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DEPARTMENT OF JUSTICE OVERSIGHT: FUNDING FORENSIC SCIENCES—DNA AND BEYOND

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BEFORE THE

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THURSDAY, JULY 31, 2003

UNITED STATES SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS, OF THE COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:09 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Jeff Sessions, Chairman of the Subcommittee, presiding.

Present: Senator Sessions.

OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATORFROM THE STATE OF ALABAMA

Chairman SESSIONS. Good afternoon. It is a busy, busy day. The floor is in a state of uproar, as is normal. I understand we have got a conference or two meeting. Senator Schumer expects to join us if he possibly can in a little bit.

The issue before us today is an important one. Forensic evidence evaluation is a critical and fundamental part of the criminal justice system today more than ever. Everyday in this country, thousands of crimes are solved through the combination of hard work of law enforcement and the crime lab scientists and technicians who evaluate fingerprints, ballistics, drug samples, DNA, and other forensic evidence.

Crime labs all across the country play a critical role in criminal and civil investigations. These labs face the mounting task of performing an array of forensic services. Over the last several years, I have been concerned that our Nation's forensic labs lack the resources to do their jobs promptly, effectively, and properly.

I was a Federal prosecutor for 12 years and I know that the job of a prosecutor depends heavily on the work of forensic scientists. If their jobs are not done properly, society is at risk. In fact, more and more prosecutors depend on laboratories.

As Americans, we have become familiar with television shows such as "CSI" and "Law and Order," and the novels of Patricia Cornwell, who helped us promote the Paul Coverdell legislation a couple of years ago, in which the forensic scientists have the most up-to-date equipment. No expense is spared when it comes to investigations of crime in those television shows and books.

Unfortunately, that is not the reality in State and local crime labs across the country. Instead, the reality is that this country's

crime labs are severely understaffed and work with equipment that for the most part is, at best, mediocre. These labs are suffering from severe underfunding, and that underfunding creates a bottleneck in the criminal justice system, stifling the ability of prosecutors to try cases in a timely manner and leaving far too many crimes, including murders, rapes, and child molestations, unsolved, and leaving people who are entitled to be cleared of crimes uncleared of crimes.

I have spoken with representatives from the American Society of Crime Lab Directors, the Consortium of Forensic Science Organizations, the American Academy of Forensic Sciences, the National Association of Medical Examiners, the College of American Pathologists, the International Association for Identification, State prosecutors, and State and local law enforcement about this lack of funding.

All of these individuals and groups tell me that the lack of personnel, staff, and funding has created a crisis for State laboratories. They all say that drug analysis, ballistics tests, fingerprint evaluation, and all of the other forensic science evaluations are often backlogged. Let me share with you the following examples of the crime lab evidence backlog.

The Alabama Department of Forensic Sciences has a drug chemistry analysis backlog of 11,917 cases, a firearm evaluation backlog of 700 cases, and a DNA backlog of over 2,000 cases.

The Los Angeles Police Department has over 6,000 murder cases in which fingerprints have not yet been evaluated because it cannot afford to update its fingerprinting analysis equipment.

The New Hampshire State Forensic Laboratory has a 13-month fingerprint analysis backlog. I didn't even think they had crime in New Hampshire. I thought everybody lived on a mountain top and listened to Judd Gregg. But they have a 13-month fingerprint backlog, a 3-month drug analysis backlog, and a 7-month firearm analysis backlog.

The Phoenix, Arizona, crime lab has a drug analysis backlog of 3,500 cases, a fingerprint backlog of 5,900 cases, a firearm backlog of 412 cases, and a 342-case DNA backlog. The Kentucky State Police has a backlog of about 6,000 drug identification cases that will take 9 months to process.

Like I said, forensic evidence evaluation backlog of drug analysis, ballistics testing, fingerprinting evaluation, DNA, and others is clear and undisputed. Backlogs of this magnitude mean tardy investigations, criminals put back on the streets, and innocent suspects detained too long while awaiting the outcome of forensic evaluations.

President Bush and Attorney General Ashcroft have introduced a DNA Initiative which seeks just over $1 billion over a period of 5 years to reduce and eliminate the DNA evidence backlog and for other DNA-related purposes. It is designed to improve the use of DNA technology, which is very important in the criminal justice system, especially the Federal, State and local crime labs, by providing funds, training, and assistance.

Some of its fiscal year 2004 provisions include $92 million to assist in clearing backlogs of unanalyzed crime scene DNA samples, such as rape kits and offender DNA samples. There is a growing

concern in this Senate and in the Congress that we have got to move these rape kits. A backlog is just not acceptable.

Ninety million dollars will go to increased forensic laboratory capacity for DNA analysis, Federal DNA laboratory programs, and to operate and improve the Combined DNA Index System, and $28.4 million for DNA-related research and development.

Besides funding, the DNA Initiative includes the Attorney General's recommendations that we here in Congress passed legislation to require that all convicted felons submit a DNA sample when they are convicted—they ought to be in the index, just like their fingerprint is; expansion of the statute governing the national DNA index to allow States which submit DNA profiles, to include all of those persons who are lawfully arrested—presently, only convicted offenders can be submitted, or are eligible to be submitted to the profile; and that the statute of limitations be tolled or stopped when DNA evidence identifies the offender that may have occurred some time after the statute of limitations has begun to run, the time in which a person can be charged.

This is an admirable and worthwhile initiative, and I would like to help the administration work to implement some of these legislative recommendations. These are important concepts for Federal prosecutors and law enforcement, but I think that the problem with this initiative is that it only funds the backlogs of DNA evidence.

A 2003 survey by the American Society of Crime Laboratories of State and local forensic laboratories found that DNA evidence accounted for only 5 percent of the total backlog in those facilities. Fingerprint analysis, drug analysis, questioned documents, and other forensic discipline work made up the bulk, the other 95 percent, of the laboratory backlog.

I know that it is not the responsibility of this Congress—and this important—or for the Federal Government to take over State crime labs, to pay all the expenses of State crime labs in the 50 States when it comes to State-run facilities. That is not a healthy example of federalism. We should not do that. However, if we are going to fund such programs to some degree, our focus should be on the areas which need the funding most, and in this situation the entire filed of forensic needs assistance.

The crime labs would benefit in different ways from funding through the DNA Initiative because labs have backlogs in every type of evidence, including DNA. For instance, the Georgia Bureau of Investigation has a fingerprint analysis backlog of 6,096 cases and a DNA backlog of 434 cases.

The Philadelphia crime lab has a drug analysis backlog of 2,832 cases and a firearm analysis backlog of 2,072 cases, and yet only a 344-case backlog for DNA analysis. The Illinois crime lab has a drug analysis backlog of 2,067 cases, a fingerprint analysis backlog of 3,132 cases, a firearm analysis backlog of 591 cases, but only a 309-case backlog of DNA evidence.

Some crime labs do not even have a backlog in DNA evidence. For example, the Columbus, Ohio, crime lab has a 920-case drug analysis backlog and no DNA backlog. The Vermont crime lab has a drug analysis backlog of 350 cases, a fingerprint backlog of 250 cases and no DNA analysis backlog.

But looking to backlogs may not be sufficient for us. Law enforcement needs very prompt forensic evidence analysis reports. Often, the filing of criminal charges or the advancement of an investigation is stopped and put on hold until the scientific analysis is complete. Our goal should be that our crime labs around America are able to supply for their police and prosecutors reports of analysis in days, not weeks, not months, and not years. This would be a huge advancement in criminal justice.

We need to fund forensic sciences and reduce the backlog of evidence across the board. States need to step up and do more. In 1996, USA Today reported that 8 out of 10 crime labs experienced a growth in their caseload that exceeds the growth in their budget and staff. Unfortunately, this statistic from 7 years ago seems still to be the norm today.

I recall the story—and D.A. Robby Owens over there has probably heard me tell it—in Alabama about a man I got to meet who ran a dry cleaners. He had heard me speak about the need to move cases promptly, and delaying a case going to trial didn't help anything. He said he really made his success in the business by buying dysfunctional laundries and dry cleaners. He would find clothes stacked up; they couldn't find them, they were lost. It was just a mess. People would come back and ask for them and they hadn't been cleaned, and he wasn't able to collect any money.

He set up a system so when the person brought in the clothes for cleaning, the assistant would take and put them right in the machine that minute. And there it was back and waiting on the rack, waiting for the customer within an hour.

Well, this whole criminal justice system today to an extraordinary degree—every police officer, every D.A., every court, every judge, is dependent on prompt receipt of information from the forensic laboratories. People expect it.

In the past, you know, you might not have to provide fingerprint analysis or drug analysis or DNA analysis, but you have to do it today. People have seen these shows on television and they expect it, and they have a right to when we can do it. So I would like to see us set a goal for America, and it can't all be done from Washington, but we need to engender a vision of the possibilities for criminal justice in America.

If every drug analysis, every fingerprint, every DNA, and every other scientific analysis reasonably possible could be produced for the investigative agencies within days, it would change law enforcement more than anything I can imagine, and realistically would not be expensive compared to all the other things we are spending money on in law enforcement. It would be very inexpensive.

Ms. Sarah Hart, thank you for coming and listening to my diatribe there.

Sarah Hart was nominated by President Bush to be the Director of the National Institute of Justice and was sworn in as Director on August 7, 2001. Before her appointment, Ms. Hart served as Chief Counsel for the Pennsylvania Department of Corrections, a challenging job, and as a prosecutor in the Philadelphia District Attorney's Office.

You had a good boss. You didn't go back to Senator Specter, though, did you?

Ms. HART. My husband was an intern for him. I was not.

Chairman SESSIONS. He was a good one, and I know the current one there is—what is her name?

Ms. HART. Lynn Abraham.

Chairman SESSIONS. Yes, Lynn Abraham.

Ms. HART. I just met with her last week about DNA.

Chairman SESSIONS. She is a committed prosecutor and professional.

You have served as lead counsel in Federal litigation involving the prison system of Philadelphia.

Previously, Ms. Hart has provided substantial assistance to the State of Pennsylvania and to the Judiciary Committees of both the House and the Senate in developing legislation that addressed prison litigation reform.

We are delighted to hear from you. You have an important task before you and we will be delighted to hear your comments on this subject.

STATEMENT OF SARAH V. HART, DIRECTOR, NATIONAL INSTITUTE OF JUSTICE, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Ms. HART. Thank you very much, Mr. Chairman. I am very, very pleased to be here today to discuss two very important topics—the President's initiative, Advancing Justice Through DNA Technology, and also support for other forensic sciences.

Everyday, we read about how DNA has solved previously unsolvable crime, linked seemingly unrelated crime, and identified serial predators. In my hometown of Philadelphia, a serial rapist, dubbed the Center City Rapist, murdered a Wharton graduate student and raped several other women. Over a year later, DNA evidence tied these Philadelphia rapes to a series of rapes in Colorado. This gave the police a key piece of information. They were looking for somebody who was in these two locations at these specific periods of time.

Armed with this information, they identified a suspect. DNA confirmed his guilt. He pled guilty to all of his crimes and all of the rape survivors were spared the trauma of a trial. Without DNA evidence, those crimes would not have been solved.

Unfortunately, the power of this technology to advance justice has been limited due to insufficient funding, insufficient laboratory capacity, information systems that are inadequate, overwhelming caseloads, and a lack of training.

Despite a substantial Federal effort to reduce the backlog and improve crime labs, there are hundreds of thousands of DNA samples awaiting analysis, many of them, if not most of them, rape kits. This is plainly unacceptable and it is wrong.

The President's DNA Initiative is a 5-year, over $1 billion plan to eliminate backlogs and prevent them from occurring in the future. I have provided the specifics of the President's initiative in my written testimony, but this comprehensive strategy includes all of the elements that you outlined, Senator Sessions.

While the President's DNA Initiative is a comprehensive approach to building the Nation's capacity to use DNA evidence, the Justice Department continues to dedicate significant resources to enhance other areas of forensic science, such as fingerprint identification, the analysis of explosives, drugs, firearms, and arson.

Many Department of Justice agencies have each invested millions of dollars to help equip and train Federal, State and local law enforcement, and to fund research into new forensic technology. A stunning example of this is the FBI's Integrated Automated Fingerprinting Identification System. We all know it as IAFIS.

To illustrate, in just 1 day last week, on July 23, IAFIS processed nearly 67,000 sets of fingerprints from Federal, State and local law enforcement agencies. This included over 38,000 sets of criminal fingerprints, with an average response time of 53 minutes.

The ATF's National Integrated Ballistic Information Network program—we call it NIBIN—helps State and local agencies solve firearm-related violent crime. Since fiscal year 2001, ATF has spent over $73 million on the NIBIN program. A significant portion of this funding directly supplies State and local law enforcement agencies with NIBIN equipment.

The President has also directed the creation of a National Forensic Science Commission, to make recommendations on maximizing the use of all forensic sciences in law enforcement.

The National Institute of Justice has also funded over $15 million in research and development projects involving forensic tools and techniques other than DNA. For example, we have funded elemental analysis of glass and paint materials, improved software for testing evidence from seized computers, development of three-dimensional bullet profiles, and teleforensic projects, just to name a few.

In the last several years, NIJ has also provided over $94 million under its Crime Laboratory Improvement Program. At the same time, the Bureau of Justice Assistance has provided more than $30 million through 234 specific local law enforcement block grants to States and localities for crime lab improvement, non-DNA forensic technology and equipment, and forensic training.

Since fiscal year 1995, the Bureau of Justice Statistics has provided nearly $400 million to improve our Nation's criminal records and information databases, and this information is also used by crime labs in solving crime.

We at the Department of Justice recognize that most of the law enforcement and prosecution in this Nation occurs at the State and local levels. Having been a prosecutor for 16 years in Philadelphia, I especially know this. At the same time, we will continue to support State and local crime labs in their non-DNA forensics, as well as their forensic DNA work. This joint approach will help bring the guilty to justice, eliminate innocent suspects, and ensure public safety.

Thank you very much, Mr. Chairman, and I would be very pleased to answer any questions you may have.

Chairman SESSIONS. Thank you, and well stated. Would you have an estimate just for perspective here—and I certainly wouldn't hold you to it, but how many scientific analysis requests

were made by the Philadelphia Police Department and DA's office as compared to the Federal officials in Philadelphia?

Ms. HART. I remember when I was a prosecutor, I used to mention, Mr. Chairman, that we prosecuted more crimes in Philadelphia than the entire Federal Government did. Now, I realize that our DUIs might not have been comparable to some of the more complex cases. But, yes, that was the bulk of crime.

Chairman SESSIONS. But they frequently had drugs involved, so you have to have a chemical analysis of the drug.

Ms. HART. That is correct.

Chairman SESSIONS. Fingerprints on a robbery, maybe, or blood on assaults, and firearms.

Ms. HART. Well, it is interesting that you should bring up the Philadelphia crime lab. I think it is a good example of some of the problems that we are facing in this country.

Even though you mentioned that Philadelphia had a relatively low DNA backlog, Philadelphia has done that by simply funding half of the analysis for DNA. So although they have half of the crime of the State of Pennsylvania, none of their DNA cases are going into the CODIS databank. All they are doing is comparing it with known suspects and other cases in Philadelphia.

They are not comparing that DNA to convicted offender profiles. They are not comparing it to see whether it is occurring in another county or across the State, whether there are related crimes. Frankly, that is not the kind of system that you want. You want to be able to encourage these labs, especially these major labs that are handling large volumes of crime, to be able to make use of this Federal database that is such a powerful tool.

Chairman SESSIONS. Will the President's proposal allow funding for those kinds of things, too?

Ms. HART. It would allow it for the local laboratories directly, yes. One of the problems we found is that by funding it directly to the States, most of the money was going to the State labs and the big jurisdictions were not getting the money.

So, for example, in Los Angeles we saw the unfortunate circumstance of thousands of crime scene samples being thrown away because they had not been tested for years. I can't begin to imagine what those thousands of rape survivors must be thinking after going through all of that to have the evidence taken and have a rape kit, only to learn that the system has thrown the evidence away and nothing will happen.

Chairman SESSIONS. That is not acceptable.

Tell me again what it is—for those laypersons that will be listening, what it is that Philadelphia is doing and what they further could and should be doing, and explain why that is important. I think I know, but I would like to get it straight.

Ms. HART. Well, if I may just first say I don't mean to pick on Philadelphia.

Chairman SESSIONS. Absolutely. We have got problems all over America, but it is something you know because you have been there.

Ms. HART. Right. A very, very committed bunch of people are working with limited resources. They are not getting direct Federal funding. So what they are doing at this point is that you have a

lab that is only doing—instead of doing analysis of the 13 loci that are required to go into the database, they are only doing 7; they are only doing half of that.

Now, that is enough to tell you with very, very good precision whether that particular person matches somebody else, but it is not consistent with the quality assurance requirements of the FBI's CODIS requirement.

Chairman SESSIONS. The FBI's CODIS requirement is the national index?

Ms. HART. Yes. I am glad you are explaining for me and I appreciate the help. We tend to all speak in acronyms and I apologize for doing it here.

Mr. Chairman, as you know, the Combined Offender DNA Index System, I think it is called, is comprised of a variety of systems. You have what we call LDIS, which is your local DNA system where people like Philadelphia can put it into their local databank. Usually, those get uploaded into State systems, which are SDIS. And then the State can send their stuff—if it meets the requirements of the Federal law and the FBI's quality assurance guidelines—they can upload that into the national database, the NDIS.

What happens is you have a lot of DNA profiles out there that are not getting into the national database. So, for example, Virginia, which has many arrestees and juveniles—many, many profiles that they have cannot be uploaded into the national database. What you have is a lot of jurisdictions who are aware that there are all these other databases out there developing a system of faxing requests out to each lab. Each lab will input it separately and do a search and give that information back, but a very inefficient system that wastes a lot of very valuable law enforcement and crime lab time.

Chairman SESSIONS. Because they don't do the complete analysis of the DNA material and they don't have a sufficient quality analysis, the FBI will not accept it for their system and it is not in the national system.

Ms. HART. That is correct.

Chairman SESSIONS. I am going to ask a question. It seems to me we need to confront this proliferation of systems. I mean, Pennsylvania has a system, the city of Philadelphia, the FBI has a system. It seems like it is a tremendous cost. We ought to be able to use one system that everybody could inquire of, and then you wouldn't have to worry about whether or not it was in some other State.

Ms. HART. With the President's proposal, I think these issues will very much be addressed. I mean, ultimately the collection of evidence occurs at the local system, and you need to have that go up ultimately to the Federal system. What you want to make sure of is that at the local system, when testing is being done, that it is being done in a quality way and it is meeting national guidelines.

At the same time, we need amendments to the Federal law to permit States to send in all of their lawfully-collected samples so that we don't have this proliferation of separate databases.

Chairman SESSIONS. Well, I would agree with that.

What about the States that have basically caught up on DNA? Are they able to access any of the money under the bill as it is now written?

Ms. HART. Well, we are working with Congress on the legislation. Nothing has been introduced yet, but I think everybody who is involved with this is very mindful of the fact that you would certainly not want to penalize the States that have done it right. We want to make sure that we eliminate these backlogs. We want to make sure that no rape victim feels that their evidence has not been tested. They should know that the system was trying to find the perpetrator.

But at the same time, every system frankly can use improvement and use help. We still have significant backlogs throughout the country not only in case work samples and convicted offender samples, but a very, very significant backlog in what we call the owed samples. We suspect it to be about a half million to a million samples that the State law requires that they be collected, but, in fact, they have not been collected.

Chairman SESSIONS. I think Federal law has a 5-year statute of limitations on almost every crime, except maybe murder. Let's say there was a serious assault and DNA was taken and it did not produce a hit. Eight years later, an individual commits another serious assault or murder or rape and their DNA goes in the system and, bingo, this is conclusive proof that this was the person that committed that crime. Under Federal law, what would happen to that defendant on the first charge?

Ms. HART. At this point, they could not be prosecuted if it was too old. You bring up a very good point. There was also a recent case in Philadelphia, a 1986 rape and homicide of 10-year old Heather Coffin that was just solved a few weeks ago. The defendant was arrested just a few weeks ago and pled guilty right away to the crime.

The reason that case could be prosecuted was it was a homicide and there are no statute of limitations for homicide. But if that had only been a rape and not a homicide, there is still a very compelling interest in being allowed to prosecute that case. The evidence didn't go stale. The many reasons that you often have a statute of limitations bar are to deal with issues that witness's recollection isn't as good down the road. The evidence may become stale.

The unique thing with DNA is that evidence does not become less reliable or less persuasive. It is equally reliable whether it is day 1 or year 50, and for that reason—

Chairman SESSIONS. So it will remain valid for 50 years?

Ms. HART. If you do that sample, 50 years down the road you can do that.

Chairman SESSIONS. Yes.

Ms. HART. In fact, you are seeing some old testing where, for example, the Romanov family was recently identified in Russia through mitochondrial DNA testing. Those murders were done, I believe, not quite 100 years ago. So it is a very remarkable technology that is able to solve things and give us answers that we didn't anticipate we would get before.

Chairman SESSIONS. Well, I think we need to deal with the statute of limitations question. For serious crimes of violence, that is

particularly important because, unfortunately, people who commit crimes of violence—rape, pedophilia—tend to do it again.

I don't know what the numbers would be, but if you go out and take a cohort of people who have committed a serious assault and a cohort who have not, there would be probably 50 times as many second assaults committed by the first group. I believe that is one of the reasons we have done some good with crime prevention in America through the repeat offender laws. We are identifying those repeat offenders and they are serving longer time. It may not be perfectly in accord with reality, but basically it works in hammering away at the repeat offenders. The thought that someone could get away from a very serious crime because they were 5 years and 1 day late before it was discovered is not acceptable to, I think, most Americans.

With regard to the funds that are there and how they can be used, would you support language that would help laboratories who don't have DNA backlogs or who could show they don't need it all on DNA to use it on something else?

Ms. HART. Well, the President's initiative contemplates capacity-building for crime labs, and much of the proposals, the things that we are looking at, have application across the board to help crime labs in a variety of ways with other types of evidence.

One of the things that we think is very important for crime labs to have is laboratory information management systems. We call them LIMS. If you think about it, we go to supermarkets and you see all of your inventory that is controlled with a bar code and people can know where stuff is and what is happening and who has bought what.

But if you go to most crime labs, you will see people, very highly trained scientists, hand-writing out form after form after form. Some of the basic technologies for managing that evidence, such as using bar codes and computer systems, are missing from some of the crime labs. Those kinds of improvements would go across the board both to DNA and non-DNA evidence. Also, it would free up a significant amount of staff time that can be devoted to other things.

In addition, the President's proposal also talks about evidence storage. The reason that we have such a difficult time getting a handle on the DNA backlog is because it appears that almost all of it is sitting on police shelves and not at the crime labs. That is because the crime labs lack the kind of storage capacity for the evidence.

Chairman SESSIONS. Director Hart, is there a definition of what a backlog is?

Ms. HART. I don't think any formal one.

Chairman SESSIONS. Is it a month, a week, or 6 months?

Ms. HART. I think at this point people are counting what is sitting on the shelves. And you are right. I think your point is a very good one. If it is sitting there for a day, it is a little hard to say that is really a backlog because in the best of all circumstances, there is going to be a certain amount that sits there.

So it is not so much the amount, but how long it has been there. In other words, if you are able to process 10,000 cases a week and you have 10,000 cases sitting there, it would be a little misleading

to say there is a backlog of 10,000 cases. So it is difficult to put a handle on it, especially because so much of this is not actually in the crime lab.

Chairman SESSIONS. Director Hart, you note either in this testimony or in the House testimony that you gave that you have hopes, or we have the capacity to develop new systems that would allow the processing of DNA in minutes rather than hours, with less people and more accuracy. What can you tell us about that?

And I would just add parenthetically that I am a very strong believer that a person in your position that is supporting, in a way, law enforcement throughout America—that research to help bring online rapidly something that would help every laboratory in America reduce their costs would be a wonderful thing to promote.

Ms. HART. When I talk about this, Mr. Chairman, I often give the example about when I was a child and somebody told me that there would be a computer in every house. And at the time, the computer was about the size of a garage, and I just laughed. I thought that was ridiculous, that nobody would ever be able to afford it, and why would you have something of that size.

If somebody had told me then that we would have actually more than one computer in my house, I wouldn't have believed it. But the reason we got there was because we made them smaller, we made them faster, we made them cheaper, and we made them easy to use. That is what we need to be doing in law enforcement for DNA.

We have a kind of mantra, which is "faster, better, cheaper." What you want is for DNA to be able to be used as a routine law enforcement tool, and that means it has to be cost-effective and it has to be relatively inexpensive. Portability is the ideal that we would like to have, something very small and very precise.

So our research funding is directed that way. We are developing DNA on a chip which uses nano technology to reduce the amount of time to do a DNA test. That was the funding we provided to MIT's Whitehead Institute to develop that, and we are working with NIST, also, to try and bring that up to speed so that we can start using it. So that is one of our goals here. If we want to make this a routine law enforcement tool, which is what the President's vision is, we need to make it very accessible, easy to use, and inexpensive.

Chairman SESSIONS. How close are we to significantly improved processing equipment?

Ms. HART. We are a ways out on this particular chip. We are making advances all the time with DNA. One of the major advances that we had, for example, within just the last year followed out of the September 11 tragedy and the World Trade Center.

We were faced with that with a very unprecedented DNA question, which was how do you identify so many human remains? With so many potential victims, how do you sort everybody out? And here you had families who were desperate to have their loved ones identified. We had the Nation's experts from all around the country come in; many volunteered their time. As a result of that tragedy, we have had major advances in the science of how to analyze degraded remains from that.

The science of DNA is moving so rapidly. Some of it is being developed in the private sector, some in the public sector. We try and leverage funds wherever we can, but there are major advances going on in this.

Chairman SESSIONS. Well, you know, if it is pretty clear that a new technique could reduce time and cost of DNA or cocaine analysis or anything else, I think we really ought to put the money into getting that down, helping the users get it as soon as possible, because it will just save the system money and make it work better.

Thank you for your testimony and for your leadership. I guess with regard to research and improvement of the system, do you believe we need to be doing that for the other areas of forensic analysis, other than just DNA?

Ms. HART. Absolutely, and we continue to support it and we will.

Chairman SESSIONS. One of the things you are going to need to wrestle with and all of us need to wrestle with is all these different databases. The ATF has got theirs. They used to have a fight with the FBI, you know, over guns analysis. I think they have settled that, and a waste of taxpayers' money to an unnecessary degree.

DEA has a drug database, Customs has a database, the Philadelphia Police Department has a database. Everybody has got them, and one of the things I would like to spend some time on in the months to come is analyzing how we can make that better, make the whole system that needs to be national be available nationally.

For example, it is a secret who are here illegally. At least that is my little way of saying it. We have found that INS does not put their fugitive warrants in the NCIC, and no police officer that stops somebody on the road is going to think to call the local INS office before they let somebody go. They should be in there if they have got a warrant for their arrest or they are a fugitive. I think we have got a lot of work to do on making that system be as powerful as it could be.

As a person who spent a lot of years in law enforcement, I am well aware, as you noted in your opening comments, that these hits on older cases help solve more crimes than most people ever know. It really has helped us identify repeat, dangerous offenders and get them off the streets, and has been a reason for the declining crime rate, I think.

Do you have anything else?

Ms. HART. No. Thank you very much for inviting us.

Chairman SESSIONS. Thank you for your leadership.

Ms. HART. We appreciate it. Thank you.

[The prepared statement of Ms. Hart follows:]

Chairman SESSIONS. We will bring up the next group. The next group will include Susan Hart Johns who is the Bureau Chief of the Illinois State Police Division of Forensics and currently serves as President of the American Society of Crime Laboratory Directors and Administrators. She has worked as a laboratory analyst and a laboratory director, and has been active in the field of forensics for 25 years.

Come on and you can be seated. If there are name cards, we will put them out.

Dr. Michael Baden is a board-certified forensic pathologist and former chief medical examiner for New York City.

How many books have you written, Dr. Baden?

Dr. BADEN. A few, sir.

Chairman SESSIONS. He is the author of *Dead Reckoning: The New Science of Catching Killers*.

You could probably write some individual case stories.

In addition to maintaining a private practice, he is the Co-Director of the New York State Police Medicolegal Investigative Unit and has served as President of the Society of Medical Jurisprudence and Vice President of the American Academy of Forensic Sciences.

As an expert in forensic pathology, Dr. Baden has been involved as an expert in numerous cases of interest, including the assassination of Dr. Martin Luther King, the death of John Belushi, and the examination of the remains of Czar Nicholas, of Russia, and family.

Peter Neufeld is a co-founder and Director of the Innocence Project at the Benjamin Cardozo School of Law, Yeshiva University. An expert on DNA evidence, Mr. Neufeld is Co-Chair of the National Association of Criminal Defense Lawyers' DNA Task Force. In 1995, he was appointed by the New York State Governor's Office to the Commission on Forensic Science, which regulates all State and local crime laboratories. Mr. Neufeld obtained his law degree from the New York University School of Law in 1975.

Chairman SESSIONS. Mr. Randy Hillman was the chief assistant district attorney in Shelby County, Alabama.

Mr. HILLMAN. Yes, sir.

Chairman SESSIONS. And currently serves as Executive Director of the Alabama District Attorney's Association. He graduated from Cumberland School of Law and entered the private practice of law in Mobile, Alabama. From there, Mr. Hillman practiced as an assistant district attorney in Shelby and Jefferson County, Alabama, before leaving the DA's office in Shelby, Bessemer Division. Now, he is the Executive Director of the State Association. So he brings the perspective of the district attorneys themselves and as a hands-on prosecutor who dealt with cases personally.

Mr. Frank Clark is the District Attorney in Erie County, New York, and has been in that position since 1997. Prior to that, he was Deputy District Attorney in Erie County and served as the Chief of the Organized Crime Drug Enforcement Task Force in western New York for 5 years and as the chief of the Violent Felony Bureau in the Erie County District Attorney's Office. Mr. Clark is a decorated veteran of the Vietnam War, where he earned the rank of captain.

Ms. Rosemary Serra is currently a stay-at-home mom, retired after 20 years from Federal Express as an operations manager. She is one of millions of people in this country who have been victims of crime. Her victimization was due to the murder of her sister, Penny, and today she will tell us about her experiences.

Ms. Serra, you will start off and give us a perspective from the world where people lose loved ones as a result of crime and how that, in your opinion, impacts forensic science analysis.

STATEMENT OF ROSEMARY SERRA, NEW HAVEN, CONNECTICUT

Ms. SERRA. Mr. Chairman, Members of the Committee, I was a victim for 28 years. On July 16, 1973, my only sibling, 21-year-old Penny Serra, was stabbed to death on a sunny afternoon in a parking garage not more than 2 miles from her home. Penny was not only my sister and best friend, but also my surrogate mother, since our own mom had died when I was 6 and she was 11.

Although the murderer left behind a calling card of evidence, he was not apprehended until June 1999, 29 years after the murder, almost to the day of Penny's death. During those days, I graduated from high school, attended college, dealt with the false arrest of a person who the police suspected murdered my sister, an acquittal, four primary suspects, my father's death, and my becoming an adult.

Although at the time of the murder DNA was not more than letters of the alphabet, the crime scene investigators took meticulous care in collecting, preserving, and logging the evidence found at the scene. Throughout the next 26 years, the key pieces of evidence—a tissue box with a thumb print, a hanky with fluid, paint chips, and a bloody parking ticket—were hauled from the police department to the chief State's attorney's office, from one forensic lab to the next.

From 1973, and for close to three decades, this evidence went through every technological advance of testing that was available. Literally thousands of manpower hours were spent in laboratories from coast to coast. The fingerprint on the tissue box seemed to always split the investigation into two schools of thought. One was that the print was that of the assailant; the other was the murder was a crime of passion. Hence, the fingerprint was not a key factor. Both theories were pursued vigorously.

As years went by, my father's perseverance on keeping the case active was heart-wrenching but successful. I, however, had lost faith of ever finding my sister's murderer. My life as I knew it was over and the hope of closure seemed to diminish as years passed. However, unknown to me as I was trying to build a new life, strangers were working furiously to find my sister's murderer. Christopher Grice, a forensic lab technician in Connecticut, is just one of those individuals.

On July 30, 1994, Mr. Edward R. Grant was fighting with his girlfriend. After a heated exchange that took place at her home in a nearby town in Connecticut, Grant beat his girlfriend enough that she filed charges with the local police department. Grant was taken into custody and booked on an assault charge. His fingerprints were taken as part of routine police procedure and entered into the FBI regional fingerprint database.

Christopher Grice, working from the Connecticut State Police Forensic Science Laboratory in Meriden, had been involved with our case since the early days of the investigation. Then a print specialist in the detective bureau of the New Haven Police Department, Grice had memorized the whirls and ridges of the thumb print found on my sister's Kleenex box.

As he sifted through literally thousands of prints for a match, of course, at the time no computer database for criminal fingerprints

existed. There were just dedicated individuals hovering over black and white cards, tracing an individual's unique markings.

Mr. Grice, who now administers the Automated Fingerprint Identification System, routinely runs checks for all of the unidentified prints associated with unsolved cases in the State. This was the process he undertook in July of 1997, 3 years after Grant's arrest. Several possible matches were found in respect to my sister's murder case, and by process of elimination Edward R. Grant's print appeared on the screen with a match of at least 12 points.

After 3 years of tireless effort, the State prosecutor and his team built a strong forensic case against Grant and we entered superior court armed with everything but a motive. The print on the tissue box was unquestionably Grant's. The DNA in the blood on the parking ticket matched Grant's DNA by a ratio of greater than 1 in 1 billion. The paint chip, which we did not realize at the time was a paint chip, which was found at the scene matched the paint used at the auto body shop which Grant owned.

Edward R. Grant was prosecuted and convicted in May 2002 solely on forensic science. He is now serving a 25-year sentence for the murder of my sister, and hopefully will never see another day of freedom. On the day of Grant's sentencing, my long-awaited ache for closure was achieved and my days of being a victim were over. In the past year, I have adopted a beautiful daughter, Jessica Anne, and look forward to new beginnings.

This story could have died along with my sister if it were not for the qualified and dedicated personnel who worked on this case, or the wide spectrum of forensic science analysis available in this country. Edward Grant would still be walking the streets a free man and I would still be looking over my shoulder for the person who stole my youth and my beloved sister.

I am not a scientist and would be lying if I said I understood the mechanics of forensic science. I am just one of many who depend on forensic science professionals for justice. To spend government money solely on DNA would be a travesty and an injustice to all the victims and families with unsolved cases in this country. Please think of Penny Serra when you think of forensic science, and be aware that this case, along with 50 percent of all other homicides, cannot be prosecuted on DNA alone.

I would like to submit my written statement for the record, and I thank you for your time.

Chairman SESSIONS. Thank you for that impressive story. It brings a human face to what these people do, so many do everyday, and it saves lives and brings justice and closure for a lot of victims of crime. We thank you for sharing that with us very, very much.

Just one question. It was the fingerprint that got the original hit confirmed by the DNA and the paint. Would that be correct?

Ms. SERRA. Exactly. If it was not for the fingerprint, it was a needle in a haystack. He would have never been arrested.

[The prepared statement of Ms. Serra appears as a submission for the record.]

Chairman SESSIONS. All right, let's see. I guess we will just start at the left with Randy Hillman. It is good to see you again and we are glad that you are here and glad that Robbie was able to come, too.

Share your thoughts with us, and I think you have a story to share, too, about how this can save lives.

STATEMENT OF RANDALL HILLMAN, EXECUTIVE DIRECTOR, ALABAMA DISTRICT ATTORNEY'S ASSOCIATION, MONTGOMERY, ALABAMA

Mr. HILLMAN. Yes, sir. First, Senator, let me thank you for asking us to be here and represent the perspective of the prosecutors. One of my brothers is down here from New York and I am sure he can tell you a lot of what prosecutors face with forensics as well.

First, let me very quickly clarify my background. I spent 3 years between Jefferson and Shelby Counties as an assistant DA, and then I spent 9 years as the chief assistant for Mr. Robbie Owens, behind me. Eighteen months ago, I assumed this job, which is the Director of the Alabama District Attorney's Association. Now, it is my responsibility to represent all 42 DAs throughout the State of Alabama.

I have been in the trenches. I have tried, I can't tell you how many felony cases, misdemeanors. I have spanned the whole gamut of prosecution. I can't tell you how important it is that we fund all areas of forensics. DNA is a good thing. I applaud the President and the other people for what they are trying to do, but DNA makes up a very small part of what we deal with everyday.

The majority of our cases in forensic sciences deal with the other disciplines. Fingerprints, questioned documents, and drugs are a major part of what we deal with everyday. Without forensics, I don't think there would be any question amongst here that the criminal justice system would absolutely shut down.

Let me talk very quickly about Alabama. The Administrative Office of Courts in Alabama, their numbers show that between 1990 and 2000, just in Alabama, our caseload felonies went up by 54 percent over the previous 10-year period of time.

Taylor Nogel, who is the Director of the Alabama Department of Forensic Sciences, says we have more work than we can possibly do; we are just swamped. All of his disciplines—toxicology, fingerprints, drug chemistry, ballistics, firearms, trace evidence—all of those disciplines are severely underfunded and overworked.

In Alabama, I did kind of an informal survey of all of our prosecutors. We estimate that somewhere around 40 percent of our caseload, of our dockets, are directly drug cases. Those are the possessions, the trafficking, the manufacturers. Methamphetamine is a huge problem for us now. We get clandestine labs out there in the rural parts of our counties. Forensic workers have to go out and process these labs because they are so dangerous.

We have currently—and I think you said it in your statement earlier, Mr. Chairman—we have somewhere around 12,000 cases that are backlogged for just our drug chemistry section in the State of Alabama.

One other point. Ms. Serra was talking about the fingerprint analysis. In Alabama, we have one fingerprint analyst in the whole State. We just cannot continue to do our business when they are at that level, when forensics is at that level.

What happens—and it is a trickle-down effect—when forensics gets behind, then it clogs our dockets; it puts us way far behind.

For example, Robbie, sitting behind me—Shelby County has somewhere between 165 and 170,000 people. We process roughly 2,000 to 2,200 felonies a year. Right now, we have a pending backlog of 1,000 felonies sitting there waiting on trial. Most of them are waiting on forensic reports.

Not only does it stymie the criminal justice system, not only does it slow it way down, but is also causes other problems for us. During that wait, during that period of time between—let's say there is an initial arrest and the time that the samples come back from the Department of Forensic Sciences. We are running more and more into problems with the defendant being out there on the street causing or committing other crimes.

Two examples, and I will be very brief with these. Crenshaw County, Alabama. Last August, a defendant was out on bond from a distribution of cocaine charge, had been out on bond almost a year. It was 11 months before the toxicology report came back on his particular case.

Chairman SESSIONS. Not indicted, but released after arrest?

Mr. HILLMAN. I am not sure if he was indicted or not, Senator. Most of the time, we do not indict cases. There is an arrest and we sit back, or oftentimes cases are brought to grand jury first.

Chairman SESSIONS. But the question is, without the chemical analysis, some district attorneys will not indict. Some will make the indictment, but they can't go to trial until they have scientific confirmation that the substance is a drug.

Mr. HILLMAN. Right.

Chairman SESSIONS. So, somehow, the analysis hasn't come back on this case 11 months later?

Mr. HILLMAN. Yes, sir. It was still with the Department of Forensic Sciences.

In that interim, this defendant went to his girlfriend's house and spent the entire day, started at seven o'clock that morning and went until nine o'clock that evening, systematically murdering six members of her family. As each would come home, he would murder that person—six people over the course of 1 day. Had we gotten that tox report back a little bit sooner, maybe we could have done something to prevent that.

Chairman SESSIONS. I would note I think that is the largest mass, serial murder in 1 day in Alabama history. And I think it is possible that had the report been readily available, and there had not been a backlog, he might have been serving time for distributing cocaine rather than being out there murdering people.

Mr. HILLMAN. Yes, sir.

Chairman SESSIONS. I thank you for sharing that story.

Mr. HILLMAN. Yes, sir.

Chairman SESSIONS. And that happens to a much less dramatic degree all over America everyday when cases sit for long periods of time.

Mr. HILLMAN. Yes, sir.

Chairman SESSIONS. Go ahead.

Mr. HILLMAN. One other very quick example. Covington County, Alabama. A defendant is arrested in January. The drug that he is charged with possessing and trafficking in, a large quantity of methamphetamine, is submitted to the Department of Forensic

Sciences for analysis. Seven months later, he takes a plastic garbage bag and puts it over his 7-year-old daughter's head and suffocates her to death. Ultimately, that sample took us 16 months to get back. Mind you, I am not disparaging the people who are doing this work. They are just swamped and don't have the ability to do what they are asked to do.

The unseen aspect of all this—you hear about the violent crimes that are occurring while people are out on bond. What society does not understand about what we see everyday is the drug offenders. That is the big problem. You will arrest a drug offender for selling cocaine. He makes bond, he gets back out on the street. He can go and do this again and again and again, and if he is caught, he will go back through the same process while we are waiting on the tox reports to come back. You have multiple, multiple victims, often young, often children, from that set of circumstances, and people don't often see that and I would very much like for this Committee to know that.

Chairman SESSIONS. Mr. Hillman, you will wrap up fairly quickly and we will—

Mr. HILLMAN. Yes, sir. I am sorry.

Chairman SESSIONS. This has been fascinating, but we have got a good panel here.

Mr. HILLMAN. I apologize.

Chairman SESSIONS. That is all right.

Mr. HILLMAN. One final thing is investigations. We are stymied oftentimes with investigations; for example, DUI murder, DUI homicide, those types of cases. The intoxication, whether it be on alcohol or controlled substances—that is the main element of the offense. It is taking us anywhere from 9 months to 12 months to get a toxicology report back from the Department of Forensic Sciences.

Meanwhile, the victim's family and the defendant are out there. Oftentimes, the defendant is on bond. The victim's family is just lost until we can establish if this defendant was intoxicated, and that is a tragedy that we shouldn't have to go through.

One last statement, if I may, please, sir. This Committee and this body has a chance to do something that prosecutors rarely get the chance to do. You have a chance to make a difference up front. You have a chance to help us be proactive and prevent some of these things from happening. Ninety-nine percent of the time as prosecutors we react and we don't get a chance to prevent things from happening. You all have the chance to do that and I would respectfully ask that you do.

Chairman SESSIONS. Thank you very much. It is just important to know that steps in investigation are not going to be taken until the toxicology reports or the reports come back. Indictments can't be returned, people can't be arrested, trials can't be held. The whole system is dependent on getting these reports in, and for every one dramatic case there may be thousands of others which, if not dealt with promptly, could become another dramatic case.

[The prepared statement of Mr. Hillman appears as a submission for the record.]

Chairman SESSIONS. Ms. Johns, you are the President of the American Society of Crime Lab Directors. We are delighted that you can be with us. Give us your thoughts, please.

STATEMENT OF SUSAN HART JOHNS, PRESIDENT, AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS (ASCLD), SPRINGFIELD, ILLINOIS

Ms. JOHNS. Thank you very much for the honor and privilege of testifying today. Like you said, I have been in the crime laboratory for 25 years. I have analyzed evidence, I have presented my findings in court. I have also been a laboratory director, managing resources, and currently I am responsible for our Westchester and Chicago laboratories.

Today, I am here speaking as the ASCLD president, but I am also speaking as a lab director and a member of the forensic community, and I am speaking in support of providing funding for all forensic disciplines in the crime laboratory.

Many of the examples or remarks I was going to make you have already covered in your opening remarks, so I might skip over them. But I do want to make the point that our crime laboratories analyze evidence, and that is a critical element of the criminal justice system.

I once heard forensic laboratories referred to as the B team in criminal justice. While more visible front-liners are seen as essential, the crime laboratory is relegated to a support position, expendable when times are rough. And we are in rough times when it comes to State and local funding for forensic resources.

Like you said, the majority of the cases worked in this country are worked in State and local crime laboratories. You gave the same examples I was going to use, in that these rough times have resulted in crime laboratory closings and in layoffs in talented and trained personnel.

Mr. Chairman, resources have an impact on the quality of the work being done in our laboratory. ASCLD supports accreditation, but not all of our members are accredited, and the reasons given for not being accredited are related to resources both in the personnel needed and in the costs of the program itself. I personally believe the cost of not being accredited far exceeds the cost of accreditation. As you have mentioned and given numerous examples, the lack of resources causes a bottleneck and significant delays.

Crime laboratories analyze all types of evidence. As of July of this year, there were 237 laboratories accredited by the American Society of Crime Laboratory Director's Laboratory Accreditation Board. Eighty-three percent of those laboratories have accredited sections which analyze for controlled substances. Sixty-one percent of those laboratories have firearm sections, 59 percent have sections which analyze trace evidence, 58 percent have forensic biology/DNA sections, and 49 have latent fingerprint sections. My submitted report has a full list of all of those areas accredited.

Problems in laboratories are not unique to evidence type. Backlogs—and it is interesting you did ask what a backlog was, and it can be defined, but backlogs are created when evidence is submitted to the laboratory faster than it can be analyzed. Not all evi-

dence, though, has the same requirements for training, equipment, personnel, and facilities.

I would like to emphasize one thing, also. Workload is different than backlog. We don't get to choose the type of analysis that we perform. It works the other way around. The evidence that is presented to us determines or dictates what types of analyses are performed.

In Illinois this year, our workload has been more than 55,000 cases. Seventy-two percent of those cases—now, this is the workload, the cases coming into the laboratory—required drug analysis. Eight percent need latent fingerprint analysis, 5 percent need toxicology analysis, 4 percent need firearms, and 3.8 need what I will call forensic biology.

Let me clarify what forensic biology is. Forensic biology is you have to examine the material presented for body fluid type or what type it is. After you do that, approximately half of those samples or half of those cases yield a sample which is suitable for DNA analysis. So only approximately half of the 3.8 percent of the cases coming to the laboratory even have samples suitable for DNA analysis. I think that is an important point for you to note. I have polled our crime laboratories and, like you, have found similar numbers on the cases that are backlogged.

I think assistance has been provided to the crime laboratory community through a variety of programs, to include the forensic resource network and grant programs from the National Institute of Justice. These programs have invaluable in assisting the community as a whole to address issues ranging from quality systems, training models, and accreditation and certification.

But additional resources are needed, and the lack of resources is the common denominator for crime laboratories. There is no one-size-fits-all approach that will address our problems. There are differences in the types of evidence used in criminal justice and each of those evidence types have different needs.

Controlled substances, latent fingerprints, firearms, toxicology, trace evidence, and forensic biology DNA are all part of the crime laboratory. We need assistance that is flexible and can be used to address the full range of issues that we deal with in the laboratory.

I would like to thank you on behalf of ASCLD and if you have any questions, I would be happy to try to answer them for you.

[The prepared statement of Ms. Johns appears as a submission for the record.]

Chairman SESSIONS. Thank you, and we will have some. Thank you for that good presentation.

DA Clark?

STATEMENT OF FRANK J. CLARK, DISTRICT ATTORNEY, ERIE COUNTY, NEW YORK, BUFFALO, NEW YORK

Mr. CLARK. Thank you, Mr. Chairman. Although it is sad, it is somewhat comforting for me to find out I am not standing alone in this problem.

I would like, if I could, Mr. Chairman, to kind of focus in on what one urban area faces in this. We are a community of about 1 million people. I would say we probably have about 2,000 police offi-

cers, we have 100 prosecutors, and right now we have 16 technicians in our lab. It has got a $1.8 million-a-year budget.

Chairman SESSIONS. You are not counting prison guards, probation officers, judges and their law clerks, and everybody else that deals with crime?

Mr. CLARK. No, sir. I am just talking about policemen on the street.

Sixty percent of our $1.8 million budget comes from State and Federal grants, which means that our county only finances 40 percent of the lab. It gets requests from more than 50 agencies in our county, and we also handle requests from six neighboring counties which are much smaller and not able to afford those types of things themselves.

I am going to kind of limit my comments in two areas; firearms, number one. In the city of Buffalo this year, for the first 6 months we have had over 1,000 shootings, which is up 30 percent from the average of the past 5 years. So we plainly have a problem.

In every case that we have, operability obviously is something which has to be established when we are talking about possession of a firearm. So the lab has to do that test initially on every single firearm case we have. We have got a 72-hour time limit for a preliminary hearing. So all those tests have to be done within 72 hours, and the testimony. If you don't have it, we can't prove it. The preliminary hearing is denied and the person is released without bail—is exonerated and the person is released.

If we are talking about more serious cases, felony cases—shootings, robbery, assaults, even homicides—and we are trying to match a bullet or a casing to a weapon, that is only done on a priority basis. We have to establish the immediate priority of that particular request so the lab can get to it. Many such tests are never, ever performed simply because the backlog becomes too great.

Let's talk about a weapon, a shooting. How about tying that weapon into other unsolved shootings? Simply not done. We have neither the time nor the resources to go back and do that. So but for the real profile case, tying that weapon into other unsolved shootings simply isn't done.

I heard NIBIN mentioned before, which is a wonderful system. It is like a DNA database, except it is for weapons. We don't have time to do the tests and submit the information to NIBIN. We are too busy working on the cases that are pending.

Chairman SESSIONS. Do you agree with that, Mr. Hillman?

Mr. HILLMAN. Absolutely.

Mr. CLARK. So here we are. There are two of us facing the same problem. A databank which would serve all of our people so well isn't getting all the information it needs because we don't have the resources to do that.

Chairman SESSIONS. Is that done by the laboratory or the DA's office?

Mr. CLARK. No, sir. That is done by the laboratory. all of that work is done by the laboratory.

If we are talking about gun powder residue, if we want to test clothing to find out whether an individual fired a weapon, if we want to find out perhaps the distance between shooter and victim,

we have no capability of doing that at all. That has to be farmed out to private laboratories, with greater expense—we have to pay for that—and then the time frame that follows.

Drugs. Twenty-five percent of all of our cases are drugs. I am listening and it is like I am hearing myself. The New York State penal statutes and regulatory codes require that a certain formula be followed. So a procedure may taken an individual chemist hours, and you have to follow that for evidentiary purposes and accreditation purposes. You can't short-cut the system. So we try to do that and we can't do it.

We don't test misdemeanors. If we had to test misdemeanor amounts, the backlog would be measured in years rather than days or months. So we simply don't do it. We have to test not only for the type of drug, but the degree of purity, the weight, et cetera. All is essential for us to establish elements of our narcotics statutes. Oftentimes, we need that for a preliminary hearing if the person is being held.

Seventy-two hours from the arrest, we have to hold a preliminary hearing. The result is we are simply not prepared to do that. So those defendants are released and the bail is exonerated. We can present it directly to a grand jury, but that could be weeks or months. We don't even have the capability—

Chairman SESSIONS. And the defendant could be gone by that time.

Mr. CLARK. Oh, sure, gone, or as we heard here, sadly, committing other offenses while he is out.

We don't even have the capability of testing for date rape drugs—Ecstasy, GHB, and things like that. We have to go to State or Federal facilities in order to do that, with all of the problems that attend it.

I have given you some idea of the problems that we face everyday, day in and day out. Obviously, these things impact not only on the quality of proof that we are able to introduce during the course of a prosecution, but on the people's perception of what we should be doing.

You mentioned earlier in your remarks that they see all these shows on television. It creates an expectation in them that the things we see in DNA exist across the board, and they simply don't. Often, sadly, the perception is that we are not doing all that we can do, when we have dedicated men and women that are working around the clock to do the very best job they can.

Thank you, sir.

[The prepared statement of Mr. Clark appears as a submission for the record.]

Chairman SESSIONS. Well said.

Dr. Baden?

STATEMENT OF MICHAEL M. BADEN, M.D., DIRECTOR, MEDICOLEGAL INVESTIGATIONS UNIT, NEW YORK STATE POLICE, NEW YORK, NEW YORK

Dr. BADEN. Thank you very much, Mr. Chairman. Thank you for honoring me with having me testify before you.

There will be 45 murders today in this country; more than a third will not be solved. Most of the autopsies will be performed by

hospital pathologists who are well-trained in the examination of natural disease—heart disease, cancer—and not by forensic pathologists who have the additional training to specifically investigate trauma, homicide, and unnatural death.

The hospital pathologist who performed the autopsy on John Kennedy made serious mistakes that linger with us 40 years later. I was the chief forensic pathologist for the U.S. House of Representatives Select Committee on Assassinations in the late 1970's that reexamined President Kennedy's death. In its final report in 1979, the Select Committee urged that medicolegal investigation offices and crime labs be improved nationally, because it was recognized then that many mistakes were made nationally, and even with the autopsy of the President of the United States.

Nothing was done to that end until Coverdell brought hope to improving medical examiner offices and the forensic science community. Today, in the United States, there are more than 800,000 physicians. Less than 400 are full-time forensic pathologists. Some States have no forensic pathologists in the entire State.

Mr. Chairman, I agree fully with your opening comments that crime labs around this country are in great trouble, and with in, the criminal justice system. Today, medical examiner offices and crime labs have the additional responsibilities that we didn't have in 1979 that we are the early-warning agencies for any death from acts of terrorism, from chemical or biological weapons. It is the medical examiner and the forensic scientist who must determine if a death is from anthrax, smallpox, SARS, cyanide, sarin gas. It is they who must recover the identifying bomb fragments or bullets from the body.

We must develop, I believe, new forensic disciplines to meet these new threats, such as forensic infectious disease experts who are internists. Infectious agents with high contagion can spread globally very quickly and must be identified as quickly as possible for effective containment. The delay in identifying SARS in China resulted in global consequences.

During the past 15 years, the development of DNA technology has been a wondrous addition to the medical community and to the ability of forensic scientists and police to investigate sex crimes and to identify the unknown death.

But in my examination of the literature and DOJ statistics, less than 1 percent of all murders in this country involve sexual assault. They get a lot of publicity in the papers, but are small in number, fortunately. In my calculations, in less than 10 percent of murders does the perpetrator leave DNA evidence behind. Most murders are by gunshots from a distance. About 5 percent of crime labs' workload involves DNA analysis.

Medical examiner offices and crime labs require properly trained forensic pathologists, crime scene investigators, criminalists, toxicologists, ballistics experts, fingerprint experts, odontologists, entomologists, anthropologists, as well as expertise in DNA analysis.

The criminal justice system requires teamwork among all the forensic sciences to function properly.

It is of interest the example Susan Hart Johns gave of the young University of Pennsylvania graduate student who was murdered in Philadelphia, whom they caught miraculously by DNA comparisons

from rapes he did in another State. In that instance, the family has brought lawsuits against the Philadelphia police because they felt that they did not respond properly to her cries for help. They came, they wouldn't go in the door, they left. She was found dead. Training of police in how to respond to dangerous situations, domestic situations, how to collect evidence at the scene, is all part of what the forensic scientist initiative should include.

The criminal justice system requires a national team of properly trained medical examiners and forensic scientists. Please consider all of the members of the team in your deliberations. To paraphrase Voltaire, we owe truth to all of the dead.

Thank you, Mr. Chairman.

[The prepared statement of Dr. Baden appears as a submission for the record.]

Chairman SESSIONS. Thank you, Dr. Baden.

Peter Neufeld.

STATEMENT OF PETER NEUFELD, CO-DIRECTOR, INNOCENCE PROJECT, BENJAMIN N. CARDOZO SCHOOL OF LAW, YESHIVA UNIVERSITY, NEW YORK, NEW YORK

Mr. NEUFELD. Good afternoon, Senator Sessions. Thank you very much for permitting me to be here today. You might be surprised to know that I, too, agreed with everything you had to say at the beginning of these proceedings. I think your points were extremely well taken.

Certainly, you know about the Innocence Project, and we will be the first to sing the praises of DNA technology and what it has done to bring truth to the criminal justice system, both in the pursuit of the guilty and also the clearing of the innocent. But we know firsthand that DNA plays a very small role in solving violent crime in this country.

Even as much as we care about DNA technology and we want it to be used most effectively by law enforcement, we realize that even if we educated everybody about DNA and we had them using it in property crimes, as well as rapes and homicides, that nonetheless in at least 80 or 90 percent of the violent crimes there would be no biological evidence to test. If that is the reality, then the reality is that law enforcement has to rely on other forensic sciences to solve crime. It is as simple as that.

I know that the sexiness of DNA has generated funds and generated all this concern nationwide, and we have been part of that as well. Obviously, whenever the public reads in a tabloid that a person who committed eight murders in Louisiana has been identified and apprehended through DNA, that is a big story. Or when somebody walks off of death after spending 20 years there for a crime he didn't commit, that is a big story.

But it is all these other forensic disciplines that actually solve the overwhelming majority of crimes, and it just doesn't make any sense to give all the funding to DNA and not also give additional funding to these other forensic science disciplines. It is that simple.

One of the things that we have learned from the wrongful conviction cases, Mr. Chairman, is that in over a third of those cases, the misapplication of forensic science played a critical role in sending an innocent person to prison or death row.

What that means is this was not DNA testing; it was the other forensic science disciplines. These are cases that involve toxicology, involve ballistics, involve medical examiners' opinions, involve trace evidence, all those other disciplines. Some of the most famous involved hair. Twenty-one of our cases alone involved forensic scientists working in government laboratories stating that hairs matched when it turned out that they didn't match.

We know and you know that every time they convict an innocent man, it is not just sending an innocent man to prison that is the problem. It is that the real bad guy is out there committing more crimes. So good forensic science makes sense from everybody's standpoint.

We have seen so many cases where criminalists or crime lab personnel have wrongly excluded somebody. They have wrongly excluded a bad guy, and so a guy who committed a murder walks away from a crime even though he is guilty. If the laboratories had better funding, had better training, had better personnel, that would not have happened. So the bottom line is that bad forensic science is bad law enforcement.

One of the things that we have been thinking about was a little bit different than what the other speakers have brought to you today: how to not only be concerned with providing additional funds to these different forensic disciplines, because God knows they need it and we certainly support that completely, but along with additional funding must go the responsibility of oversight, something that you are obviously very much educated about.

Sure, Congress has to give these additional funds, but we are worried about the integrity of the results, as well, not just us, but obviously the public at large. A victim needs to know that when you have excluded somebody through toxicology or through trace evidence that you have excluded them professionally and you are not letting a guilty guy go. We all have to know that.

One of the things that you have in the Federal Government that most States lack is you have oversight through the Office of the Inspector General. We all know about how the Inspector General has oversight over the FBI Crime Laboratory, and they can decide when it is appropriate to commence a forensic audit of something that went on there.

We know how important forensic audits are in everything in life. When the space shuttle crashed, you didn't want it to be an in-house investigation by NASA. You folks in Congress demanded that it be an independent external audit. When the Enron scandal happened, people said, no, it can't be Enron or Arthur Andersen that looks into this; it has got to be an independent external audit. Well, the same things applies when there is some major mishap at a crime laboratory. You have it in the Federal Government, but these folks don't have it at the State level.

Our suggestion is very simple and very inexpensive, and it goes like this: Allow the IG here at the DOJ which has expertise in this area to simply set up some guidelines, some parameters, and then allow each State on its own, because we do agree with you and the position that you have taken before as a matter of federalism that the running of the criminal justice system should be left to the

States themselves to experiment with—so let the States come up with their own type of IG.

It could be a different agency in each State, but there has to be some external, independent auditing mechanism in place, which means certain minimum Federal criteria, chosen by the States so that when there is a scandal—and my God, in the last year there have been more crime lab scandals in America, and you read about them in the newspapers, than in the preceding 5 years.

In those scandals, it wasn't just about innocent people being wrongly prosecuted or convicted. More often than not, it was about guilty people going free because of laboratory sloppiness. So we need to have somebody who can look into it when it happens, not to point the finger, but to make recommendations so this kind of thing doesn't happen in the future.

So we are going to suggest that one of things you might do, which is very inexpensive, would be to set up this kind of local auditing system. Let the States do it their own way, but have it certified by the Federal Government in exchange for the generous contributions and support that hopefully you will be a part of.

Chairman SESSIONS. Thank you. I think that has some potential. You know that labs get complained of and most of the time the complaints are not true. They are doing a good job, but have to defend themselves. Perhaps you would like to have a national group that could be called in, known to be independent. If Alabama wanted to verify that its laboratory is operating according to the highest level, they could be called on to do an independent audit.

What do you think of that, Ms. Johns?

Ms. JOHNS. Well, actually, in my opinion, there are resources that—

Chairman SESSIONS. That is your accreditation process.

Ms. JOHNS. Yes. That allows us to call in people external to our agency to come in and have outside eyes look at our processes and what we are doing in the laboratory.

Chairman SESSIONS. Where do they come from?

Ms. JOHNS. The American Society of Crime Laboratory Directors' accreditation is a not-for-profit organization that is comprised of—it has some full-time staff inspectors, but many of its inspectors are volunteer inspectors. I am an inspector for the ASCLD/LAB program, as well as a team captain, and I think it is an excellent, excellent program.

I think that external audits can also be done contractually with some organizations such as the National Forensic Science Technology Center. So if you want to go hire someone to come in and audit your laboratory, you can contract with that agency to do that.

I think this goes to my comments that I alluded to on accreditation. I really do feel that accreditation is something that our laboratories need, and that is what my colleague at the end of the table was speaking to, then I agree with that. I think that it is very, very important that we urge our laboratories to do that.

Some of the problems in not getting evidence or DNA analyses into the database relate to laboratories not having external audits or reviews of the work they have done. That is one of the requirements of NDIS, and it could be one of the reasons that some laboratories are not getting their information into the database.

Chairman SESSIONS. Thank you.

Mr. Clark, you and Mr. Hillman are users of the—you are the customers, I guess, at one level.

Mr. CLARK. Yes, sir.

Chairman SESSIONS. So are the police and sheriffs and deputies.

I will start with you, Mr. Clark. Would you respond to the idea that if somebody were looking at this criminal justice system afresh and they realized that we had a shortage consistently of funding in the laboratory, which is critical to almost all of our cases moving forward, that even if they didn't have additional money, they would find some way to rearrange money to get it to the laboratories because it represents a bottleneck that undermines police departments and DAs' offices and court systems?

Mr. CLARK. WE have been for years robbing Peter to pay Paul to try and help them do that, Senator. I do feel that some of the Federal money that has been available recently has been a godsend to us.

I think part of the problem is that we have to make people in local areas understand—those legislatures that control the purse strings have to understand the need. You have taken the time to do this today. I wish somebody in my area, and I wish somebody in Mr. Hillman's area would take the time to do this to realize how critical our need is. The county is only paying for 40 percent; you are paying for 60 percent. You are paying more for me than my own locality is, and that is not right.

Chairman SESSIONS. Let's go back to the numbers you gave. About how many police and sheriffs and DAs?

Mr. CLARK. We have lots of policemen, we have lots of prosecutors, but we don't have many technicians to handle all that.

Chairman SESSIONS. Their work is undermined, their work is effectively stymied as a result of a small lack in one part of this system. Would you agree?

Mr. CLARK. Yes, sir, that is true, and in many cases I am told that the COPS grant and things like that which put more policemen on the street don't consider laboratory technicians as law enforcement, so that they don't qualify under those grants of money. So what you are doing is helping in one sense. Policemen are going out on the street and making more arrests. It is just creating a bigger backlog in the labs.

Chairman SESSIONS. Is that true, Ms. Johns, that lab technicians are not considered law enforcement for the purposes of COPS grants?

Ms. JOHNS. I put it gracefully when I referred to us as the B team, but that is true. We are considered support personnel and most of these grants that he refers to do not address the crime laboratory problems.

Chairman SESSIONS. That is something to think about, Mr. Clark.

Mr. Hillman, you have been a user, also. Do you think in terms of priorities—let me just put it bluntly. In terms of priorities, do you think that improving the whole system could be effected better by working on the labs than almost any other part of it?

Mr. HILLMAN. Yes, without question. It is probably the biggest cause of every delay that we have, and again not because these

people aren't doing what they are supposed to do. They are just swamped. They don't have the time or the manpower to keep up with the system.

Alabama grew 54 percent in 10 years. I can't tell you what their budget is, but it wasn't that much that it grew over that same 10-year period of time. And that stopped 3 1/2 years ago. Imagine where they are now.

Chairman SESSIONS. Mr. Hillman, do you find that perhaps based on these television programs and that sort of thing that when you try a case, if there are five drops of blood on the scene and you test three of them, Mr. Neufeld would come in and say the real murderer was in those other two, why didn't you test those?

Mr. HILLMAN. The general public now thinks that murderers—their investigation, their processing at the lab, their arrest, the prosecution, and their incarceration occurs in 60 minutes. It just does not happen. It takes years sometimes.

Chairman SESSIONS. Well, I was just kidding because people deserve vigorous defense and maybe the drops were somebody else's. But I think you have gotten to the point where we are testing—would you say, Mr. Clark, crime scenes are requiring more tests per crime scene than ever before?

Mr. CLARK. Absolutely, positively, and the sad part is we would love our laboratory technicians to be able to come to the crime scene. They could add a tremendous amount to that, but, of course, that is a pipe dream. They are still working 18 hours a day trying to do the drug tests.

One problem leads to another, leads to another, leads to another. But, yes, the expectations are so much greater, the time required is so much longer, and the problem isn't getting any better. The only thing that is growing is the backlogs.

Chairman SESSIONS. Dr. Baden, are police and investigators sufficiently trained to preserve evidence when it gets to you or to Ms. Johns? Does that cause a problem sometimes?

Dr. BADEN. It often causes problems. Now, they have a trial going on down in South Carolina, the Peterson/East trial, the novelist who is accused of killing his wife and throwing her down a staircase. The defense on Court TV—they have cameras in the courtroom—is having a field day in showing all of the things that were done wrong by the technicians, the police tramping through the area improperly.

We thought that had been explored sufficiently at the O.J. Simpson trial and that police agencies learned about it. There are many good agencies, but most of this country still—the crime scene analysis, the training for police officers, has not been effective enough or there hasn't been enough training.

I might suggest that Dr. Jamie Downs advises me that nationally there is one lab person for every hundred police officers, and the lab persons can't manage that kind of workload. A better ratio would be 1 out of 40.

Chairman SESSIONS. Dr. Downs used to be our director and he moved up to South Carolina.

Dr. BADEN. He is now in Georgia.

Chairman SESSIONS. That is right, Georgia. He had an interest in recovering the remains of the Hunley submarine as one of his extra projects. He did good work on that.

Dr. BADEN. Yes. He is my guru; he is my rabbi right now.

If I may, on a discussion about national concerns, it struck me as a physician that we have a Surgeon General who has been a bully pulpit over the years for doing research and for improving natural diseases—heart disease, cancer—and it has been a very effective bully pulpit.

Maybe the time has come to have some kind of a national bully pulpit, like a forensic sciences general, who can have authorization to be a bully pulpit and to help set up the kind of programs, training programs. The most important link in the chain at a crime scene is the least experienced police officer, who is the first responder who is supposed to protect the scene.

When we train the New York State Police and they say, well, we are here, we are trying to protect the scene and the bosses and the higher-ups come down, how do we keep them out—and the example I have used is you have a book; everybody that goes on the scene has to be signed in. You have the mayor or whoever it is there, because it is often a photo opportunity for certain kinds of people, sign in and tell them, look, if you go on that scene, you are the first witness that Peter Neufeld is going to call for the defense as possibly mucking up the scene or potentially having evidence destroyed.

I would also like to make one point, too, about the World Trade Center. Of the 1,500 bodies that have been identified, out of the 2,800, the great majority have been done by traditional means—fingerprints, dental, x-rays, visual. Most of them have been identified that way.

Chairman SESSIONS. Mr. Neufeld, do you want to comment on that?

Dr. BADEN. Point of personal privilege.

Mr. NEUFELD. No, no, no. I mean, actually, it is interesting. In New York State, we have a forensic science review board. We are the only State in the country that does have that. and what we have done for people like Mr. Clark is, in a sense, we have created certain standards and mandates, and therefore we have had to put our money where our mouths are and we have had to provide them and their laboratory with additional funding.

So sometimes by requiring higher standards of laboratories, you create a mandate and then there has to be the money flowing so they can satisfy that. So it is not always a bad thing. It actually sometimes acts as a very good carrot device.

The one little comment I did want to make, though, is a response to Ms. Johns. ASCLD accreditation is not enough. I am not even addressing that issue. Obviously, the internal audit that goes on through an ASCLD accreditation is very, very important. I am talking about a different situation.

The FBI crime laboratory is ASCLD-accredited, but nevertheless there was a small scandal in that laboratory recently when it turned out that one of the scientists was consistently not utilizing a certain control which was essential in all the forensic DNA tests.

So the IG of the DOJ commenced an audit, and they commenced that audit for a lot of reasons. They wanted to see what was the scope of the problem, where did the traditional controls fail, what changes should we make in their protocol which would make it more likely that that won't happen again. So it can even happen with accredited laboratories. I am talking about the forensic audit.

Accounting firms ordinarily have wonderful means of doing internal audits, but if something serious goes wrong—I am not talking about two drops that weren't picked up. I am talking about the serious mishap, and we have seen them in Oklahoma, we have seen them in Indiana recently, and in Montana. The first three cases we have looked at involving a hair expert—all three of them were exonerated. He used testimony in a court of law which all of his peers at the FBI and the British Home Office said is nonsense and not scientific.

So sometimes something does go wrong and needs to be investigated. You folks are experts at that, okay? All we are saying is that in those situations, there should be an independent external entity that does it. It can't be the folks doing it themselves.

Chairman SESSIONS. There need to be reviews for specific allegations of wrongdoing.

Mr. NEUFELD. That is exactly right.

Chairman SESSIONS. Some good thoughts. I think we ought to think about that as we go forward.

I think back on my career and what the Innocence Project brings to mind, and when I have had a series of things like Ms. Serra talked about—a fingerprint, a DNA, and a paint—I have never had it come back that that person wasn't guilty. But I have seen two in my career that really were innocent and in danger of being convicted. One was convicted on eyewitness testimony. I don't know if others have seen that, too.

We have got to be alert to the possibility of the innocent being convicted. I certainly believe that, but good circumstantial evidence, good scientific evidence has proven to me over the years from my personal experience to consistently lead us toward truth.

I don't think you would dispute that, Mr. Neufeld.

Mr. NEUFELD. Dispute it? I wholeheartedly agree. I will take good toxicology and ballistics over a lone eyewitness 7 days of the week, and I think you would, also.

Chairman SESSIONS. All right. Do any of you have anything you want to add to this agenda at this point that is on your brain and heart before we go forward?

Senators Grassley and Leahy have statements for the record, and we will leave the record open for one week for a additional statements and follow-up questions for all witnesses.

I think we are getting to this, and this is what I would say to you. I don't believe that this Congress is going to fund the State laboratories to any significant degree ultimately. I think helping in critical areas, providing the best equipment, best training, and additional funds when laboratories are in crisis is very helpful. But I doubt and don't expect, and am not sure I can support a whole lot more money.

I did fight for and help pass the Paul Coverdell forensic sciences bill, which has not been adequately funded, but provides for the kind of utilization of the money I think I hear you saying you favor.

Would that be fair, Ms. Johns?

Ms. JOHNS. Yes, I agree.

Chairman SESSIONS. And so we can get some more money there, I hope. We are spending money on things that make the news and get people excited, and sometimes that is what Congress does. But in the long run, we have got to figure out a way to strengthen forensic sciences throughout America, and maybe a forensics czar wouldn't be a bad thing, to be able to go into a State and call all the newspaper editors together and say, look, you are spending all this on police and jails and prosecutors and judges and just this little bit on research. And you have got this backlog and something could be done.

I believe once the information is out there, the American people would respond. There is so much on television, so much in novels and things, that people are more attuned to the capabilities of it. So that is where I am coming from.

I will be supporting additional funding. I am going to be supporting that because we are funding a lot of aspects of criminal justice that need it less than this aspect. I intend to do all I can to create a circumstance in which States will be more successful in going to their counties to get them to contribute more. I know in Alabama, I think the Governor is convinced that forensics need more money in Alabama and somehow he is going to find it. I am proud to hear that, but we have been talking about it for a number of years.

Anything else before we finish?

Thank you for coming. This was a very valuable panel. We will look to utilize this to promote public policy that will help forensic sciences in America, and I think that will help criminal justice.

Thank you very much. We are adjourned.

[Whereupon, at 3:55 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS
JULY 31, 2003

Michael M. Baden, M.D.

Mr. Chairman and Members of the Subcommittee,

Thank you for the honor of inviting me to testify before this Subcommittee.

Let me introduce myself. I am a physician and I have been a medical examiner for 43 years. I was the Chief Medical Examiner for the City of New York. I was the Chief Forensic Pathologist for the United States House of Representatives Select Committee on Assassinations that reinvestigated the deaths of President John F. Kennedy and Dr. Martin Luther King (1977-1979). I am presently the Director of the Medicolegal Investigations Unit of the New York State Police. The opinions I express are my own.

There will be 45 murders today in this country. More than one-third will not be solved. Most of the autopsies will be performed by hospital pathologists who are well-trained in the examination of natural diseases and not by forensic pathologists who are specifically trained to investigate trauma, homicide and unnatural death - as it was with President Kennedy where serious autopsy mistakes were made. Our Select Committee urged in 1979 that it was necessary that medicolegal investigation offices and crime labs be improved nationally so that murders and violent death could be more accurately, effectively and fairly investigated. Nothing was done to this end. Today, of 800,000 physicians in this country, less than 400 are full-time forensic pathologists. Some states have no forensic pathologists.

Today, medical examiner offices and crime labs are also the early warning agencies for any death from acts of terrorism or from chemical or biological weapons. It is the medical examiner and forensic scientists who must determine if a death is from anthrax, smallpox, SARS, sarin gas, cyanide; who must recover identifying bullets or bomb fragments from the body.

During the past 15 years the development of DNA technology has been a wondrous addition to the medical community and to the ability of the forensic scientist and police to investigate sex crimes, and to identify the unknown dead. But less than 1% of all murders involve sexual assault. In less than 10% of murders the perpetrator leaves DNA evidence behind. About 5% of a crime lab's workload involves DNA analysis.

The ability to properly investigate crimes such as murder, robbery, illicit drug possession, assaults, arson and rape requires teamwork: properly trained police, medical examiners, forensic scientists, district attorneys, defense attorneys, and judges.

Medical examiner offices and crime labs require properly trained forensic pathologists, crime scene investigators, criminalists, toxicologists, ballistics experts, odontologists, etymologists, autropologists, as well as expertise in DNA analysis. The criminal justice system requires teamwork among all of the forensic sciences to function properly.

Please consider all of the members of the team in your deliberations.

To paraphrase Voltaire, we owe truth to <u>all</u> of the dead.

Remarks before Senate Judiciary Subcomittee
by
Hon. Frank J. Clark, District Attorney
Erie County, New York
on July 31, 2003

The Central Police Services (CPS) Laboratory (Erie County, New York) has a staff of 20 technicians with two positions currently unfilled. More than 60% of its 1.8 million yearly budget comes from state and federal grants. Significant cuts in those grants are anticipated.

CPS processes work from approximately 50 agencies in Erie County and accepts limited requests from 6 other Western New York Counties.

CPS has in-house DNA testing capability by virtue of an $800,000 grant allocated from seized assets in 1993. The below-stated shortcomings in our lab are probably representative of crime labs in major urban areas throughout New York and other northeastern states. In order to alleviate these deficiencies, revenue received would have to be in addition to funds already dedicated to DNA testing. Diverting funds from DNA testing to other areas would not resolve those problems and could cripple DNA processing capabilities, the single largest scientific advancement in crime detection in our lifetime.

Firearms

Proliferation of availability and use of firearms is perhaps our area's biggest single problem. Shootings in Buffalo during the first six months of this year (1,023) are up almost 30% over the average of the past four years (769). Some of the principal requirements and/or shortcomings in the area are:

In any offense involving the possession or use of a firearm, operability must be established. Since an incarcerated accused is entitled to a preliminary hearing within 72 hours, tests and testimony must conform to that timeline. Over 1000 such requests are made every year.

Further testing, such as matching a bullet or casing to a particular gun can only be done on a priority basis. Many such tests are never performed.

Due to existing backlogs, critical investigative work such as connecting a seized weapon to other shootings is virtually impossible.

There is insufficient staffing to perform tests required to submit basic ballistics information on seized weapons to the National Integrated Ballistics Information Network (NIBIN) which is akin to a DNA database, but for guns.

Ancillary testing such as analyzing clothing for the presence of gunpowder residue to determine if a person fired a weapon or the distance between shooter and victim simply isn't being done. If a prosecutor desires such evidence, the testing has to be farmed out to private laboratories at considerable expense.

Drugs

Possession and sale of controlled substances constitutes almost 25% of the 2200 matters referred to the Erie County Grand Jury last year.

New York's penal statutes and laboratory regulations require that certain tests be performed and in a prescribed manner in order to conform to evidentiary and accreditation standards. Hence, shortcuts are not possible.

The sheer volume of requests precludes any testing on misdemeanor amounts of controlled substances.

New York law requires that suspected narcotics be tested for type of drug, weight and degree of purity, often within the 72 hours required for many preliminary hearings. Since this is often not possible, many cases are dismissed with a release of bail. These cases can be referred directly to a grand jury, but such defendants frequently abscond.

Much necessary equipment is dated or obsolete. For example, our laboratory does not have the capability to analyze date-rape drugs such as ecstacy or GHB. We must seek state or federal assistance in these areas, resulting in additional problems due to the inevitable time delays.

All of the above represents only a sampling of the problems our forensic laboratories face. Presently, much of our firearms testing is about 7 months behind the ideal level of production and that gap is widening.

Excessive demands and reduced staffing levels preclude expanding the labs participation into areas such as crime scene analysis and evidence collection and preservation. Time and space prevent me even broaching areas such as soil and fiber analysis and other technological advances.

The expertise exists, the resources to exploit it do not.

Many state and federal grants do not even consider crime laboratories part of law enforcement and thus they are not even considered for subsidies. We put more police officers on the street but do not provide the prosecutorial, judicial and forensic support necessary to take full advantage of their efforts.

The forensic benefits from advances in DNA technology are inestimable. Unfortunately, these advances have created an expectation in the minds of the public, especially jurors, that all our scientific testing is equally sophisticated. The reality in many cases is that it is not, resulting not only in the exclusion of probative evidence, but the perception that we have done less than we could, or should, in investigating serious crime.

Advancing Excellence

Statement to
The Subcommittee on Administrative Oversight and the Courts
Committee on the Judiciary
United States Senate

Department of Justice Oversight: Funding Forensics Sciences— DNA and Beyond

July 31, 2003

Submitted by
College of American Pathologists

College of American Pathologists
Division of Government and Professional Affairs
1350 I St. N.W., Suite 590
Washington, D.C. 20005-3305
(202) 354-7100
(800) 392-9994
www.cap.org

Statement Submitted
By
The College of American Pathologists

Department of Justice Oversight:
Funding Forensics Sciences—
DNA and Beyond

The Subcommittee on Administrative Oversight and the Courts
Committee on the Judiciary
United States Senate

July 31, 2003

The College of American Pathologists (CAP) is pleased to submit this statement for the record of the Judiciary Committee's Administrative Oversight and the Courts Subcommittee hearing on forensics sciences funding. The College is a medical specialty society representing more than 16,000 board-certified physicians who practice clinical or anatomic pathology, or both, in medical examiner's offices, community hospitals, independent clinical laboratories, academic medical centers and federal and state health facilities. Pathology forms the foundation for forensic sciences and, as such, the College understands well the importance of strong federal support for this discipline. The College applauds the leadership and commitment that Senator Sessions and others on the subcommittee have demonstrated on this critical issue over the years. We also appreciate Senator Sessions' efforts to work with the College and respond to the concerns of those serving our communities in state and local crime laboratories nationwide.

The College is pleased to see continued support in Congress for forensic sciences funding. But much more is needed. Forensic laboratories provide crucial scientific evidence used to assist our court system in achieving fair and impartial verdicts. The CAP strongly supports the appropriation of $134.7 million in fiscal 2003 and $128 million in fiscal 2004 as authorized by the Paul Coverdell National Forensic Sciences Improvement Act of 2000 (NFSIA). To date, appropriations under this landmark legislation, the first to provide federal funding assistance for medical examiners' and coroners' offices, have been only a fraction of that originally authorized by the act.

The nation's forensic laboratories face enormous and well-documented casework backlogs despite advancements in forensics technology and techniques. Many laboratories simply cannot afford to update their facilities or properly train personnel to effectively process evidence. Pathologists and other personnel working under these conditions must make difficult decisions about which cases take priority and which must wait. The result is that many cases linger for months or longer.

Just this week, Kentucky media report that an overwhelming caseload at the Kentucky State Police Forensic Laboratory has created delays of up to six months in processing DNA, blood and

other evidence for criminal trials. Laboratory officials say they face a backlog of 10,000 cases and that 80 percent, 8,000 cases, involve substances that must be tested for cocaine, methamphetamine and other illegal drugs. They attribute the doubling of their caseload from 1989 to 2001 to mostly evidence seized in drug arrests.

In Alabama, the overall casework backlog has increased 41 percent from October 2002 through last month. Alabama's toxicology case backlog alone has increased 50 percent, from 1,447 cases to 2,172, and drug identification cases awaiting processing have increased 30 percent, from 9,132 to 11,917, the state's Department of Forensic Sciences reports. In Georgia, the problem is even more acute. There, the drug identification case backlog has grown almost 17-fold during the same period, from 508 to 9,097.

Even as the backlogs increase, resources for forensic laboratories decline. During the period in which Georgia's drug identification cases soared, laboratory staffing fell by 16.5 percent. Oklahoma recently reduced its medical examiner's budget by about 17 percent and Alabama contemplates an equally significant funding cut next year for forensic laboratories.

In 1999, the American Society of Crime Laboratories asked state and local forensic laboratories what resources they would need to deliver quality services in a timely fashion, which the survey defined as 30 days, unless state law required a shorter turnaround time. The conclusion? The nation's forensic laboratories would need 9,000 more forensic scientists, $1.3 billion for facility modernization and construction and $285 million for laboratory equipment. Further, the study found, 26 percent of forensic laboratories do not have even basic computer systems to track evidence.

What does this mean for the nation's criminal justice system? Long, painful delays for victims and their families as court cases wait for crucial forensics evidence. Worse, prosecutors sometimes must go to trial without critical information needed to win convictions. Pathologists who perform autopsies and interact with the courts and surviving victims and families share their frustration. Imagine needing a simple answer to proceed to trial, complete a death certificate, settle a life insurance claim and being unable to move forward due solely to the lack of relatively inexpensive equipment.

Other laboratory personnel suffer, too, as they labor under an increasingly heavy workload without the tools and funding necessary to efficiently and effectively provide services. The long-term consequences are clear: CAP member pathologists report that inadequate resources are driving young physicians away from the field. Because it takes about 10 years of post-graduate medical training to perform forensic medical examinations, we risk losing the present generation and, as such, our future.

Inadequate forensic laboratory funding also carries serious implications for our battle against bioterrorism. Pathologists and the other laboratory professionals who would be among the first to respond to an attack now lack the facilities, equipment and training they would need to process evidence quickly and perform autopsies and other services critical to protecting the public health.

Much has been made in recent years of the contributions DNA analysis can make to identifying crime suspects and securing their convictions. But it is important to understand that while DNA analysis has much to offer, it is only one tool in a broad menu of necessary services forensic laboratories perform to support the nation's criminal justice system. The CAP believes increased federal funding is necessary for equipment, forensic education, training, staffing and other basic resources now in critically short supply in all the nation's forensic laboratories. As Congress considers increased funding for DNA initiatives, it also must work to direct NFSIA dollars to the laboratories that so urgently need such support.

Again, the CAP thanks Senator Sessions and other Judiciary Committee members for their leadership on the issue of forensic sciences funding. The CAP appreciates the opportunity to present its views to this subcommittee and offers its support and continued assistance as Congress works to meet the challenges posed by the increasing backlog of forensics cases nationwide.

Statement of James Claude Upshaw Downs, M.D.
Senate Committee on the Judiciary
Subcommittee on Administrative Oversight and the Courts
Regarding "Funding Forensic Science: DNA and Beyond"

Thank you, Chairman and distinguished Senators, for the opportunity to provide testimony for your consideration in deliberating the vital issue of funding our nation's forensic system. I am presently a practicing board certified Forensic Pathologist – a Medical Examiner – in Savannah, Georgia. I served for four years as the Director and Chief Medical Examiner of the state of Alabama's entire forensic laboratory system. I am Legislative Liaison for the Consortium of Forensic Science Organizations, which represents some 11,000 practicing forensic scientists and medical examiner/coroners. I serve on the Board of Advisors for the National Forensic Academy/Law Enforcement Innovation Center and the Board of Directors of the National Association of Medical Examiners. I am published in the field of forensic pathology and forensic science and have lectured nationally and internationally on forensics. I am originally a biochemist by training, thus I speak from the perspectives of a DNA scientist, a laboratory system director, and a medical examiner. In addition, I am the parent of a child who was physically abused and whose case could not be prosecuted for lack of forensic evidence.

Former Director Stewart of the National Institute of Justice pointed out that "Where physical evidence is properly cared for and preserved, the conviction rate rises to 60% in robbery cases and 25% in other violent crimes."[1] I fear that if resources are not forthcoming, labs might lose the ability to locate, collect, and analyze all forms of evidence that might assist in adjudication of cases. More citizens will become victims without justice simply because we lack the ability to properly perform all types of forensic analyses.

The success and potential of forensic DNA analysis is impressive. DNA has served as the scientific basis for overturning over 100 wrongful convictions and has matched over 7000 cases to offenders. Due to the nature of the cases involved, e.g. murder and rape, there has been great media attention to the potential of DNA evidence. This truly remarkable record of success is impressive and should be emulated in other areas of forensics. This will require a significant amount of new funding for our nation's forensic system. Regrettably, the rest of the forensic world, although much more often used and arguably *equally powerful* evidence, has been largely ignored in tangible terms – the national funding for forensics is simply abysmal.

The National Institute of Justice (NIJ) enumerates challenges facing our nation's crime labs as: being overwhelmed by backlogs, being ill-equipped to handle the influx of cases, delays in administering justice, a need to develop faster methods, and education/training to optimize use of resources.[2] All true and serious concerns in the delivery of forensic services nationwide. The *Advancing Justice Through DNA Technology* goals[2] are to: identify criminals quickly and accurately, eliminate backlogs, strengthen crime lab

capacity, stimulate research and development, provide training, protect the innocent, and identify missing persons. All are laudable and worthwhile efforts. Of course, all of these challenges and goals apply equally to non-DNA evidence as they do to DNA materials. Only more so, given the relatively small number of actual casework and backlog samples involving DNA as opposed to all the other forensic disciplines. DNA represents around 5% or less of all casework and backlogged material in crime labs nationwide.[3, 4] That means 95% of all evidentiary material processed by crime labs and medical examiners is *not* DNA. In fact, in some areas, it only represents 1.5% of casework. To date, most federal governmental assistance and interest in the forensic system has been directed to DNA. Regrettably due to lack of adequate funding, other types of evidence and autopsies are collecting in our nation's medical examiner and forensic science system. *Backlogs are growing!* (See attachment)

Reportedly, available monies have been insufficient to take full advantage of the DNA system. Much less publicized is the fact that the federal funds targeted exclusively to DNA continue to go unspent. The *Advancing Justice Through DNA Technology* initiative is based on the premise that the DNA system could do even more if more resources were available. So too could all the other forensic disciplines do more with more funding. In fact, the rest of forensics could do far more – and for far less money.

How might that 95% majority of all forensic cases be handled if the labs received adequate funding?

Evidence, presented in court, is considered by a jury or judge who determines guilt or innocence. There are many types of evidence in addition to DNA: witness polygraphs, trace physical evidence (hairs, fibers, etc.), firearms examination, arson examination, toxicology, chemistry, autopsies, medical examination, anthropology, odontology, engineering, accident reconstruction, pattern analysis, behavioral sciences, toolmark examination, etc. DNA can be highly specific – even to the point of identity of the donor – but it is not sensitive as to *why the sample is there.* The answer to that question is the essence of the criminal justice system.

I am a tremendous advocate for the value of DNA evidence – I am a biochemist by training. Some of my most important cases have involved DNA evidence. Forensic science is not, however, a one-size-fits-all specialty. The evidence available dictates the forensic exams best suited to the case. This is well illustrated in a recent TV broadcast[5] about a serial killer of convenience store clerks. When he was eventually located, months after the killings, the suspect had the victim's DNA on his clothing. He also had something else – a plausible explanation for why the blood was there. If we had nothing other that the DNA, it is very likely this killer would have walked. Fortunately, I had dissected and retained critical physical evidence from the body which I was able to successfully match back to a knife in the killer's possession. The murderer was convicted and now awaits execution.

"Death investigators, be they coroners or medical examiners, wield enormous power.... It is the medical examiner or the coroner who determines the course and scope of any

investigation, including X-rays or toxicology tests should be done."[6] Medical Examiners speak for those smallest and weakest among us, the victims of the most violent of crimes – our children and seniors. The Bureau of Justice Statistics (BJS)[7] tells us that almost 5% of all homicides are committed against children and another 5% of murders are of our elders. Thus, 10% of all homicides involve those least able to defend themselves. The reality of these deaths is that the cause may be subtle, such as smothering or poisoning, and thus easily missed, unless the bodies are examined by a qualified and competent forensic pathologist.

The numbers do not do justice to the tragedy. In my home of Savannah, we recently had a case involving the killing of a twelve-year old girl. The collective heart of a community of 300,000 cried for a resolution to this heinous crime. Justice was delayed as the child went missing for a month. The tragedy was resolved a month later when a child's decomposing body was located. Within 12 hours of locating the body, I had made a dental ID – this, hours before even the most preliminary of DNA processes (determining if potential DNA evidence were even present) could even begin. In a perfect DNA world, and with everyone working to full capacity, we would be lucky to have DNA results in this case within a week. Some might attempt to dismiss this as merely an isolated incident. Quite the contrary, non-DNA ID is the norm. Remember just last week with the success in the location of two of the Butchers of Baghdad. These bodies were identified by our Military's Forensic Pathologists at the Armed Forces Institute of Pathology within a day. Not by DNA, but by good old fashioned and cheap dental comparison and x-ray comparison. We still do not have DNA results a week later.

Some ask, with good cause, "Why is forensic funding a federal concern?" From its inception, America's forensic system has been based on the location and analysis of evidence, as illustrated in the founding of one of the earliest medical examiner/crime lab systems. In 1931, in the little town of Scottsboro, Alabama, eight innocent young Blacks, who were guilty only of being passengers on a train, were found convicted of the rape of two White prostitutes and were sentenced to death. The verdicts were not based on forensic evidence because none was available. These young men were almost lynched because the public did not want to hear the truth. Just a few years later, in 1935, the Alabama's legislature and governor assured that an independent and impartial entity would collect, examine, and testify regarding scientific evidence. Fair analysis of forensic evidence yields truths. Truth is infallible.

Most obviously, the national interest and established federal assistance in the forensic DNA discipline indicate there is a clear national responsibility. The National Commission on the Future of DNA Evidence[8] established the vital link between the federal government and forensic evidence.

Other national and even international professionals with a vested interest in forensics recognize the importance of the subject. The National Association of Counties Crime and Justice Subcommittee this month unanimously supported funding the Coverdell National Forensic Science Improvement Act and allowing labs to determine if their system's need was best served by funding DNA or the other 95%. The International Association of

Chiefs of Police is keenly aware of the needs of the nation's forensic community and is actively studying the issue. The *Advancing Justice Through DNA Technology* proposal calls for a Forensics Commission to study all the forensic disciplines. We whole-heartedly endorse this concept. Such a commission must remain independent and accurately reflect the demographics – all populations served, all disciplines practiced, all user law enforcement agencies, prosecution, defense, and judiciary. Such a forensics commission can and should help set national minimum standards for the practice of forensic science, much as the DNA Commission[8] succeeded in its mission to elevate the science and reliability of forensic DNA evidence.

The need for fair and impartial forensic work is even more crucial in the era of advanced technology and mass communication. Recent concerns about civil rights violations in Florida and California reaffirm the need for excellence and credibility in death investigation and injury evaluation. Given the gravity of legal proceedings involving forensic evidence, including capital punishment, the United States government has a vested interest in the evaluation of such forensic evidence. Only when we have complete confidence in scientific results can we fairly use these data in the courts.

Unfortunately, as Former NIJ Director Stewart pointed out, there exists a "void in policy relevant research for policymakers in delivering death investigation .... Yet this void represents a 'critical link in preventing people from getting away with murder.'"[1]

In the world of the medical examiner, the federal government has additional interests in assuring public health functions. Forensic pathologists are crucial to recognizing potentially lethal hazards and in helping improve the lives of all citizens. The requirements for seat belts and air bags in our automobiles originate with medical examiner recognition of specific dangers inherent in vehicular travel.

Because all forensic services are best delivered locally, federal assistance should not replace or supplant local and state responsibilities. The national interest is better served in improving forensic infrastructure nationwide across all forensic disciplines and ensuring that certain consensus minimum criteria are met regarding forensic evidence.

The purpose of law enforcement officers is to enhance public safety. The federal government has clearly demonstrated a national interest in policing through funding of the COPS (Community Oriented Policing Services) program. Less visible, but equally vital to public safety is the nation's forensic infrastructure. Ensuring all evidence is correctly and fairly obtained and analyzed accomplishes the goals of the *Advancing Justice Through DNA Technology* plan. The Bureau of Justice Statistics has documented that in the period 1982 to 1999, there has been a major increase in resources for most of the major elements of the criminal justice system:[7] 244% increase in law enforcement, 442% in corrections, and 314% in courts. In the period 1992 to 1999 alone, state prosecutors staffs grew by 39%.[7]

In addition, we now have the considerations of mass disasters, including terrorism and weapons of mass destruction. These are clearly areas of federal concern. Locals are those

most critical to adequately evaluating and processing a mass disaster scene, ensuring critical evidence is not damaged or destroyed prior to collection and analysis. In addition, death investigation is a local responsibility – one need only recall the 167 fatalities in Oklahoma City from a single episode of terrorism to comprehend the scope of the issue. September 11, 2001 took these concerns to a new level, with the local New York Medical Examiner handling almost 3000 fatalities. Clearly, these are matters of not only national interest and national security. Yet we are under prepared in most of the country to death with mass fatalities on this scale.

Emblazoned on the edifice of the United States Supreme Court is the very essence of the need for adequate full-spectrum forensic funding: *"Equal Justice Under Law."* Justice should not depend upon one's state of residence. A certain minimum standard of laboratory and scientist competence and quality should be assured through certification and accreditation. Only the direct influence of the federal government can assure that such excellence occurs everywhere.

Presently, the majority of forensic cases receive sub-optimal funding. And only "one group should be cheering – the state's criminals.... [A] delay in processing cases...means a delay in criminal police investigations and in criminals going to trial.... [We are] penny wise and pound foolish in the funding...."[9]

Things have gotten to the point where attorneys, law enforcement agencies, and even surviving family members have paid significant sums of money to have samples processed by outside labs. The reason: no one can afford the wait. Investigators need fast and reliable scientific answers in order to pursue appropriate leads in a timely manner thus making the most of their limited resources. Prosecutors and defense counsel require reports quickly in order to make sure witnesses do not disappear or their memories falter. Families need answers for peace of mind as well as to close out personal affairs such as insurance, house payments, and bills. This, at a time when they can least afford added expenditures. Funerals are expensive. So communities and survivors now face "*the new death tax*" where they are forced into paying again for services that should be provided. If you are fortunate to not know what it is like to be a victim, just think back to September 11, 2001. We are, all of us, crime victims seeking closure.

Regrettably, in the area of terrorism, the forensic community has very real concerns regarding conventional explosives and about chemical, biological, and radiation threats. First responders include the oft overlooked forensic scientists who must respond and collect evidence for analysis. Medical Examiners must perform autopsies in order to determine the cause of death – in some cases, such as anthrax – actually first determining that there even *is* a threat. Yet, medical examiner and crime lab personnel lack personal protective equipment, facilities/equipment for testing/performing autopsies, and training in hazards. *More amazing, Medical Examiner/coroners are the sole authority to call these cases homicide yet are ignored in current federal forensic funding!*

Why has DNA captured the attention of funding entities? When it works, it works – sometimes very well. And it gets headlines because the cases resolved are among the

worst – rape and murder. However, we must not forget who it is who determines the cause and manner of death – who is singularly best trained to evaluate injury, collect evidence of that injury, and present the data in court. That scientist is the Forensic Pathologist, the Medical Examiner. The real tragedy is that the single most important part of the habeas corpus, the actual body, is in danger of limited or shoddy examination due to a lack of attention. Why does this highly trained medical specialist receive little or no attention? Partially because we deal with death – a subject no one really wants to face. We work in the morgue – a cold and lonely place.

Budget woes are a reality in all forensic disciplines, particularly in the medical examiner field. Medical inflation is staggering – no one knows this any better than the Congress who is struggling to find some way to find affordable health care for all. Regrettably, one field continues to be left out of the mix. In my native Georgia, for this year, we have eliminated transport of bodies to the lab – sometimes as much as 4 hours away. The cost is now passed on to locals who must absorb this cost as another unfounded mandate. This is not limited to Georgia alone – Oklahoma's Medical Examiner's Office budget was cut 16.9% requiring the reduction in the number of autopsies. In Montana, the locals are charged based on the extent of the examination. Autopsies are being curtailed and limited, solely based on the lack of money. Nationally, over ¼ of medical examiners offices cannot fund body transport. The tragedy of all of these stories is that the highly trained specialists who determine when an autopsy is necessary are being forced into a position of practicing less than ideal medicine. We are not able to autopsy those cases where the homicide is subtle. No one will be there to hear the voice. We will miss homicides. Murderers will go free to kill again. Tragically, this situation has no quick fix. Due to the extensive training required, we must act now if we are to be positioned for ten years from now. With the present continued woeful under funding of the field, young physicians are being actively repelled from the practice of forensic pathology.

With 5 years of training following medical school, the forensic pathologist has one of the longer training programs of any medical specialty, yet receives no reimbursement from third party payers for the performance of medical autopsies. Nor, if one considers resources allocated as a measure of interest, does the NIJ deem the forensic autopsy of significant value. A great irony is that the forensic pathologist is the one physician specifically trained to run the laboratory – including those labs that perform DNA analysis. The forensic pathologist is trained to run the toxicology lab, however, 63% of medical examiners do not perform their own toxicology analyses – virtually assuring that some poisonings are being missed due to a lack of resources. Believe it or not, 6% of Medical examiners do not even have an x-ray machine to locate bullets in homicide cases! How long can we allow this travesty to continue?

Only 42 medical examiner facilities are presently accredited; twelve accredited facilities have let their accreditations lapse.[10] My medical examiner system – 6 labs and 12 forensic pathologists is not presently accredited. We are striving to see that change within the next year. The reality is that many offices are contemplating not renewing this voluntary benchmark of competence due to a lack of resources.

"We're still living in the Dark Ages' when it comes to death investigations.... It's a national disgrace."[6] "It is important to note that even the use of the word 'system' to describe a process that encompasses more than 3,000 individual jurisdictions is a misnomer. There is no uniform method for certifying deaths in this country, and no two states do it exactly alike. In some states, the process even varies from county to county."[6] "The medical specialty of forensic pathology is seriously understaffed.... More than half of the forensic work done is performed by pathologists with no specialized training in forensics."[2]

We need to upgrade our medical examiner infrastructure – only 81% of those who perform forensic autopsies are board certified. 8% of all medical examiner positions are vacant. We are not properly preparing for the future. Because it takes about 10 years to adequately train a forensic pathologist to start practicing forensic medicine, we must be proactive and anticipate future forensic needs. *"Nearly all agree on the need for higher salaries..., a uniform set of national standards..., better training for employees...., and improved funding to ensure that each investigation gets the attention it deserves. The public should demand no less."*[6]

Every person who has been touched by a forensics issue has a fervent belief that theirs is the issue. The sad reality is that rape, murder, drug overdoses, child deaths, DUI vehicular homicides, infanticide, elder abuse, adverse medicinal reactions, firearms deaths, arson fatalities, child abuse, plane crashes, spousal abuse, disease epidemics, and terrorist acts are now and forevermore will be a part of our lives. They are *all* important issues and should be dealt with. As a medical examiner, I speak for those unfortunate enough to not be here today – the dead and brutalized victims of murder, child abuse, and terrorism. They never chose to become a statistic but had the misfortune of being murdered or of dying under suspicious circumstances.

What is the solution to the under funding of forensic sciences? I urge listening to the nation's forensic lab directors, scientists, and medical examiners – the ones who ought to know what they need and how much it will cost. Over 11,000 forensic scientists and medical examiners have spoken through the Consortium of Forensic Science Organizations (CFSO) – a multi-disciplinary group including The National Association of Medical Examiners, the International Association for Identification, the American Academy of Forensic Sciences, and the American Society of Crime Lab Directors. The CFSO supports full funding for the Paul Coverdell National Forensic Science Improvement Act of 2000 because it would allow the scientists – criminalists and medical examiners – to determine how to best use the funding *in their own states*. If we trust these scientists and physicians to determine scientific truths on which a subject's life and liberty literally hang in the balance, why not heed their advice when it comes to strategic planning for the labs' needs.

As British Prime Minister Sir William Gladstone said, "Show me the manner in which a nation cares for its dead and I will measure with mathematical exactness the tender mercies of its people, their respect for the laws of the land, and their loyalty to high ideals."

If we continue to ignore funding for forensics, the losers will include: truth, justice, citizens, victims, families, communities, suspects, courts, investigators, and society. As said Clarence L. Watts, defense counsel for the Scottsboro boys, "It takes courage to do the right thing.... But when justice is not administered fairly, governments disintegrate and there is no protection for anyone – man or woman, black or white."

J.C. Upshaw Downs, M.D.
Forensic Pathologist
Savannah, Georgia

[1] *Advancing Justice Through DNA Technology*, Executive Summary, pp ii-iii, NIJ 2003

[2] *County News*, July 1, 1985

[3] Consortium of Forensic Sciences Organizations study, 2003

[4] *The New Detectives: Case Studies In Forensic Science*, Arts and Entertainment Network, Alabama v. Kenneth Stallworth case, originally aired May 2003.

[5] http://www.usatoday.com/news/nation/2003-07-31-lab-usat_x.htm, USA Today, August 1, 2003, page 13A

[6] *American Bar Association Journal,* June 1995 p 60

[7] http://www.ojp.usdoj.gov/bjs/homicide/homtrnd.htm

[8] http://www.ojp.usdoj.gov/nij/dna/welcome.html

[9] *Montgomery (Alabama) Advertiser*, Editorial, Dec 5, 1999

[10] http://www.thename.org/

STATEMENT OF

BARRY A. J. FISHER

CRIME LABORATORY DIRECTOR

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

LOS ANGELES, CALIFORNIA

BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

REGARDING THE

"DEPARTMENT OF JUSTICE OVERSIGHT: FUNDING FORENSICS SCIENCES

– DNA AND BEYOND."

ON

JULY 31, 2003, AT 2:00 P.M.

Mr. Chairman and member of the subcommittee:

Thank you for this opportunity to brief you on the state of forensic science in the United States and to speak on the future funding for crime laboratories and medical examiners offices.

My name is Barry Fisher and I am director of the Los Angeles County Sheriff's Department Crime Lab. I also represent the American Academy of Forensic Sciences, a scientific society which represents over 5000 practicing forensic scientists employed on crime labs and medical examiners offices. The Academy is a member organization of the Consortium of Forensic Science Organizations whose task has been to represent the needs of forensic science in Washington.

Before beginning my remarks, I wish to publicly thank Sarah V. Hart, Director of the U.S. Department of Justice, National Institute of Justice. Over the past several years under Director Hart's leadership, much needed funds have been made available to help improve forensic sciences throughout our country. Director Hart's vision and leadership in funding forensic DNA and other elements of forensic science have begun to bear fruit. Thank you Director Hart.

The forensic science delivery system in our country is in trouble. Simply stated, crime labs and medical examiners offices are under funded to meet the demands of a 21st century criminal justice systems. Crime labs and medical examiners offices often cannot provide timely services. The result is inadequate criminal investigations that affect the quality of justice. The ability to appropriately use science and technology to solve crimes, to help bring the guilty to justice and

help exonerate the innocent is seriously compromised because of inadequate resources for crime labs and medical examiner offices.

Unlike the television portrayal of crime labs where crimes are solved in under an hour, many labs are unable to get the job done. Unfortunately, I am unable to provide you with quantitative data to demonstrate this point, but I can describe the problem facing forensic science labs today. The problem presents itself in different ways. In some regions, DNA backlogs are the problem and rape cases are not examined in a timely fashion. Other jurisdictions face problems with drug cases, or fingerprints, or firearms cases, or toxicology cases. There are insufficient resources to allow labs to complete casework in a timely manner. This is sometimes due to a lack of adequate work space, or enough trained personnel, or equipment.

While I do not have numbers to prove may point, there are scores of newspaper and television reports to demonstrate that there is a problem:

- Feb 3, 2003, Pittsburgh, PA (KDKA-TV). Eight months ago, a KDKA investigation uncovered a backlog at the Allegheny County crime lab that was forcing police to wait weeks, months and even years for evidence analysis they needed to crack cases.

  As a result, bags of evidence from hundreds of cases have been sitting on shelves in the county crime lab -- collecting dust instead of catching criminals.

- Mar 6, 2003, Chattanooga, TN (WDEF-TV) Methamphetamine use is on the rise in Southeast Tennessee, but now the Meth Task force wonders if it can keep up. The Chattanooga Crime Lab is closing, and all the evidence from more than 20 counties will have to go to Knoxville.

  "It affects every police department. The City of Chattanooga will have to have a transport person..." Hamilton County Sheriff John Cupp says his force will dedicate one person to take evidence to Knoxville at least once a week. "They say, 'Oh, you can mail these, and send them by different ways.' When it comes to drugs and chain of custody and a large case, I'm not going to put it in the mail or anything else."

  The ingredients to make meth are so dangerous; officers need special training to handle them. "Inhalation of hazardous airborne chemicals has been a problem over the years. A lot of officers have suffered from respiratory problems," explains Roger Cheshire of the Network Environmental Service. Not only is the Chattanooga Lab closing, but the Jackson Lab is, too, meaning the Knoxville Lab could face a heavier workload.

- February 21, 2003, Augusta Maine (Blethen Maine Newspapers) Proposed budget cuts for the state Department of Public Safety will mean fewer troopers to answer emergency calls and fewer

forensic specialists to help solve crimes, according to state police officials. The cuts, part of Gov. John Baldacci's effort to eliminate the state's projected $1.1 billion budget deficit without raising taxes, would eliminate as many as 49 positions in the department. The proposed cuts include 14 troopers, one detective and 20 civilian positions...

... the reduction in forensic specialists at the State Police Crime Lab will have a significant impact. "We have backlogs now. We are just going to have to prioritize those backlogs," ...

Evidence from some property crimes may not be processed at all at the crime laboratory and material from violent crimes may wait longer for attention.

- Feb. 14, 2003, Waterbury, VT (Channel 3 – TV News) Budget cuts are slowing lab tests of potentially key evidence in a ... murder investigation, according to authorities. Police gathered the evidence a month ago ... But there have been no arrests and police now say they are still awaiting lab analysis of the murder scene evidence, including DNA material.

  Eric Buel, Director of the Vermont Crime Lab, says a large backlog of cases, and a shortage of space and personnel delayed lab testing.

- Jan. 21, 2003, Wisconsin Leader-Telegram. A state crime laboratory in Wausau may have to close because of budget cuts facing the state's Department of Justice. Attorney General Peg Lautenschlager talked about the possible closing last week during an address at the Wisconsin District Attorneys Association Conference in Appleton.

  The state also has crime lab offices in Madison and Milwaukee.

  Lautenschlager said the impending cuts would be significant, particularly for a Justice Department that already has been operating on a "bare-bones budget."

  She said closing the Wausau crime lab is among the cuts she is contemplating.

- Feb 4, 2003, Alabama, WTVM Channel 9 News. The new director of Alabama's state crime lab says he'll do the best he can with the limited resources the state has. ... For instance, the crime lab has 9,000 drug cases still unresolved, as well as 500 firearms cases. State leaders didn't help, as this year's budget is $2.5 million smaller than last year's.

- July 24, 2003, Corpus Christi, TX, KRIS-TV. A new state law tells local authorities to either upgrade their crime labs or don't bother bringing their evidence to court, and at this point, the outlook for Corpus Christi Police

doesn't look too good. As a result of serious DNA irregularities at the police crime lab in Houston, lawmakers recently voted to require that all similar labs be accredited by 2005. The problem is that to upgrade Corpus Christi's lab will require more personnel, more equipment, and most of all more money, and right now, that money just isn't being spent.

- May 14, 2003, San Mateo County, CA, Mercury News. The San Mateo County crime lab has just moved into a brand-new, multimillion-dollar building, but inadequate staffing and poor management are causing serious delays in evidence analysis, according to a grand jury report released Tuesday.

  The 57-page report found that the lab is chronically late in processing evidence, sometimes delaying trials and keeping defendants in jail when the evidence could possibly exonerate them. ... [The] lab director ... acknowledged that there is a major backlog of unprocessed evidence, but said most of the lab's delays are due to one thing beyond his control: low staffing.

- July 8, 2003, Mayfield, KY, Channel 3 – TV. A Graves County circuit judge wants to know what the holdup is in testing for drugs and other evidence at the Kentucky State Police crime lab in Madisonville. Circuit Judge John Daughaday issued an order ... for lab officials to appear in his court Aug. 12 to explain the delay.

> Graves and other counties in western Kentucky have seen a sharp rise in methamphetamine cases in recent years. But delays in getting back lab results have left some defendants sitting in jail. But a police official said the Madisonville lab is understaffed, resulting in a backlog.

These are a few of the news stories I have been collecting. The tell a story that there are problems all around the country with forensic science labs.

Some have questioned the Administrations plans to spend $1B over a five year period to address forensic DNA related issues while ignoring the many other problems facing crime labs and medical examiners offices. What can be done to solve the problem?

The Consortium of Forensic Science Organizations strongly believes that funding forensic DNA is important. But other forensic science areas, such as drug testing, toxicology, firearms identification, fingerprint identification, and forensic pathology are also important. These disciplines help to solve crimes. They must be appropriately funded as well.

The U.S. Congress passed the Paul Coverdell National Forensic Science Improvement Act. Sadly, the amount of funding appropriated for the act is exceedingly small. We urge that the monies proposed in the Administration's Budget be placed into the Coverdell Act to allow jurisdictions to use the funds in ways they feel are necessary.

Subcommittee on Administrative Oversight and the Courts
Hearing on, " DOJ Oversight: Funding Forensic Sciences - DNA and Beyond"
July 31, 2003

Statement of Senator Charles Grassley

Chairman Sessions, thank you for holding this oversight hearing on an issue of extreme importance to the criminal justice system - the issue of adequate funding of forensic science labs.

First, let me commend the fine work of the men and women in the area of forensic science. Their "behind the scenes" work done in the field and at our crime laboratories is rarely given the weight of recognition commensurate with their contributions. While I applaud these efforts, it should come as no surprise to most of you that, when I Chaired this Subcommittee, I developed a healthy concern in this area due to my years of conducting oversight of the FBI Crime lab. I agree that insufficient funding only encourages the types of deplorable conduct uncovered at the FBI, such as

lab contamination, lack of quality assurance standards, mishandling of evidence, testimonial errors and withholding of exculpatory evidence. But I would caution those who argue that funding is the panacea for all your problems. I worry about organizations that foster a culture of arrogance and seek to stifle dissent. I've seen, first-hand, what happened at the FBI when a laboratory scientist came forward with information on improper actions. These occurrences have resulted in somewhat of a "loss of innocence" within this area of expertise. And it has been disturbing to learn that what was previously thought to be an irrefutable and impartial opinion, isn't necessarily the case. It has also been discomforting to see that many state and local agencies are not immune to this type of conduct. So, without appropriate and ongoing training, management and oversight, a fully-funded program is no better off than it was before because the truth is not being served.

Even after having said all that, I need to highlight the foolishness of funding a single area of the crime labs' backlog to the neglect of other areas. A 2002 survey by the American Society of Crime Laboratories, a group representing state and local forensic laboratories, found that the DNA backlog and analysis accounted for just 5% of the total work done by such facilities. This is an important fact because it illustrates that the great majority of the work done by crime labs does not involve DNA evidence. According to the crime labs, fingerprint and drug analysis make up the bulk of their work loads - not DNA analysis.

Does it make fiscal sense to spend $1 billion dollars over the course of the next five years to fund the reduction of the DNA evidence backlog, as the President's DNA Initiative directs, while we spend zero dollars on the great majority of the labs' workload?

I urge my colleagues to listen to the testimony of today's hearing and see the varied needs of America's crime

labs. If we are going to commit federal dollars to solving problems in crime labs, lets make sure we are acting wisely by funding the labs where the assistance will make the greatest impact.

Department of Justice

STATEMENT

OF

SARAH V. HART
DIRECTOR
NATIONAL INSTITUTE OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

REGARDING

DOJ OVERSIGHT: FUNDING FORENSIC SCIENCES - DNA AND BEYOND

ON

JULY 31, 2003

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to inform this Subcommittee concerning the activities of the Administration and the Department of Justice relating to the use of DNA technology, as well as other forensic tools and techniques, to solve crimes and promote public safety.

While all forensic methods have their place in modern law enforcement, the promise and importance of the DNA technology are so great that the President has endorsed a major initiative, totaling more than $1 billion over five years, to fully realize its potential in the criminal justice process. My testimony today will focus primarily on the proposals in the President's initiative and the Department's significant progress in other areas of forensic science that directly supports state and local law enforcement. I will also discuss needed DNA-related reforms in Federal law which we have already recommended to Congress in previous testimony and statements.

Before turning to these issues in detail, allow me to summarize our views and proposals:

The President's DNA initiative, which was announced by the Attorney General on March 11 of this year, proposes the commitment of $232.6 million for DNA-related purposes in FY 2004, and continuation of this level of funding in successive years through FY 2008. The funding will be administered through various components of the Department of Justice including, in FY 2004, $177 million through the National Institute of Justice, $13.5 million through existing programs of other Office of Justice Programs components, and $42.1 million for activities of the FBI. The topical elements of the President's initiative, and their funding allocations for FY 2004, are as follows:[1]

(i) **DNA BACKLOG ELIMINATION** – $92.9 million to assist in clearing backlogs of unanalyzed crime scene DNA samples (such as rape kits) and offender DNA samples. Nationwide, there is an unacceptably high number of unanalyzed crime scene DNA samples in sexual assault, homicide, and kidnapping cases. If analysis of these backlogged samples results in DNA "hits" in even a fraction of these cases, the result will be the solution of thousands or tens of thousands of the most serious violent crimes. The President's initiative proposes the critical funding needed to clear these backlogs.

(ii) **STRENGTHENING CRIME LABORATORY CAPACITY** – $90.4 million to increase forensic laboratory capacity at the State and local levels - primarily for DNA analysis, for Federal DNA laboratory programs, and to operate and improve the Combined DNA Index System. The existence of DNA sample backlogs has resulted from the failure of public laboratory capacity for DNA analysis to keep pace with the growth of the DNA identification system. The proposed funding aims to upgrade State and local forensic laboratory capacity so that these laboratories will be able to keep

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[1] *See* Presidential Document, *Advancing Justice Through DNA Technology* (March 2003); U.S. Department of Justice, Fact Sheet, *The President's Initiative to Advance Justice Through DNA Technology* (March 11, 2003); Prepared Remarks of Attorney General John Ashcroft: DNA Initiative (March 11, 2003).

abreast of incoming DNA work in the future – thereby avoiding the development of new DNA backlogs – and will no longer require Federal assistance for this purpose. Additionally, many of these capacity building measures will also benefit the non-DNA forensic work performed by these laboratories.

(iii) **RESEARCH AND DEVELOPMENT** – $24.8 million for DNA-related research and development. This commitment of funding will result in smaller, faster, and less expensive tools for DNA analysis which will reduce capital investments for crime laboratories while increasing their capacity to process cases.

(iv) **TRAINING** – $17.5 million for training in the collection, handling, and use of DNA evidence, including training for both law enforcement and medical personnel. Adequate training can greatly increase the number of cases in which usable DNA evidence is obtained, as well as ensuring appropriate sensitivity to and treatment of crime victims in obtaining biological material.

(v) **POST-CONVICTION DNA TESTING** – $5 million to defray costs of post-conviction DNA testing in the State systems. The recent emergence of the DNA technology means that new evidence may be generated from retained biological material in cases that predate the availability of DNA testing. Most States have accordingly adopted provisions authorizing post-conviction DNA testing in recent years. The funding proposed in the President's initiative will encourage and support these State efforts.

(vi) **MISSING PERSONS IDENTIFICATION** – $2 million to promote the use of the DNA technology to identify missing persons. This funding is needed to realize the full potential of the Missing Persons DNA Database Program, which can provide closure to the families of missing persons by identifying human remains.

In addition to the critical need for adequate funding, which the President's initiative proposes, the efficacy of the DNA system depends on having adequate laws governing the system's operation and related procedural matters. To this end, we have proposed the following Federal law reforms:[2]

(i) **ALL-FELONS SAMPLE COLLECTION** – The existing categories of convicted Federal offenders from whom the collection of DNA samples is authorized are too

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[2] *See* U.S. Department of Justice, Fact Sheet, *Legislation to Advance Justice Through DNA Technology* (March 11, 2003); Prepared Remarks of Attorney General John Ashcroft: DNA Initiative, *supra* note 1, at 4; Letter of Assistant Attorney General Daniel J. Bryant to Honorable Joseph R. Biden, Jr., concerning S. 2513, at 2-3, 8-10 (Nov. 25, 2002); Statement of Sarah V. Hart, Director, National Institute of Justice before the Senate Judiciary Subcommittee on Crime and Drugs regarding DNA Initiatives, at 6-8 (May 14, 2002).

narrow, and should be expanded to include all convicted felons. Thirty-one States have already adopted this reform.

(ii) **COMPREHENSIVENESS OF THE NATIONAL DNA INDEX** – The statute governing the national DNA index should be amended to allow submitting jurisdictions to include the DNA profiles of all persons from whom they lawfully collect DNA samples. Currently, the national index statute only allows the inclusion of DNA profiles from convicted offenders, though many States collect DNA samples from some categories of non-convicts (such as adjudicated delinquents) and include the resulting profiles in their own DNA databases.

(iii) **STATUTE OF LIMITATIONS REFORM** – Existing time rules can confer effective immunity from prosecution on persons whose identity as the perpetrators of rapes and other serious crimes is conclusively established through DNA matching. Congress should permit the statute of limitations to be tolled where DNA evidence identifies the perpetrator.

(iv) **POST-CONVICTION DNA TESTING** – While most States have made provision for post-conviction DNA testing in appropriate cases, the Federal government has yet to do so. We look forward to working with Congress to establish post-conviction DNA testing standards and procedures for Federal convicts who could not have obtained such testing at the time of their trials.

Our detailed testimony is as follows:

I. THE PRESIDENT'S DNA INITIATIVE

The operation of the DNA identification system is similar to that of the fingerprint identification system. For the past century, fingerprint technology has been an important tool in solving crimes. Fingerprints left on objects touched by the perpetrator of a crime may be compared to those of persons who may have committed the crime, thereby inculpating them or excluding them as the guilty party. Moreover, even where there is no known suspect, fingerprints may be instrumental in bringing the guilty to justice. Matching of crime scene prints to fingerprint records which are available in State and national databases – reflecting the routine collection and maintenance of fingerprints from arrestees and convicts in criminal cases – may identify the perpetrators of crimes which would be unsolvable by other investigative methods.

Beginning in the late 1980s, working groups associated with the FBI laid the groundwork for a comparable system of DNA identification. Around the same time, some States began to collect DNA samples routinely from certain categories of convicted offenders, and Congress subsequently provided the statutory basis for a nationwide DNA identification system through the enactment of the DNA Identification Act of 1994. The standards developed for the system include the convention of using 13 DNA loci which do not designate any overt trait or

characteristic of an individual, but which in the aggregate identify him or her uniquely. The effect is to produce, through the analysis of DNA samples taken from crime scenes and offenders, DNA profiles which amount to genetic fingerprints.

Comparing the DNA profile derived from biological material left by the perpetrator at a crime scene – e.g., semen in a sexual assault examination kit – to that of a known suspect may confirm or refute the suspect's identity as the perpetrator. In cases where there are no known suspects, matching of crime scene DNA to DNA profiles of convicted offenders which are maintained in State and national databases can promptly solve crimes that would otherwise be unsolvable. Even where an individual is not specifically identified, common DNA profiles at multiple crime scenes may show a common perpetrator, thereby allowing the pooling of critical investigative information.

Under the current development of the system, all States collect DNA samples from some categories of convicted offenders, and many collect DNA samples from some persons in non-convict categories, such as adjudicated juvenile delinquents. At this point in time, a substantial majority of the States have enacted legislation authorizing the collection of DNA samples from all convicted felons, and the strong trend in State law reform is towards broader sample collection. The States maintain databases which include the profiles derived from the crime scene and offender DNA samples they collect, and the FBI maintains a national DNA identification index which makes the DNA profiles obtained under the State systems available on a nationwide basis for law enforcement identification purposes. The FBI also operates the Combined DNA Index System (CODIS) which links the State and national databases and enables them to communicate with each other.

The results of this system have been remarkable, even though many States are only beginning to use DNA's full crime solving potential, and the nation's DNA databases contain only a fraction of the DNA profiles that they will eventually include as the system develops further. For example:

- In December 1998, a 21-year-old pediatric nursing student was kidnapped, sexually assaulted, and murdered in Broward County, Florida. Three months later a DNA sample from Lucious Boyd was matched to semen found on the victim's body. Boyd was convicted of sexually assaulting and murdering the nursing student and sentenced to death in June 2002.

- In 1983, a boy was raped and murdered in Virginia while walking on a path. Investigators resubmitted the case in 1999 for DNA analysis. In August 1999, they matched the profile to Willie Butler, who was in the database due to a previous conviction for burglary. Butler was convicted of this crime.

- In 1977, a six-year-old girl disappeared while vacationing with her family in Reno, Nevada. Her remains were found two months later. DNA testing was not available in

1977, and the case remained unsolved for twenty-three years. In 2000, renewed investigative efforts resulted in a DNA test of the victim's clothing and entry of the resulting DNA profile into the Nevada State DNA database. A database search revealed a match to a man who had been on parole since 1976 for a previous sexual assault of a minor. The man pled guilty to the murder in October 2000.

Given the extraordinary potential of the DNA technology, both Congress and the Department of Justice have endeavored for a number of years to further the system's development. For example, in 2000, Congress enacted the DNA Analysis Backlog Elimination Act, which authorized funding assistance to the States to clear DNA backlogs, and provided the initial authorization for the collection of DNA samples from convicted Federal offenders. The Department's activities have included extensive DNA programs of the National Institute of Justice and the FBI. For example, by the end of last year, the National Institute of Justice had disbursed funds supporting the analysis of more than 470,000 DNA samples collected from convicted offenders by the States, and had awarded Federal funds to support the analysis of more than 24,000 crime scene DNA samples in State cases involving no known suspects.

This year, based on the recommendations of a national panel of forensic and criminal justice experts, the President proposed a comprehensive national strategy that addresses a wide range of issues currently impeding the nation's ability to maximize the use of DNA technology. This strategy promises immediate and long term solutions of backlog, delay, and underutilization that now impede the system's operation. As noted, this includes the commitment of over $1 billion for this purpose over the next five years, the first installment of which is reflected in the President's budget request for FY 2004.

The President's DNA initiative, which the Attorney General announced on March 11, proposes the following measures:[3]

A. <u>DNA BACKLOG ELIMINATION</u> (FY 04 amount: $92.9 million)

The backlogs of DNA samples in the State and Federal systems represent rapes, murders, and other serious crimes which are waiting to be solved, but will not be solved until the needed resources are made available to analyze these samples. The backlog problem has two basic components:

First, there is the backlog of "casework" samples, which consist of DNA samples obtained from crime scenes, victims, and suspects in criminal cases. We estimate that there are hundreds of thousands of casework samples awaiting testing. The President's initiative calls for

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[3] The documents setting forth the President's initiative are cited in notes 1-2 *supra*. A chart summarizing the principal elements of the initiative and funding for those elements appears in *Advancing Justice Through DNA Technology*, *supra* note 1, at 15.

$76 million in FY 2004, with continued funding over the five years of the initiative, to help clear this backlog.

Second, there is a backlog of "convicted offender" samples, which consists of DNA samples obtained from convicted offenders who are incarcerated or under supervision. At the time of the announcement of the President's initiative in March, we estimated the number of collected but untested convicted offender samples at between 200,000 and 300,000. We further estimated that there were between 500,000 and 1,000,000 such samples which were "owed" under State sample collection standards, but not yet collected. The volume of convicted offender samples to be collected and tested will increase as the States continue to enlarge the categories of offenders from whom they collect DNA samples. The President's initiative calls for $15 million in FY 2004 to help eliminate the convicted offender sample backlog over five years.

In addition to the States' backlog of convicted offender samples, the Federal Bureau of Prisons, the Federal probation offices, and the Court Services and Offender Supervision Agency for the District of Columbia began to collect DNA samples from Federal and District of Columbia offenders following the authorization of such sample collection by the DNA Analysis Backlog Elimination Act of 2000. The FBI's Federal Convicted Offender Program (FCOP) is responsible for processing and analyzing these samples. At the time of the announcement of the President's initiative, approximately 18,000 DNA samples from Federal and D.C. offenders had been collected and submitted to the FBI. The President's initiative calls for $1.9 million in FY 2004 to fund FCOP, which includes funding for analysis of the collected samples.

B. **STRENGTHENING CRIME LABORATORY CAPACITY** (FY 04 amount: $90.4 million)

In addition to providing immediate assistance to clear the backlogs of casework and convicted offender samples, the President's initiative seeks to remedy the underlying problem of inadequate public laboratory capacity for the timely analysis of DNA samples. Many laboratories currently have limited equipment resources, outdated information systems, and overwhelming case management demands. The initiative proposes Federal funding to further automate and improve the infrastructure of forensic laboratories so they can process DNA samples efficiently and cost effectively. These improvements will prevent future DNA backlogs, and enable the criminal justice system to realize the full potential of DNA technology on a permanent basis.

$60 million is budgeted for this purpose in FY 2004. Specific uses of the funding will include providing basic infrastructure support to public crime laboratories for DNA analysis; acquisition of Laboratory Information Management Systems to automate evidence handling and casework management – now available in only an estimated 10% of public DNA laboratories; providing automation tools to streamline aspects of the DNA analysis procedure that are labor and time-intensive, such as robotic DNA extraction units; and providing support for the retention and storage of forensic evidence.

This component of the President's DNA initiative also includes $20.5 million in funding in FY 2004 for the FBI's laboratory programs. The FBI's Laboratory Division handles the regular DNA casework in Federal criminal cases, and provides support and technical assistance to the DNA programs of State, local, and international law enforcement agencies. This includes the Nuclear DNA Program ("DNA Unit 1"), which handles nuclear DNA analysis, and the Mitochondrial DNA Analysis Program ("DNA Unit 2"), which is responsible for performing mitochondrial DNA analysis of forensic evidence containing small or degraded quantities of DNA. In addition to providing funds to these two existing programs – $13,902,645 for nuclear DNA and $6,009,137 for mitochondrial DNA – the initiative budgets $661,693 in FY 2004 for regional mitochondrial DNA laboratories, to provide an alternative source for mitochondrial DNA analysis to State and local law enforcement and allow the FBI laboratory to concentrate more of its efforts on Federal cases.

In addition, the FBI administers the Combined DNA Index System (CODIS) which effectively integrates the DNA information obtained under the various State and Federal DNA systems, and makes it available on a nationwide basis for law enforcement identification purposes. The initiative budgets $9.9 million for the operation and improvement of CODIS in FY 2004. This includes completing a general redesign and upgrade of CODIS, which will increase the system's capacity to 50 million DNA profiles, reduce the search time from hours to microseconds for matching DNA profiles, and enable instant, real-time (as opposed to weekly) searches of the database by participating forensic laboratories.

C. **RESEARCH AND DEVELOPMENT** (FY 04 amount: $24.8 million)

The President's initiative includes substantial funds for DNA-related research and development including, for FY 2004, $10 million to be administered by the National Institute of Justice, and $9.8 million for the FBI's DNA research and development program. Areas of emphasis over the next several years will include, for example, the development of "DNA chip technology" to improve the speed and resolution of DNA analysis – which will reduce analysis time from several hours to several minutes and provide cost-effective miniaturized components – and development of robust methods to enable more crime laboratories to analyze degraded, old, or compromised biological evidence.

Another element in this area is DNA demonstration projects, for which $4.5 million is budgeted in FY 2004. This will involve the funding of research projects in several jurisdictions to determine the scope of public safety benefits when police are trained to more effectively collect DNA and other forensic evidence, evidence is timely tested, and prosecutors are trained to enhance their ability to present this evidence in court. The information obtained will allow State and local governments to make more informed decisions regarding investment in forensic DNA as a crime-fighting tool.

A final element in this category is $.5 million in FY 2004 to establish a National Forensic Science Commission. The Commission would both develop recommendations for maximizing

the use of current forensic technologies to solve crimes and protect the public, and identify potential scientific breakthroughs that may be used to assist law enforcement.

D. TRAINING (FY 04 amount: $17.5 million)

Adequate training concerning the collection and use of DNA evidence is essential to maximize the benefits of the DNA technology. Police officers and investigators, for example, must have the knowledge to identify biological material at crime scenes that may contain usable DNA evidence, and must know how to collect such evidence properly. Prosecutors and defense attorneys need to know how to introduce DNA evidence and use it successfully in court, and judges must be able to rule correctly on its admissibility. Medical personnel and victim service providers likewise need to understand DNA technology to promote successful evidence collection, and to be fully responsive to the needs of victims. The President's initiative proposes $17.5 million for these purposes, including training and education for police officers and investigators, prosecutors, defense attorneys, judges, offender supervision and corrections personnel, forensic scientists, medical personnel, and victim service providers.

E. POST-CONVICTION DNA TESTING (FY 04 amount: $5 million)

The President's initiative proposes $5 million in FY 2004 to help States defray the costs of post-conviction DNA testing. We believe that this will adequately cover the costs of tests done nationwide under the criteria that the States have established.

The DNA technology has its principal impact at the pretrial investigative stages, both in securing evidence of guilt, and in clearing innocent persons who might otherwise be wrongly suspected, accused, or convicted of crimes. In light of the recent emergence of this technology, however, there is also a need for DNA testing in the post-conviction context. If a person is imprisoned for a rape for which he was convicted in the 1980s, for example, DNA testing could not have been sought by the defendant before trial, because it did not exist at the time. But it may now be possible to determine whether the defendant's DNA matches to that of the apparent perpetrator in a rape kit or other retained evidence. There have in fact been a number of cases in which post-conviction DNA testing has cleared persons convicted for crimes they did not commit, and in some instances, matching of the retained evidence to DNA databases has implicated other persons as the actual perpetrators. For example:

- A Maryland man served 20 years of a 30-year sentence after being convicted of a 1982 home invasion rape of a schoolteacher. Through post-conviction DNA testing, the man was exonerated in 2002. When the crime scene profile was uploaded to CODIS, it was preliminarily linked to a felon whose DNA profile was maintained in the DNA database. This man has subsequently been arrested and charged for the 1982 crime. The original defendant was pardoned in January 2003.

While this experience points to the need for post-conviction DNA testing in appropriate cases, it also underscores the urgent need to bring the nation to a point where DNA analyses can be routinely performed early in the investigation, thus precluding the possibility of an innocent person being convicted in the first instance. No one in 21st Century America should be charged with or imprisoned for a crime he did not commit, and DNA technology is available to help prevent that from occurring.

Further, while post-conviction DNA testing is necessary to correct erroneous convictions imposed prior to the ready availability of DNA technology, experience also points to the need to ensure that post-conviction DNA testing is appropriately designed so as to benefit actually innocent persons, rather than actually guilty criminals who wish to game the system or retaliate against the victims of their crimes. Frequently, the results of post-conviction DNA testing sought by prisoners confirm guilt, rather than establish innocence. In such cases, justice system resources are squandered and the system has been misused to inflict further harm on the crime victim. The recent experience of a local jurisdiction is instructive:

> Twice last month, DNA tests at the police crime lab in St. Louis confirmed the guilt of convicted rapists. Two other tests, last year and in 2001, also showed the right men were behind bars for brutal rapes committed a decade or more earlier.
>
> [The St. Louis circuit attorney's] staff spent scores of hours and thousands of dollars on those tests. The staff personally counseled shaking, sobbing victims who were distraught to learn that their traumas were being aired again.
>
> One victim, they said, became suicidal and then vanished; her family has not heard from her for months. Another, a deaf elderly woman, grew so despondent that her son has not been able to tell her the results of the DNA tests. Every time he raises the issue, she squeezes her eyes shut so that she will not be able to read his lips.
>
> "She finally seemed to have some peace about the rape, and now she's gone back to being angry," the woman's son said.
>
> DNA tests confirmed that she was raped by Kenneth Charron in 1985, when she was 59. To get that confirmation, however, investigators had to collect a swab of saliva from her so that they could analyze her DNA. They also had to inquire about her sexual past, so they could be sure the semen found in her home was not that of a consensual partner.
>
> The questioning sent the woman into such depression that she's now on medication. "None of this needed to happen," her son said . . . .

Currently, over 30 States have enacted special statutory provisions for post-conviction DNA testing, and additional States make post-conviction testing available through other procedures. In adopting post-conviction DNA testing procedures, the States have sought to

balance these important interests – using post-conviction DNA testing appropriately to clear innocent persons, while maintaining appropriate protections against abuse of the system by criminals. The funding committed for this purpose under the President's initiative will assist and encourage States in these efforts.

F. MISSING PERSONS IDENTIFICATION (FY 04 amount: $2 million)

The FBI's Missing Persons DNA Database makes it possible to determine the fate of missing persons who have died, by comparing DNA profiles contributed by relatives of missing persons with the DNA profiles of unidentified human remains. This database is not being used to its full potential for a number of reasons: States have only recently begun to conduct DNA analysis on human remains and to submit the results to the database; unidentified human remains continue to be disposed of without the collection of DNA samples; and many crime laboratories lack the capacity to conduct timely analysis, especially where the biological sample is old or degraded. In addition, many law enforcement officials and family members lack sufficient information about the existence of the program and how to participate.

A number of elements of the President's DNA initiative discussed above will contribute to the solution of this problem. These include the general strengthening of crime laboratory capacity which will facilitate timely analysis of biological samples from unidentified human remains; assistance in the analysis of degraded and old biological samples through the FBI's Mitochondrial DNA Analysis Program; and research and development of more robust methods for analyzing degraded, old, or compromised biological samples.

In addition, the President's initiative will include: (i) providing outreach and education to medical examiners, coroners, and law enforcement officers about using DNA to identify human remains and aid in missing person cases, (ii) make DNA reference collection kits available to these State and local officials, (iii) support the development of educational materials and outreach programs for families of missing children and adults, (iv) encourage States to collect DNA samples before any unidentified remains are disposed of, and (v) provide technical assistance to State and local crime laboratories and medical examiners on the collection and analysis of degraded remains through the FBI and the National Institute of Justice. The $2 million budgeted specifically for missing persons identification under the President's initiative will be used for these outreach programs and the development of educational materials and reference collection kits.

II. FEDERAL LAW REFORMS

Maximizing the use and benefits of the DNA technology requires the right law, as well as the right resources. To this end, we have proposed a number of Federal law reforms affecting the operation of the DNA identification system and the use of DNA evidence:[4]

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[4] Previous statements concerning these proposals are cited in note 2 *supra*.

A. ALL-FELONS SAMPLE COLLECTION

The efficacy of the DNA identification system depends entirely on the profiles entered into it. Experience demonstrates that broad collection and indexing of DNA samples is critical to the effective use of the DNA technology to solve rapes, murders, and other serious crimes.

The DNA sample that enables law enforcement to identify the perpetrator of a rape, for example, often was not collected in connection with an earlier rape. Rather, in a large proportion of such cases, the sample was taken as a result of the perpetrator's prior conviction for a non-violent crime (such as a burglary, theft, or drug offense).

For example, in Virginia, which has authorized the collection of DNA samples from all felons since 1991, a review of cases in which offenders were linked to sex crimes through DNA matching found that almost 40% of the offenders had no prior convictions for sexual or violent offenses. Most serious offenders do not confine themselves to violent crimes. The experience of States with broad DNA collection regimes demonstrates that DNA databases that include all felons dramatically increase law enforcement's ability to solve serious crimes.

As a result of the proven value and importance of broad DNA sample collection in solving rapes, murders, and other serious crimes, the States have been moving towards the collection of DNA samples from all felons. At this time, at least 31 States have enacted legislation authorizing the collection of DNA samples from all persons convicted of felonies, and the number is increasing rapidly.

However, the specification of sample collection categories for Federal offenders remains narrower than that currently authorized in most State systems. The DNA sample collection categories in the DNA Analysis Backlog Elimination Act of 2000, as originally enacted, were relatively narrow and fragmentary. These categories were recently expanded to include Federal offenders convicted of terrorism offenses and of crimes of violence generally.[5] While this was an improvement over the original law, the Federal DNA sample collection provisions continue to exclude many Federal offenders whose inclusion in the DNA system would predictably be of significant value in solving rapes, murders, and other crimes.

This omission should be corrected by extending the DNA sample collection categories for Federal offenders to include all felons, as most of the States have already done.[6]

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[5] A proposed rule to implement this extension has been published, *see* 68 FR 11481 (March 11, 2003), and a final rule will be issued shortly.

[6] Legislation to effect such an extension should preserve the current unrestricted coverage of crimes of violence, and of sexual abuse offenses under chapter 109A of the criminal code, regardless of penalty grading. Suitable legislative language for this purpose appears in § 3(b)-(c) of S. 149, 108th Cong., 1st Sess. (2003).

B. COMPREHENSIVENESS OF THE NATIONAL DNA INDEX

The statute governing the national DNA index currently authorizes inclusion in the index of the DNA profiles of "persons convicted of crimes." 42 U.S.C. 14132(a)(1). This is narrower than the scope of DNA sample collection under existing legal authorities in most United States jurisdictions. For example, most States collect DNA samples from some categories of adjudicated juvenile delinquents, and some States – including Virginia, Louisiana, and Texas – have authorized DNA sample collection from certain arrestees on a categorical basis. The States can collect these samples and include the resulting DNA profiles in their own DNA databases, but cannot enter this information into the national DNA index because of the wording of the Federal database statute.

This limitation undermines the utility of the national index as a means of making nationally available for law enforcement identification purposes the information collected under the State systems, and hence works against the effective solution of rapes, murders, and other crimes through DNA matching. This problem should be corrected by allowing inclusion in the national index of DNA profiles of other persons whose DNA samples are lawfully collected under applicable legal authorities, as well as those of convicted offenders. By way of comparison, the States regularly include fingerprint information for arrestees, as well as convicts, in the national criminal history records system, and are free to include prints for juvenile delinquents as well as adult offenders.

This proposed change is essential to conserve limited law enforcement and laboratory resources. Knowledgeable law enforcement officials are often aware that many States and local jurisdictions maintain DNA profiles (from juveniles and arrestees) that are not uploaded into the national database. As a result, police often use an informal search mechanism that relies on faxed search requests to all jurisdictions to investigate cases. The lawful search mechanism wastes valuable law enforcement resources as each laboratory must input an individualized search and then respond to the requesting jurisdiction. The proposed statutory change would conserve these valuable law enforcement and laboratory resources by permitting a single search of the national database instead of the current individualized fax/search process.

C. STATUTE OF LIMITATIONS REFORM

A statute of limitations usually reflects a legislative judgment that the burden of prosecuting an old crime may outweigh its benefits. It balances the need to prosecute serious crimes with concerns that a delayed prosecution may be unreliable given the passage of time and faded memories. A statute of limitations may also encourage law enforcement officials to investigate promptly suspected criminal activity. For serious crimes, such as murder, where the

public interest in holding an offender accountable is particularly compelling, there is usually no statute of limitations.

Where, however, a prosecution is supported by DNA evidence, imposing a statute of limitations does not serve these public interests. The dependability of DNA evidence does not diminish over time and it produces reliable verdicts years after the crime was committed. Likewise, the mechanical application of a fixed statute of limitations can bar a trial even where law enforcement officials have promptly investigated the crime and sought to use DNA evidence. For these reasons, we have recommended that the provisions governing the time period for commencing prosecution in Federal cases be amended so as to toll the limitation period for prosecution in felony cases in which the perpetrator is identified through DNA testing. This reform is necessary to realize the full value of the DNA technology in solving crimes and protecting the public from rapists, killers, and other serious offenders.

The DNA identification system solves crimes by collecting DNA samples from offenders and matching the resulting DNA profiles to DNA found in crime scene evidence. However, this process proves to be futile where the sample taken from an offender matches, for example, rape kit DNA from a rape committed some years previously, but prosecution is impossible because it is time-barred. For example, in Federal law, the limitation period for the prosecution of most offenses is five years, *see* 18 U.S.C. 3282. So if a person who commits a rape avoids identification for five years, he has quite likely acquired permanent immunity from prosecution – even if DNA matching conclusively identifies him as the perpetrator five years and one day after the commission of the crime. Rape cases involving DNA matches which occur after the expiration of a restrictive statute of limitations have already been seen in the current operation of the DNA identification system,[7] and their number will increase as the DNA databases grow and the use of the DNA technology expands.

Nor is the problem confined to the area of sexually violent offenses. For example, consider a case in which a person commits a murder in violation of the interstate domestic violence or interstate stalking provisions of Federal law, 18 U.S.C. 2261 and 2261A. Since these provisions include no death penalty authorizations, the no-limitation rule for capital cases under 18 U.S.C. 3281 is inapplicable, and they must normally be prosecuted within five years under the general limitation rule of 18 U.S.C. 3282. Thus, if the offender is not identified and indicted

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[7]*See, e.g.* , http://www.townhall.com/columnists/stevechapman/sc000312.shtml (regarding California case involving rape of Jeri Elster in 1992 and solution of the case through DNA testing in 1999, following expiration of six-year statute of limitations); New York Times, Aug. 29, 2001, at A12, "In Rape Case Gone Awry, New Suspect – DNA Freed a Man, Now Implicates a 2nd" (regarding Oklahoma case in which DNA testing exonerated individual imprisoned for 15 years for a rape he did not commit, and implicated a second person following the expiration of the statute of limitations); Tulsa World, Dec. 22, 2002, at A4, "Statutes of limitations get look" (regarding prosecution of Edward Alberti for 1987 sexual assault, based on DNA evidence that had exonerated another man imprisoned for 14 years for the crime).

within five years, prosecution under these provisions is thereafter likely to be impossible, even if DNA matching establishes the identity of the perpetrator following the expiration of the limitation period.

Currently, State systems vary considerably in their statutes of limitations for prosecution. A number of States have no limitation period for the prosecution of felonies generally, or for other broadly defined classes of serious crimes. *See, e.g.,* Ala. Code § 15-3-5 (no limitation period for prosecution of felonies involving violence, drug trafficking, or other specified conduct); Ky. Rev. Stat. § 500.050 (generally no limitation period for prosecution of felonies); Md. Cts. & Jud. Proc. Code § 5-106 (same); N.C. Gen. Stat. § 15-1 (same); Va. Code § 19.2-8 (same); *see also* Ariz. Rev. Stat. § 13-107(E) (limitation period for prosecution of serious offenses tolled during any time when identity of perpetrator is unknown). Other States have amended their statutes of limitations in light of the development of the DNA technology and its ability to make conclusive identifications of offenders even after long lapses of time. Common reforms include extending or eliminating the limitation period for prosecution in sexual assault cases or cases that may be solvable through DNA testing. *See, e.g.,* Ark. Code § 5-1-109(b)(1); Del. Code tit. 11 § 205(i); Ga. Code § 17-3-1(b), (c.1); Idaho Code § 19-401; Ind. Code § 35-41-4-2(b); Kan. Stat. § 21-3106(7); La. Crim. Proc. Code art. 571; Mich. Comp. Laws § 767.24(2)(b); Minn. Stat. § 628.26(m); Or. Rev. Stat. § 131.125(8); Tex. Crim. Proc. Code art. 12.01(1)(B).

Federal law, however, has not yet adequately addressed this problem in Federal criminal cases. As noted, we have recommended remedial legislation to provide that, in felony cases in which the defendant is implicated through DNA testing, the statute of limitations does not begin to run until the DNA identification occurs. Even where crime scene DNA evidence is available, unavoidable delay may occur before the offender can be identified through DNA matching, if he is not convicted until years later for some other offense which results in a DNA sample being taken and entry of his DNA profile into CODIS. The proposed tolling provision will help to ensure that prosecution will not be barred by an arbitrary time limit in such cases.[8]

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[8] We have also proposed a reform to allow prosecution without limitation of time of felonies under the principal sex offense chapters of the Federal criminal code, and of kidnapping of children in violation of Federal law. *See, e.g.,* Letter of Assistant Attorney General Daniel J. Bryant to Honorable Joseph R. Biden, Jr., *supra* note 2, at 2, 8-10 (Nov. 25, 2002). Considerations supporting this reform include the frequent availability of DNA evidence in sex offense cases, which may lead to conclusive identification of the perpetrator even after the passage of many years; the seriousness of these crimes; the likelihood that sex offenders will reoffend if not restrained by prosecution and conviction; and the delay in the reporting of these crimes which may occur because of the dependence, intimidation, or traumatization of the victim. The House of Representatives has already passed this reform. *See* H.R. 5422, § 202, 107th Cong., 2d Sess. (2002). The statute of limitations reform that Congress recently enacted in the PROTECT Act (P.L. 108-21, § 202, amending 18 U.S.C. 3283), while beneficial, does not obviate the need for the proposed general reform for sex offense cases because: (i) the PROTECT Act reform only applies in cases involving child victims, and hence does not help in

We also recommend that this reform be made retroactively applicable to offenses committed before its enactment, to the full extent permitted by the Constitution. The Supreme Court recently considered this issue in *Stogner v. California*, 2003 WL 21467073, and held that legislation extending a statute of limitations cannot be given fully retroactive effect, to revive prosecutions that were already time-barred when the legislation was enacted. The Court emphasized, however, that this does not impugn the validity of giving such reforms partially retroactive effect, to extend the limitation period for prosecuting an offense that is not yet time-barred when the statute of limitations reform is enacted. *See* 2003 WL 21467073, at *4, 7, 16. Affording the statute of limitations reforms we have recommended retroactive effect to the full extent that the Constitution allows will maximize their value in older cases which will be solved through DNA testing, but in which the DNA identification would come too late under the previously applicable limitation rules.

D. POST-CONVICTION DNA TESTING

Most of the States have made provision for post-conviction DNA testing, but the Federal government has yet to adopt standards and procedures for the conduct of such testing in Federal cases. We look forward to working with Congress to develop appropriate statutory provisions for this purpose. As in the State systems, the need is to develop procedures which appropriately make post-conviction DNA testing available to convicts whose factual innocence may now be provable by such testing, while maintaining adequate safeguards against abuse of such a remedy and retaliatory traumatization of victims by criminals.

III. DEPARTMENT OF JUSTICE FUNDING FOR NON-DNA FORENSIC SCIENCE

Mr. Chairman, in addition to discussing the President's DNA Initiative, you also requested that the Department of Justice address its other non-DNA forensic science programs.

Our nation is at a unique moment in time in the area of DNA forensic science. It is consistently proving that the use of DNA technology is revolutionizing the criminal justice system –from solving cold cases, identifying missing persons, to exonerating the innocent. While the President's DNA Initiative focuses on a sweeping approach to building the nation's capacity to use DNA in the criminal justice system, the Department of Justice has also dedicated significant resources to enhance other areas of forensic science such as fingerprint identification and analyzing explosives, drugs, arson, and firearms. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Federal Bureau of Investigation (FBI), the U.S. Drug Enforcement Administration (DEA), the National Institute of Justice (NIJ), and the Bureau of Justice

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adult victim rape cases or any other cases involving adult victims, and (ii) it only suspends the statute of limitations during the life of the child victim, and hence does not help in cases in which the child is killed or dies.

Assistance (BJA) have each invested millions of dollars to help equip and train Federal, State and local law enforcement, as well as fund research to develop new forensic technology.

Examples of the nature and extent of programs that support non-DNA forensic science follow:

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

ATF NATIONAL LABORATORY CENTER

The ATF's new National Laboratory Center is a state-of-the-art facility combining a forensic science laboratory, a fire research lab, and an alcohol and tobacco lab in one location. Much of the work performed at the center benefit state and local law enforcement. Since FY 2001, ATF has spent over $9 million on its National Laboratory programs. Of the three components:

- the Forensic Science Laboratory evaluates evidence obtained in crimes involving firearms, bombings, and suspected arson incidents,
- the Fire Research Laboratory is the first facility in the world dedicated to fire scene investigations, including the ability to reconstruct fire scenes to determine how fires begin and spread, and
- the Alcohol and Tobacco Laboratory conducts chemical, physical, and instrumental analyses to support illicit alcohol and tobacco trade investigations.

I will discuss the work of the ATF's Forensic Science Laboratory in more detail, however if the Subcommittee would like additional information about the other two components of the National Laboratory Center, I will be more than happy to explain them in more detail after today's hearing.

ATF FORENSIC SCIENCE LABORATORY

As mentioned previously, the Forensic Science Laboratory evaluates evidence obtained in crimes involving firearms, bombings, and suspected arson incidents. Specifically,

National Integrated Ballistic Information Network Program:

Vital technology to help State and local agencies solve firearm-related violent crime is available nationwide through the ATF's National Integrated Ballistic Information Network (NIBIN) Program. NIBIN uses the Integrated Ballistics Identification System (IBIS), a computer system combined with microscopy and digital imaging, quickly searches databases for matching toolmarks left by a firearm on fired bullets and cartridge casings. This search allows trained specialists to associate evidence in crimes committed with firearms in multiple locations throughout a geographical region.

Since Fiscal Year (FY) 2001, ATF has spent $73.8 million on the NIBIN program and has requested $27.2 million to continue expansion of the program in FY 2004. A significant portion of this funding is used to supply state and local law enforcement agencies with the equipment necessary to use the NIBIN system.

The NIBIN program is currently in the second year of a multi-year expansion through which 222 state and local law enforcement sites have received IBIS equipment. However, when the deployment is complete in all 16 multi-state regions, IBIS technology will be available at approximately 235 state and local law enforcement sites. When a crime is committed with a firearm, fired bullets and/or cartridge casings are entered into the system and a database search is performed to find any link between this evidence and evidence in other shooting incidents. Once the system identifies a potential match, a firearm and toolmark examiner collects and microscopically compares the actual evidence to verify the match. Since ATF and its partner agencies began using this technology, over 6800 "hits" have been logged, many of them yielding investigative information not obtainable by other means.

Through funding and supporting this program, ATF provides State and local law enforcement agencies with an effective intelligence tool that many could not afford on their own. Having one unified system makes it possible to share intelligence across jurisdictional boundaries, enabling State and local law enforcement agencies to work together to stop violent criminals. For example:

- In June 2003, a cross-jurisdictional link enabled Illinois law enforcement to strengthen evidence against an accused killer. McDonough County, Illinois police investigated a homicide at a residence, in which a guest robbed the resident, then fatally shot him with his own gun. Ballistic evidence from the shooting was collected at the scene. When the suspect was later apprehended, he was driving a car that had belonged to the victim. No weapon was recovered; police believed it had been sold or traded for narcotics. Ten months later, Chicago police stopped a vehicle for traffic violations, and discovered that its driver possessed a firearm. The driver told police that he had purchased the firearm on the street, but didn't remember the name of the seller or when the purchase had taken place. Testfire and NIBIN entry of the firearm revealed that it had been used in the murder ten months before. This discovery enabled prosecutors to use the actual murder weapon as evidence in the case.

- In a June 2003 case, a suspect was arrested two days after a nightclub shooting. Through NIBIN, New Orleans police discovered that one of the guns used in the shooting had also been used in four other crimes. No suspects had been identified in the other crimes, which included a homicide and an aggravated battery. This ballistic link will now help police to investigate the potential links between the suspects and the other crimes.

Other services provided by the ATF National Laboratory and which benefit state and local law enforcement include: firearm and toolmark examinations, explosive examinations, fire debris

analysis, fingerprint examination, questioned document examination, trace evidence comparisons, training, and research. Scientists performing the analyses of crime scene evidence are frequently called on to testify as expert witnesses in state and local courts.

FEDERAL BUREAU OF INVESTIGATION

The successful investigation and prosecution of crimes requires, in most cases, the collection, preservation, and forensic analysis of evidence, which can be crucial to demonstrations of guilt or innocence. The FBI provides many services to the state and local forensic science community that include analysis, research, training, and technology.

FBI LABORATORY

As one of the largest and most comprehensive forensic laboratories in the world, the FBI Laboratory provides forensic and technical services to state and local law enforcement agencies at no expense to these agencies. The Lab analyzes physical evidence ranging from blood and other biological materials to explosives, drugs, and firearms and develops new scientific techniques. Laboratory examiners provide expert witness testimony in court cases regarding the results of forensic examinations, and specially-trained teams of special agent and support personnel assist domestic and international law enforcement agencies in large-scale investigations and disasters. More than one million examinations are conducted by the FBI Laboratory each year, and efforts to implement the results of current research in forensic casework are ongoing. Forensic services provided by the FBI Laboratory for evidence examination include: firearms-toolmarks analysis, computer analysis, chemistry analysis, computer analysis and response, DNA analysis, evidence response analysis, explosives analysis, firearms and toolmarks analysis, forensic audio, video, and image analysis, forensic science research, forensic science training, hazardous materials response, investigative and prosecutive graphics analysis, latent prints analysis, materials analysis, questioned documents analysis, racketeering records analysis, special photographic analysis, structural design, and trace evidence analysis.

INTEGRATED AUTOMATED FINGERPRINTING IDENTIFICATION SYSTEM (IAFIS):

Criminal identification by means of fingerprints is one of the most potent factors in apprehending fugitives who might otherwise escape arrest and continue their criminal activities indefinitely and law enforcement officials to learn the criminal history of a suspect or offender. This tool is perhaps the most commonly used forensics tool, one used every day by state and local law enforcement officers across the nation. The FBI maintains the National Repository of Criminal History Records and Criminal History Data, containing 41 million subjects in the criminal fingerprint file and 40 million subjects in the civil fingerprint file.

After many years of development, in 1997 the FBI Laboratory implemented the Integrated Automated Fingerprint Identification System (IAFIS). Now, instead of using ink and fingerprint

cards to take fingerprints of arrested subjects and job applicants, fingerprint images are now recorded digitally and transmitted to the FBI for comparison. By comparing fingerprints at the scene of a crime with fingerprint records of suspected persons, officials can establish absolute proof of the presence or identity of a person. Fingerprint processing has been reduced from weeks to months to hours and minutes with IAFIS.

To illustrate on one day alone – on July 23, 2003 – IAFIS processed 66,568 sets of fingerprints. Of those, 38,780 were criminal fingerprints and 27,788 were civil fingerprints. (Civil fingerprints are those taken for employment or licensing purposes as required by federal or state law.) The average response time for processing criminal fingerprints was 53 minutes, while the average response time for processing civil fingerprints was 155 minutes since criminal fingerprint checks are given the highest priority. (65.55% of the processed fingerprints were submitted electronically.) From October 1, 2002 to July 15, 2003, IAFIS processed 13,885,367 sets of fingerprints. Of this figure, 7,108,719 fingerprints were submitted by law enforcement agencies as a result of arrest and 6,776,648 fingerprints were submitted for employment or licensing purposes as required by federal or state law. Of the arrest fingerprints submitted, approximately 66% of the criminal fingerprints were identified with current arrest fingerprints on file. Of the civil fingerprints submitted, 12% were identified with previous criminal histories.

IAFIS also has a latent fingerprint capability. During the October to July period discussed above, over 2,101 searches involving 332 cases were conducted. In using the IAFIS latent fingerprint search, identifications were affected in 42 cases leading to the identification of 32 individuals.

Each day approximately 5,000 new individual criminal records are added to the files, totaling approximately 25,000 new criminal records per week. All of these fingerprint identifications were made without benefit of a named suspect and helped solve a variety of crimes, including homicides, rape, bombing matters, organized crime, extortion, drug crimes, and financial institution fraud.

THE FBI ACADEMY: FORENSIC SCIENCE RESEARCH AND TRAINING CENTER:

Forensic science research is conducted to develop new and improved methods for the analysis of forensic evidence. The Forensic Science Research and Training Center is a section of the FBI Laboratory Division that supports the FBI Training Division by providing forensic training to state and local law enforcement agencies and crime laboratories. It allows law enforcement agencies and crime laboratory personnel hands-on training to enhance their basic skills and procedures, as well as introduce them to new or more advanced techniques used in the examination of physical evidence.

U. S. DRUG ENFORCEMENT ADMINISTRATION

The DEA laboratory system, consisting of seven regional laboratories, a digital evidence laboratory and a Special Testing and Research Laboratory, is the premier drug analytical laboratory system in the world. DEA forensic scientists provide accredited scientific support to federal, state and local law enforcement agencies. In FY 2002, DEA expended in excess of $3 million analyzing drug evidence and providing expert testimony for the District of Columbia Metropolitan Police Department. In addition, the DEA cleaned up 6,800 state and local clandestine laboratories nationwide in FY 2002 at a cost of approximately $21 million dollars. DEA also provided clandestine laboratory certification to 1065 state and local law enforcement personnel in 24 schools last year. Also in FY 2002, DEA filled 894 requests from state and local law enforcement canine handlers for authentic materials for police dog training. Over the past thirty years DEA has trained well over 5,000 state and local chemists in various aspects of drug analysis as well as untold numbers of state and local police officers in the field testing of drugs. Over the past thirty-five years DEA has provided up to date information on drug analysis through its Microgram publication distributed to approximately 2000 subscribers.

The DEA laboratory system experts stand ready to assist state and local agencies upon request. In 2000, DEA laboratory personnel provided emergency analytical support to the State of West Virginia after their drug analytical laboratory was rendered inoperable for a period of several months. Additionally, the North Central Laboratory in Chicago is currently assisting the Kansas Bureau of Investigation by providing drug analytical support to that agency. In 2002, the DEA digital evidence laboratory supported a number of national investigations of internet rogue pharmacies involved in fraudulently prescribing millions of dollars worth of dangerous prescription pain medications. The DEA also assisted the National Forensic Science Technical Center in the development and implementation of an NIJ funded basic training program for state and local forensic drug chemists.

OFFICE OF JUSTICE PROGRAMS

NATIONAL INSTITUTE OF JUSTICE

The National Institute of Justice, the research, development, and evaluation agency of the U.S. Department of Justice's Office of Justice Programs, seeks to stimulate research and development of methods, techniques, and technologies that can enhance or increase the discriminatory power, applicability, and/or reliability of forensic analyses used in crime laboratories. Proposals that build or improve upon existing technologies, methods, or approaches as well as proposals based on new or novel technologies, methods, or approaches are funded to meet the goal of maximizing the value of forensic evidence to state and local law enforcement agencies.

As previously discussed, the President's DNA Initiative will also benefit the forensic science community in ways other than simply those involving DNA. The Initiative's funding for laboratory capacity building will provide much needed laboratory information management systems to help officials efficiently track all of the work of their lab, not only that involving DNA, and thereby increase the efficiency of the lab. The use of Initiative funding to increase evidence storage capacity will help to ensure that states and units of local government will be able to adequately maintain all necessary evidence collected from a crime scene, regardless of the type of forensic analysis performed on the evidence, for as long as needed.

Over the last several years, NIJ has provided much needed assistance to the forensic science community in many other ways. NIJ's 1999 publication, *Forensic Sciences: Review of Status and Needs,* provided an needs assessment to the forensic science community that, for the first time, represented the consensus of a group of forensic practitioners, researchers, and administrators representing several State, local, and Federal forensic science organizations. The document has helped Federal, state and local officials in understanding the needs of this community and planning for future support of this work.

In February 2003, NIJ provided funds to the Institute of Medicine of the National Academy of Sciences to conduct a workshop on identifying the needs of the medical examiner and coroner systems in the United States. The workshop identified issues for further research and suggested additional standards to enhance the level of service provided by these members of the forensic science community.

Over the last several years, NIJ has funded a number of research and development projects involving forensic tools and techniques other than DNA. Since 2001, NIJ has awarded over $15 million in grants for this work. Some examples include,

- One project makes use of remarkably accurate depth measurements of a bullet's surface to create a three-dimensional (3D) profile of a bullet. These profiles are stored in a database, and through the use of mathematical algorithms, can be compared in a completely objective manner. When a bullet is fired, the gun leaves unique impression marks on the bullet and casing. Current methods look at these marks in two dimensions. This project will permit 2D profiles. Imagine the difference between looking at the Grand Canyon in a 2D overhead picture versus a 3D view from inside it. This research has the potential to greatly enhance the ATF's NIBIN system.

- Another project aims to use advanced technology to rapidly screen for drugs and poisons in postmortem toxicology cases. This procedure will significantly expand the number of drugs and poisons that may be screened for by a toxicology laboratory at a lower cost and make possible the screening of over 100 additional compounds. This project is especially important for detection of emerging drugs of abuse.

- Another project focuses on the elemental analysis of glass and paint materials. Elemental analysis of materials has become an important yet under utilized type of evidence at many crime scenes, including scenes of shootings and bombings. Glass and paint elemental analysis procedures and a database which can be used by state and local crime labs to analyze crime scene evidence will be developed.

- NIJ is currently funding research for two tele-forensics projects. The first project focuses on gunshot residue detection. It will analyze patterns in inorganic ratios specific to gun shot residue using advanced technology to locate exact quantities of inorganic elements, such as lead, antimony, and barium, in gun shot residue from different firearms. Funding will also be used to construct a portable x-ray fluorescence instrument for investigators to map gunshot residue at crime scenes. The second project will develop a mobile tele-forensics command vehicle. It will serve as a technology test bed to provide the following: real time video and audio review of evidence and crime scene tasks by off-site forensic professionals, on-site communications, video evidence collection and cataloguing, and remote crime scene analysis.

- Another project will test the programs used by investigators to examine computers seized for evidence in criminal cases. The testing will help developers improve the software and establish the validity of evidence produced by the software for use in court. NIJ funding also maintains the National Software Reference Library of software commonly found on computers. Law enforcement investigator currently uses the library to compare common computer programs found on a suspect's computer with the same program in the library. By doing this, investigators are able to determine if the suspect has hidden date, pictures, or other information in the program on his computer.

In addition to providing funding for research and development, NIJ also has also provided over $94 million since FY 2001 under its Crime Laboratory Improvement Program, designed to establish or improves the capabilities and capacities of state and local crime laboratories to conduct forensic analyses. While much of this funding has been earmarked by Congress, NIJ has worked closely with the recipients of these earmarks by providing advice and technical assistance so as to help ensure that these funds are used in the most effective manner.

BUREAU OF JUSTICE ASSISTANCE

The Bureau of Justice Assistance (BJA) provides funding, training, and technical assistance to state and local governments to combat violent and drug-related crime and help improve the criminal justice system. BJA administers the Local Law Enforcement Block Grants (LLEBG) Program, which provides funds to units of local government to underwrite projects that reduce crime and improve public safety. One of LLEBG's legislatively mandated purpose areas allows law enforcement agencies to procure equipment, technology, and other items directly related to basic law enforcement functions. Since FY 1999, BJA has awarded 234 LLEBG grants to State and local law enforcement agencies totaling more than $30.9 million for crime lab

Testimony of Randall Hillman,
Executive Director
of the Alabama District Attorney's Association

Before the Senate Judiciary Subcommittee on
Administrative Oversight and the Courts

Thursday, July 31, 2003
2:00 p.m.
Dirksen Senate Office Building
Room 226

Mr. Chairman and other distinguished members of this Committee,

I thank you for the opportunity to testify this afternoon in front of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, about the need to fund forensic evidence analysis. I bring a unique perspective to the hearing today. I have been involved in many investigations and prosecutions during my three years as an Assistant District Attorney in Alabama and my nine years as a Chief Assistant District Attorney in Shelby County, Alabama. I am now the Executive Director of the Alabama District Attorney's Association an organization which represents all 42 elected District Attorneys in the state of Alabama.

As a prosecutor, I am familiar with forensic sciences evidence analysis. It is a subject about which I think the country should be educated and that affects thousands of lives each year. Having been in the courtroom and the trenches of the criminal justice system, I have seen the chaos that occurs when a crime has been committed. I have also seen a victim or victim's family experience some measure of relief and sense of peace when their perpetrator has been apprehended, convicted, and sentenced to prison.

It is estimated that approximately 75 percent of all cases in the criminal justice system are touched by forensic science evidence analysis. Without this service, our criminal justice system would effectively come to a halt.

Funding for all forms of forensic sciences is essential -- let me be clear about that. Our state and local crime labs are in serious need of funding in all areas of forensic science, including drug chemistry, trace evidence, toxicology, firearms examination, questioned document examination, and others. In Alabama, between 1990 and 2000, felony cases alone rose some 54 percent. The current Director of the Alabama Department of Forensic Sciences has stated that his department has more work than it can possibly handle. This excessive workload has a substantial ripple effect.

As you well know, prosecutors cannot take a case to trial without evidence. I, and my fellow prosecutors in Alabama and across the country, suffer greatly because crime labs do not have the resources to analyze evidence in a timely manner. An example of this is: In Alabama, over 40 percent of our total number of cases are drug offenses, including the possession, distribution, trafficking, and manufacture of controlled substances. In each of these cases, the Department of Forensic Sciences must issue a report to confirm that the substance was, in fact, an illegal drug, and how much of the drug was present. Alabama currently has a backlog of almost 12,000 drug analysis cases at the Department of Forensic Sciences.

Prosecutors routinely have to delay cases for long periods of time, while awaiting drug and other evidence analysis. Thus, our dockets become severely backlogged. Offenders have to wait in prison or out on bond for their cases to go to trial, and more

importantly, victims and their families must wait for justice to be served. Mr. Chairman, this is unfair to the victims and it is unfair to our society.

There are some instances in which the wait becomes tragically unfair. For instance, last August, in Crenshaw County, Alabama, a defendant systematically murdered six members of his girlfriend's family. One by one, he executed these people. This began in the morning and continued until evening. At the time, this defendant was out of jail on a $15,000 bond on a pending distribution of cocaine charge. The tragic part of this story is that he had actually been out of jail on bond for a year because the prosecutor in Crenshaw County had to wait for a toxicology report before going to trial on that case. The Alabama Department of Forensic Sciences received the cocaine sample in August of 2001, but because of their overwhelming backlog of drug cases, they were not able to analyze it until June of 2002. The murders happened on August 27, 2002 -- practically one year from the date of the defendant's drug arrest. Perhaps if the drug sample had been analyzed more quickly, this defendant would not have been out on the street -- he would have been in prison -- and those six innocent victims would be alive today.

On October 14, 2001, in Covington County, Alabama, a defendant was arrested for capital murder. He placed a plastic garbage bag over the head of his 7-year-old daughter and suffocated her to death. At the time of the murder, this defendant had a pending charge of trafficking in methamphetamine in a neighboring county. The case had been at the Department of Forensic Sciences for almost seven months awaiting

analysis. Ultimately, it took 16 months for the report to be returned. Here, too, had these results been given to the prosecutor faster, the life of a 7-year-old child might have been spared. I could continue with more examples, as I am sure there are many more horrendous stories like these around our nation.

Also, criminal investigations are regularly put on hold for long periods of time while we wait for analysis of a particular piece of evidence. DUI murder, DUI manslaughter and vehicular homicide cases are an example. Currently, it takes nine to 12 months to receive a toxicological analysis of a blood sample or other sample submitted to the Alabama Department of Forensic Sciences. Because of the nature of the charge, many times an arrest is not made nor an indictment issued because the critical element of the offense – intoxication, can not be established without the forensic analysis. Even in cases where a charge is levied shortly after the commission of the crime, prosecutors routinely have to re-indict or amend the original charge because of something new that the forensic analysis reveals.

Mr. Chairman, this committee is in a unique position. You have an opportunity that prosecutors and law enforcement rarely have. By helping to adequately fund all areas of forensic sciences, you can possibly stop some of these tragedies before they happen. By doing this, all of society will benefit.

Randall I. Hillman, Executive Director
Alabama District Attorneys Association

Testimony
of

Susan Hart Johns
President, American Society of Crime Laboratory Directors (ASCLD)
Bureau Chief, Illinois State Police
2060 Hill Meadows Drive
Springfield, IL 62702

U. S. Senate
Committee on the Judiciary
Subcommittee on Administrative Oversight and the Courts

July 31, 2003

Mr. Chairman and Members of the Committee:

Thank you very much for the honor and privilege of inviting me to testify before this committee today. I would like to introduce myself to you. I am a Bureau Chief for the Illinois State Police, Division of Forensic Services. I have been employed with the Illinois State Police for more than twenty-five years and have served in a number of capacities. I have analyzed evidence and presented my findings in court. I have also served as a laboratory director, managing resources to include personnel, equipment and facilities. Currently, as a Bureau Chief, I work in our Forensic Sciences Command Office and am responsible for laboratories located in Chicago and Westchester.

I am also the President of the American Society of Crime Laboratory Directors (ASCLD). The ASCLD is a professional organization, incorporated in 1976, and its membership includes more than 500 crime laboratory directors and administrators, primarily from state and local laboratories. (ASCLD has existed for more than twenty-five years to provide leadership in the forensic science community, providing training and information to its members and promoting quality in the practice of the forensic sciences.)

I am also the vice chair of the Consortium of Forensic Science Organizations. (The consortium includes four member organizations: ASCLD, the American Academy of Forensic Sciences (of which I am a former member of the Board of Directors), the National Association of Medical Examiners, and the International Association of Identification.)

I am here today to speak as the ASCLD President, a laboratory director and a member of the forensic community in support of providing funding for all forensic disciplines in the crime laboratory.

Why is Federal Funding Needed to Support the Nation's Crime Laboratories?

Our crime laboratories analyze evidence, both for investigative purposes and for providing evidence in court. They are an integral part of the criminal justice system. In the past 35 years crime laboratories have evolved from a collection of fewer than 100 state and local agencies scattered in various jurisdictions around the country, to today's array of over 400 sophisticated scientific operations serving the nations police and courts. Reliance on scientific evidence has grown, stimulated by rapid growth in laboratory technology and the demand for the use of evidence by the courts. (Studies dating from 1972 [1] document the utilization of physical evidence in the administration of criminal justice and its use in the courts.) Most recently, in *Daubert vs. Merrill Dow* (1993) [2] and *Kumho Tire* (1999) [3], the Supreme Court drafted new standards to govern the admissibility of scientific and technical evidence.

The vast majority of the evidence analyzed in criminal cases in this country is analyzed in a state or local crime laboratory. In most jurisdictions, the demand for testing has increased for crime laboratory analyses but funding has not kept pace with this increasing demand. For example, between 1990 and 2000, the average U.S crime laboratory experienced an increase in caseload of 23%. During that same period, budgets grew by only 10% and staff size by only 9%.

I once heard forensic laboratories referred to as the B team of the criminal justice system. While more visible front liners are seen as essential to the criminal justice system, the crime laboratory is relegated to a support position, expendable when times get rough. And we are in rough times when it comes to state and local funding for forensic resources. These rough times can result in laboratory closings and layoffs. In February 2003, the Oregon State Police lost 85 positions. In March, 40 positions were restored, but not without disruption to the services offered. This disruption was clearly evident in the firearms section where six of the seven state firearms examiners were included in the lay off. Even with the restoration of personnel in the Oregon laboratory system, there are still shortages in equipment, training and commodities. In another example, in May of this year, the state of Tennessee consolidated its five laboratories into three. Budget issues were a primary factor in that consolidation.

Mr. Chairman, resources have an impact on quality. The ASCLD has established a formal mentoring program for our members to assist one another in seeking accreditation from the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB). The problems reported by many laboratories which are not yet accredited are related to resources; both the personnel needed to work on the accreditation standards and the cost of the program itself. And while we do not see accreditation as a guarantee against errors, it is a program which requires laboratories to look for problems and address them. In fact, at least three states have mandated the accreditation of their crime laboratories: New York, Texas, and Oklahoma. However, resources are needed to assist laboratories in obtaining and maintaining accreditation. I believe the cost of not being accredited exceeds the cost of accreditation.

The lack of resources in laboratories causes significant delays in evidence being analyzed, resulting in delays in the courts as well as in the investigation of crimes. Work is prioritized according to court dates. In some cases, it is not even brought into the laboratory. Many laboratories establish case acceptance policies to limit the number of cases coming into the laboratory. Sometimes the laboratory may return evidence if it cannot be analyzed in a timely manner. In New York, for example, over 2000 drug cases are annually returned to the submitting agencies without analysis.

Crime laboratories analyze all types of evidence. As of July 28, 2003, there were 237 laboratories accredited by ASCLD/LAB in a range of disciplines. These disciplines include controlled substances, toxicology, trace evidence, forensic biology/DNA, firearms/toolmarks, questioned documents, and latent prints. Eighty-three percent of the laboratories accredited have sections which analyze for controlled substances; 61 % have firearms/toolmarks sections, 59% have sections which analyze trace evidence, 58% have forensic biology/DNA sections, and 49% have latent print sections. The full list of accreditation by discipline is listed in Table 1 which is submitted to the record.

Table 1: Disciplines Accredited by ASCLD/LAB

Accredited Discipline	# Labs Accredited in Discipline	% of Labs Accredited in Discipline
Controlled Substances	197	83%
Toxicology	70	30%
Toxicology (Blood Alcohol only)	44	19%
Trace Evidence	139	59%
DNA	138	58%
Firearms/Toolmarks	144	61%
Questioned Documents	57	24%
Latent Prints	116	49%
Crime Scene	11	5%

The problems in the laboratories are not unique to evidence type. Backlogs in all sections are created when evidence in that section is submitted to the laboratory faster than it can be analyzed. That is not to say, however, that all evidence has the same personnel, training, equipment, and facility requirements.

- The drug chemist analyzes suspected substances for the presence of controlled substances such as cocaine, heroin and marijuana, as well as a wide range of prescription drugs. Products from clandestine laboratories, such as methamphetamine, are also analyzed by the controlled substances section. Many laboratories use sophisticated instrumentation for the analysis of drugs. These instruments are expensive to purchase and have an effective lifetime of approximately five years. Training for this position can take up to one year.

- The toxicology section analyzes biological tissues (primarily blood and urine) for the presence of alcohol and/or drugs in cases involving driving under the influence (DUI). Coroner's cases may also be analyzed in the laboratory to assist with the determination of cause of death. Much of the same type of instrumentation used in the controlled substances section is used in the toxicology section. Unfortunately, the analytical parameters for the analysis of drugs from body fluids are sufficiently different from the solid dosage forms analyzed in the controlled substances section to prevent the use of the same equipment for both types of analyses. Training for this section may also require one year.

- The trace evidence section is best described as all other stuff not elsewhere analyzed. It may include microscopic examinations of hairs and fibers or glass, or it may involve analyzing for accelerants from a suspected arson scene. This section also uses a wide range of expensive equipment. Training for individuals working in this section may be in excess of two years due to the wide range of materials encountered.

- Latent print evidence is called latent print evidence because in many cases, the print is not visible until some type of processing, often chemical, is performed. Lasers are also often used in this visualization process. Comparisons are performed by analysts trained for up to two years. An Automated Fingerprint System, known as AFIS, is used to conduct computer assisted searches against a known database.

- The forensic biology/DNA section includes the identification of body fluids and DNA analysis. Prior to the advent of DNA, if a suspect was not known, about all we could do with biological evidence was store it until a suspect was identified. Now, with DNA and the national DNA database (CODIS), we are able to identify a suspect much in the same way we do with latent fingerprints; i.e., by conducting a computer assisted database search. Additionally, DNA evidence is much more discriminating than traditional serological evidence. Training for the forensic biology/DNA section can require up to two years.

- The firearms/toolmarks section involves evidence associated with firearms. When a weapon is fired, marks are left on shell casings and projectiles by the weapon. The examination of these marks allows the examiner to associate weapons, casings and projectiles. There is also a firearms database, the National Integrated Ballistic Identification Network (NIBIN), which can be used to facilitate the association of casings, hopefully to a weapon and ultimately to a person. Training for firearms examiners is also lengthy, in excess of two years in many cases.

- The questioned documents section conducts hand writing analysis, and examines documents and its components (e.g., paper, ink). It also includes obliterated writing. Work in this section is labor intensive and training is lengthy, up to three years.

- Additional specialty areas including computer forensics and crime scene processing is also part of many crime laboratories.

Crime laboratories are an essential part of the criminal justice system but their backlogs cause a bottleneck in that system. It is difficult to estimate the extent of the backlog problems in crime laboratories. Backlogs and their causes are complex. Since the mid-1970s, the American Society of Crime Laboratory Directors has gathered resource information from its members, including information on backlogs. In 1997, the ASCLD/Aspen Systems survey, funded by the National Institute of Standards and Technology, identified laboratories and their operating characteristics. In March 2001, the ASCLD conducted an electronic staffing/workload poll of its members. Most recently, the ASCLD has been working collaboratively with the Center for Research in Law and Justice at the University of Illinois at Chicago to conduct the 2002 census of publicly funded forensic crime laboratories. This work is being funded by a grant from the Bureau of Justice Statistics. That census is in progress but information is not yet available. Recently, however, I polled ASCLD members concerning their backlogs. Here are examples of the information I received:

- In April, the Kentucky State Police reported a total backlog of 10,259 cases, 81% of which was drugs. This backlog was the subject of a recent newspaper article entitled *Caseload Crunch* [4]. This same article cited delays in DNA testing.
- The New York State Police are also experiencing severe shortages in the personnel necessary to analyze drug and toxicology cases. A November 2001, decision in the Albany Supreme Court ruled that the people cannot declare ready for trial without a scientific evaluation and formal laboratory report. A drug analysis is required within 45 days of receipt. There have been 5 drug cases recently dismissed in New York State due to the lack of a laboratory analysis and subsequent report.
- As of June 30, the Illinois State Police had a backlog of 8,179 cases. The largest single backlog, representing 31% of the total, was in latent prints. The average latent prints case on the backlog was 61 working days old; that is, it had been in the laboratory for approximately 3 months.
- In total, there were 145,849 cases which laboratories reported as being backlogged when polled. Of these, 45% of the cases in the laboratory were controlled substances, 23 % were latent prints, 9.5% were DNA, and 10 % were firearms.

Recommendation

Assistance has been provided to the crime laboratory community through a variety of programs, to include the Forensic Resource Network and grant programs from the National Institute of Justice. These programs have been invaluable in assisting the community as a whole to address issues ranging from quality systems, training models, accreditation and certification, but additional resources are needed.

The lack of resources is the common denominator for the crime laboratory, but there is no one size fits all approach that addresses the problem. There are different types of evidence used in the criminal justice system, each with different needs. Controlled substances, latent prints, firearms, toxicology, trace evidence and forensic biology/DNA are all part of the crime laboratory. We need assistance which is flexible and can be used to address the full range of issues we deal with in the laboratory. The ASCLD thanks you for your support.

Endnotes

[1] Parker, B. and Peterson, J.L. (1972) Physical Evidence Utilization in the Administration of Criminal Justice. LEAA Grant NI-032. Washington, DC: U.S. Government Printing Office.

[2] Daubert v. Merrel Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786 (1993).

[3] Kumho Tire Co., Ltd., v. Carmichael et al., 119 S. Ct. 1167 (1999).

[4] "Caseload Crunch", Tom Loftus, The Courier-Journal, Louisville, Kentucky, (Monday, July 28, 2003).

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement Of Senator Patrick Leahy
Senate Committee On The Judiciary
Subcommittee On Administrative Oversight And The Courts
Hearing On "Funding Forensics Science: DNA And Beyond"
July 31, 2003

I thank Chairman Sessions and Ranking Member Schumer for holding this subcommittee hearing on the current conditions of forensics science services, as well as their future role in the enforcement of justice.

The use of quality forensic science services is widely established as a key to effective crime fighting, especially with advanced technologies such as DNA testing. Over the past decade, DNA testing has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene. Because of its scientific precision, DNA testing can, in some cases, conclusively establish a suspect's guilt or innocence. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value for investigators. While DNA's potential to root out the truth has been a boon to law enforcement, it has also been the salvation of law enforcement's mistakes for those who, for one reason or another, are prosecuted and convicted of crimes that they did not commit.

Clearly, forensic science services are critical to the effective administration of justice in 21st Century America.

With that popularity and reliability, however, forensics science workloads have dramatically increased in both number and complexity over the past decade, while funding for those services has failed to keep pace with this increasing demand. In fact, the Bush Administration has repeatedly failed to request adequate funding for programs authorized on a bipartisan basis to provide critical federal support for our nation's forensic labs.

For example, I worked with Senator Sessions, the American Society of Crime Lab Directors, and others to authorize the Paul Coverdell National Forensics Sciences Improvement Act of 2000 to provide $465 million in federal support for public and private forensic laboratories in every state in the country from 2001 to 2006. Under our bipartisan legislation, our nation's forensic labs should receive $128 million this coming year for improvements. But the Bush Administration has refused to request any funding for this bipartisan grant program for this year. Indeed the Bush Administration has never requested funding for the Paul Coverdell Forensic Sciences Improvement Grant Act even though Congress has authorized more than $250 million in the last two years for forensic lab improvements.

senator_leahy@leahy.senate.gov
http://leahy.senate.gov/

When this administration does request federal funding to support our nation's forensic labs, the requests are woefully inadequate. For example, for the coming fiscal year, President Bush has proposed funding totaling only $235 million for 2 programs that involve forensics science: the DNA Initiative, which would be funded at $177 million, and the National Criminal Records History Improvement Program, which would be funded at $58 million. For FY 2003, Congress appropriated over $400.5 million in grants for projects focusing on crime identification technology, DNA analysis backlog elimination, and forensic sciences improvements.

Backlogs in many state and local laboratories have impeded the use of new technologies in solving cases without suspects – and re-examining cases in which strong claims of innocence exist – as laboratories are required to give priority status to those cases in which a suspect is known. In some parts of the country, investigators must wait several months – and sometimes more than a year – to get DNA test results from rape and other violent crime evidence. Solely for lack of funding, critical evidence remains untested while rapists and killers remain at large, victims continue to anguish, and statutes of limitations on prosecution expire.

Timeliness and quality concerns in the forensic science services threaten the administration of justice in the United States.

Let me describe the situation in my home State. The Vermont Forensics Laboratory is housed on the third floor of a building constructed in 1941 as part of a state mental hospital designed to house mental health patients. A 2000 study detailed many problems with the existing facility. In short, the building was never designed to house a laboratory and lacks, for instance, proper ventilation, space, and environmentally controlled rooms for instrumentation. The lab staff must often repeat DNA analytical testing since room temperature fluctuations cause quality assurance problems with their instruments. This results in time delays for court-required casework, reduces the number of total cases that may be completed, and increases the overall cost per DNA analysis.

Health and safety problems also exist. The laboratory has about half the space it needs to do the work currently performed let alone allowance for growth. The American Society of Crime Laboratory Directors accreditation team recently informed the head of the Vermont Forensics Lab that the facility probably would not pass the expected inspection standards in 2004, its reaccredidation date.

Forensics sciences in Vermont face a predicament. I commend the scientists and lab personnel at the Vermont Forensics Laboratory for the fine work they do everyday under difficult circumstances. But the people of the State of Vermont deserve better.

Forensics science and DNA analysis grant programs – if and when they are fully funded – would give states like Vermont the help they desperately need to handle the increased workloads placed upon their forensic science systems. My colleagues and I have worked hard to create and authorize programs and appropriations for programs that would improve the quality, timeliness and credibility of state and local forensic science capabilities to improve their criminal justice systems. If we truly want to take advantage of what forensics science and DNA analysis offer to

enrich the administration of justice in the United States, then we must ensure that the funds are available to support such programs.

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Testimony of Ms. Rosemary Serra Before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts

Department of Justice Oversight: Funding Forensic Sciences – DNA and Beyond

Thursday, July 31, 2003
2:00 p.m.
Dirksen Senate Office Building
Room 226

Mr. Chairman, Members of the Committee,

I was a victim for 28 years. On July 16, 1973 my only sibling, 21 year old Penny Serra, was stabbed to death on a sunny afternoon in a parking garage not more than 2 miles from our home. Penny was not only my sister and best friend, but also my surrogate mother since our own mom had died when I was six and she was 11.

Although the murderer left behind a calling card of evidence, he was not apprehended until June 1999, almost 26 years to the date of Penny's murder. During those years, I graduated from high school, attended college, dealt with false arrest of a person who the police suspected murdered my sister, an acquittal, four primary suspects, my father's death, and my becoming an adult.

Although at the time of the murder DNA was not much more than letters of the alphabet, the Crime Scene Investigators took meticulous care in collecting, preserving and logging the evidence found at the scene. Throughout the next 26 years the key pieces of evidence, a tissue box with a thumb print, a hanky with fluid, paint chips, and a bloody parking ticket were hauled from the police department to the Chief States Attorneys office, and from one forensic lab to the next. From 1973, and for close to three decades, this evidence went through every technological advance of testing that was available. Literally thousands of manpower hours were spent in laboratories from coast to coast.

The finger print on the tissue box seemed to always split the investigation into two schools of thought. One was that the print was that of the assailant, the other was that the murder was a crime of passion, hence the fingerprint was not a key factor. Both theories were pursued.

As years went by my father's perseverance on keeping the case active was heart wrenching but successful. I however, had lost hope of ever finding my sister's murderer. My life as I knew it was over and the hope of closure seemed to diminish as years passed. Unknown to me, as I was trying to build a new life, strangers were working furiously to find my sister's murderer. Christopher Grice, a forensic lab technician in Connecticut, was one of those individuals.

On July 30, 1994, Edward R. Grant was fighting with his girlfriend. After a heated exchange that took place at her home in a nearby town in Connecticut, Grant beat his girlfriend enough that she filed charges with the local police department. Grant was taken into custody and booked on an assault charge. His fingerprints were taken as part of routine police procedure, and entered into the FBI regional fingerprint database.

Christopher Grice, working from the Connecticut State Police Forensic Sciences Laboratory in Meriden, had been involved with our case since the early days of the investigation. Then a print specialist in the detective bureau of the New Haven Police Department, Grice had memorized the whirls and ridges of the thumb print found on my sister's Kleenex box as he sifted through literally thousands of prints for a match. Of course at the time no computer

databases for criminal fingerprints existed - there were just dedicated individuals hovering over black and white cards tracing an individual's unique markings.

Mr. Grice, who now administers the Automated Fingerprint Identification System, or AFIS, routinely runs checks for all of the unidentified prints associated with unsolved cases in the state. This was the process he undertook on July 21, 1997 with respect to my sister's murder case. Several possible matches were found, and by process of elimination, Edward R. Grant's print appeared on the screen with a match of at least 12 points.

After 3 years of tireless effort, the state prosecutor and his team built a strong forensic case against Grant and we entered Superior court armed with everything but a motive. The print on the tissue box was unquestionably Grant's. The DNA in the blood on the parking ticket matched Grant's DNA by a ratio of greater than one in one billion people. The paint chips found at the scene matched the paint used at the autobody shop which Grant owned. Edward R. Grant was prosecuted and convicted in May 2002 solely on forensic science. He is now serving a 25 year sentence for the murder of my sister, and hopefully will never see another day of freedom. On the day of Grant's sentencing, my long awaited ache for closure was achieved, and my days of being a victim were over. In the past year I have adopted a beautiful daughter, Jessica Anne, and look forward to new beginnings.

This story could have died along with my sister if it were not for the qualified and dedicated personnel who worked on this case, or the wide spectrum of forensic science analysis available in this country. Edward Grant would still be walking the streets a free man, and I would still be looking over my shoulder for the person who stole my youth and my beloved sister.

I am not a scientist, and would be lying if I said I understood the mechanics of forensic science. I am just one of many who depend on forensic science professionals for justice. To spend government money solely on DNA would be a travesty and an injustice to all of the victims and families with unsolved cases in this country. Please think of Penny Serra when you think of forensic science, and be aware that this case, along with 50% of all other homicides, cannot be prosecuted on DNA alone.

I would like to submit my written statement for the record, and I thank you for your time.

JEFF SESSIONS

U.S. SENATOR • ALABAMA

335 Russell Senate Office Building • Washington, D.C. 20510

July 31, 2003

Contact: Michael Brumas
202-224-4124

STATEMENT OF SENATOR JEFF SESSIONS, CHAIRMAN, SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS ON DOJ OVERSIGHT: FUNDING FORENSIC SCIENCES – DNA AND BEYOND

Forensic evidence evaluation is a critical and fundamental part of the justice system. Every day in this country thousands of crimes are solved through the combined hard work of law enforcement and the crime lab scientists and technicians who evaluate fingerprints, ballistics, drug samples, DNA and other forensic evidence. Crime labs all across the country play a critical role in criminal and civil investigations. These labs face the mounting task of performing an array of forensic services. Over the last several years, I have been concerned that our nation's forensic labs lack the resources to do their jobs properly. I was a federal prosecutor for 12 years and I know that the job of a prosecutor depends heavily on the work of forensic scientists. If their jobs are not done properly, society is at risk.

As Americans, we have become familiar with television shows, such as CSI and Law and Order, on which the forensic scientists have the most up to date equipment and no expense is spared when it comes to investigation of a crime. Unfortunately that is not the reality in state and local crime labs across the country.

Instead, the reality is that this country's crime labs are severely understaffed and work with equipment that for the most part is, at best, mediocre. These labs are suffering from severe underfunding, and that underfunding creates a bottleneck in the criminal justice system, stifling the ability of prosecutors to try cases in a timely manner and leaving far too many crimes, including murders, rapes, and child molestations, unsolved.

I have spoken with representatives from the American Society of Crime Lab Directors, the Consortium of Forensic Science Organizations, the American Academy of Forensic Sciences, the National Association of Medical Examiners, the College of American Pathologists, the International Association for Identification, state prosecutors, and state and local law enforcement, about the lack of forensic funding. All of these individuals tell me that the lack of personnel, staff, and funding has created a crisis in state and local crime labs. They all say that drug analysis, ballistics tests, fingerprint evaluation, and all of the other forensic science evaluation is backlogged. Let me share with you the following examples of the crime lab evidence backlog:

- The Alabama Department of Forensic Sciences has a drug chemistry analysis backlog of 11,917 cases, a firearm evaluation backlog of 700 cases, and DNA analysis backlog of over 2,101 cases;
- The Los Angeles Police Department has over 6,000 murder cases in which fingerprints have not yet been evaluated, because it cannot afford to update its fingerprint analysis equipment;
- The New Hampshire State Forensic Laboratory has a 13 month fingerprint analysis backlog, a three month drug analysis backlog, and a seven month firearms analysis backlog;
- The Phoenix, Arizona crime lab has a drug analysis backlog of 3510 cases, a fingerprint backlog of 5910 cases, a firearms backlog of 412 cases, and a 342 case DNA backlog; and
- The Kentucky State Police have a backlog of about 6,000 drug identification cases that will take nine months to process.

Like I said, the forensic evidence evaluation backlog of drug analysis, ballistics testing, fingerprint evaluation, DNA, and others is clear. Backlogs of this magnitude mean tardy criminal investigations, criminals put back on the streets, and innocent suspects detained too long while awaiting the outcome of forensics investigations.

President Bush and Attorney General Ashcroft have introduced a DNA initiative which seeks just over $1 billion over a period of five years to reduce the backlog of DNA evidence and for other DNA related purposes. It is designed to improve the use of DNA technology in the criminal justice system – especially in federal, state, and local crime laboratories – by providing funds, training, and assistance. Some of its fiscal year 2004 provisions include:

- $92.9 million to assist in clearing backlogs of unanalyzed crime scene DNA samples, such as rape kits, and offender DNA samples,
- $90.4 million to increase forensic laboratory capacity for DNA analysis, Federal DNA laboratory programs, and to operate and improve the Combined DNA Index System; and
- $28.4 million for DNA-related research and development.

Besides funding, the DNA Initiative includes Attorney General recommendations that we, here in Congress, pass legislation to require:

- that all convicted felons submit a DNA sample;
- expansion of the statute governing the national DNA index to allow states which submit DNA profiles to include all of those persons who are lawfully arrested (presently only convicted offenders are able to submit DNA profiles); and
- that the statute of limitations be tolled where DNA evidence identifies the offender.

This is an admirable and worthwhile initiative. And I would like to help the Administration work to implement some of those legislative recommendations, like the statute of limitations provision. They are very important concepts for federal prosecutors and law enforcement. But I do think that the problem with the initiative is that it funds only the backlog of

DNA evidence. A 2003 survey by the American Society of Crime Laboratories, of state and local forensic laboratories, found that DNA evidence accounted for only 5% of the total backlog in those facilities. Fingerprint analysis, drug analysis, questioned documents, and other forensic discipline work made up the bulk – the other 95% – of laboratory backlog.

I know that it is not the responsibility of this Congress, as a part of the federal government, to pay the expenses of the 50 states when it comes to state run facilities. However, if we are going to fund such programs, our focus should be on the areas which need the funding the most – in this case the entire field of forensics needs the funding.

The crime labs would benefit in different ways from funding through the DNA Initiative because labs have backlogs in every type of evidence - not just DNA. For instance, the Georgia Bureau of Investigation has a fingerprint analysis backlog of 6096 cases and a DNA backlog of 434 cases; the Philadelphia crime lab has a drug analysis backlog of 2832 cases and a firearms analysis backlog of 2072 cases, yet only a 344 case backlog for DNA analysis; and the Illinois crime lab has a drug analysis backlog of 2067 cases, a fingerprint analysis backlog of 3132 cases, a firearms analysis backlog of 591, but only a 309 case backlog in DNA evidence.

Some crime labs do not even have a backlog in DNA evidence. For instance the Columbus, Ohio crime lab has a 920 case drug analysis backlog and no DNA backlog, and the Vermont crime lab has a drug analysis backlog of 350 cases and a fingerprint analysis backlog of 250 cases, but has no DNA analysis backlog.

But, looking to backlogs may not be enough. Law enforcement needs very prompt forensic evidence analysis reports. Often the filing of criminal charges or the advancement of an investigation is stopped until scientific analysis is complete. Our goal should be to complete reports in days – not weeks, or months, or even years. This would be a huge advancement in criminal justice.

We need to fund forensic sciences and reduce the backlog of evidence across the board. In 1996, USA Today reported that eight out of ten crime labs experienced a growth in their caseload that exceeds the growth in their budget or staff.[1] Unfortunately, that statistic from seven years ago seems to still be the norm today.

[1] Bealey Beaupre & Peter Eisler, *Crime Lab Crisis: Staff, Funding Haven't Kept Up with Caseload*, USA Today, August 20, 1996 at 1A.

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