S. HRG. 111–455

ENSURING THE EFFECTIVE USE OF DNA EVIDENCE TO SOLVE RAPE CASES NATIONWIDE

HEARING

BEFORE THE

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	1
prepared statement	61
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama	3

WITNESSES

Howley, Susan Smith, Public Policy Director, National Center for Victims of Crime, Washington, DC	10
Redding, Steve, Senior Assistant County Attorney, Violent Crimes Division, DNA prosecutions and Forensics, Hennepin County, Minnesota	7
Sepich, Jayann, Victims' Advocate, Carlsbad, New Mexico	14
Smith, Debbie, CEO, H-E-A-R-T, Inc., Williamsburg, Virginia	4
Stoiloff, Stephanie, Commander, Crime Laboratory Bureau, Miami-Dade Police Department, and Board Member, American Society of Crime Laboratory Directors, Miami, Florida	12

SUBMISSIONS FOR THE RECORD

American Civil Liberties Union, Michael W. Macleod-Ball, Acting Director, Washington, Legislative Office and Jennifer Bellamy, Legislative Counsel, Washington, DC, statement	32
Boschwitz, Dr. Jeff, Vice President and Executive Officer, Orchid Cellmark Inc., Princeton, Jew Jersey, letter	36
Department of Justice, Washington, D.C., statement	43
Howley, Susan Smith, Public Policy Director, National Center for Victims of Crime, Washington, DC, statement	50
Innocence Project, Stephen Saloom, ESQ, Director, New York, New York, statement	56
Redding, Steve, Senior Assistant County Attorney, Violent Crimes Division, DNA prosecutions and Forensics, Hennepin County, Minnesota, statement	63
Sepich, Jayann, Victims' Advocate, Carlsbad, New Mexico:	
Statement	71
Declaration	75
Picture of Jayann's daughter, Katie	81
Smith, Debbie, CEO, H-E-A-R-T, Inc., Williamsburg, Virginia, statement	82
Stoiloff, Stephanie, Commander, Crime Laboratory Bureau, Miami-Dade Police Department, and Board Member, American Society of Crime Laboratory Directors, Miami, Florida, statement	87

VerDate Nov 24 2008 09:30 Jun 07, 2010 Jkt 056520 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\56520.TXT SJUD1 PsN: CMORC

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TUESDAY, DECEMBER 15, 2009,

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 10:08 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Whitehouse, Klobuchar, Franken, Sessions, and Grassley.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning, everyone. Today the Judiciary Committee is holding its second hearing on the reauthorization of the ground-breaking Justice for All Act, and the Justice for All Act included the Debbie Smith Rape Kit Backlog Reduction Act. This authorized significant funding to reduce the backlog of untested rape kits so that victims need not live in fear while kits languish in storage, and we have seen that happen around the country.

Now we are going to examine some disturbing reports that, despite the important progress we have made to ensure justice for rape victims, in too many jurisdictions large numbers of kits continue to sit untested. When DNA evidence taken from rape victims that could be used to find and convict criminals instead sits on a shelf, rape victims are victimized once again, but also our communities become more dangerous rather than safer. That is unacceptable, and we have to fix that problem.

Since we passed this important law in 2004, the Debbie Smith Act has resulted in hundreds of millions of dollars going to States for the testing of DNA samples to reduce backlogs. And I have worked with Senators of both parties to ensure full funding for the Debbie Smith Act each year, and I compliment those Senators in both parties who joined with me to get that funding.

Of course, I welcome Debbie Smith and her husband to the Committee once again. She lived in fear for years after being attacked before her kit was tested and the perpetrator was caught. Debbie and her husband, Rob, have worked tirelessly to ensure that others need not experience her ordeal.

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On a personal basis, let me just mention, Debbie, you and Rob and I have talked so many times, and I will see you again. Thank you for being here.

Ms. SMITH. Thank you.

Chairman LEAHY. And, Rob, thank you for being here. The two of you, in my orbit of friends I put you right there, right at the very first line, two people I admire greatly.

As I have researched this problem of untested rape kits, there is one thing that I have heard again and again which should be of great comfort both to Debbie and Rob and to all of us here: the Debbie Smith program is working and it has made tremendous gains across the country. I have heard from the Justice Department, the States, law enforcement, and victims' advocates that Debbie Smith grants have led to significant and meaningful backlog reduction, and to justice for victims, in jurisdictions across the country.

Eric Buel, the Director of the Vermont Forensic Laboratory, described to me how Federal funding for testing and a case manager position has resulted in the elimination of all backlogs in Vermont and in the efficient use of DNA evidence to solve cases. I hope our little State of Vermont will be an example for other jurisdictions, but I also note that Eric was very clear in saying that Vermont's success would not be possible without the Federal funding through the Debbie Smith program.

Now, having said all that, it is clear we would not be here today if there were not still a problem. Despite the good strides we have made and the significant Federal funding for backlog reduction, we have seen alarming reports of continuing backlogs. A study last year found 12,500 untested rape kits in the Los Angeles area alone, and while Los Angeles has since made progress in addressing the problem, other cities have now reported backlogs almost as severe. The Justice Department released a report last month finding that in 18 percent of open, unsolved rape cases, evidence had not even been submitted to a crime lab.

That Justice Department study gets to one key component of this problem. No matter how much money we send to crime labs for testing, if samples that could help make cases instead sit on the shelf in police evidence rooms and never make it to the lab, then the money does no good. Police officers have to understand the importance of testing this vital evidence; they must learn when testing is appropriate and necessary. In too many jurisdictions, rape kits taken from victims who put themselves through further hardship to take these samples—rape kits that could help law enforcement get criminals off the street—are just sitting untested. That is unacceptable in any jurisdiction.

In another way, the backlog problem in some jurisdictions shows that we are the victims of our own success. The effectiveness of DNA testing and the availability of substantial funding for testing have led to more and more samples in more and more cases being sent to forensic labs. Labs and law enforcement also face difficult questions of priorities when there are limited resources.

So we are beginning to learn of possible solutions to these different dynamics. There must be national standards, protocols, and best practices giving clear guidance to police officers about when

kits and other relevant DNA should go to labs. Every jurisdiction must have real incentives to provide comprehensive training and put into place these standards for the officers who handle DNA evidence. We have to ensure good communication and compatible technology among labs, prosecutors, and law enforcement. We also should reexamine regulations requiring that samples sent out to good private laboratories then be retested in Government laboratories, something that costs time and money and slows our ability to reduce backlogs.

I thank Senator Klobuchar, also a former prosecutor, for her help in putting this hearing together and her leadership on this issue, as well as the many other Committee members on both sides of the aisle who are committed to fixing this. It was Senator Kyl from Arizona who worked closely with me to get the Debbie Smith Act passed. Now let us get to the bottom of the problem that we still have, but we can solve that. There is no question in my mind we can solve it. There is no question in my mind that we will solve it. We will.

Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Chairman Leahy. I am firmly of the view that we are not as a Nation investing enough money into the kind of forensic evidence-gathering capabilities that can help us reach the best way to fight crime, particularly crime like rape, which tends to be repetitive. People tend to be repeat offenders. And I really believe we should do a lot more about that.

I am not happy, frankly, with our State and local governments. It has always been frustrating to me that we have increases in law enforcement for this or that, but not enough for forensics. And it is not just DNA. I mean, there are fingerprints, there are forensics for the guns and firearm cases and all kinds of other scientific evidence that are often backlogged, leaving cases unsolved and not going forward. Even simple drug analysis cases that often delay prosecutions for months, many months, are simply waiting on a chemist's report to determine the substance the individual had was illegal. So I guess, Mr. Chairman, I really think that we are on to something that is important.

I also believe the Department of Justice should be taking the lead in studying DNA and how it could be better applied just as you said. What kind of protocols and best practices should be out there? What kind of new techniques are developing now in DNA that can help local officials identify repeat criminals much earlier in their processes and stop victimization and actually reduce crime?

So I think there are a lot of things we need to do. I do not think that this Federal Government should be bearing the responsibility of paying for every rape kit in America. It just does not strike me as a smart thing. So we need to be figuring a way to get our local law enforcement up to where they need to be. And if we can help creating the data base, the infrastructure, the protocols, the research, that would be our first choice. And I have supported and will continue to support additional Federal resources to accelerate

and improve our State and local forensics capability. I think that is an important matter.

I look forward to this excellent panel. Thank you.

Chairman LEAHY. Thank you very much, and why don't we begin with Debbie Smith, who has been a leading national advocate for the elimination of rape kit testing backlogs since she was kidnapped and raped near her home in 1989. More than 6 years later, her assailant was finally caught and linked to the crime through the use of DNA evidence. She has worked tirelessly, along with her husband, Rob, to raise awareness of the importance of DNA evidence contained in rape kits. She worked closely with me and other Members of the Congress to address the problem of rape kit testing backlogs. She has lent her name to the Debbie Smith Rape Kit Backlog Reduction Act, which passed as part of the Justice for All Act of 2004.

I remember that phone call I made to you—I think I caught you at an airport or somewhere——

Ms. SMITH. You did.

Chairman LEAHY [continuing]. To tell you the good news, and as I recall, both of us were pretty emotional on that phone call. And it was reauthorized in 2008.

If you would please go ahead, and then I am going to ask Senator Klobuchar to introduce the next witness. Please go ahead.

STATEMENT OF DEBBIE SMITH, CEO, H-E-A-R-T, INC., WILLIAMSBURG, VIRGINIA

Ms. SMITH. Let me say how honored I am to have been included in this panel before you today. As a surviving victim of sexual assault, I understand the great importance of the work to be done. I do not bring any kind of professional perspective to this table seated with some the top professionals in their field, but what I can offer you is firsthand knowledge of the importance of timely testing of DNA evidence and the elimination of the current backlog of both suspect and victim kits.

For the next few minutes, I would like to ask each of you to remove your political hats, and I would like to ask you to take your place as a husband, father, or brother, or as a mother, sister, or friend. You have just received the news that your loved one was abducted from her home and taken to the woods, where she was robbed and raped. He entered her home in the middle of the afternoon through a door that was left unlocked for a matter of moments. This masked man repeatedly said that he would return and kill her if she told anyone. She believes him. She cries hysterically, pleading with you not to call the police. But in your heart you know that it is the right thing to do. You call the police, and your loved one sits in shock as she is asked countless questions. Your heart is breaking as you watch her trying to hold on to her sanity. Watching her trying to struggle and make sense out of what has just changed her life so completely hurts beyond measure. You feel helpless wanting to take away the pain that is just so very evident in her eyes. Within your heart and mind, a search begins because surely there has to be something that you can do to make it better or somehow easier. But you find that that search is in vain.

You convince her now that she needs to go to the hospital to have the only physical evidence taken. This person that you love is begging you not to make her go, but you know that you have to deny these pleas, just as you denied her cries not to call the police. Your prayer is that you are helping her to do the things that she would do, make the right decisions—ones that she would make herself, if only she could. It is what you have been taught is the right thing to do, the next step.

As the two of you walk into the hospital, you try to make her understand that this really is necessary. It is the only way that we can catch this man and prevent him from hurting anyone else. She walks like a frightened child, terrified and confused. She hears you tell the receptionist that she was raped. Now her mind begins to reel, "No, because it just can't be true. Rape just doesn't happen to people like me." The nurse then leads the two of you to a room where the questions begin all over again. Questions, questions, and still more questions. You begin to wonder if you really have helped her to do the right thing after all. The look in her eyes conveys the sheer desperation she is feeling, needing to know that someone is on her side, that someone truly believes her.

But her nightmare continues as she is asked to lie down on the table, to put her feet in the stirrups and to spread her legs. A male doctor then appears and begins this invasive procedure by probing, plucking, scraping, and swabbing her just hours after being attacked by another man. Her face reveals her humiliation. She is crushed and feeling even more vulnerable. What was left of her self-esteem has now completely vanished from her limp body. Simply put, she has been violated all over again. You only hope that one day this very procedure will bring justice.

As you leave the hospital, you trust things are going to be better now. But it doesn't take long before the vacant stares give away that she has been robbed of any joy in life. Her fear is very apparent as you watch her struggle to leave her house or to even allow the children out of her sight, as her rapist's threats will not leave her mind. "Remember, I know where you live and I will come back to kill you if you tell anyone." Because you know her so very well, you fear that one day you will find that she has taken her own life. All she wants is her freedom, peace of mind. She wants to feel safe. She wants justice. But she waits. My husband and I lived this nightmare.

When a rape victim submits to this very intrusive 4-hour evidence collection process, she at least knows that she has done her part; she has done everything that has been asked of her to keep this man from hurting anyone else. Unfortunately, there is a very good chance that this vital evidence will sit on a shelf with thousands of other kits. Each box holds within it vital evidence that is crucial to the safety of women everywhere. Statistics prove that the average rapist will rape 8 to 12 times before he is caught. How many of these rapes could be prevented? I merely existed for 6½ years waiting for my rapist to be identified, trying my best to deafen the sound of his voice in my ears. But fear for my family and myself held my heart and soul within its grip. I became suicidal seeking peace and rest from the pictures that played in my mind constantly. But, finally, DNA revealed the identity of my rapist,

giving me the sweet breath of validation and promised justice. I want every victim of sexual assault to experience this gift of renewed life, and I am here today on behalf of those thousands of victims whose cases continue to sit on those shelves. I am here for those future victims and for those who sit in a prison cell who have been wrongly accused. I speak today for victims like Amy, who was attacked in 1996. She had no hope that her rapist would be identified because the rape kit collected yielded very little DNA evidence. Amy tried to find peace from her memories through therapy, antidepressants, and alcohol. By 2004, though, DNA technology had changed; her evidence was retested and revealed the DNA profile of her attacker and has linked him to at least two other cases. Amy says in her own words, "Today I have hope. He still haunts me. I still have fear. But I also have hope and a new purpose."

I am also here for those who can no longer speak for themselves. A lab scientist in Florida related the story of a rape victim who waited until she could no longer wait anymore. This was evidently a case that they had worked on for some time, for the day that a DNA match was made, the scientist went to deliver the news in person to the detective working the case. The detective looked at her with a very solemn face and said, "That is great news, but the victim committed suicide last night." Unfortunately this is not an isolated case.

It is now time that I would ask you to put your political hats back on, because by doing this it empowers you with the ability to make a real difference. It is within your capacity as a legislator to make sure these kits are taken off the shelf and reviewed to ascertain if there is any viable forensic evidence within. Can you imagine going through this horrible examination only to have the results sit behind locked doors?

When someone is robbed, everything possible is done to find this person who has taken what does not belong to him. Prosecution is pursued and the guilty is made to return what was stolen to its rightful owner. But you are powerless to return to a rape victim what was taken from her because you cannot restore her dignity, her innocence, or her peace of mind. You cannot remove those pictures from her mind that appear without warning. You just cannot. But you can give her justice by making her rapist pay for his crime.

Lady Liberty stands proudly in the New York harbor offering freedom for all within our borders. "Equal Justice Under Law" is etched in stone across our Supreme Court building, and our flags are raised high, symbolic of our pledge of liberty and justice for all. Sexual assault victims across our country wait for that pledged freedom from the chains of fear and guilt her attacker would have constrain her. She anticipates the promised justice to be imparted for the crime committed against her. I ask that you use your power to award her what is promised to all Americans: Liberty and justice for all. Thank you.

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

Chairman LEAHY. I think, Ms. Smith, or Debbie, because I have gotten to know you and Rob so well, I think listening to your testimony, I think people can understand why when I called you a few

minutes after we passed the bill, why that was such an emotional phone call for both of us. I thank you for being here.

Ms. SMITH. Thank you.

Chairman LEAHY. And, Rob, I thank you, too.

Senator Klobuchar, the next witness is someone you know well. Could I ask you to please introduce him?

Senator KLOBUCHAR. Thank you so much, Mr. Chairman, and thank you, Ms. Smith, for that moving story and your courage, not only for telling your own story but also for being the voice for so many victims out there.

And on behalf of Senator Franken and myself, we welcome Steve Redding, who is our next witness and a Minnesotan. When I became Hennepin county attorney, which is about over a million people, Minneapolis, 45 suburbs, I came in there from the outside without a lot of criminal experience, and I wanted to put someone in charge of the Violent Crimes Division that had the trust of the people in the office, and that was Steve Redding. He served well in that role, but most importantly for our hearing today, he is one of the national experts on DNA, and this means not only being a tough, smart trial lawyer and being able to convince a jury, like so many good prosecutors do; it also means having the willingness and the determination and the intellect to learn the science of DNA, which is not that easy for so many lawyers to dig in and read all those scientific articles, because we have to be as sophisticated as the science and the people on the other side. And he is someone—his wife, Suzanne, is here as well—who believes, Mr. Chairman, that you can use this new-found science not only to convict the guilty but also to protect the innocent.

Steve Redding.

STATEMENT OF STEVE REDDING, SENIOR ASSISTANT COUNTY ATTORNEY, VIOLENT CRIMES DIVISION, DNA PROSECUTIONS AND FORENSICS, HENNEPIN COUNTY, MINNESOTA

Mr. REDDING. My name is Steve Redding, and I am a Senior Assistant County Attorney in Hennepin County, Minnesota. I supervise the sexual assault unit in our office. Hennepin County encompasses Minneapolis and its 45 surrounding suburbs. Our office serves, as Senator Klobuchar said, approximately 1.1 million people.

I want to thank the members of the Judiciary Committee for inviting me here and providing me with a brief respite from the Minnesota winter. I especially want to thank Senator Klobuchar, of course, who, as you all know, was county attorney for 8 years. From the moment she was elected county attorney, she fully understood the power of DNA testing to protect women and children and to assist prosecutors like myself in carrying out our duty to convict the guilty and to protect the innocent.

I also want to thank Mike Freeman, my present boss at Hennepin County—he is the Hennepin County Attorney—for his unwavering support in DNA issues, both now and for the 8 years that he was county attorney prior to Senator Klobuchar's election.

DNA testing has solved many cold cases in the United States. I had the good fortune to prosecute the first two cold cases in the United States in 1992 and 1993. One was the rape-homicide of a

recent college graduate; the second was the sexual assault of a young woman by a serial rapist. Neither of those men, I am happy to say, will ever be released from prison.

These successes were not the result of anything special that I did but, rather, due to the foresight of the Minnesota State Legislature which began funding the Minnesota Bureau of Criminal Apprehension's DNA lab in the late 1980's. The BCA became what it is today, an excellent DNA testing lab and a pioneer in DNA testing practices.

As a recent CBS News special documented, there are large numbers of untested sexual assault kits. There are also significant disparities between State and local labs in their ability to timely process DNA kits.

While it should be remembered that this issue is not as severe as it might seem at first blush for the reasons that I detail in my written submission to this Committee, many stranger rape kits remain untested. Approximately 2½ years ago, we were able to obtain a list of 99 cases where the victim reported that she was raped by a stranger. From those 99, I identified 33 where the kit had not been tested and that it appeared that if DNA testing was to identify a suspect, a prosecution might be possible.

The results were as follows: In seven of those cases, there was not a sufficient amount of biological material to test. Thirteen of those cases produced John Doe profiles. Thirteen of those cases produced a hit to a convicted offender. Ten of those hits were to convicted offenders with previous sex histories; three were to offenders without a sex history.

Of those 13, three have been convicted, five have been charged by my office. In two cases, we are still looking for the victim. One is still under investigation. And two of those cases, it turned out the DNA was from a consensual partner.

These results clearly demonstrate how fruitful it can be to test this group of cases and this type of case. Additional grant funding similar to the project that I am working on now can yield similar results.

One year ago, it became mandatory in Minneapolis to test all cases where the victim has identified her perpetrator and indicated that he was, in fact, a stranger. We need more training for police, for evidence gatherers, and for prosecutors. Years ago, prosecutors with DNA experience such as myself provided training to inexperienced prosecutors. That training was crucial; however, it in most cases is no longer available.

In sexual assault cases, evidence collection is most often performed these days by a specially trained nurse. Perpetrators know about DNA, and they are taking steps to avoid leaving their DNA at a crime scene. One perpetrator carjacked and raped his victim and then ejaculated on her pants. As he was leaving, he took her pants, and she yelled for him to bring her pants back. His response: "I'm taking these for DNA purposes." He thought that he had taken the only evidence which could tie him to the sexual assault that he had just committed on this woman. However, the nurse who was taking the evidence from her in a careful interview revealed that he had talked on her cell phone. She obtained her cell phone. She swabbed the receiver of the cell phone. That DNA pro-

file was entered into the convicted offender data base, and it hit to this man. Her training and innovation made that arrest possible. He is charged and is awaiting trial in Hennepin County. For similar reasons, police and prosecutor training would enhance investigations.

There needs to be more cooperation between police and prosecutors. If there is anything I have learned in my 32 years as a prosecutor, it is that when police and prosecutors work together, we improve outcomes significantly. Teamwork on cold cases is especially crucial. In many places, a roadblock exists to this cooperation, and I have detailed what that is in my submissions and suggested solutions to overcome it.

The crime-solving ability of our national databases is amazing. In September 1989, a young woman was stabbed to death in South Minneapolis. As part of an NIH-funded cold case homicide project, Minneapolis Police Sergeant Barbara Moe found evidence, and that evidence was submitted for DNA testing. That evidence hit to a man whose only felony conviction was for felony drunk driving. Senator Klobuchar was largely responsible for the Minnesota law which made repeat drunk driving offenses a felony. I charged that man and he is now doing 25 years in prison for a crime that never would have been solved but for the fact that he was placed into the convicted offender database. This is a magnificent example where the law of unintended consequences led to a terrific outcome.

I am fortunate to have been a part of this revolution in DNA evidence. I have made several observations and suggestions in my written submissions to the Committee. I believe the use of DNA typing to identify rapists can be further enhanced and additional rapists can be brought to justice. I outline in my submissions a number of areas that I think could help this.

I want to thank you for inviting me to testify before you today, and I look forward to continuing my work on maximizing the use of DNA technology in this area.

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

Chairman LEAHY. Thank you very much, Mr. Redding.

Our next witness is Susan Smith Howley. She has been Director of Public Policy for the National Center for Victims of Crime since 1999. Is that correct?

Ms. HOWLEY. Yes.

Chairman LEAHY. She joined the organization in 1991, served as its Director of Victim Services from 2002 to 2005. She has written and spoken extensively on policy issues affecting victims of crime, recently served on the National Advisory Committee on Violence Against Women. I have a note that she received her law degree from Georgetown University Law Center, and some of us on this Committee, of course, find that—never mind. We actually have two of us on this Committee, one other besides myself, who graduated from Georgetown. That would be Senator Durbin.

Please go ahead.

STATEMENT OF SUSAN SMITH HOWLEY, PUBLIC POLICY DIRECTOR, NATIONAL CENTER FOR VICTIMS OF CRIME, WASHINGTON, D.C.

Ms. HOWLEY. Thank you, Chairman Leahy. Good morning, Chairman, Ranking Member Sessions, and other members of the Committee. Again, I am public policy director for the National Center for Victims of Crime, which is a national nonprofit resource and advocacy organization that will soon celebrate our 25th year of championing the rights and interests of victims of crime. Our members include victim service providers and allied professionals at the State, Federal, and local levels. We have a long history of advocating for sexual assault victims and working to promote the use and understanding of DNA evidence, and I appreciate the opportunity to appear before you this morning.

Sexual assault victims call our National crime victim help line every day when they cannot find the help or information they need at the local level. They remind us, as Debbie Smith did this morning, that undergoing a rape exam can be intrusive, violating, exhausting, and confusing, especially when it is not conducted by a specially trained sexual assault nurse examiner.

Once the exam is complete, victims often have no idea what happens to the rape kit. Many mistakenly assume that every kit is sent to the lab immediately, so they are very confused as to why they cannot get information about their case. If they later learn that the kit was never sent to the lab and no one tells them why, they become very upset and discouraged. Victims whose kits are lost or destroyed before processing are especially angry.

One recent caller spoke at length about her frustration that after she had done all she could to promote the investigation, no one else seemed to care about bringing the offender to justice.

Another recent caller was outraged that rape kits from her offender's previous victims had languished for years without being tested. She is ready to sue State and local officials because she is convinced that if those kits had been processed, her rapist would have been caught and she would never have become a victim.

Our members confirm what we hear from victims, that many jurisdictions are not processing all appropriate rape kits, and that there are substantial delays in many jurisdictions around the country.

Now, moving forward, we would like to appear today to offer a clear policy solution to the rape kit backlog, but before we can do that, we need more information. We need to know more about whether the problem is a lack of understanding about the investigative power of DNA evidence or a lack of funding to process evidence or a lack of will to investigate and prosecute more sexual assault cases. Each of those barriers would call for a different policy solution.

We also need to know if there is any benefit from testing every rape kit, even if the identity of the defendant is not at issue. Some jurisdictions have cleared or are in the process of clearing their rape kit backlogs by doing just that—testing every kit. Their experience could give us the information to know whether that is out path forward.

But at this point, we are reluctant to recommend that every kit be tested. If a defendant admits to the sexual conduct but claims consent, there may be no evidentiary value in processing the kit. After all, if he is later convicted, his DNA will be captured and submitted into the database.

Because our capacity to process DNA and other forensic evidence is limited, to require testing of every sexual assault kit, even those unlikely to result in probative evidence, will inevitably reduce or delay testing in other types of cases.

Many victims of other crime also have a compelling interest in the prompt testing of forensic evidence. Forensic DNA testing could help close many open homicide cases. Burglary victims can benefit from the use of forensic evidence. Families with missing persons could benefit if more unidentified remains were processed. Until our capacity for DNA testing grows, any prioritization of a class of cases should be crafted carefully.

In the meantime, there is much Congress can do to improve the treatment of rape victims as forensic evidence is gathered and processed.

First, Congress could provide additional support for sexual assault nurse examiners to ensure compassionate treatment and preservation of evidence.

We also recommend the creation of a Sexual Assault Victims DNA Bill of Rights, such as California has, that gives rape victims the right to know whether their rape kit has been processed and whether an assailant has been identified.

We also urge you to support increased public awareness that sexual assault victims have the right to a free forensic exam, even if they have not yet made the decision whether to report the crime. Victims typically learn about the forensic exam from the police or the rape crisis center, but only a fraction of victims will report to the police, and many victims delay calling the rape crisis center until it is too late to capture that forensic evidence.

We applaud this Committee for its repeated efforts to bring justice to sexual assault victims and other victims of crime and Senator Franken for bringing attention to this important issue. The National Center for Victims of Crime looks forward to working with you in crafting legislation to advance the use of DNA evidence, reduce the backlog of rape kits, and bring a just response to victims of crime.

Thank you.

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

Senator KLOBUCHAR [presiding.] Thank you very much. Chairman Leahy stepped out briefly, and so I have the honor to introduce Stephanie Stoiloff.

Stephanie Stoiloff is the commander of the Miami-Dade Police Crime Laboratory Bureau. As head of the lab, she oversees forensic labs that test controlled substances, trace evidence, biological evidence, firearms, and tool marks. She is a nationally recognized leader in forensic science and has lectured before the American Prosecutors Research Institute, the National Institute of Justice, and the International Association of Chiefs of Police. She has also taught as an adjunct professor of forensic biology at the Inter-

national Forensic Research Institute at Florida International University and is a current board member of the American Society of Crime Laboratory Directors. She received her bachelor's of science from Florida University and her master's from Florida International University.

Ms. Stoiloff.

STATEMENT OF STEPHANIE STOILOFF, COMMANDER, CRIME LABORATORY BUREAU, MIAMI-DADE POLICE DEPARTMENT, AND BOARD MEMBER, AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS, MIAMI, FLORIDA

Ms. STOILOFF. Good morning, Mr. Chairman and members of the Committee. As stated, my name is Stephanie Stoiloff. I am the crime laboratory director at Miami-Dade Police Department, and I am responsible for managing the operation of a full-service laboratory. In addition to my duties as crime laboratory director, I also sit on the board of the American Society of Crime Laboratory Directors, which represents the interests of over 500 crime laboratory directors throughout the United States and overseas and plays an active role in ensuring the quality, integrity, and credibility of forensic laboratories. I appreciate the opportunity to testify before your Committee today, and I am honored to be asked to speak to you about ensuring the effective use of DNA evidence to solve rape cases nationwide.

The role of crime laboratories is twofold: to provide investigative leads in order to remove dangerous offenders from the streets or exonerate an innocent suspect, and to provide the results and interpretations resulting from these investigations in a court of law.

At the end of the day, there are more cases that could be worked. Cases must be prioritized. Generally speaking, when faced with a decision on how to prioritize these cases, the highest priority is given to those cases in which the subject is the greatest threat to society.

Crime laboratories are faced with insufficient personnel, facilities, equipment, training, and funding to meet the service needs and expectations of investigators, courts, and citizens. Forensic science has become an increasingly critical component of the successful investigation and prosecution of criminal cases.

In addition to DNA, crime laboratories also provide scientific analysis in areas such as controlled substances, firearms, latent prints, and trace evidence. It is estimated that non-DNA forensic service areas comprise almost 90 percent of a crime laboratory's annual caseload. A significant backlog exists in all areas of forensic science, not just DNA, and the timely disposition of cases is impacted by a lack of funding to support the staffing, equipment, training, and facility needs of forensic laboratories nationwide.

As a result of the glamorization of forensic science on television, DNA requests are made of the crime laboratory because the jury expects the evidence to be tested. There are many, many requests that are made of the lab to perform DNA testing when the identity of the subject is not in question. If identity is not in question, why drain precious laboratory resources? Prosecutors need to explain that television drama is just that: a dramatization of fictitious events and capabilities. In a perfect world with unlimited resources

including staffing, space, and supplies, every lab could analyze every sample from every case. However, the reality is quite different. There are resource issues nationwide that preclude the analysis of every item and of every case. Each case is evaluated separately and each case is different.

For example, if a consensual sex case is submitted for analysis with an underage female and her adult boyfriend, should this receive the same level of attention as a stranger rape? Crime laboratories, as a whole, do not treat these the same way. We clearly understand the value of analyzing sexual assault evidence. This does not mean that a consensual sex case would not ever be analyzed, but it does mean that the prioritization is necessarily different. If crime laboratories were to examine every case as they are submitted, then other cases would go unexamined.

The primary challenges that face crime laboratories? Backlogs exist. There is no single explanation that defines what makes up a backlog. Is it cases in-house that have not been opened? Cases in progress but not yet complete? Cases never submitted to the laboratory? Crime laboratories can only manage the cases that they know about. In our experience, a written prioritization policy allows the Miami-Dade Police Department to manage the backlog and triage the analysis of cases. This translates to a constant reprioritization and continual juggling of priorities to meet the needs of the judicial system.

This juggling is not performed in an arbitrary manner; there are defined priorities for all cases that enter a crime laboratory. Incoming priorities are the violent crimes; however, the cases that go to trial fastest are the property crimes. The question is then posed as to why valuable resources are spent on the DNA analysis of property crimes. Data collected by the Florida Department of Law Enforcement revealed that 52 percent of violent offenders had a burglary in their past. The idea here is prevention. The earlier these offenders are removed from society, the less opportunity they have to progress to violent crimes.

Cold case violent crimes are also important, and Congress has repeatedly allocated funding to use current technological advancements to re-examine cold cases. The Miami-Dade Police Department has actively pursued Federal funding under the Solving Cold Cases with DNA grant program and has successfully obtained over $1.1 million to re-examine cold case violent crimes. Of the first 100 cold sexual crimes cases reviewed and submitted to the laboratory, 68 DNA profiles were developed and uploaded into CODIS; 32 hits were made in cases where all other leads had been exhausted.

Training is an essential component of forensic science from the collection and submission of evidence to the analysis, reporting, and testimony. The Miami-Dade Police Department Crime Laboratory Bureau provides training to investigators, attorneys, and judges. Publications such as "Guidelines for the Collection and Preservation of DNA Evidence" and "What Every Law Enforcement Officer Should Know About DNA" explain the importance of DNA evidence. This information should be common knowledge among law enforcement and criminal justice personnel. Training curricula for every law enforcement recruit should include, as a matter of

routine, procedures for the proper collection and storage of DNA evidence.

The management of casework submitted to a crime laboratory is not only a law enforcement problem; it is an issue that must be addressed within the entire judicial system. Submission of every case to the crime laboratory with the expectation that every case can be worked is unrealistic. Every case needs to be evaluated separately, and not every case needs to be analyzed. In addition, crime laboratories do not have the resources to evaluate every case or every sample from every case. The answer to case management does not lie in the hands of the criminalists across the country who analyze these cases on a daily basis or in the hands of crime laboratory directors. The responsibility for case management lies in the hands of the entire judicial system. If the cases are not going to be prosecuted, why expend the law enforcement and laboratory resources? The efforts within a crime laboratory should focus on how to produce results in a timely manner for cases where forensic science can provide critical investigative information. There is no effective "one size fits all" approach to case management; this is an ever-changing re-prioritization that must be fluid to meet the demands of the judicial system.

I appreciate the opportunity to appear before this Committee today. Thank you.

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

Chairman LEAHY [presiding.] Thank you very much.

Our last witness Jayann Sepich. She has been a leading national advocate for mandated DNA testing of all felony arrestees since the tragedy of her daughter being raped and murdered as a graduate student at New Mexico State University. Ms. Sepich led the effort that eventually resulted in the adoption of Katie's Law in New Mexico. Along with her family, she founded DNASaves, a nonprofit organization devoted to the passage of arrestee testing laws across the country. Her work has been featured in "Anderson Cooper 360" and "America's Most Wanted." She has been honored by Governor Bill Richardson as the Outstanding New Mexico Woman of 2007 and inducted into the New Mexico Women's Hall of Fame.

Notwithstanding all the honors you have received, I am sure you wish the reason was not there, but thank you for what you have done, and we look forward to your testimony.

STATEMENT OF JAYANN SEPICH, VICTIMS' ADVOCATE, CARLSBAD, NEW MEXICO

Ms. SEPICH. Chairman Leahy and members of the Committee, my name is Jayann Sepich, and I so greatly appreciate the opportunity to speak to you today about the very important issue of forensic DNA testing and the related backlogs. I am here as the mother of a murdered daughter, and I am also here representing the Surviving Parents Coalition. The Surviving Parents Coalition are parents of children who have been murdered or abducted and sexually assaulted, and as a group, we fight for laws that will help protect our children and young people.

Forensic DNA is vital to solving crimes against children, particularly as children are often not able to put into words those crimes

that were committed against them. So, as such, support of DNA is a legislative priority for the coalition.

In August of 2003, my beloved daughter Katie was a vivacious, joyful, loving graduate student at New Mexico State University. She was attacked just outside of her home in a supposedly very safe neighborhood. She was brutally raped, sodomized, strangled, set on fire, and her body left at an abandoned dump site. I have no doubt that it is never easy for any parent to bury their child, but the horror and the pain of losing Katie in this violent manner is beyond description.

There were no strong suspects in Katie's murder, but Katie fought so hard for her life that she had the skin and blood of her attacker underneath her fingernails, which contained his DNA. I know now how lucky we were that Katie's murder was such a high-profile case because the district attorney of Dona Ana County did not want to send that DNA sample to our crime lab because our backlog there was about a year, so she used her own precious budget to outsource it to a private DNA lab. That profile was sent to the national DNA database called CODIS, and I cannot describe to you what bright hope this gave our family because we know who had killed our daughter. We had his unique DNA profile. All we had to find was a match on the offender database.

There are so many families across this country that also have this bright hope, but there are so many more who are waiting. Waiting. And it pains me to think of those thousands of rape kits that are sitting on shelves around this country because when I think of those rape kits, I do not think of evidence. I see faces. I see faces like that of my daughter Katie, and I feel the pain of the mothers who have buried their daughters and are waiting for justice. And they deserve justice. They deserve to have evidence in their cases tested, analyzed, and uploaded, because without testing, there may be no hope for justice. And without justice, these monsters remain free on our streets to victimize again and again, to rape again, to murder again, to cause this pain again. This is unconscionable.

When I learned of the DNA evidence in Katie's case, I said, "This man was such a monster that surely he will commit another crime, he will be arrested for something else, they will take his DNA, we will know who he is, we will stop him from killing again." And that is when I learned that while every State takes fingerprints from individuals arrested for crimes, most States at that time did not allow for DNA to be taken upon felony arrest. I was stunned. We do not allow our law enforcement to check the DNA database for a possible match before allowing people accused of the most heinous crimes in our society—murder and rape—to be released on bail. We do not even bother to check the database. We just release them.

This is when I began to research and study the issue of taking DNA upon arrest. Based on my research, I became a national advocate for the taking of DNA upon felony arrest, and my husband and I founded DNASaves, which is a nonprofit association that advocates for DNA laws nationwide. We know we cannot bring Katie back, but we can work to change laws so that we may be able to prevent this horrible pain from being visited upon other parents.

In 2006, we fought for Katie's Law in the State of New Mexico. It is a law that requires that DNA be taken upon felony arrest. It went into effect January 1, 2007, at midnight. Since that date, New Mexico's DNA database program has registered 104 matches of unsolved crimes to 86 individual arrestee DNA profiles. That is less than 3 years in a State with a total population of right at 2 million people. One hour and 14 minutes after this law went into effect in New Mexico, the first arrestee was swabbed in the Bernalillo County Detention Center. It matched a double homicide. That man, James Mussaco, has since been convicted of murdering these two women.

Just 3 months after Katie was murdered, a man named Gabriel Avilla was arrested on aggravated burglary charges for breaking into the home of two young women. We did not have Katie's Law in New Mexico at that time, so his DNA was not taken. It was over 3 years later that he was finally convicted of burglary, incarcerated, and his DNA was taken, and that DNA matched the DNA that Katie fought so hard to provide as she was being murdered. He subsequently confessed, pled guilty, and will spend the rest of his life in prison.

If New Mexico had required a DNA sample for Avilla's felony arrest in November of 2003, Katie's murder would have been solved 3 years sooner—3 years that her family prayed for justice and waited to know that this killer was off the streets.

I have to tell you that during that time I have been told by the Dona Ana County district attorney that over $200,000 was spent investigating her murder—$200,000 that would have been saved. But, more importantly, this man would have been in custody 3 years sooner, unable to victimize other young women.

But we cannot consider one side of the database because the database has two sides: the offender DNA database and also the evidence in the database. Without a strong DNA database of offenders and arrestees, we will necessarily limit the possibility of matches that can be made. And, conversely, without testing of the evidence, without uploading the evidence in a timely manner, we limit the matches that can be made.

In the past 6 years, I have come to meet so many families who have lost their daughters, as I have, so many families who have had their children abducted and sexually assaulted, and a great number of rape victims. We owe it to these people to have their evidence tested in a timely manner. But, more importantly, we owe it to our country, to our citizens, to stop these monsters in their tracks before they rape and murder again and again. We have been given a wonderful scientific tool in DNA that is ultimately the truth, and this truth cannot only solve crimes, it can prevent crimes. And in doing so, it can save precious lives and exonerate the innocent. We must do everything we can to make full use of this invaluable scientific tool. To do otherwise is criminal.

Thank you.

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

Chairman LEAHY. Thank you very much, and thank you for your courage in coming here to speak. You and Ms. Smith put a—it takes us far from the statistics and brings it to the reality. Those

of us who had the privilege to serve as prosecutors before we were here in the Senate know what a lot of these cases are like. We see the personal side of it. They are not just statistics. They are human faces on crimes, the victims, what it does to families and communities. And what you do, both of you, in speaking out tells all of us what that is, so thank you.

I want to ask a question of Commander Stoiloff and Mr. Redding. A recent National Institute of Justice report found that one key obstacle to reducing the backlog of rape kits around the country is simply getting that evidence from the police department to the lab. The study recommended additional training of law enforcement personnel, the creation of uniform procedures for submitting evidence, as well as improved training for police officers on the benefits and use of forensic analysis.

I will start with you, Commander. In your experience, what role has training played in educating law enforcement personnel about the importance of DNA testing? And how about prioritizing those cases where DNA analysis is most useful?

Ms. STOILOFF. Let me address the second part of your question first with prioritization. I think the prioritization is something that had to occur, as I said in my statement, in order to remove the offenders that are the greatest threat to society. So if you have a homicide and a sexual assault that come in with a stranger offender versus a burglary of somebody's car, you know, most citizens understand burglaries because that is what is common to society. However, the greatest threat would be the rapist or the murderer.

So the prioritization is pretty clear in laboratories nationwide.

Chairman LEAHY. Should there be a uniform standard nationwide on that?

Ms. STOILOFF. Well, I think there should be a uniform standard insofar as all of the offenders that are threatening, yes; I mean, for the violent offenders, absolutely. I think all crime laboratories directors, at least in my experience, and as part of ASCLD and anybody I have ever spoken to, understand that those are the highest priority. I do not think there is any laboratory that prioritizes as a case is submitted.

Chairman LEAHY. What about a national training program? Would that be helpful? Because you go from somewhere as large as Dade County or Hennepin County down to very small jurisdictions, which are actually the majority of jurisdictions.

Ms. STOILOFF. I am sorry. So your question is?

Chairman LEAHY. Well, would a national training program on rape kits and DNA evidence help?

Ms. STOILOFF. Well, I think the national training program would certainly help from the perspective of law enforcement in that you have a lot of law enforcement—especially, as you are saying, in small agencies—that are not aware necessarily of what DNA can do. So I think the education and training is on the side of what can we—you know, to know what to collect, to know what to submit.

One thing that is very important is that, you know, you have one chance at the crime scene to collect everything. It does not mean everything is submitted to the laboratory or analyzed right away, but it does mean that it is preserved in the event that it needs to be analyzed at a later date.

So I do think that there should be some kind of training across the—you know, nationwide as far as what the capabilities are. I do think there is a lack of understanding whether you have—forgive the expression, but the old school police who believe that investigation should solve every crime, and the realization of what physical evidence can actually do to solve a case I think is one side of it. And then you have the new recruits that come in that it should be mandated that they go through some sort of training.

Chairman LEAHY. Well, Mr. Redding, before my time runs out, you see after it gets to the police. You see it from the prosecutor's point of view. What do you think of this, having uniform standards for when the DNA gets turned over to the labs, national training? Are these things helpful? Or can you fall into a one size fits all?

Mr. REDDING. Well, I do not think you could fall into a one size fits all, but I do think that some type of national standard or some type of best practices would be something that would be very valuable to law enforcement. Even within Hennepin County, I have noticed and I have seen significant differences between the police departments in what they choose to send to the laboratory and police departments in what the people who collect the evidence actually collect. And we have done some work to try to bring those standards together so that we have an even policy across our law enforcement agencies in Hennepin County.

But, yes, I do think that that type of training would be helpful. I get calls all the time from police officers who simply are not aware of all of the capabilities of DNA typing. DNA typing has changed drastically in the 20 years that I have been working on it, and so law enforcement needs to understand that, whereas 20 years ago we needed a significantly large sample to get DNA from, recently, for example, we obtained DNA from a murder victim by simply swabbing the area that we believed that the perpetrator had grabbed this victim, and we were able to—the lab was able to swab that area where he had put his hands on her and come up with a DNA profile that confirmed who we thought that was.

Chairman LEAHY. My time is up. I want to yield to Senator Sessions, and then I am going to turn the gavel over to Senator Klobuchar. As you may have gathered from some of the press, there are, unfortunately, several things going on here in the Senate right at the moment. In case I do not get back, I want to thank every one of you for your testimony and say how helpful it is, even as difficult especially for two of you, how difficult it must be to give it.

Senator Sessions.

Senator SESSIONS. Thank you. I thank all of you for your testimony, and Ms. Smith and Ms. Sepich particularly because of the description you have given of real-life situations that are so painful.

Let me ask with regard to Ms. Smith, the 7 years you waited before there was a hit, it strikes me that you have to have a database to check the person against. Was that a factor in the delay in getting the identification of the person who assaulted you?

Ms. SMITH. Yes, it was, because with my case all of this was just beginning, so it was kind of playing catch-up, so trying to get the database set up and all of that, and so that was—there was really

nobody at fault at the time that my case sat. There is nobody at fault now other than the fact that we have a tremendous amount of kits that we just need to figure out the best way to get it done, because I think that everybody is on the same page in wanting to get it done. It is just that we have got to figure out a way to get it done.

Senator SESSIONS. I think that is good advice to us. We need to figure out how to do this correctly.

Ms. Sepich, you described that you led an effort, I believe, to pass a law for New Mexico, and that law turned out to be the reason, it seems to me from your testimony, that you identified the person who had killed your daughter. In other words, they did the test on this person when he was arrested 3 years later for a burglary that got the hit. Is that correct?

Ms. SEPICH. Senator Sessions, actually they could have had the hit 3 months after she was murdered. That is when he was arrested for burglary. But we did not have the law at that time. It was 3 years, 3½ years after she was murdered that he was ultimately convicted and incarcerated. The law did not go into effect until about a month after the hit was made. But we have had tremendous success since we have had the law go into effect in New Mexico.

Senator SESSIONS. But one of the points we should all remember is that this individual was not arrested for another rape. He was arrested for a burglary.

Ms. SEPICH. That is correct.

Senator SESSIONS. And that is what told the tale. And, Mr. Redding, you solved a case when you got a hit on a person who was arrested for DWI, which is unrelated.

Mr. REDDING. That is correct.

Senator SESSIONS. Based on your experience—and you have been at this for a number of years—do you think that the 20 States who now currently, I understand, test on arrest, that that is good public policy?

Ms. STOILOFF. I do think that is good public policy. I think that the larger you can get the convicted offender database as well as the larger that you can get the database which contains evidence from crimes, the more hits you are going to get.

So I think that is good public policy. I see no constitutional barrier to that being enacted into law in other States. And I know that the trend is in that direction. Again, that will cause a significant uptick in the number of samples which are submitted to go into the database, but I think that can be handled, and I think that it should be handled.

Senator SESSIONS. Ms. Howley, with regard to assault victims, you made reference—several of you did—to rape victims even if they know the person who attacked them, it seems to me that either upon that person's arrest or from the DNA itself, a test should be run because maybe the victim may not know that this person has a tendency, you know, is likely to assault someone else. How would you discuss the value of even testing and entering this information based on a case where you know the offender?

Ms. HOWLEY. When the offender is known to the victim, we know that so many sex offenders are repeat offenders, and your ability

to upload that person's sample will depend on their being convicted or in many States arrested.

At this point, if you were to run a rape kit on a known defendant, that information would not be uploaded into CODIS because——

Senator SESSIONS. Is that right?

Ms. HOWLEY [continuing].—Yes, because you have a known defendant. It would only then be when he——

Senator SESSIONS. That would be a policy error, would it not?

Ms. HOWLEY [continuing].—Well, when we are talking about greatly expanding our demand on CODIS, I think we do have to be careful going forward. Again, that sample, if he is arrested, in about half of the States would go into CODIS. And if he is later convicted, we would get it into CODIS. And there you are right, we could start to see patterns.

Senator SESSIONS. I see, yes.

One quick question, Ms. Stoiloff. If a rape victim is examined properly, do you have to do multiple DNA checks to make sure that you are getting good information? In other words, how many actual readings and how much DNA do you have to gather per victim?

Ms. STOILOFF. When the victim responds to the rape treatment center, there is a standard protocol that is followed for collection. There is a standard number of swabs and slides, et cetera, that are taken at the time.

When we analyze the evidence in-house, we analyze it once unless it is required to be retested for court purposes, either the original analyst is not there or for whatever reason, the analysis is done once, and the victim does not have——

Senator SESSIONS. There could be multiple swabs.

Ms. STOILOFF. Correct.

Senator SESSIONS. And you analyze each swab.

Ms. STOILOFF. We would analyze each swab, correct.

Senator SESSIONS. If the person was arrested and you did it, you would only have to have one swab or specimen of that person's DNA to put it into the database. Is that right?

Ms. STOILOFF. Well, if I am understanding you correctly, the information, if it is obtained—like if we were to obtain a male profile from one of the items of evidence, we would not need to test multiple items to put that profile in. However, when we do test the rape kit, we do test multiple items, but the profile is only entered once. Does that satisfy your question?

Senator SESSIONS. I think so. I just think if you identify the perpetrator, you know the perpetrator, I think it could be put in and might not cost quite as much as if you were having to obtain the sample from the rape victim.

Ms. STOILOFF. Well, we need the sample from the victim to compare against—in the interpretation to know whether, you know, what information is there. Every case is different. Sometimes the details of the case necessitate comparison to the victim, so we always take the victim standard as part of the rape treatment kit. However, I can tell you that in our experience we work every case with a standard—even if the subject is known, we still work it, obviously, for prosecution reasons. And in Florida, we put the stand-

ard in. So I would take the subject standard, and that would go into the database.

We do not know if, when he is arrested. In the laboratory setting, we do not have any knowledge of the disposition unless we happen to testify.

Senator SESSIONS. Thank you.

Senator KLOBUCHAR. Thank you very much, Senator Sessions. Again, thank you, Ms. Sepich and Ms. Smith, for your moving testimony, and thank you for coming forward.

Ms. Smith, you mentioned in your testimony, I think your written testimony and your story, about the need for well-trained nurses and how critical that is for collecting the evidence and making sure that victims do not feel revictimized when the evidence is collected. Do you have any thoughts about what we could do to better train these nurses in this area as well as get more medical students, nursing students to go into this area and be trained?

Ms. SMITH. Yes. There is a wonderful program, Sexual Assault Nurse Examiners, that are trained specifically to take this exam. In my case, my doctor was actually reading the instructions as we went along. That is not real reassuring when you are going through an exam like this. But the sexual assault nurse examiners are not only trained how to get information that the average doctor may not even think about, but she is also trained to know how to do those first emotional needs of her patient.

In a very good sexual assault nurse program, you will have rooms that are set aside so that the victim can go into a room. These sexual assault nurse examiners, that is all they are there for. It is a one-on-one examination. With me, I had three different nurses asking me questions and then a separate doctor, and that——

Senator KLOBUCHAR. So it builds trust to just have one.

Ms. SMITH [continuing].—Exactly. Plus you have all the confusion that just—and she is trained to know or he is trained to know exactly what questions to ask, how to ask them, and I cannot tell you the difference that that can make.

Senator KLOBUCHAR. Thank you.

Speaking of that kind of coordination and efficiency, Mr. Redding, you talked about how there needs to be better cooperation and coordination with prosecutors and law enforcement with these labs, that the labs do not just serve the police, they also serve prosecutors. Do you want to talk about why that is important and if you think there is something that we can do to enhance that cooperation?

Mr. REDDING. That is very important, as I have indicated, not just in cold DNA cases but any time that a prosecutor and the police cooperate during the investigation and the pre-charging aspect of a case, uniformly that case turns out to be better and we have better results from that case.

One of the things that happens and that I realized needed to be corrected was that the only person who was being advised of a hit was the police officers, and I received a call some years ago from our lab saying, "What happened to these 25 cases of homicides and rapes?" And I didn't know anything about most of them. So I con-

tacted the police. We began together to investigate those crimes, and we were able to charge and convict a number of those people.

So I have now set up in our jurisdiction contemporaneous notice from the laboratory to me as well as the police department, and that enables me to get involved immediately if that case—if it is important. And it is important because prosecutors can teach and are teaching across the country interrogation techniques for police officers, which are different in cold cases than they are in the regular investigation. And if they are investigated differently and if the interrogation goes differently, we have a much greater chance of success.

Senator KLOBUCHAR. And, again, along these lines of efficiency, getting better results, we all want to get these rape kits tested. There is no doubt about that. Some of the previous hearings we have had on this issue—and we also want to get you more funding to do that. At the same time, I know as a local prosecutor there is nothing worse than a mandate without the funding. Leave the money behind, right?

So what I would like to know and hear from, I guess, you, Mr. Redding and Ms. Stoiloff, is just explain to me how we can best use these resources if we give you more resources. Are there certain kits that you would argue should not be tested, or should they all be tested? What are the criteria you think that we should look at as we go forward? Mr. Redding.

Mr. REDDING. Well, in sexual assault cases, I agree that there is some value to testing acquaintance rape kits. Obviously, laboratories have to prioritize, and they must prioritize, and almost all laboratories do. Our laboratories certainly do.

Senator KLOBUCHAR. Because it is not just DNA, right? There is even more evidence, other kinds of evidence. There is more than DNA.

Mr. REDDING. Yes, there are many types of other evidence in the laboratories, and prosecutors, of course, have to deal with statute of limitations questions and those kinds of things that arise.

But I do think that as we move forward, we are going to discover and we are going to be able to ascertain what the value is of—whether or not we should test every sexual assault kit.

In the grant that I am working on now, we are evolving that opinion as we go along. Our grant expires in June. We are looking now to see whether or not in acquaintance rape cases that man who is identified by the victim is, in fact, in the offender database. If he is in the database, then there is not the significant reason to test that case or that kit because, if he is in the database, his case or his profile would have already hit to an unsolved case. So we do not need to do that. That eliminates a significant number of the acquaintance rape cases that we would think that there is value in testing.

Senator KLOBUCHAR. OK. Ms. Stoiloff, do you want to add to that?

Ms. STOILOFF. I would say I agree with what Steve said. The prioritization certainly needs to be any stranger rape case, and as I said earlier, when you have a written prioritization policy, that is clear that that is what is going to happen when the case comes into the laboratory. The issue becomes if a stranger rape comes in

and it is not addressed, that is what should be handled by each laboratory correctly, if you will. And the point that Steve made about getting the profile in the database, I mean, we even in our laboratory, in our experience, if the case is negative, we will still—meaning that there is no male profile, no foreign profile obtained, we will still work the standard that is submitted of the subject and put that into the database. So we will do everything we can to get the profile in there. And, you know, sometimes it means that there is no evidence to test, but they will submit the standard, and we will put that in as well.

Senator KLOBUCHAR. So, just to summarize this, you want those tests, you want the kit done, but once they get there, you want them preserved and there to use. But there may be an argument for prioritizing some of them while testing, clearly, in all the stranger rape cases. Is that fair to say?

Mr. REDDING. Yes, that is correct.

Senator KLOBUCHAR. OK. Thank you very much.

Senator Grassley.

Senator GRASSLEY. Thank you, Madam Chairman, and thanks to all of you for your testimony. I am just going to ask a few questions of Ms. Howley. I have had the opportunity to work with her before on Dorgan's bill on the Restitution of Victims of Crime Act. I thank you for working with us on that.

I was glad to have Senator Franken ask me if I would join him as a lead cosponsor of this Justice for Survival of Sexual Assault Act because I think that this would cut down on the backlog of untested rape cases.

Now, you seem to raise the question, as you discussed in your testimony, of the need to know more about the backlog of untested kits before you would have a concrete recommendation to address the problem. I understand your concerns that we test DNA samples effectively and efficiently. So a few questions along that line.

Do you believe a requirement that State and local governments provide statistics to the Federal Government on untested rape kits on the backlog thereof would be useful?

Ms. HOWLEY. I think having that information would definitely be useful. My concern is I am not sure how difficult it is to require States to provide that. NIJ and others have been trying to quantify precisely the existing DNA database for many years, and so I would just want to be sure that we understand what the barriers have been to getting precise figures before we demand that of States.

I certainly agree that we need that information and we need to figure out how we can best get it. I think part of the problem has been, as I believe Ms. Stoiloff said earlier, sometimes you have kits that are in the local law enforcement or local sheriff's office and you have other kits that are in a lab. It might be a local lab, it might be a private lab, it might be a State lab.

I believe one of the problems has been identifying all those locations. Maybe some are still kept at the hospital and have not been forwarded. So identifying what exactly do we want to count as part of the backlog and where exactly can we get those numbers.

You know, we have had problems before where I know many lawmakers have tried to get precise figures from their State. They

might be told by the State lab, "We have no backlog." Well, that may be true at the lab level, but if you were to go around to all of the local law enforcement, you might find there are quite a few samples that have not been forwarded.

So that is my concern. Not that we definitely need the information, but we should figure out how realistic can we be that we will have a precise number.

Senator GRASSLEY. Well, will the annual reporting requirements assist in reducing and eliminating the backlog by, you think, essentially shaming jurisdictions into testing more rape kits?

Ms. HOWLEY. I think that any time that we can use real numbers to draw attention to a problem and then have real numbers to measure the effectiveness of agencies in addressing that backlog, that is clearly an important step.

Senator GRASSLEY. What do you recommend for the sort of information required of the States or from the States?

Ms. HOWLEY. I am sorry. Can you restate that?

Senator GRASSLEY. What sort of information should be required from the States that we are trying to get the statistics on?

Ms. HOWLEY. I think States should be given clear guidance as to what should be considered part of the DNA backlog and then urged to measure that backlog. So States should be given guidance that we want not only the backlog that exists at your State-level labs and your local labs, but your private labs. We want not only the number of samples that are in your major cities, but also your smaller jurisdiction law enforcement offices.

Senator GRASSLEY. I am going to move on to another question. In some States, rape victims are required to pay for their own rape kits and seek reimbursement after the kit has been processed. My judgment is rape victims should never have to pay for the cost of the kit. Evidence collection is obviously an integral part of law enforcement. This Survivors of Sexual Assault Act includes a provision that requires States to be responsible for full up-front costs of the kit, examination. This is an important provision.

Do you think that the current law allowing for reimbursement of rape kit costs by States as opposed to full payment up front has caused any rape victims to avoid having a rape kit collected?

Ms. HOWLEY. While I am not aware of any cases where that has happened, that would likely be a result. Most States do not require victims to pay for the rape kit and then seek reimbursement. Most States pay for it up front, and often through their crime victim compensation program. Under the compensation program, the very fact of requesting a forensic exam counts as reporting for purposes of having the cost of that exam reimbursed. In most States, the victim will never see a bill for the forensic exam. The hospital will send it directly to the compensation program or the other government payment source.

Senator GRASSLEY. See, I thought—maybe I have got it wrong, but I thought that there was more requirement to pay and it was holding people back. So if it is not a problem, I think we have a problem getting word out that that is not the case.

Ms. HOWLEY. We definitely do have a problem getting word out, and part of this is because this system has been evolving in many years. So it could be that previous victims or previous advocates

are not aware of the change in procedures. States have made a real effort, especially through mandates under the Violence Against Women Act, to change the way that they are reimbursing—or to change the way that they are paying for forensic exams. But a lot of that change is recent.

Senator GRASSLEY. OK. Thank you.

Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much, Senator Grassley.

Senator Franken.

Senator FRANKEN. Thank you, Madam Chair, and I want to thank you and Chairman Leahy for your leadership on this issue. I want to thank each of our witnesses, Ms. Smith, Ms. Sepich, for your courage and strength, and Mr. Redding and Ms. Stoiloff for your expertise and professionalism, and Ms. Howley for your advocacy.

Last month, I introduced a bill, joined by my colleagues Senator Grassley and Senator Hatch and Senator Feinstein, that would create financial incentives for jurisdictions to process their rape kit backlogs and make sure that processing them continues to remain prompt.

The truth is, I think, that this is one of those issues in Congress where we all can agree on the big picture. Rape is a heinous crime, and we need to provide our law enforcement agencies with everything they need to prevent it and bring perpetrators to justice. So I just want to ask a few questions on this front.

Mr. Redding, in your testimony you said there is a need for improve infrastructure and lab capabilities so that DNA evidence can be processed as quickly as possible. The National Institute of Justice study revealed that six out of ten police departments surveyed lack computerized evidence-tracking systems. They rely on paper tracking systems. And it is no surprise that when some police departments review their inventories, they discover stores of untested kits. This happened in Detroit and Los Angeles.

Mr. Redding and Ms. Stoiloff, how do your departments track DNA evidence? And what kinds of Federal resources are available to help police departments set up the kind of tracking systems that they require?

Mr. REDDING. Well, again, as I mentioned, in my county there are 46 different jurisdictions or different law enforcement jurisdictions, and that ability to track information and to track inventories does vary significantly. Minneapolis has a good system that I can access from my office and my paralegal can access, and so we are able to look at those issues and look at what is there when we want to try to ascertain is this a case that we can do something with or has the evidence never been submitted or never been inventoried. So I have good access there.

I do not have the same kind of access in some of the other smaller suburbs. I think there needs to be uniform best practices recommended to jurisdictions for how long they hold onto evidence and for how long they hold onto police reports. Even in some places police reports are being destroyed within 7 years, and that is very troubling to me as a prosecutor, when we have expanded the statute of limitations, as we have in Minneapolis, yet we still have a

situation where we can go back to 1991 to prosecute these cases, but the police reports have been destroyed.

So we do need a better practice and a best practices suggestions for jurisdictions about how long they keep evidence, how they keep track of that evidence, and how long they keep even something as basic as police reports. It is very important, and it is crucial.

Ms. STOILOFF. Aside from the Miami-Dade Police Department, we also have over 36 municipalities in Miami-Dade County, so I can only address what happens with our agency. I have no idea, to be honest, how they track evidence in the other agencies.

We do have an in-house LIMS system, if you will, which is a Laboratory Information Management system. However, what that does is actually tracks—we know what we have in-house. As far as what is in the property room, even I do not know that, what is actually there from years ago.

We are, however, as I said, actively—we have been doing cold cases since 2001, reviewing cold sexual assaults and cold homicides. So we have pretty much covered everything with our own agency as far as what has been collected and stored. But, unfortunately, I agree with what Steve said, that there are issues that need to be addressed so that there is uniform best practice with other agencies, too.

Senator FRANKEN. Thank you. I want to move on and highlight the experience of some of the jurisdictions that have chosen as a default to test all or nearly all rape kits. These jurisdictions have seen their arrest rates for rape increase by as much as 30 percentage points and have had thousands of cold hits.

Our average national rape arrest rate is 22 percent. Jurisdictions that have implemented a "test all kits" policy have seen them climb to up to 70 percent, more than 3 times the national average.

Ms. Howley, what in your mind is keeping all jurisdictions from moving toward this model?

Ms. HOWLEY. I believe that there are three barriers, as I outlined in my testimony, and the NIJ report indicated a big one is that local law enforcement agencies do not always understand the evidentiary value of DNA evidence, that it can be used to solve crimes. So many law enforcement agencies in that NIJ survey indicated they were not forwarding for testing where there was not already a suspect, so that indicates one problem.

Another, of course, is funding. If a local law enforcement agency has heard that the lab is overloaded or already knows that it will take more than a year to get something back from a lab, they may not be forwarding information because they know they cannot get it in a timely fashion, and that would be directly related to funding to increase the capacity and reduce the lag time.

But a third issue could be a lack of will. We know in too many places law enforcement agencies make a judgment as to the importance or value or credibility of the victim based on what they think a rape victim ought to act like. When talking to our members about the problems that they see, many of them highlighted the need to train law enforcement about sensitive response to victims of sexual assault so that they can better understand why a rape victim may be presenting with what is called a flat affect—no emotion. She is no longer hysterical. Law enforcement needs to be trained to know

that does not necessarily mean she was not a victim. So I would prioritize that as well.

Senator FRANKEN. Thank you. I have run out of time. I just want to make one little point on the reimbursement issue. I just want to highlight that we have heard from advocates like Human Rights Watch that people are slipping through the cracks and that some women pay for their kits up front and that some of them are never repaid the full cost. And my bill on this would close those loopholes.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Madam Chair. Thank you, Ms. Sepich and Ms. Smith, for your extraordinarily powerful testimony. Thank you, Ms. Howley, for your voice on behalf of victims across the country. And thank you, Commander Stoiloff and Mr. Redding, for your service in law enforcement.

Clearly, the science of DNA has sped far, far ahead. My first realization of it was a murder case where we were able to get DNA off a beer bottle that the perpetrator of the crime had taken a swig out of during the course of his time in the home of the murder victim, and I suspect it has rocketed forward in the years since then. So I think it is a very valuable tool, and I assume that all of you would support mandatory DNA testing of violent criminals.

Mr. REDDING. Yes, I certainly would, Senator. Any way that we can get the DNA from a person who has committed crimes and who has been arrested, as I said, get that into the database, larger databases of convicted offenders along with a larger database of crimes which have been tested, when those databases are searched against each other, we get more hits the bigger they are.

Senator WHITEHOUSE. Let the record reflect that all five heads were nodding in agreement. Yes, because at that point you are no longer confirming evidence and using it as a tool of proof. It becomes an investigative tool against a larger audience, and that adds enormously to the value of the DNA sample.

In terms of prioritizing rape kits, does the prioritization need to take place more at the lab or more at the investigative side in the police and prosecutor's office? I assume that—I do not know the answer to the question, so why don't you—or do we need prioritization at both points?

Mr. REDDING. At least from my experience, the problem is not prioritization at a lab. I think the labs that I deal with are properly prioritizing. I think the problem is the prioritization within the police department, to some degree within the prosecutor's office, but I do not want to fault the police department, but I think that——

Senator WHITEHOUSE. That is the area where the prioritization would make the most sense?

Mr. REDDING. That is the area, and when we have changed that prioritization and we get more kits, we do get better results. And I want to just briefly comment on police making that determination about whether a victim is credible or not.

Many victims, our most vulnerable victims, are homeless. They have a chemical dependency problem or they have, you know, some other problem, possibly a mentally ill problem, and so they are

preyed on. And we need to get those victims' DNA results into our database as well. They can be linked to other cases, and we have done that on a number of occasions and been able to prosecute cases where we have gotten multiple hits.

Senator WHITEHOUSE. I have just a minute or so left and two more questions. One is, Do any of you fear that a broader regime of mandatory DNA testing would test the capacity of the private laboratories to run the DNA? Or is there not that kind of a capacity problem?

Ms. STOILOFF. There is definitely a capacity problem. All laboratories nationwide have a capacity problem if there is a mandate that we have to do every single kit. Even without mandating every single kit, the prioritization still allows you to handle——

Senator WHITEHOUSE. I meant mandatory testing of every single violent criminal.

Ms. STOILOFF. Oh, as far as the offender.

Senator WHITEHOUSE. Offender testing.

Ms. STOILOFF. It is actually done. It is separate. There are convicted offender laboratories for each State, and then there are local and State labs that process evidence. So it would be necessarily different, but the money would be allocated by the State.

Senator WHITEHOUSE. So the additional burden of processing offender data would not impede the evaluation of DNA evidence in active cases?

Ms. STOILOFF. They are separate laboratories. So the forensic laboratory would have the capacity to do the evidence cases, and the convicted offender database lab would have the capacity. But anytime you mandate any kind of testing like that, the funding has to go with it. As the Senator stated earlier, you know, we have had quite a few unfunded mandates even in Florida that now they have learned to write in that if it is not funded, it cannot happen.

Senator WHITEHOUSE. And the last question just to the law enforcement representatives, just for the sake of the record, the effects of delay in processing evidence in an ongoing investigation are often more than just loss of time. Could you each briefly comment on some of the collateral damage that takes place in an investigation where the investigation cannot move rapidly forward and does not have timely access to key evidence?

Mr. REDDING. That can be devastating to victims. It is devastating to wait years and then to get a call from a police officer or a victim witness advocate in my office and say, "You know that thing you have been trying to put behind you and you have been trying to forget for all these years? Well, we are going to reopen that wound for you"—for a good reason, of course, but that is very painful. It is not an easy call to make. It is not a call that we ever want to make.

So I would like to see the system take care of that and contemporaneously process sexual assault kits and other evidence kits so that time lag——

Senator WHITEHOUSE. But from a prosecutive point of view, you also lose witnesses, lose recollection, raise cross-examination issues. I mean, setting aside for a moment the effect on the victim, the effect on the case itself is often significant beyond the simple delay, is it not?

Mr. REDDING. Yes, it is. It can be severely compromised. Evidence, you know, goes away. It is lost. Memories change. We have had a number of cases where important witnesses are deceased by the time that we get the DNA result, and so that compromises our case. We are looking at some of those cases now in an attempt to see if we can work around that problem, but it certainly is a problem.

Senator WHITEHOUSE. Thank you.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much.

I have just a few follow-ups here. I wanted to just go at this issue again, Mr. Redding—and Senator Whitehouse touched on it—of the national databases and how comprehensive they are. I know in your written testimony you talked about how Wisconsin discovered that it had 12,000 convicted offenders who were, nevertheless, not in the convicted offender database, and this I do not think was an issue of the testing as much as the data was not dumped in. Is this right?

Mr. REDDING. That is correct. Again, my understanding is that some of this is this reaction to an unfunded mandate. Some of the localities are required, of course, to collect kits from all convicted offenders within the particular county, and I am aware that that costs money to the counties, and it is somewhat of a burden to counties which are strapped, and as a result, those counties are not as vigorous as they should be in collecting that data.

So I am sure that Wisconsin is not alone in this, that there is a problem of uncollected kits——

Senator KLOBUCHAR. So you are not just picking on them because of the Packers?

Mr. REDDING. I am not picking on them because of the Packers. [Laughter.]

Senator KLOBUCHAR. But you are saying that you believe this happens in other States and it is the actual physical entry of the data?

Mr. REDDING. I do. I would be shocked if it did not, yes.

Senator KLOBUCHAR. Do you know if we have that going on in Minnesota?

Mr. REDDING. There is a problem with it in Minnesota that we are attempting to correct right now, but, yes, it is an issue.

Senator KLOBUCHAR. Ms. Stoiloff, I was just talking about how the sort of nitty-gritty testimony today makes us realize that with the Miami Police Department not every day is like "Miami Vice"—right?—and that there is a lot of hard work that is done in the labs every day to catch these perpetrators. Do you want to comment about what Mr. Redding just noted, this lag in getting the information actually in the databases?

Ms. STOILOFF. Well, I can say, for the most part, the prioritization helps with the lag, if you will, on the high-priority cases, especially in cases where in homicides where you have so much evidence that is collected at a scene that we actually have meetings as soon as possible with the detective, the assigned analyst, and the prosecutor to resolve some of these issues and identify what needs to be analyzed right up front. So it is a matter of—it is a short turnaround on current cases.

Now, for cold cases it is a different story, so you have the technology to solve the crimes, but then you have a problem finding witnesses, et cetera. So it is sort of twofold. But I think as long as we adopt a best practice in addressing these issues immediately, you know, as soon as the cases are submitted, that should help some of those. And, no, we do not drive Hummers.

[Laughter.]

Senator KLOBUCHAR. All right. I will remember that.

The other thing that you mentioned in your testimony, which I have heard before from our lab directors, is just the forensic scientists and the amount of money that is put in to train them by the Government and to get them up to speed. And then what I have heard—and I do not know if this was in your testimony—is then a lot of times they may leave and go somewhere else, maybe to the private sector, maybe to another lab that pays a little more, and it becomes like a bidding war. And I have certainly heard this in our State.

Do you want to comment on that?

Ms. STOILOFF. We have the same issue. Unfortunately, as nice as Miami looks on TV, we do have a problem that these analysts want to come—forensic science is a hot thing, is a hot place to go, and they want to come and be trained wherever they can get a job. We have had the misfortune to lose quite a few over the——

Senator KLOBUCHAR. Where do they go?

Ms. STOILOFF. Usually home, like wherever they came from. So——

Senator KLOBUCHAR. But they go to other labs?

Ms. STOILOFF. But they go to other labs.

Senator KLOBUCHAR. A government lab——

Ms. STOILOFF. But it is not a situation, though, where they are seeking a job anywhere else, you know, so I do not want to portray that the Miami-Dade police lab is bad in any way, but they are going to where they came from and where their families are. And so that becomes a problem because it is a 2-year training process for DNA. And so from the date of hire, which is a whole different issue, to get them hired and in-house, and then it is 2 years' training, it is effectively 2 years until they are—you know, they may be—I may have zero vacancies, but essentially carry them as non-DNA analysts for 2 years.

Senator KLOBUCHAR. Does anyone else want to comment on that?

Mr. REDDING. I would just like to comment briefly and echo that. That is a tremendous issue. As you know, Senator, we can hire a prosecutor, an experienced prosecutor, and throw him right into the courtroom. You cannot do that with a DNA analyst. You have to wait for them to complete the training, and it is a long training. And so when you lose an analyst, like we lose them in the Minnesota BCA or you lose them in Miami, you cannot throw somebody else in there right away. So it is a significant problem.

Senator KLOBUCHAR. OK. Anything more anyone wants to add here?

[No response.]

Senator KLOBUCHAR. Well, I just want to thank you for your testimony today, for taking the time to be here. As you can see, we are very devoted to working on this problem. We know that there

have been improvements made, and the improvements have been made because of the willingness of people like you, Ms. Sepich, and you, Ms. Smith, to come forward and tell your stories. But we know that there is clearly a backlog issue, and we want to be smart about how we tackle that. I think anyone who has worked on the front line as a prosecutor understands this unfunded mandate issue, and we have to figure out how to be smart to get the right rape kits tested and to get them tested; that we also have to do better with training, everything from the nurses to the forensic scientists. And I was interested in some of Mr. Redding's points about the coordination with the police and prosecutors on the lab and improvements that can be made there.

So those are the things that we are working on right now, and just for me, in my former job, which I loved very much—especially I think back very lovingly to that job after what we've been going through the last month in Washington—but I just have these memories that are ever etched in my mind about how we were able to use this science to not just convict horrendous murderers and rapists, but I will never forget that case—and maybe Steve remembers this. We had someone come up from North Carolina—I think that was the State—who had identified who she thought was her rapist many years before, and he had served something like 6 years or a decade in prison, and then the DNA test, in fact, showed that it was not him. And he got out of prison, and the two of them actually became friends. The real person was already in jail and had been convicted, and they went around the country talking about eyewitness ID and improvements that had to be made to that.

I remember a remarkable case we had—and maybe, again, you remember this one, Steve, where we had a burglary, and the burglar had broken some glass and got his blood on the glass shard, and then that DNA matched some DNA in another burglary, I think it may have been in Florida, in another State, and we were able to charge him as, like, number 34546 because we did not know who he was. We just had the record. I do not know if anything has ever come of that case, but it was a memory I have of just the improvements that we have made in this technology and the tool that it is, as you have pointed out, for any kind of case.

So I am actually optimistic of the work that can be done here, the place that science has taken us, and all of you in your respective roles have been such a big part of that.

So thank you very much, and we look forward to working with you on the reauthorization of the Violence Against Women Act and all the work that we will be doing in this area. Thank you very much.

We will keep the record open for one week for any additional submissions, and the hearing is adjourned. Thank you.

[Whereupon, at 11:53 a.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

WASHINGTON
LEGISLATIVE OFFICE

December 14, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Senate Committee on the Judiciary
U.S. Senate
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TREASURER

Statement of the American Civil Liberties Union (ACLU) for Hearing on "Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide"

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the American Civil Liberties Union, a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide, we applaud the Senate Judiciary Committee for its hearing entitled "Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide." This important and timely hearing will be helpful in bringing attention to a glaring and unacceptable deficiency in our criminal justice system: the nation's backlog in testing rape kits – the physical evidence collected from sexual assaults. As Congress considers ways to correct this injustice and ensure timely testing of rape kits, we caution against any effort that aims to further expand the collection of DNA samples from those who have merely been arrested, and not yet convicted, of a crime. Such an effort would only aggravate the problem of ever-mounting backlogs and will do little, if anything, to make us safer.

While the majority of rape victims give their consent to the creation of a rape kit, which are critical to actually solving and prosecuting these cases, tens of thousands of such kits across the country sit in police storage facilities and crime labs, sometimes for years on end, without being tested and having the information entered into state and federal DNA databases. Earlier this year, Human Rights Watch released a reported entitled "Testing Justice: The Rape Kit Backlog in Los Angeles City and County." The report revealed that Los Angeles County has the largest known rape kit backlog in the country. The report found –

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> At least 12,669 untested sexual assault kits ("rape kits") - which potentially contain DNA and other evidence collected from rape victims' bodies and clothes immediately after the crime - are sitting in police storage facilities in the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and 47 independent police departments in Los Angeles County. A smaller, but not inconsiderable, backlog resides at police crime labs.[1]

Additionally, an editorial in *The New York Times* in November of 2008 entitled "A DNA Backlog" stated –

> California is not alone. West Virginia's State Police reported that its DNA case backlog grew to 697 cases by the end of 2007, from 560 cases six months earlier, despite receiving about $230,000 in federal money. The Miami-Dade Police Department failed to spend any of the $200,000 it requested in 2007 to cut its DNA backlog, whose size was not reported to the federal government.[2]

For hundreds, indeed thousands, of rape victims across the country, justice delayed is truly justice denied. It is entirely appropriate for Congress to investigate the causes of this backlog and examine potential remedies, such as requiring states that receive funding under the Debbie Smith DNA Backlog Grant Program to use a higher percentage of those funds specifically to test backlogged rape kits.

In working to ensure the timely testing of rape kits, Congress should not attempt to add needless controversy to this worthy effort by further expanding the collection of DNA samples from arrestees. In 2006, President Bush signed into law legislation that authorized DNA collection and retention from persons arrested or non-U.S. persons detained under federal authority.[3] About a dozen states have similarly expanded their DNA database statutes to include DNA from some categories of arrestees.

The routine collection and permanent storage of DNA from persons who have simply been arrested, and not yet convicted, of a crime raises a host of troubling civil liberties and privacy concerns. At its core, such an effort violates one of the fundamental principles of American law, which is that one is presumed innocent until proven guilty. Housing a person's DNA in a criminal database renders that person an automatic suspect for any future crime – without warrant, probable cause or individualized suspicion.

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[1] http://www.hrw.org/sites/default/files/reports/rapekit0309web.pdf

[2] http://www.nytimes.com/2008/11/10/opinion/10mon2.html

[3] The "DNA Fingerprint Act of 2005" was signed into law as Title X of the "Violence Against Women Act" (VAWA), H.R. 3402, 109th Cong. (2006) (enacted). ("The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested or from non-United States persons who are detained under the authority of the United States").

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One of the causes of rape kit testing backlogs has been the heedless and costly expansion of DNA databases to ever-increasing categories of individuals. A recent audit by the U.S. Department of Justice reported that, despite more than $1 billion that the federal government has poured into crime labs around the country over the past few years, state legislative changes have resulted in a backlog of 600,000-700,000 convicted offender samples. That same report concludes that arrestee testing could derail current attempts to reduce these backlogs and "estimate[s] that the expansion of legislation to include arrestees would increase the annual receipt of DNA samples by 223 percent."[4] According to the FBI, there were an estimated 14,005,615 arrests in 2008 for all offenses (except traffic violations).[5]

The collection of DNA constitutes a "search" and therefore triggers the full protections afforded by the Fourth Amendment. While U.S. courts have generally ruled that DNA banking of convicted felons is permissible because a person convicted of a crime has a "diminished expectation of privacy," this cannot be said for those who have merely been arrested or charged with a crime.[6] To date, two state courts and one federal district court have recognized this distinction and declared routine DNA testing of arrestees unconstitutional.[7] While any arrest involves a degree of lost privacy, the seizure, testing and storage of DNA information without a showing of guilt goes well beyond the limitations the Constitution places on searches and seizures incident to an arrest.

There is ample and solid evidence that collecting DNA at the point of arrest will do little if anything to make us safer. In Britain, where the national DNA database has in recent years been flooded with hundreds of thousands of arrestees, including children as young as 10, this expansion in the number of DNA samples in the database has *not* led to an increase in the number of crimes solved.[8] This is because individuals who have never been convicted of a crime are unlikely to be involved in a violent crime where DNA evidence is available. The effectiveness of a DNA database is limited not by the number of *individual samples*, but instead by the number of *crime scenes samples*.

Law enforcement has always had ample authority to collect DNA from an individual in cases where DNA evidence is relevant in establishing whether that individual may have been involved in the crime. That process involves obtaining a court-issued warrant supported by probable cause. DNA samples collected under these circumstances may be tested and compared with the

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[4] http://www.justice.gov/oig/reports/OJP/a0923/final.pdf

[5] U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 2008*, http://www.fbi.gov/ucr/cius2008/arrests/index.html

[6] *See. e.g.*, Landry v. Att'y Gen., 709 N.E.2d 1085, 1092 (Mass. 1999); *see also* Hudson v. Palmer, 468 U.S. 517, 523 (1984); People v. Wealer, 636 N.E.2d 1129 (Ill. App. Ct.); Jones, *supra* not 6, at 308.

[7] *United States v. Mitchell*, 2009 U.S. Dist. Lexis 103575 (W. D. Penn. Nov. 6, 2009); *United States v. Purdy*, 2005 WL 3465721 (D. Neb. Dec. 19, 2005); *In the Matter of the Welfare of C.T.L.*, 722 N.W.2d484 (Minn. App. 2006).

[8] Genewatch UK, "Human Genetics Parliamentary Briefing No. 6 -- The Police National DNA Database: An Update," July 2006.

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biological evidence collected from the crime scene in question. This warrant authority strikes an appropriate balance between meeting public safety needs while ensuring that a person is not subjected to potentially lifelong genetic surveillance unless or until he or she is first convicted of a crime.

Finally, expansion of DNA databases to arrestees perpetuates the racial biases that are systemic in our criminal justice system. The persistent and well-documented practice of discriminatory profiling in law enforcement combined with expanded DNA collection would inevitably result in an increasingly skewed criminal database in which minority populations are disproportionately overrepresented.

We thank the Committee for holding this important hearing on an often ignored aspect of our criminal justice system. Congress should pursue appropriate remedies to reduce the unacceptable national backlog in testing rape kits to ensure that justice for the survivors of sexual assault is not simply denied. As it examines ways to accomplish this worthy goal, any effort to expand DNA collection should be rejected as an unnecessary diversion of already scarce resources from the important task of rape kit testing, in addition to a fundamental violation of the presumption of innocence afforded to all arrestees.

Sincerely,

Michael W. Macleod-Ball
Acting Director, Washington Legislative Office

Jennifer Bellamy
Legislative Counsel

Cc: Senate Judiciary Committee

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ORCHID
CELLMARK

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December 15, 2009

Senator Patrick J. Leahy, Chairman, Committee on the Judiciary
443 Russell Senate Office Building
Washington, D.C. 20510

Senator Jeff Sessions, Ranking Member, Committee on the Judiciary
335 Russell Senate Office Building
Washington, D.C. 20510

Mr. Chairman and Senator Sessions:

My name is Dr. Jeff Boschwitz. I am a Vice President and executive officer of Orchid Cellmark Inc., one of the largest worldwide providers of human DNA testing. On behalf of Orchid Cellmark, we would like to thank you for the opportunity to provide testimony on this important subject. Orchid Cellmark was one of the originators of the technology used today for human identity testing using DNA and has a reputation for delivering the highest quality testing. In addition, we are the only private lab with a significant presence in the US and the UK. As a result, we believe we are uniquely positioned to share insights on the rape kit backlog issue with the Committee.

Before we begin, we want to first commend the Committee for its leadership in issues involving the use of DNA testing on crime scene evidence as a means of aiding in establishing the guilt or innocence of the accused. It is particularly to be commended for scheduling this hearing on "The effective use of DNA evidence to solve rape cases nationwide."

We would like to focus our testimony on the valid concerns regarding available resources to address the rape kit backlog (whether or not that backlog is defined as just stranger rapes, or defined as all reported rapes). Specifically, we believe that the use of public-private partnerships between public crime laboratories and private DNA testing laboratories can be a significant part of the backlog reduction solution in terms of:

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1) Contributing to backlog reduction without significant incremental spending;

2) Rapidly addressing the backlog while maintaining or enhancing quality (private labs must meet the exact same quality standards and accreditation requirements as public labs); and

3) Providing a mechanism to prevent future backlogs.

Although public-private partnerships for DNA testing exist today and have been successful in addressing many of the nation's backlogs (including the backlog in Los Angeles), there are current guidelines (the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories: Effective July 1, 2009) that create significant obstacles to these partnerships and at best make them very inefficient for the public lab and the taxpayer. We believe there is an opportunity to re-examine these guidelines in light of the importance of reducing the backlog in a rapid, high quality, cost-effective manner.

Use of Private Labs Can Stretch Existing Resources Farther

One of the historic concerns about using public-private partnerships for DNA testing is that it will increase testing costs. We believe the reverse is true today, particularly in light of the decrease in the cost of private lab testing in recent years. One study that supports this assertion is the recently completed NIJ study on property crime (NCJ 222318, April 2008). In that study, the variable costs (direct labor and materials only) were measured and estimated to be $460 per sample (assuming 50% of analyst time was on production-related activities). Orchid Cellmark's published pricing for property crime testing (since the NIJ study) has dropped to as low as $245 per sample, almost half the cost of public lab variable costs. When considering that the cost of overhead typically adds about 50% to the cost per sample, this cost difference is exacerbated further. Please also note that many published estimates of public lab costs do not count overhead costs.

Orchid Cellmark believes these lower costs will be realized for rape kit testing as well and estimates that the cost of private lab testing for new contracts averages between $800 and $1,600 per case (depending on the technical requirements and number of samples per case) in contrast to a cost between $1,500 and $3,500 per case for public labs (including overhead).

The cost savings in public-private partnerships are even greater when the cost of overtime is included. Federal funding through the Debbie Smith Act only can be used by the public sector for overtime (if it is not used for equipment or private labs). Use of federal money for overtime pay is understandably an increasingly attractive option for public labs in

these challenging financial times, but it ultimately may not be an optimal utilization of the money for backlog reduction purposes.

Finally, it is important to point out the extent to which existing federal spending could impact the backlog were it used more for public-private partnerships. For example, if the FY09 Debbie Smith Act casework backlog reduction money allocation of $62MM was applied towards private labs, at least 55,000 cases could be completed. The last estimated count of the number of cases in backlog that were submitted to crime labs (therefore excluding rape kits in police storage not submitted) was 38,200 in 2005 (NCJ 222181, July 2008). Thus, even if that number has grown by 50% in the last four years, the money would already exist at the federal level to effectively eliminate the DNA testing backlog for casework, at least by that backlog definition.

Testimony Costs Do Not add Significantly to Total Public-Private Partnership Costs

Because private labs charge an average of $2,500 a day for time and expenses related to testimony, there is concern that any cost savings described above will be eliminated by these testimony costs. However, as it stands today, many defense attorneys see little benefit in putting analysts on the stand when it comes to DNA testing and infrequently ask for DNA testing-related testimony. In fact, Orchid Cellmark estimates that it is asked to testify in an average of 2% of the cases it analyzes (even in the months since the Melendez-Diaz ruling). When testimony costs are amortized over all cases analyzed, it only adds about 5% to the total cost of public-private partnerships. Thus, even if the rate of testimony were to double or triple, there would still be significant cost benefits to more efficiently leveraging the private sector to help with backlog reduction.

Private Lab Capacity

Another concern about public-private partnerships is that private labs do not have the capacity to handle significant volume inflow. While it is true that private labs do not have large amounts of capacity that sits idle today, large private labs have two key structural advantages that enable them to more rapidly expand capacity than public labs. First, private labs can pay competitive salaries and thus can attract employees faster and retain these employees longer. Second, large private labs have the economies of scale to break the testing process into its individual components such that less experienced people can be focused on areas of the testing process where extensive experience is not required to achieve high quality (e.g., accessioning, inventory) and thus be productive sooner. Orchid Cellmark estimates it could add the capacity to do several thousands more cases a year fairly quickly and that private industry in total could increase its annual capacity by tens of thousands of cases within 12 months. The rapid absorption by private labs of the over

10,000+ cases from the Los Angeles County rape kits backlog is evidence of these advantages.

Private Lab Quality and Innovation

Another concern about public-private partnerships is that private labs may not deliver the same quality as public labs. However, as noted above, private labs must meet the exact same accreditation requirements and quality standards as public labs. In addition, private labs have the added need to compete on quality with other private labs and ultimately differentiate themselves from other private labs for testing work that goes out to competitive bid. As a result, private labs often have a dedicated R&D team that focuses on 1) increasing the success rate of DNA testing (i.e., the chance a complete DNA profile will be obtained) and 2) decreasing the risk of errors due to contamination or sample swapping. Orchid Cellmark's R&D team has made significant advances in these areas including invention of a proprietary process to increase success rates on rape kit testing called SpermElute™ and development of proprietary software to detect compromised samples and to ensure that plates containing DNA samples cannot accidentally have their orientation reversed while going through the testing process.

The competitive bidding process also forces labs to compete on price and thus use R&D resources for process improvement. Public labs are already realizing the benefit of these innovations through the reduced costs of public-private partnerships.

Public-Private Partnerships Can Prevent Future Backlogs

One final concern about the use of public-private partnerships is that once the backlog is eliminated, the public lab will be no better off than they were before in terms of capacity and that the backlog will then ultimately reoccur. However, maintaining the public-private lab partnership beyond backlog completion is a much greater guarantee that the backlog will not reoccur and gives state and local governments far more financial flexibility to manage the highs and lows in the crime rate.

In an effective partnership, the state or local lab can staff to ensure that all high-profile cases and other cases not amenable to high-throughput processes or remote processing can be done locally, and use private labs for cases amenable to high-throughput such as no-suspect rape cases and property crime. When high-profile crime is down, the public lab can take back some of the work it sends to the private lab to fill its capacity. Likewise, if rape and/or property crime declines, the public lab can scale back spending without resorting to layoffs. Conversely, the private lab can rapidly expand capacity on a temporary basis to deal with unexpected surges in crimes or turnover in the public lab or other local issues that cause productivity in the public lab to decline below optimal levels

for a time. This scenario was most recently experienced in the Delaware State lab (Delaware Online, October 18, 2009). The alternative is for the public lab to invest in costly infrastructure and additional capacity which it may not need in the future and does not allow the flexibility to cost-effectively deal with the inherent unevenness of DNA testing demand.

The importance of having this capacity flexibility is reinforced by the recent report showing that law enforcement does not submit a significant amount of evidence for DNA testing that might otherwise be submitted if capacity was there (NCJ 2228415, October 2009). In fact, in 2007 alone, it was estimated that 1.4 million property crimes had forensic evidence that was not submitted. This "holding back" of forensic testing is one reason why many public labs that start to catch up on their backlog quickly get behind again as demand for testing unexpectedly increases as service levels improve. Maintaining a cost-effective public-private partnership for these high volume, no-suspect cases (even when the backlog is reduced), gives states the ability to more rapidly adjust to changing demand and prevent the violent crime backlog from building. It also can prevent rapes and homicides from occurring as many burglars progress to violent crimes over time.

Impact of Automation Adoption by Public Labs

Robotics/automation is an important tool for improving quality and productivity and should be considered part of the backlog reduction solution. By creating a more consistent pipetting process, automation improves the signal to noise ratio of DNA profiles and results in a higher percentage of usable profiles. , Besides eliminating sample transfer errors, the elimination of manual pipetting saves time and may result in 15% to 25% productivity improvements when adopted. However, it is important to note that robotic automation alone will not address the nation's DNA testing capacity needs because that will require far greater than a 15% to 25% increase.

The impact of automation can result in productivity improvements of 100% or more when it is integrated with the laboratory information management system (LIMS). This integration enables elimination of labor-intensive processes such as sample set-up on multi-well plates, dilution calculations, master mix creation, report generation, and quality surveillance, and fully unlocks the benefits of automation. The complete integration of a LIMS with automation is one of the primary drivers behind the significant decrease in public-private partnership costs recently observed. However, it took Orchid Cellmark a few years of dedicated R&D and IT resources to make and implement the LIMS programming changes required to achieve these gains and we continue to improve this process to ensure the highest quality of results possible. In our

experience, this kind of long-term resource intensive effort is something that is beyond the reach of the average public lab.

An Example of Public-Private Partnership Success Exists in the UK

The UK is the most progressive country for using DNA testing as a means to solve crimes. In addition to aggressively testing property crimes for DNA, the UK includes all felony-arrestees and not just convicted felons in its national database. Despite this aggressive testing approach, the UK does not have a DNA testing backlog and has not had one for several years primarily due to the use of public-private partnerships.

The UK system currently emphasizes direct public-private partnerships with the 40+ police forces. Orchid Cellmark has a significant presence in that marketplace. Private labs compete on cost and quality to win contracts from these police forces and have direct (one-way) access to the national database as long as they meet the UK quality standards and accreditation requirements (which are somewhat similar to US requirements).
The results of these partnerships on service levels have been significant. Not only is there no backlog for DNA testing, but standard turn-around times to complete testing are extremely fast. For example:

- No-suspect rape cases: 10 days;
- Property crime testing: 3 days;
- Database sample analysis: 2 days; and
- Violent crime with suspect, all forensic analysis: 45 days.

At the same time, the cost of testing has continued to decline as private labs continuously improve their efficiency to compete for new contracts.

We believe the UK provides a valuable case example on how public-private partnerships can significantly benefit victims, law enforcement, and the taxpayer if managed effectively. Additionally, at Orchid Cellmark, we know first-hand how well it works because half of our worldwide volume is UK-based.

Obstacles to More Effective Public-Private Partnerships for DNA testing

Despite the advantages of public-private partnerships, most state and local labs do not utilize them or utilize them on a very limited scale (we estimate that, at most, 15% of crime scene evidence is analyzed through one of these partnerships). One of the primary

reasons for the lack of public-private partnerships is that the current quality guidelines place significant obstacles on public labs in establishing these partnerships. Specifically, public labs must take ownership of private lab data and perform a complete technical review of each case before the results can be uploaded to CODIS despite the fact that public labs and private labs must otherwise meet the exact same quality guidelines and obtain the same accreditation. These reviews can each take 4 to 6 hours and thus consume a significant amount of resources. In addition, public labs must perform an initial site visit at each private lab it utilizes even though these labs are visited annually by the accrediting agency for its audit. The end result is that public labs are deterred from engaging in public-private partnerships due to the resources required to initiate and maintain them. As was noted most recently by the Colorado Bureau of Investigation (a lab that does not currently use public-private partnerships), "private-lab outsourcing could be more efficient if private labs were allowed to input extracted DNA profiles into CODIS themselves" (Forensic Magazine, August 2009). Other agencies such as LAPD and the International Association of Police Chiefs (IACP) have written to the regulatory bodies asking that the regulations on private lab testing be changed to eliminate these obstacles.

The fact that the UK has found a way of avoiding 100% review of private lab work by a public agency without any resultant quality issues indicates that there may be an opportunity for the US to explore alternatives to the current guidelines, particularly since public labs and private labs already must meet the same quality standards and accreditation requirements. In addition, there are many other US industries with life and death implications that do not require 100% review of a private entity's work by a public employee such as clinical lab testing. While mistakes ultimately do get made, the federal government has refrained from resorting to 100% review of the work because of the inefficiency inherent in such an approach.

Summary

In summary, it is well understood that there is a lack of public lab resources to adequately address the rape kit testing backlog. While there are many avenues to address this issue, including more widespread implementation of automation and additional funding, Orchid Cellmark believes that creating guidelines that facilitate public-private partnerships is an inexpensive solution to backlog reduction that can play a major role in this endeavor.

Very truly yours,

Jeffrey S. Boschwitz, Ph.D.
Vice President, North America Marketing and Sales

Department of Justice

STATEMENT FOR THE RECORD
ON BEHALF OF THE U.S. DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ENSURING THE EFFECTIVE USE OF DNA EVIDENCE TO SOLVE RAPE CASES NATIONWIDE

DECEMBER 15, 2009

STATEMENT FOR THE RECORD
U.S. DEPARTMENT OF JUSTICE
FOR THE SENATE COMMITTEE ON THE JUDICIARY

"ENSURING THE EFFECTIVE USE OF DNA EVIDENCE TO SOLVE RAPE CASES NATIONWIDE"
DECEMBER 15, 2009

Chairman Leahy, Senator Sessions, and Members of the Committee: The Department of Justice appreciates the opportunity to submit this statement to the Committee regarding untested forensic evidence and how it impacts effectively investigating and prosecuting rape and sexual assault cases.

Please be assured that the Department shares the Committee's concerns about untested forensic evidence and DNA in particular. The Department's Office of Justice Programs (OJP) and Office on Violence Against Women (OVW) have made this issue a key priority. A recent study funded by the OJP's National Institute of Justice (NIJ), *The 2007 Survey of Law Enforcement Forensic Evidence Processing*, showed that 14 percent of all unsolved homicides and 18 percent of unsolved rapes contained forensic evidence that was not submitted by law enforcement agencies to a crime laboratory for analysis.

As reported in the media, thousands of rape kits are untested and DNA backlogs in crime labs are causing delays in the criminal justice system. In order to effectively address this problem, we must first try to better understand what the backlog entails. For example, there is no industry-wide agreement defining what a backlogged forensic case is. NIJ defines a backlogged case as one that has not been tested 30 days after submission to the crime lab. However, many labs refer to any case in which the final report hasn't been submitted as a backlogged case. Using

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that definition, the moment a new case was logged into the laboratory, it would become reported as part of the backlog.

Another key point is that the DNA backlog is not static; it is constantly changing. DNA evidence, including evidence from rape kits, is being submitted to crime labs and tested, but very often new DNA evidence is being submitted at a much faster rate. In other words, the laboratories are receiving new evidence to be tested at a faster rate than they are able to process. However, the reason for the increased submission of evidence is good news. Law enforcement officers are more aware of the power of DNA technology than in the past and are making more requests for testing than ever before. In addition, DNA testing requests have risen due to the retesting of older "cold cases" with DNA technologies, increased requests for post-conviction cases, and increasing submissions from property crime cases.

Research conducted by DOJ's Office of Justice Program's National Institute of Justice (NIJ) has shown that from 2005 to 2008, demand for DNA testing services has increased by over 260 percent. The good news is that from 2005 to 2008, crime laboratory capacity for DNA cases (as measured by cases completed) has increased by over 280 percent. While reported backlogs are increasing, they are increasing at a slower rate than the capacity. But until the capacity to work cases equals the new case requests, or supply equals demand, reported backlogs will continue to increase.

The Department has worked diligently with our state and local partners to support increased collection and testing of DNA evidence in rape kits. We are eager to work with Congress to determine the best ways to address issues raised by the backlog. In doing so, there are certain facts to keep in mind. Rape kits held at police agencies may include kits in cases when the victim has not decided whether to file a police report. In those circumstances,

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submitting the rape kit to the crime lab for processing would not result in criminal charges being filed and the results would not be eligible for upload to the FBI's Combined DNA Index System (CODIS). Also, if law enforcement agencies were to submit all untested rape kits immediately to their laboratories, it would likely result in a bottleneck that would cause severe delays, making the problems worse, not better. The Department therefore supports working with law enforcement and crime laboratories to help them prioritize kits that should be tested so that we are using the crime laboratories in the smartest way possible as we continue to work to build the capacity of the laboratories.

Before submitting evidence in sexual assault cases to crime laboratories, law enforcement officials should carefully review cases to see that they have all necessary information and samples to eliminate non-guilty parties who have had recent consensual intercourse with the victim. Without such "elimination" samples, any profiles obtained from the evidence cannot be entered into the FBI's Combined DNA Index System (CODIS), where male profiles from these cases can be searched against profiles of convicted offenders and/or arrestees to determine if any matches occur.

Also, there may be other physical evidence, including DNA evidence that in some cases may be more valuable than evidence from a rape kit. For example, there may be victim's clothing, bedding, and other objects which may also provide DNA evidence, or evidence other than DNA (hairs, fibers, soil, latent prints, etc.). Additionally, other direct and circumstantial evidence often is crucial in determining whether a case will be prosecuted. Sexual assault cases are very complex. Each one needs to be appropriately evaluated to determine the best approach to not only identify and prosecute the perpetrator, but to exonerate the innocent as well.

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As previously noted, OJP and OVW are working with our federal, state, local, and tribal partners to improve DNA testing capacity and the effective use of DNA in rape and sexual assault cases. Through the DNA Initiative from 2004 to 2009, NIJ has provided over $322 million for capacity enhancement purposes. Funding has been used for purposes such as new personnel, overtime for existing staff, supplies and materials needed to process cases beyond what their existing budgets will provide. Our long-term approach is to build the capacity of crime labs by providing funds to purchase high-speed instruments capable of processing multiple samples at the same time, automated robotic systems, and lab information management systems to manage the data generated more efficiently. Funds may also be used for hiring additional personnel and for validating newer, more efficient lab procedures and equipment.

Even with a backlog, thousands of cases have been solved using the CODIS system. As of June 30, 2009, the FBI reports that over seven million offender profiles and 272,000 forensic profiles have been uploaded to CODIS since its inception, resulting in over 93,000 hits and more than 91,000 investigations aided nationwide. The use of CODIS as an investigative tool not only provides investigators with leads to perpetrators, but also eliminates many suspects of crimes, allowing law enforcement officers to re-direct their investigations elsewhere. Faster identification of perpetrators using CODIS means they can be apprehended earlier, and ultimately victimization can be reduced.

The Department recognizes that at the core, the goal of improving forensic evidence is not just to hold offenders accountable, but to meet the needs of victims of sexual assault. OVW, OJP, and OJP's Office for Victim's of Crime (OVC) have long supported improved forensic evidence collection as part of a comprehensive approach to investigating and prosecuting rape and sexual assault cases, while also serving the victims of these horrible crimes. Since 1997,

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OVC has worked to further the development of Sexual Assault Nurse Examiner (SANE) and multi-disciplinary Sexual Assault Response Team (SART) programs with its training and technical assistance, including the SANE Development and Operation Guide in 1999 and its National SART Training Conference, conducted every two years since 2001. The conference as well as other OVC funded supported training and technical assistance focus on a victim-centered response to all victims of sexual assault – including males, females and children. This training and technical assistance offers a holistic approach to victims' needs.

In 2004 the Attorney General released *A National Protocol for Sexual Assault Medical Forensic Examinations (Adults/Adolescents)* (the Protocol), which provides detailed guidelines for criminal justice and health care practitioners in responding to the immediate needs of sexual assault victims. OVW developed the Protocol after extensive consultation with national, State, tribal, and local experts in the field. It is currently reviewing the Protocol and considering how to update it to reflect recent developments in law and practice.

Since 2006, OVW has issued national training standards for sexual assault forensic examiners, started a project providing training and technical assistance to support communities implementing the SAFE Protocol, and, working with NIJ, developed guidance for health care professionals who work with sexual assault victims. OVW is now adapting the Protocol for Indian Country and developing new training and technical assistance for professionals who work with tribal sexual assault victims.

The years of effort are paying off: NIJ recently released the results from an SANE evaluation it funded. The evaluation revealed that guilty pleas and trial convictions in sexual assault cases increased when SANEs were involved with the case. Because SANEs are

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specifically trained to work with victims, gather both DNA and non-DNA forensic evidence effectively, and testify in court, they can play a crucial role in sexual assault prosecutions.

As described above, the Protocol, national training standards, and other technical assistance supported by OVW have improved the way communities collect evidence and respond to victims of sexual assault. In addition, the Department has received positive feedback regarding training and technical assistance we offer to sexual assault service providers. It is possible that taking a similar approach of providing national training standards, technical assistance, and other guidance to crime labs and law enforcement entities could contribute to resolving the rape kit backlog.

All of our efforts are consistent with the Attorney General's and the Department's commitment to combat violence against women. The Department stands ready to work with Congress to improve the investigation and prosecution of rape and sexual assault cases nationwide, including addressing the rape kit backlog. We hope that together we can build on some of the efforts outlined in this testimony.

Thank you for the opportunity to submit this written statement for the record on behalf of the U.S. Department of Justice.

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TESTIMONY OF SUSAN SMITH HOWLEY

Public Policy Director, National Center for Victims of Crime

Before the
Committee on the Judiciary
United States Senate

Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide

December 15, 2009

Good Morning, Chairman Leahy, Ranking Member Sessions, and members of the Committee. My name is Susan Howley, and I am the public policy director for the National Center for Victims of Crime. The National Center is a nonprofit resource and advocacy organization that will soon celebrate our 25th year of championing the rights and interests of victims of crime. Our members include victim service providers and allied professionals who assist crime victims at the federal, state, and local levels.

The National Center has a long history of advocating for sexual assault victims and working to promote the use and understanding of DNA evidence. We were actively involved in efforts to secure passage of the Justice for All Act of 2004. In recent years, we have trained victim service providers and law enforcement officers about the use of DNA evidence. In preparation for that work, we conducted research and held a focus group of victim advocates to determine the victim service providers' level of understanding about DNA evidence. We have also created a series of educational brochures for law enforcement, for victim service providers, and for crime victims on the use of DNA in criminal investigations.

The National Center also has a National Crime Victim Helpline, though which we speak with thousands of victims every month. Many of those callers are victims of sexual assault.

The issue of DNA processing is important to crime victims. Many offenders commit multiple violent and property offenses over a lifetime; identifying those offenders as early as possible can limit their offending career and thus the number of victims they create.[1] DNA evidence also provides the surest form of identity evidence available. Its competent use ensures a level of certainty in convictions.

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[1] In one important study of college men, 120 admitted conduct that would be considered rape or attempted rape, and 76 of those committed a total of 439 rapes and were responsible for 1,045 total acts of interpersonal violence including battery, child abuse, and sex crimes. David Lisak and Paul Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Journal of Interpersonal Violence* 17, no. 1 (February 2002): 73-84.

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The testing of DNA and other forensic evidence has been particularly valuable in sexual assault cases. In a recent survey of our members, nearly one-half of those who work with sexual assault victims said that DNA testing has made victims more willing to report sexual assault. Because few sexual assault cases involve witnesses or visible evidence, many sexual assault victims are afraid they won't be believed. The forensic evidence, however, can corroborate a victim's report.

Even when the identity of the accused is not in question, a forensic exam can provide other important evidence, such as documentation of ligature marks, bruising, bite marks, and other physical injuries that can support a victim's report about the force or violence involved in the rape.[2]

What we hear from victims

In many jurisdictions, forensic evidence in rape cases is gathered in a manner that is sensitive to victims and promotes a just result in the criminal case. But in other jurisdictions, we have far to go.

Sexual assault victims call our National Crime Victim Helpline every day, seeking our help because they can't find assistance or information at the local level. We know from them that the forensic rape exam can be intrusive, violating, exhausting, and confusing, especially in the absence of a specially trained sexual assault nurse examiner (SANE). Even when victims are fortunate enough to have a SANE available, they often report that they faced hours of distress and fear waiting in a crowded emergency room or left alone in an examination room.

Once the examination is completed and the evidence is collected, victims often have no idea what happens to the rape kit. They call us because no one has been able to answer their questions. Hospital staff and even the local rape crisis volunteer may be unsure what happens to the rape kit after the victim leaves the hospital. Some victims mistakenly assume that in every sexual assault case the rape kit is immediately sent to the lab for processing, so they don't understand why they can't get any information about their case. We've talked to victims who have waited months or years after undergoing a forensic exam to hear the results.

When forensic evidence is taken in a sexual assault case and not tested, or if victims learn the investigation is not progressing, they become very upset and disheartened. Many victims have told us the police said they wouldn't process the evidence because they knew who the suspect was. Other victims say the police won't process the evidence because they don't have a suspect.

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[2] It is important to note that the sexual assault forensic exam provides more than an opportunity to gather evidence. It allows the victim to receive immediate medical care and advice regarding trauma and injuries, information regarding the risk of sexually transmitted disease or pregnancy, and referrals to supportive services. For more about the elements of compassionate care during a sexual assault medical response, see U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents" (September 2004): 27–37, www.ncjrs.gov/pdffiles1/ovw/206554.pdf (accessed December 10, 2009).

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Victims whose rape kits have been lost or destroyed prior to being tested are especially angry. One recent caller said the forensic lab told her that they didn't have the kit from her case, while law enforcement insisted that they had sent the kit to the lab. This victim spoke at length about her frustration and anger, because she had done her part by undergoing the exam and reporting the crime, but no one else seemed to care about seeing the offender brought to justice.

Another recent caller was outraged that rape kits from her offender's previous victims had languished for years. She wants to sue state and local officials because she is convinced that if they had processed those kits, the rapist would have been caught and she would never have been victimized.

What we hear from our members

The stories we hear from our members who serve rape victims mirror those we hear from victims themselves. Some advocates report efficient, local crime labs, well-run SANE programs, and coordinated action by prosecutors, police and advocates.

Others report that in their jurisdiction, sexual assault victims become upset as cases are continued repeatedly because of delays in processing the forensic evidence. In some places, victims often wait months for the rape kit to be analyzed, then months longer to find out what will happen with the case. Other advocates report working with victims who are devastated to learn that after all they've been through to try to cooperate with the investigation, their kits are never processed.

Moving forward: the rape kit backlog

We would like to be able to appear today with a concrete recommendation to address the rape kit backlog. But before we can recommend a clear path forward, we need more information. For example, a recently released National Institute of Justice (NIJ) report on law enforcement forensic evidence processing nationwide revealed that many local law enforcement agencies are not forwarding rape kits to labs in cases where they haven't identified a suspect.[3] We need to know more: is the problem a lack of knowledge about the investigative power of DNA, lack of funding to process evidence, or lack of will? The answer to that question should guide the approach forward.

We also need to know whether there is any benefit in testing all kits, even in cases when the identity of the defendant is not at issue. We might learn the answer to that question from the experience of those jurisdictions, such as Los Angeles, that have worked to clear

[3] Kevin J. Strom, et al., "The 2007 Survey of Law Enforcement Forensic Evidence Processing, Final Report" (Washington, DC: U.S. Department of Justice, National Institute of Justice, September 2009): 3-6 and 3-7, at www.ncjrs.gov/pdffiles1/nij/grants/228415.pdf (accessed December 10, 2009).

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their rape kit backlog by testing every kit. Their experience should inform the national policy response.

Until we have this information, we are reluctant to recommend that every rape kit be tested. While such a policy might be easy to understand and administer, it could negatively affect other cases. Because our capacity to process DNA and other forensic evidence is limited, to require testing of all rape kits—even where such processing is unlikely to produce any probative evidence—will inevitably reduce or delay testing in other types of cases.

Many victims of other crimes have a compelling interest in the prompt testing of forensic evidence. For example, homicide cases frequently require forensic analysis. The recent NIJ survey estimated that more than 87 percent of unsolved homicide cases have forensic evidence that could be processed.[4]

Victims of burglary and other property crimes could also benefit from the processing of have forensic DNA testing. Nearly one-third of open property offenses have forensic evidence that can be analyzed.[5] Jurisdictions that have made an effort to broaden DNA testing in burglary cases have shown that such analysis brings justice to a range of victims and improves public safety. In Denver, many of the burglars identified in such an effort had committed 100 to 200 burglaries a year.[6] In addition, property crime offenders frequently commit a range of offenses, both violent and nonviolent. When Virginia expanded its DNA database to include samples from a range of offenders, 40 percent of violent crimes solved through the database were perpetrated by those with previous property crime convictions.[7]

Families with missing loved ones are also awaiting additional DNA testing. The growth of the National Missing and Unidentified Persons System, NAMUS, which provides cross-matching between the Missing Persons Database and the Unidentified Decedents Database, has the potential to bring answers to families across the country. Unfortunately, many jurisdictions still have a backlog of body parts awaiting DNA sampling and processing, leaving too many families waiting for word about a missing loved one.

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[4] Id., at Exhibit 3-1.
[5] Id.
[6] Dale Garrison, "Solving Property Crimes with DNA Evidence," *Evidence Technology Magazine* (July-August 2009), 12-15.
[7] See Virginia Department of Forensic Science, "DNA Databank Statistics," www.dfs.virginia.gov/statistics/index.cfm (accessed December 10, 2009). Similarly, a cost-benefit analysis of the use of DNA in high-volume property crimes, such as burglary and theft from automobiles, conducted by the Urban Institute, found that property crime suspects identified by DNA had at least twice as many prior felony arrests and convictions as those identified by traditional investigation. John Roman, Shannon Reid, Jay Reid, Aaron Chalfin, William Adams, Carly Knight, "The DNA Field Experiment: Cost-Effectiveness Analysis of the Use of DNA in the Investigation of High-Volume Crimes," (Washington, DC: Urban Institute, April 2008) www.urban.org/publications/411697.html (accessed December 10, 2009).

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Improvement in the capacity and processing time for DNA and other forensic evidence can increase access to justice for a range of crime victims. But until that capacity grows, any prioritization of cases should be crafted carefully.

Moving forward: helping sexual assault victims

While the best way forward to address the rape kit backlog is still unclear, there is much Congress can do to improve the treatment of rape victims as forensic evidence is gathered and processed.

First, Congress can provide additional support for sexual assault nurse examiners (SANEs). This investment is the best way to ensure that victims of sexual assault receive compassionate treatment in a manner that also collects and preserves the physical evidence. We know that the use of such specially trained professionals increases the numbers of successful rape prosecutions.[8] Unfortunately, too many jurisdictions have no SANE, and many formerly existing SANE programs have been discontinued for lack of funding.[9]

Once victims undergo a forensic exam, they should have the right to be informed about the standard procedure for processing such kits, including where they can obtain information about the status of the processing. They should be told whether the rape kit produced a DNA profile of the assailant, whether that profile was entered into the DNA database, and whether a match resulted. If the identity of the perpetrator is in question but law enforcement decides not to forward the rape kit for analysis, the victim should be informed of that decision as well.[10] Simply by informing victims of the status of this evidence, we can improve victims' experience. Congress could follow the example of California and create a Sexual Assault Victims DNA Bill of Rights that ensures victims will receive such key information.

Across the nation we need increased public awareness that sexual assault victims have the right to a free forensic exam, even before they have decided whether to report the crime. Victims typically learn about forensic exams when they report the crime to the police or call a rape crisis center. However, only a fraction of rape victims report to the police, and many do not contact a rape crisis center until long after the assault. Because forensic evidence can be gathered only within a brief period of time after a rape, we must increase awareness about the importance and availability of this exam. We are convinced that capturing the evidence immediately and linking victims to supportive services will empower more victims to report the offense and bring more offenders to justice.

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[8] See Philip Bulman, "Increasing Sexual Assault Prosecution Rates," *NIJ Journal*,(November 2009), www.ojp.usdoj.gov/nij/journals/264/SANE.htm (accessed December 10, 2009).

[9] For example, see Senate Judiciary Committee, Alaska State Legislature, "Report and Recommendations: Reducing Sexual Assault in Alaska," October 16, 2009, www.aksenate.org/french/101609_Senate_Judiciary_report_on_sexual_assault.pdf (accessed December 14, 2009).

[10] See Cal. Penal Code § 680 (2009). Available through www.victimlaw.info.

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Conclusion

We applaud this Committee for its repeated efforts to bring justice to sexual assault victims and other victims of crime. The issue of the effective use of DNA and other forensic evidence is an important one, and appropriate for federal attention. The National Center for Victims of Crime looks forward to working with you in crafting legislation to advance the use of DNA evidence, reduce the backlog of rape kits, and bring a just response to victims of crime.

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WRITTEN STATEMENT OF STEPHEN SALOOM, ESQ.
DIRECTOR OF POLICY, INNOCENCE PROJECT

BEFORE THE U.S. SENATE
COMMITTEE ON THE JUDICIARY

ON ENSURING THE EFFECTIVE USE OF DNA EVIDENCE TO SOLVE RAPE CASES NATIONWIDE
HEARING HELD ON DECEMBER 15, 2009

On behalf of the Innocence Project, thank you for allowing me to submit testimony to the Senate Judiciary Committee as it considers how to ensure the effective use of DNA evidence to solve rape cases nationwide.

As you may know, the Innocence Project represents convicted persons who seek to prove their innocence through post-conviction DNA testing. To date there have been 248 men and women exonerated by such testing nationwide. Private labs have played a critical role in these cases, and in fact a good number of these exonerations were achieved through DNA testing conducted by private labs. The unique and valuable complementary role that private labs can play in exonerating the innocent and identifying the guilty, however, is critically challenged by the recently enacted CODIS regulations. I am writing to urge a change of those rules in a

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manner that ensures quality yet removes needless obstacles to public-private partnerships in the use of DNA to enhance the public safety.

A case that exemplifies the contributions to justice that can be made by private labs is that of Thomas McGowan, who, in 1985, was convicted of a rape committed not by him, but by another man who had eluded justice. The Innocence Project represented Mr. McGowan in his quest for post-conviction DNA testing. Pursuant to an agreement between the Innocence Project and the District Attorney of Dallas County, the rape kit from the case was sent to Orchid Cellmark, a private DNA testing lab in Texas. Cellmark's testing identified a foreign male profile from the 23 year old rape kit and excluded Mr. McGowan as the source. That profile was then run through the Combined DNA Index System ("CODIS") and on June 17, 2008, it hit to Kenneth Wayne Woodson, who had been convicted of a similar crime in 1986.

Mr. McGowan's case is only one of the many cases in which testing by a private lab succeeded in developing a DNA profile that exonerated the innocent and brought the true perpetrator to justice. The biological evidence in our cases – frequently mere remnants of potentially degraded samples – often poses unique difficulties for DNA testing. Public labs are already stretched thin, and thus often do not have the time to give post-conviction samples the additional attention that they require. The use of private labs has allowed our clients to obtain prompt and often time-consuming testing while minimizing the strain on limited public lab resources.

Particularly given existing backlogs - but indeed in any event - private labs provide an essential complement to public labs' ability to conduct the post-conviction DNA testing necessary to test viable claims of innocence. Without their ready ability to participate in the DNA testing so critical to our criminal justice system, justice would not only be delayed, but in some cases, completely denied.

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It is therefore with great concern that we regard the recently enacted CODIS regulations, which have created needless barriers to public-private partnerships in forensic DNA testing. Indeed, the new CODIS regulations, implemented on July 1, 2009, have severely impacted the ability to conduct any forensic DNA testing at private labs and threaten to grind post-conviction DNA testing in particular to a halt.

I. CODIS Regulations Create Costly and Unnecessary Barriers to DNA Testing at Private Labs.

Even prior to the promulgation of the new regulations, uploading private lab profiles into CODIS--called NDIS ("National DNA Index System") at the national level--was difficult. CODIS can only be accessed by NDIS-approved government labs, and the preceding FBI regulations required the NDIS lab to conduct a time-consuming technical review of the private lab's data before the profile could be run through CODIS.

While that situation proved challenging, passage of the new CODIS regulations has exponentially increased the burdens on public labs, which are required to play a role in uploading private labs' DNA profiles to CODIS. Under the new regulations, *before any DNA testing can even begin*, the private lab must seek pre-approval from the NDIS lab confirming that it will accept its data for potential upload to CODIS. The pre-approval process involves a significant expenditure of resources by the NDIS lab, requiring it to do a full review of the private lab's technical specifications, records, and protocols and to conduct an on-site visit. Under the new rules, this process must occur *before* it is even clear that a CODIS-eligible DNA profile can be generated from that testing. Thus, per the new CODIS regulations, these burdensome reviews may often be conducted for naught (if a CODIS-eligible profile cannot be developed), wasting the valuable time and resources of the public lab without any benefit to anyone.

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II. These Regulations Have Created Particularly Devastating Barriers to Post-Conviction DNA Testing at Private Labs.

While the new regulations create additional costs for all forensic testing at private labs, the regulations make post-conviction DNA testing at private labs exorbitantly costly – indeed, cost-prohibitive. Most NDIS labs enter into outsourcing contracts with only one private lab at a time; going through the pre-approval process a single time allows the NDIS lab to send multiple cases to the private lab for testing. But in the context of the Innocence Project's work, the pre-approval process poses a potentially insurmountable barrier.

We have a limited number of cases arising out of any given jurisdiction in a single year, and often our case may be the only outsourced case from that jurisdiction, or we may be using a different private lab from the one doing outsourced cases for a particular jurisdiction. So when we request an NDIS lab to go through the pre-approval process in one of our cases, we are in the position of asking it to incur great expense in time, money and effort so that testing can go forward in a single case where the prospect of a future CODIS search of a foreign profile is still theoretical.

As a result, most NDIS labs that have been contacted to initiate the pre-approval process in our cases have understandably been reluctant to do so or simply refused outright, citing lack of resources. Since we have no way of knowing prior to testing whether the testing will produce a CODIS-eligible profile *and* testing cannot even begin until the private lab receives pre-approval, these regulations are impacting virtually every one of our cases. In fact, we have numerous cases for which courts have ordered post-conviction DNA testing at an accredited private lab with compatible testing platforms, but the evidence is currently sitting at the private lab untested because the NDIS lab has not completed or even agreed to engage in the pre-approval process.

There is presently no relief in sight for this significant barrier to the post-conviction DNA testing that can prove our clients' claims of innocence – and in many case, through CODIS, identify the real perpetrator of those crimes, who had previously eluded prosecution.

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III. Quality must be ensured while this process is improved

This testimony has thus far addressed the value of the complementary role of private labs in important post-conviction DNA testing, and the crippling effect that the new CODIS regulations have on using private labs in the nation's work to free the wrongfully convicted, which always possesses with potential for identifying the real perpetrator who had long eluded justice. But there is an important point that we must also make clear – quality must be assured in the course of that improvement.

The Innocence Project is confident that there are ways that the quality of DNA analyses can be assured while enabling private DNA testing labs to readily contribute to the need for the post-conviction (and other) DNA testing that can identify the guilty and free the innocent. We are fortunate that Congress and the federal government have access to the leaders in DNA quality assurance who can navigate those two important concerns, and we encourage the Committee to explore the options for balancing those needs in the interests of justice and public safety.

IV. Conclusion

Thank you for the opportunity to present this written testimony. These CODIS regulations were surely promulgated to ensure the quality of NDIS profiles submitted by private laboratories, yet they needlessly cost extra time and money, slow the country's ability to analyze DNA in all stages of the criminal process, and have virtually rendered many of our cases inert. Put simply, these CODIS regulations hinder justice. The Innocence Project has proposed certain solutions to the FBI to streamline its CODIS regulations on uploading profiles. And while it is appropriate for the FBI to determine its uploading process, Congress should stand at the ready to require action. The Innocence Project looks forward to providing any support it can to creating a solution that serves our common interest in harnessing the extraordinary power of CODIS to exonerate the innocent and identify the true perpetrators of crime.

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Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
December 15, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
"Ensuring The Effective Use Of DNA Evidence To Solve Rape Cases Nationwide"
December 15, 2009

Today the Judiciary Committee holds its second hearing on the reauthorization of the groundbreaking Justice for All Act. The Justice for All Act included the Debbie Smith Rape Kit Backlog Reduction Act, which authorized significant funding to reduce the backlog of untested rape kits, so that victims need not live in fear while kits languish in storage.

Today we will examine disturbing reports that, despite the important progress we have made to ensure justice for rape victims, in too many jurisdictions, large numbers of rape kits continue to sit untested. When DNA evidence taken from rape victims that could be used to find and convict criminals instead sits on a shelf, rape victims are victimized once again, and our communities become more dangerous rather than safer. That is unacceptable, and we must fix the problem.

Since we passed this important law in 2004, the Debbie Smith Act has resulted in hundreds of millions of dollars going to states for the testing of DNA samples to reduce backlogs. I have worked with Senators of both parties to ensure full funding for the Debbie Smith Act each year.

I welcome Debbie Smith to the Committee once again. She lived in fear for years after being attacked before her rape kit was tested and the perpetrator was caught. Debbie and her husband Rob have worked tirelessly to ensure that others need not experience her ordeal. Debbie is always willing to do whatever is asked of her to advance this cause, even when it means reliving a terrible ordeal. I commend her for her courage.

As I have researched this problem of untested rape kits, there is one thing that I have heard again and again which should be of great comfort to Debbie and Rob and to all of us here: the Debbie Smith program has been working and making a major difference. I have heard from the Justice Department, the states, law enforcement, and victims' advocates that Debbie Smith grants have led to significant and meaningful backlog reduction, and to justice for victims, in jurisdictions across the country.

Eric Buel, Director of the Vermont Forensic Laboratory, described to me how federal funding for testing and a case manager position has resulted in the elimination of all backlogs in Vermont

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and in the efficient use of DNA evidence to solve cases. I hope Vermont will be an example for other jurisdictions, but I also note that Eric was very clear in saying that Vermont's success would not be possible without federal funding through the Debbie Smith program.

Of course we would not be here today if there were not still a problem. Despite the good strides we have made and the significant Federal funding for backlog reduction, we have seen alarming reports of continuing backlogs. A study last year found 12,500 untested rape kits in the Los Angeles area alone, and while Los Angeles has since made progress in addressing the problem, other cities have now reported backlogs almost as severe. The Justice Department released a report last month finding that in 18 percent of open, unsolved rape cases, evidence had not even been submitted to a crime lab.

That Justice Department study gets to one key component of this problem. No matter how much money we send to crime labs for testing, if samples that could help make cases instead sit on the shelf in police evidence rooms and never make it to the lab, that money will do no good. Police officers must understand the importance of testing this vital evidence and must learn when testing is appropriate and necessary. In too many jurisdictions rape kits taken from victims who put themselves through further hardship to take these samples – rape kits that could help law enforcement to get criminals off the street – are sitting untested. That is unacceptable.

In another way, the backlog problem in some jurisdictions shows that we are the victims of our own success. The effectiveness of DNA testing and the availability of substantial funding for testing have led to more and more samples in more and more cases being sent to forensic labs. Labs and law enforcement also face difficult questions of prioritization when there are limited resources.

We are beginning to learn of possible solutions to these different dynamics that contribute to the continuing problem. There must be national standards, protocols, and best practices giving clear guidance to police officers about when kits and other relevant DNA samples must go to labs. Every jurisdiction must have real incentives to provide comprehensive training and put into place these standards for the officers who handle DNA evidence. We must ensure good communication and compatible technology among labs, prosecutors, and law enforcement. We also should reexamine regulations now requiring that samples sent out to good private laboratories then be retested in government laboratories, costing time and money and slowing our ability to reduce backlogs. I look to our witnesses today to help us identify the best ways to tackle this urgent problem.

I thank Senator Klobuchar for her help in putting this hearing together and her leadership on this issue, as well as the many other Committee members on both sides of the aisle who are committed to fixing this problem. It was Senator Kyl who worked closely with me to get the Debbie Smith Act passed. We must now work together to get to the bottom of this problem. The time to solve this problem is now.

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TESTIMONY OF STEVE REDDING
Senior Assistant County Attorney
Hennepin County, Minnesota

Senate Judiciary Committee
"Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide"
December 15, 2009

My name is Steve Redding and I am a Senior Assistant County Attorney in Hennepin County, Minnesota. I supervise the sexual assault unit in our office. Hennepin County encompasses the city of Minneapolis and its 47 surrounding suburbs. Our office serves 1.1 million people.

I want to thank the members of the Judiciary Committee for inviting me here and providing me with a brief respite from the Minnesota winter. I especially want to express my thanks and gratitude to Senator Klobuchar, who was the Hennepin County Attorney for eight years prior to being elected U.S. Senator. From the moment she was elected county attorney, Senator Klobuchar fully understood the power of DNA testing to protect women and children and to assist prosecutors in carrying out our duty to convict the guilty and protect the innocent. Prior to the recent large trend towards using DNA testing to solve property crimes, 90% of the crimes where DNA constituted critical evidence were crimes against women, and the next largest group was children. Her commitment to fully using this incredible technology enabled myself and the other career prosecutors in our office to obtain convictions in cases which previously never would even have been charged. I also want to thank Michael Freeman, the present Hennepin County Attorney, for his unwavering support on DNA issues both now and in the eight years he was county attorney prior to Senator Klobuchar's eight years.

Because I have been a prosecutor for so long – 32 years – I have tried rape cases both before and after the introduction of DNA testing. I can assure you, after is better. Prior to the advent of DNA testing, a probability figure of 1 in 100 from biological evidence was cause for celebration. Now prosecutors that I supervise tell me that something must be wrong with the testing if the number is less than 1 in 1 *billion*. Prosecutors can now tell rape victims not to worry about whether they can identify a perpetrator by sight, because we have the best identifier there is – his DNA. When prosecutors were just starting to get introduced to and familiar with using DNA in court, we had to pick and choose the cases which we would submit for DNA testing. Thankfully, those days are long gone.

While DNA evidence has been a huge help in prosecuting offenders who have been identified by conventional police investigation, it has also had a tremendous impact in solving what we know as "cold cases." I had the good fortune to prosecute the first two cold hit cases in the U.S. in 1992 and 1993. One was a rape homicide of a recent college graduate, and the other was a sexual assault of a young woman by a repeat serial rapist.

I am happy to report that both of those predators are still behind bars almost twenty years later and will never be released from prison. Neither would be there but for the advent of DNA testing. No amount of conventional police investigation could have solved either of those crimes. That I was able to prosecute the first two cold hit cases in the U.S. was not because of anything special I did, but because of the foresight of the Minnesota State Legislature which began funding the Minnesota Bureau of Criminal Apprehension DNA lab in the late 1980s, allowing it to become then what it still is now: an excellent DNA testing lab and a pioneer in DNA testing practices.

I am fortunate to have been a part of this revolution in DNA evidence. Many victims and families of victims have seen justice done which never would have occurred without DNA

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testing. However, my experience has also made me keenly aware that there is much more which could be done to make even greater use of DNA testing. I have several observations and suggestions that I would like to put before this committee.

Before I make these observations, however, I want to state that there is broad agreement on many issues relating to the use of DNA in rape cases: 1) we need to ensure that rape victims never have to pay for their own rape kits to be tested; 2) we need improved infrastructure and lab capabilities so that DNA evidence in rape cases and others can be processed as expeditiously as possible; 3) we need to ensure that our national DNA databases are as up to date, accurate, and comprehensive as they can possibly be; 4) we need to ensure that there is a high level of communication between police departments, DNA labs, and prosecutors to ensure that rape victims – like all crime victims – see justice. This involves consultation when a case is first brought to the attention of police; coordination when lab results are returned; and training of all parties on the best practices and current uses of DNA evidence.

SHOULD ALL UNTESTED KITS BE TESTED?

In terms of improving and ensuring the effective use of DNA evidence to solve rape cases, there has been a spate of publicity recently about thousands of rape kits sitting untested in police warehouses. As a recent CBS Evening News special documented, in a number of jurisdictions, there are large numbers of untested rape kits, and there are still significant disparities between states and localities in their ability to timely process DNA kits.

This begs the question: Should there be a requirement that all of these kits be tested? There are two possible approaches. The first would be to mandate that all untested kits be tested. The second would be to suggest that some type of screening process be implemented to determine if there would be any probative value from testing a particular kit. Before deciding to test all kits, I believe there are two important considerations which must be dealt with.

First, most sexual assault support organizations advise women who have a rape exam performed that the decision to notify police and to have testing done on the evidence taken from them is their decision, not a decision for the police or prosecutor to make. The crime of rape is significantly underreported for a variety of reasons. Many times there is late reporting, by which time any biological evidence is no longer available. Everything possible should be done to encourage all victimized women to participate in the reporting and collection of biological evidence. However, if testing was absolutely mandatory, women would have to be advised that if they participate in the examination, the rape kit would be turned over to police and to a DNA lab. This would lead to a reduction in reporting – perhaps only a slight reduction, but a reduction nevertheless.

Second, the testing of kits and the development of a DNA profile from these kits results in that person's DNA profile being put into a national database. Congress has placed significant restrictions on what DNA profiles can be entered into the database. Even after participating in a rape exam at a hospital, some women inform police that they have no intention of cooperating with a prosecution. Under these or other circumstances, placing that profile into the national database may contravene entry requirements.

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The decision to test or not test requires that a number of additional factors be considered. Some of these and the reason they are important are as follows:

1. In at least 80% of reported rapes, the perpetrator is known to the victim. Some studies suggest this figure is as high as 88% to 93%.
2. The primary benefit of DNA testing is its ability to identify predators where identification was previously impossible.
3. This justification for testing is obviously not present when the perpetrator can be identified by the victim as a person she knows. Thus, if there are 10,000 untested raped kits sitting in a warehouse, it is highly likely that a significant majority are from rape victims who knew the perpetrator.
4. This considerably lessens the likelihood that testing any of those kits from acquaintance rapes would yield probative evidence.
5. This does not mean that there is no value to testing at least some of those kits after screening. There is no justification for concluding that a man who would rape an acquaintance would not rape a stranger. If at least some of the kits from acquaintance are screened and tested, this could yield a connection from that acquaintance rape case to an unsolved stranger rape case.
6. While the vast majority of kits obtained in stranger rape cases should be tested, there are also some rare circumstances where testing would not be appropriate in those instances – for example, if the victim has recanted her story.

In the grant program my office is working on, we do two things with acquaintance rape cases: First, we look to see if the named suspect is in the convicted offender database. If he is, there is no point in performing a DNA test in that case. If he is not in the database, we look at his criminal record/history. If he has an extensive record of convictions and/or police contacts, we may ask the lab to test that kit. The justification for doing so is that we know two things: rape is a crime of opportunity, meaning that he may rape an acquaintance or stranger, and active criminals do not confine themselves to one particular type of crime. Testing that kit in which he is a known contributor may result in connecting him to an unsolved sexual assault or other crime.

Is the segment of kits where the victim reports that she did not know her rapist a group of kits where testing should be focused? I think so. Too many of these kits are going untested. Among the reasons were that sometimes the police were not able to find the victim a few days later, or the victim refused to cooperate when contacted, etc.

Approximately two and one half years ago, we were able to obtain a list from our sexual assault resource center of 99 cases over an 18-month period where the victim reported she was raped by a stranger. I reviewed all of those cases and identified 33 where the kit had not been tested and my review of the police reports led me to believe that there would be a significant possibility of prosecution if DNA testing identified a suspect. Those kits were tested and the results are as follows:

No semen/sperm	5
DNA amount too small	2

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John Doe	13
Hit-Prior sex history	10
Hit-No Prior sex history	3

Of that group of 13 hits:

Convicted	3
Charges Filed	5
Looking for victim	2
Under investigation	1
Consensual Partner	2

Our review of cases from other years indicated that obtaining hits in 13 of 33 cases was unusually high. This validated my initial opinion that there was value in testing this type of case, as we were able to convict three perpetrators as a result of the new "cold case" testing we are doing – and charges have been filed against five more. After obtaining these results, we applied and received grant money from the National Institute of Justice to review other "cold cases" and do even more DNA testing of old rape kits. We are reviewing rape cases going back to 1991, which is the outer limit of the statute of limitations for rape cases in Minnesota. Once our grant project is completed late 2010, we will have more data about the value of testing a segment of these untested kits. More can be done to ensure that most if not all stranger rape cases are tested. Testing all kits where the victim indicates that the rapist was a stranger became mandatory in Minneapolis one year ago.

As we continue to screen reported sex crimes from Minneapolis year by year, we are identifying, from the yearly average of 500 reported sex related crimes 30-40 cases we believe should be tested. NIJ is funding our efforts. More funds should be allocated for similar grants for additional jurisdictions. The grant funds were not sufficient to fund all applicants.

DISPARITIES IN LAB CAPABILITIES, CAPACITIES, AND TIME TO COMPLETION

Minnesota began funding a top notch DNA testing laboratory – the Minnesota Bureau of Criminal Apprehension (BCA) – in the late 1980s, long before most other states began funding DNA labs. Many other areas of the country have only recently begun to utilize the full capability of DNA testing. Some capability and backlog studies either have been done or are in progress. A focused study on lab capabilities nationwide would help identify those areas most in need of additional resources. I am not aware that such a study has been conducted; perhaps this is an area where the National Institute of Justice could be asked to step in and conduct an evaluation.

TRACKING COLD HITS FROM LAB TO POLICE TO PROSECUTORS

DNA hits in rape cases are increasing exponentially. Does anyone really know what percentage of the hits in rape cases reported by labs result in a prosecution? The answer is no. There is no system for tracking DNA hits from lab to law enforcement to prosecutor. As such it is impossible to assess and determine the number of hits and subsequent investigations which

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result in prosecutions. Tracking this data would identify both strengths and weaknesses in the present system and allow for improvements where warranted.

ENCOURAGING COLD CASE COOPERATION BETWEEN POLICE AND PROSECUTORS

If there is anything I have learned in my 32 years as a prosecutor, it is that when police and prosecutors work together on investigations, the outcomes are improved. Unfortunately, cooperation on cold hit cases can be hindered by the fact that most labs treat the law enforcement agency who submits the evidence to them as their only client. As such, the labs only provide reports to the cop who sent the evidence to them. Several years ago, our lab contacted me and asked about the status of 25 hits on rape and murder cases from many years ago. I had never heard about or seen most of those cases. We were able to assist the police department in investigating a number of those cases and were able to successfully prosecute the perpetrators. Following that, I obtained an agreement from the major police departments in our county that the BCA would provide us with contemporaneous notice of all cold hits.

Our lab people tell me that as more labs become accredited under ISO (International Organization for Standardization) protocols, this will become an even more common practice. Apparently, ISO is very restrictive about identifying who the client is and how the lab can treat information generated during the testing. In my opinion, because the district attorney is the chief law enforcement officer of the jurisdiction where the police department is located, and is the ultimate end user of this information, s/he must be notified of cold hits contemporaneously with the police. One possible solution would be a statutory mandate requiring notice to the appropriate prosecutor.

Tragedies can happen when a hit occurs years after the submission of the evidence to the lab. The report will be sent to the police department but the specific officer may have since retired, been transferred, etc. This can and has led to situations where the hit may never be properly investigated. If the perpetrator is left on the street, he is free to commit other crimes. How many hit cases are there out there which should be investigated so that charges can be brought? No one knows.

IMPROVING THE UTILITY OF THE NATIONAL DATABASES

Our national DNA database index system consists of several separate databases. One of these databases contains the DNA profiles of convicted offenders and arrestees submitted by federal, state and local DNA labs. The second database contains DNA profiles from crime scenes and crime victims. These databases are periodically searched against each other. Any matches or hits are then reported to the submitting law enforcement agency.

The ability of this DNA index system to solve crimes is dependent on two factors: the submission of all appropriate DNA profiles from the broadest group of convicted felons (or arrestees) and the submission of DNA profiles from crime scenes and crime victims. I could give many examples of instances where a violent crime was solved as a result of the perpetrator's DNA being put into the convicted offender database for a rather minor crime, but one in particular stands out. In September of 1989, a young woman was stabbed to death in south

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Minneapolis. Last year, as part of a cold case homicide project, Minneapolis Police Sergeant Barbara Moe found evidence from that crime and submitted it for DNA testing. A DNA profile was developed and compared to those in the Minnesota convicted offender database. That profile hit to a man whose only felony conviction was for felony drunk driving. Ironically, Senator Klobuchar was largely responsible for a Minnesota law which made drunk driving a felony after 3 convictions. I charged that man and he is now doing 25 years in prison for a crime that would otherwise never have been solved. This is a magnificent example where the law of unintended consequences led to a terrific outcome. Research has shown that a very small segment of the population is responsible for a huge proportion of all crimes. By age 25, half of all crimes, and 2/3 of all violent crimes, are committed by 6% of a given age group. By age 30, 74% of all crimes, 84% of personal injury crimes, and 82% of all property crimes are committed by that same 6% of the given age group. The more of this 6% population segment whose DNA is in the convicted offender or arrestee databases, the more crimes we can solve.

Congress has wisely left it to the states to individually determine what crimes qualify a convicted offender to have his or her DNA profile entered into the database. The natural evolution has been for states to broaden the universe of crimes which qualify for the mandate that a convicted offenders DNA be put into the database. Many states and the federal government have gone beyond conviction and now as far as requiring that DNA samples be taken from arrestees. Experience has proven that larger databases mean more hits.

Recently, however, Wisconsin discovered that due to several factors, there were 12,000 convicted felons who were required by law to submit DNA samples but had not done so. There is no reason to believe that this is a problem unique to Wisconsin. Efforts should be made to determine if there are similar problems elsewhere and to ensure that DNA profiles of all convicted offenders or arrestees are entered into the database.

POLICE, SARS NURSE AND PROSECUTOR TRAINING

For a number of years, prosecutors from around the U.S. who had extensive experience with DNA cases were providing training to prosecutors without DNA experience. Those efforts are no longer funded and are critical to ensure the most productive use of DNA evidence to prosecute all crimes, including rape. Of course, it is not only important to train prosecutors about DNA evidence – it is also critical to provide training to medical professionals and other members of law enforcement.

DNA testing is completely dependent on the proper collection of evidence which may contain biological material from the perpetrator. If the only important piece of biological evidence left by a perpetrator is missed in the evidence collection process, the chance to identify the perpetrator has been lost. Perpetrators know about DNA. As DNA testing has become more prevalent and in the news, rapists are more likely to use condoms and other means to avoid leaving any biological fluids. One such perpetrator carjacked and raped his victim, then ejaculated on her pants, and took her pants with him when he fled. She yelled at him to leave them and he responded, "I'm taking these for DNA purposes." He thought he had taken the only evidence which could connect him with the crime. However, during her interview of the victim, a specially trained nurse learned that the perpetrator had talked on the victim's cell phone. The

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nurse swabbed the phone receiver and obtained a sample of the perpetrator's DNA, which was tested and a match was found in the convicted offender database. He is charged and awaiting trial.

The same can be said for police training. There is a lack of understanding among police officers that cold hit investigations should be conducted differently than conventional police investigations. Interrogation of a suspect in a cold case is crucial and should be conducted very differently. Better training would enhance police interrogation techniques and result in more prosecutions. Finally, many police officers are not completely aware of what the full capability of DNA testing is. As such, police officers without that knowledge may neglect to have rape kits tested which should be tested. The better practice would be to encourage police officers to consult with a prosecutor knowledgeable in DNA testing decisions about testing are made.

Many prosecutors knowledgeable about DNA testing are more than willing to share their expertise with other prosecutors, SARS nurses and police, both within and without their individual jurisdictions. Training should be encouraged and funded to the extent possible.

UNFINISHED TESTING OF CASES IN DNA LABS

For very good reasons, DNA labs require that whenever possible, known DNA samples from all involved parties be provided to the lab along with the evidence sample to be tested. One of the questions asked of a rape victim is whether or not she has had any consensual sexual relations with anyone within 72 hours from the time she was raped. Often a victim will have had consensual sex with a partner within that time period and thus there may be biological evidence from the consensual partner present. The DNA profile from the consensual partner may complicate the interpretation of the DNA profile from a mixture of DNA from the victim, the perpetrator and the consensual partner.

After DNA labs have done the initial screening, if there is an indication that DNA from a consensual partner may be present, a letter is sent to the police. The letter indicates that testing will begin as soon as a sample from the consensual partner is provided. There appear to be a substantial number of cases where this is not done. Thus, no further testing is ever done on that evidence. This completely negates any possibility that a DNA profile from the perpetrator will be developed. There may be hundreds if not thousands of such samples waiting to be tested. It would be possible to conduct a screening of those cases to determine which of them should be tested to completion and any profiles derived could then be entered into the national database. A better practice from this point forward would be to also send that notice to the district attorney to help ensure that the known sample is indeed provided wherever possible.

Thank you for inviting me to testify before you today and I look forward to continuing to work on maximizing the use of DNA technology.

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PREPARED STATEMENT OF

JAYANN SEPICH

before the

COMMITTEE ON JUDICIARY

UNITED STATES SENATE

Washington, D.C.

December 15, 2009

Mr. Chairman and members of the Committee, my name is Jayann Sepich. I appreciate this opportunity to speak to you today regarding the very important matter of forensic DNA testing and related backlogs. I am here today as the mother of a murder victim, as well as a representative of the Surviving Parents Coalition. The Surviving Parents Coalition are parents of children who were abducted, sexually assaulted, murdered, recovered or are still missing. As a group, we advocate for legislation that will aid in the prevention of crimes against children and young people, especially sexual abuse, sexual assault, exploitation, abduction and murder. Forensic DNA is vital to solving many crimes committed against children, particularly as children are often not able to put the crimes committed against them into words. As such, support of DNA is a legislative priority for the Coalition.

In August 2003, my oldest daughter Katie, a vivacious 22 year old student at New Mexico State University, was brutally attacked just outside her home, which was located in a supposedly safe neighborhood. She was raped, strangled, her body set on fire, and abandoned at an old dump site. I have no doubt that it is never easy to lose a child for any reason, but the pain and horror at losing our daughter, our first child, this violently is beyond description.

No strong suspects emerged in Katie's case, but Katie had fought hard for her life. Skin and blood were found under her fingernails, leaving the attacker's DNA sample. This

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evidence was vital to solving her case. I know now how very lucky we were that Katie's murder was such a high-profile case. The Dona Ana County District Attorney used funds from her own account to send the evidence in Katie's case to a private DNA testing laboratory in order to get quick results. The wait on DNA analysis at the New Mexico state crime laboratory was over a year, and she was not willing to allow this case to languish. In fact, the New Mexico state laboratory suspended all DNA testing in late October when it was unable to renew its accreditation, and only resumed testing last week.

A DNA profile was generated at the private laboratory and that profile was sent to the national DNA database system (called CODIS). I cannot describe the bright hope this news gave our family. Finally. We knew who he was by his unique DNA profile – we just needed to match this profile to a name on the database.

There are thousands of families who have found this hope for their own cases. And it pains me to think that there may be thousands more still waiting. When I read of the thousands of rape kits that have not been tested around the country, I don't see evidence. I see the faces of victimized women. These are all women who have someone who loves them. A mother. A father. A child. They deserve justice. They deserve to have the evidence in their cases tested in a timely manner. Without testing, there may be no hope for justice. And without justice a murderer or rapist will remain on the streets. Victimizing more people. Creating more backlogged evidence. This is unconscionable.

When I learned of the existence of DNA evidence in Katie's case and CODIS I thought, "A person this horrible will commit another crime and be arrested. Soon we'll know who killed Katie." But that's when I learned that, while every state takes fingerprints from individuals arrested for crimes, most state laws did not allow law enforcement to take DNA for felony arrests. I was dumbstruck. We do not allow our law enforcement to check the DNA database for a possible match before allowing people accused of the most heinous crimes in our society – murder and rape – to be released on bail. We do not bother to check the DNA database. We just release them.

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This is when I began to research and study the issue of taking DNA upon arrest. Based on my research, I became a national advocate for the taking of DNA upon arrest. My husband and I started the non-profit association DNASaves in order to advocate for arrestee DNA laws nationwide. We know we cannot ever bring back Katie. But we absolutely believe that we may be able to prevent this horrible pain from being visited upon other, unsuspecting parents.

In 2006, my husband and I fought for the enactment of "Katie's Law" in New Mexico to require DNA upon arrest for felonies. Since "Katie's Law" was implemented in January 2007, New Mexico's DNA database program has registered 104 matches of unsolved crimes to 86 individual arrestee DNA profiles (several arrestees were linked to multiple unsolved crimes). In Bernalillo County, the first arrestee's DNA sample was taken from James Mussaco at 1:14 AM on January 1, 2007. It was matched to a double homicide case and Mussaco has since been convicted in that case.

Over three years after Katie was murdered, in December of 2006, the New Mexico DNA database matched the unknown DNA profile found under Katie's fingernails to a man recently included on the DNA database after a felony conviction. Gabriel Avilla had been arrested in November 2003, less than three months after Katie was killed, on aggravated burglary charges for breaking into the home of two women, while armed with a knife, after watching them through a window. The women were able to escape harm by barricading themselves in a bathroom and called police.

Avilla was convicted of the aggravated burglary in March 2004, but was released on bond before sentencing and promptly disappeared. Authorities recaptured Avilla in August 2005 and incarcerated him. His DNA was finally taken, and a match was later made to Katie's case in December of 2006. He was formally charged on December 26, 2006 — which happened to be Katie's 26th birthday – and eventually plead guilty to the murder. He will spend the rest of his life in prison.

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If New Mexico had required a DNA sample for Avilla's felony arrest in November of 2003, Katie's murder would have been solved three years sooner, saving thousands of dollars in investigation costs and saving her friends and family years of additional pain as they sought closure and prayed for justice. More importantly, Avilla would have remained in police custody rather than being released on bond only to flee justice.

Avilla's activities are largely unaccounted for during the time he was missing. We may never know if there were other lives that he jeopardized, or other crimes that he committed.

Of the 104 matches in New Mexico, nine of these have identified suspects in unsolved murders, and 16 have identified suspects in unsolved sex-related crimes. These numbers may seem insignificant to a state like California, but with New Mexico's population of under 2 million, this is a very big deal.

But we cannot consider only one side of the database. Without a strong database of offenders and arrestees, we will necessarily limit the number of cases for which we can identify potential suspects through DNA matches. Likewise, a strong database of offenders and arrestees is useless if law enforcement if the evidence is not being submitted and/or analyzed. Through my advocacy work on DNA database expansion and funding issues, I have come to meet families of murder victims, abducted and recovered children, and surviving rape victims. We owe it to these survivors to solve their cases. We owe it to ourselves to stop these criminals in their tracks before they offend someone we know and love next. The evidence must be tested in a timely manner. We must do everything we can to make full use of this invaluable scientific tool for solving and preventing crimes. To do otherwise is criminal.

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ELIZABETH AIDA HASKELL and REGINALD ENTO, on behalf of themselves and others similarly situated, Plaintiffs, v. **EDMUND G. BROWN, JR., Attorney General of California; EVA STEINBERGER, Assistant Bureau Chief for DNA Programs, California Department of Justice; and MICHAEL HENNESSEY, Sheriff, San Francisco County,** Defendants.	CV 09-4779 CRB **DECLARATION OF JAYANN SEPICH** Date: Dec. 4, 2009 Time: 10:00 a.m. Courtroom: 8, 19th Floor Judge The Honorable Charles R. Breyer Action Filed: October 7, 2009

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I, Jayann Sepich, declare under penalty of perjury as follows:

1. I make this declaration in opposition to Plaintiff's motion for Preliminary Injunction. This declaration is based on my own personal knowledge and if called to testify I could and would do so competently as follows.

2. I am a resident of Carlsbad, New Mexico.

3. In August 2003, my daughter Katie, a vivacious 22 year old student at New Mexico State University was brutally attacked just outside her home. She was raped, strangled, her body set on fire, and abandoned at an old dump site.

4. No strong suspects emerged in Katie's case, but Katie had fought hard for her life. Skin and blood were found under her fingernails, leaving the attacker's DNA sample.

5. This DNA sample was profiled and that profile was sent to the national DNA database system (called CODIS), where officials hoped a match would be made.

6. When I learned of the DNA evidence and CODIS I thought, "They are arresting people every day, so soon we'll know who killed Katie." But I soon learned that, while every state takes fingerprints from individuals arrested for crimes, most state laws did not allow law enforcement to take DNA for felony arrests.

7. Over three years after Katie was murdered, in December of 2006, the New Mexico DNA database matched the unknown DNA profile found under Katie's fingernails to a man recently included on the DNA database after a felony conviction. Gabriel Avilla had been arrested in November 2003, less than three months after Katie was killed, on aggravated burglary charges for breaking into the home of two women, while armed with a knife, after watching them through a window. The women were able to escape harm by barricading themselves in a bathroom and called police.

8. Avilla was convicted of the aggravated burglary in March 2004, but was released on bond before sentencing and promptly disappeared. Authorities recaptured Avilla in August 2005 and incarcerated him. His DNA was finally taken, and a match was later made to Katie's case in December of 2006. He was formally charged on December 26, 2006 — which happened to be Katie's 26th birthday – and eventually plead guilty to the murder. He will spend the rest of his life in prison.

9. If New Mexico had required a DNA sample for Avilla's felony arrest in November of 2003, Katie's murder would have been solved three years sooner, saving thousands of dollars in investigation costs and saving her friends and family years of additional pain as they sought

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closure and prayed for justice. More importantly, Avilla would have remained in police custody rather than being released on bond only to flee justice.

10. Avilla's activities are largely unaccounted for during the time he was missing. We may never know if there were other lives that he jeopardized, or other crimes that he committed.

11. As a result of the brutal rape and murder of my daughter Katie, I began to research and study the issue of taking DNA upon arrest. Based on my research, some of which is included here, I became a national advocate for the taking of DNA upon arrest. My husband and I started the non-profit association DNASaves in order to advocate for arrestee DNA laws nationwide. We know we cannot ever bring back Katie. But we absolutely believe that we may be able to prevent this horrible pain from being visited upon other, unsuspecting parents.

12. In 2006, my husband and I fought for the enactment of "Katie's Law" in New Mexico to require DNA upon arrest for felonies. Since "Katie's Law" was implemented in January 2007, New Mexico's DNA database program has registered 101 matches of unsolved crimes to 83 individual arrestee DNA profiles (several arrestees were linked to multiple unsolved crimes). In Bernalillo County, the first arrestee's DNA sample was taken from James Mussaco at 1:14 AM on January 1, 2007. It was matched to a double homicide case and Mussaco has since been convicted in that case.

13. Of the 101 matches, nine of these have identified suspects in unsolved murders, and 16 have identified suspects in unsolved sex-related crimes. These numbers may seem insignificant to a state like California, but with New Mexico's population of under 2 million, this is a very big deal. A true and correct copy of the spreadsheet of New Mexico DNA matches to arrestees, as provided to me by the Administrator of the New Mexico DNA Identification System, is attached to this declaration as Exhibit A.

14. New Mexico's law is bringing justice for victims in other states as well. Alvaro Medina was arrested in Albuquerque and was linked to an unsolved homicide in Nevada. Medina has been charged with this homicide, and Nevada detectives have told me that the suspect had never previously been considered in connection with this crime. The Las Vegas Metropolitan Police Department released an announcement regarding the arrest in this case, which can be found at http://www.lvmpd.com/news/pdfs/2008/102908release_b.pdf. A true and correct copy of the announcement can be found at Exhibit B.

15. But I am most proud of the DNA match that solved the murder of 11 year-old Victoria Sandoval. Victoria was sexually assaulted and killed in her grandparents' home on October 31,

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2005. A man named Robert Gonzalez was quickly arrested in connection with the crime and confessed. However, the DNA evidence in the case did not match his own profile. Nonetheless, law enforcement and prosecutors felt certain he was involved and continued with the homicide charges. Gonzalez was jailed for more than two years pending various legal proceedings regarding his competency and admission of the confession.

16. In April 2008, a man named Israel Diaz was arrested on felony burglary charges, and his DNA sample was matched to the unknown profile in the Sandoval murder case. Investigators determined that Gonzalez and Diaz were in no way connected and that Diaz acted alone in this heinous crime. Gonzalez was finally released from police custody in June 2008.

17. Without arrestee DNA testing, Gonzalez may easily have been convicted in this case, despite the fact that the DNA evidence excluded him as a contributor, and Diaz would have gotten away with the crime. In fact, Diaz was eventually located in federal custody after the DNA match -- facing deportation as an illegal immigrant. Had Diaz's sample not been collected upon arrest for his felony crime, Gonzalez may very well have been wrongly convicted of the crime. And Diaz would have gotten away with murder, while remaining free to potentially victimize more little girls.

18. The ability of arrestee DNA testing to prevent crimes should not be overlooked. There are examples from around the nation proving how important arrestee DNA testing is to protecting public safety and preventing violent crimes.

19. In California, on January 26, 1987 Chester Dewayne Turner was arrested for assault with a firearm on person. There was not enough evidence to convict him and he was set free. His DNA was not taken. He was arrested over 20 times before he was convicted of a charge that resulted in DNA being taken. In 2002, he was convicted of rape, and his DNA was taken. It matched the DNA evidence found on twelve rape and murder victims. The first was murdered in March of 1987, less than two months after his January 26, 1987 arrest.

20. Had Chester Turner's DNA been taken when he was arrested on January 26, 1987, it is probable that eleven of his victims would still be alive. Murders linked by DNA to Chester Dewayne Turner:

a. Diane Johnson – March 9, 1987
b. Annette Ernest – October 29, 1987
c. Anita Fishman – January 20, 1989
d. Regina Washington – September 23, 1989

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e. Debra Williams – November 16, 1992
f. Mary Edwards – December 16, 1992
g. Andrea Triplett – April 2,1993
h. Desarae Jones – May 16, 1993
i. Natalie Price – February 12, 1995
j. Mildred Beasley – November 6, 1996
k. Paula Vance – February 3, 1998
l. Brenda Bries – April 6, 1998

21. In Illinois, the Chicago Police Department prepared a case study of eight serial killers and rapists, identifying 60 violent crimes could have been prevented -- including 53 murders and rapes -- if Illinois had required DNA upon felony arrest. These eight offenders accumulated 21 prior felony arrests, of which only seven arrests were for violent felonies. The remaining two-thirds of arrests were for non-violent felonies. A true and correct copy of the study can be found at Exhibit C.

22. A study prepared by the Office of the Governor of Maryland identified 20 violent crimes that could have been prevented if DNA samples had been required upon arrest for just three individuals. A true and correct copy of the study can be found at Exhibit D.

23. In Colorado, the Denver District Attorney's Office released a study of 47 violent crimes that could have been prevented if DNA had been collected upon felony arrest for five individuals. A true and correct copy of the study can be found at Exhibit E.

24. These case studies of just a handful of individuals in four States find 138 preventable violent crimes had a buccal swab of persons arrested for felony crimes been collected for identification at the same time as fingerprints and mugshots.

25. In conclusion, I have very little in way of credentials compared to that of others the Court may hear from. What I know of criminal investigations and the legal system I learned as the mother of a murder victim. What I have learned of forensic DNA I have taught myself through research and through conversations I have had with experts in forensic science. But I do know what it means to lose a child to a senseless murder. And I know what it means to find justice. Requiring DNA upon arrest can stop these repeat criminals in their tracks. Names can change, appearances can be altered, even fingerprints can be purposely marred to hide a person's true identity. But the forensic DNA profile does not change. Law enforcement should have a right to determine the true identity –through forensic DNA analysis -- of an individual in custody

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for a serious felony crime, and to ensure that such persons are not being sought in connection with other crimes. As the surviving mother of a murder victim, to do anything less seems negligent to me.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of November, 2009 in Carlsbad, New Mexico.

Jayann Sepich

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Senate Judiciary Hearing

Debbie Smith

December 15, 2009

Let me begin by saying how honored I am to have been included in this panel before you today. As a surviving victim of sexual assault I understand the importance of the work that is to be done, though I may look at this discussion from a much different view point from many of you. I bring no professional perspective to this table seated with some the top professionals in their field ... but I can offer you firsthand knowledge of the importance of timely testing of DNA evidence and elimination of the current backlog of both suspect and victim kits. My personal experience attests to how imperative it is that we move quickly.

For the next few minutes, I would like for each of you to remove your political hats and take your place as a husband, father or brother; or as a mother, sister or friend. You have just received the news that your loved one was abducted from her home and taken to the woods, where she was robbed and raped. He entered her home in the middle of the afternoon through a door that was left unlocked for a matter of moments. This masked man repeatedly said that he would return and kill her if she told anyone and she believes him. She cries hysterically, pleading with you not to call the police. But in your heart you know it is the right thing to do. The police are called and your loved one sits in shock as she is asked countless questions. Your heart is breaking as you watch her trying to hold on to her sanity ... but you are void of any way to ease her efforts. Watching her struggle to make sense out of what has just changed her life so completely hurts beyond measure. You feel helpless wanting to take away the pain that is so evident in her eyes. Within your heart and mind a search begins for surely there must be something you can do to make it better or somehow easier ... but the search is in vain for there truly is nothing that you can do.

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You convince her to go to the hospital to have the only real physical evidence collected. This person you love is begging you not to make her go, but you know you have to deny these pleas, just as you had to deny her cries not to call the police. Your prayer is that you are helping her to make the right decisions ... ones that she would make herself, if only she could. It is what you've been taught is the next step ... the right thing to do.

As the two of you walk into the hospital you try to make her understand that this is necessary ... the only way to catch this man and prevent him from hurting anyone else. She walks like a frightened child, terrified and confused. She hears you tell the receptionist that she was RAPED! Her mind begins to reel, "NO! It just can't be true! Rape doesn't happen to people like me!" The nurse leads the two of you to a room where the questions begin all over again. Three nurses and a doctor are going in and out ... questions, questions and still more questions. You begin to wonder if this was the right thing to do after all. The look in her eyes conveys the sheer desperation she is feeling ... needing to know that someone is on her side and that someone believes her.

But her nightmare continues as she is asked to lie down on the table, put her feet in the stirrups and to spread her legs. A male doctor then begins this invasive procedure by plucking, probing, combing and swabbing her just hours after being attacked by another man. Her face reveals her humiliation, she is crushed and feeling even more vulnerable. What was left of her self esteem has now completely vanished from her limp body. Simply put, she feels violated all over again. Your only hope is that one day this very procedure will make bring justice.

As you leave the hospital, you trust things will be better for her now. But it doesn't take long before the vacant stares give away that she has been robbed of any joy in life. She is alive physically, but she has died inside. Her fear is apparent as you watch her struggle to leave the house or allow the children out of her sight, as her rapist's threats will not leave her mind. "Remember I know where you live and I will come back and kill you if you tell anyone."

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Because you know her so very well, you fear that one day you'll find that she has taken her own life. All she wants is her freedom. She craves peace of mind. She wants to feel safe. She wants justice. She waits. My husband and I lived this nightmare and the feelings are as present with us now as they were then.

When a rape victim submits to the very intrusive four hour evidence collection process she at least knows that she has done her part ... she has done all that has been asked of her ... to keep this man from hurting anyone else. Unfortunately, there is a very good chance that this vital evidence will sit on a shelf with thousands of other rape kits. Each box holds within it vital evidence that is crucial to the safety of women everywhere. Each day that passes without the identity of these rapists being known, allows them to continue to claim victims ... and they will. Statistics prove that the average rapist claims eight to twelve victims before he is caught. How many of them could have been prevented? I merely existed for six and 1/2 years waiting for my rapist to be identified, trying my best to deafen the sound of his voice in my ears, "Remember I know where you live and I will come back to kill you if you tell anyone." But fear for my family and myself held my heart and soul within its grip, choking out any joy of life. I became suicidal seeking peace and rest from the pictures that played constantly in my mind. But finally DNA revealed the identity of my rapist, giving me the sweet breath of validation and promised justice. I want every victim of sexual assault to experience this gift of renewed life, and I am here today on behalf of those thousands of victims whose cases continue to sit on the shelves, I am here for those future victims, and for those who sit in a prison cell wrongly accused. I speak today for victims like Amy, attacked in1996 she had no hope that her rapist would be identified because the rape kit collected yielded very little DNA evidence. Amy tried to find peace from her memories through therapy, anti-depressants and alcohol. By 2004 DNA technology had changed, her evidence was retested and revealed the DNA profile of her attacker and has linked him with at least two other cases. Amy says, "Today I have hope. He still haunts me. I still have fear. But I also have hope and a new purpose in life."

VerDate Nov 24 2008 09:30 Jun 07, 2010 Jkt 056520 PO 00000 Frm 00088 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56520.TXT SJUD1 PsN: CMORC

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I am also here for those who can no longer speak for themselves. A lab scientist from FL related the story of a rape victim who waited until she could wait no longer. This was evidently a case they had worked on for some time, for the day the DNA match was made the scientist went to deliver the news in person to the detective working the case. The detective looked at her with a very solemn face and said, "That's great but the victim committed suicide last night." Unfortunately this is not an isolated case.

Finally, I am present today on behalf of those wonderful forensic nurses some who give up their own personal money and time to learn how to best help a victim of sexual assault, and I am here for the scientists who are overworked and under paid, but continue to labor feeling overwhelmed by what seems to be an endless task.

It is now time to put your political hats back on, empowering you with the ability to make a difference. It is within your capacity as a legislator to make sure these kits are taken off the shelf and reviewed to ascertain if there is any viable forensic evidence within. Can you imagine going through this examination only to have the results sit on a shelf?

When someone is robbed, everything possible is done to find this person who has taken what does not belong to him. Prosecution is pursued and the guilty is made to return what was stolen to its rightful owner. You are powerless to return to rape victims what was taken from her. For how can you restore her dignity, innocence, or peace of mind? Can you remove the pictures that play in her mind without warning? YOU CANNOT! But you can give her justice by making her rapist pay for his crime. You can DO something!

Lady Liberty stands proudly in the New York harbor offering freedom for all within our borders. Equal justice under law is etched in stone across our Supreme Court Building and our flags are raised high symbolic of our pledge of liberty and justice for all. Sexual assault victims across

VerDate Nov 24 2008 09:30 Jun 07, 2010 Jkt 056520 PO 00000 Frm 00089 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56520.TXT SJUD1 PsN: CMORC

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our country wait for that pledged freedom from the chains of fear and guilt her attacker would have constrain her. She anticipates the promised justice to be imparted for the crime committed against her. I ask that you use your power to award her what is promised to all Americans ... liberty and justice for all.

VerDate Nov 24 2008 09:30 Jun 07, 2010 Jkt 056520 PO 00000 Frm 00090 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56520.TXT SJUD1 PsN: CMORC

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Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide
December 15, 2009

Testimony of

Stephanie Stoiloff

Commander, Crime Laboratory Bureau
Miami-Dade Police Department

American Society of Crime Laboratory Directors Board Member

Good morning Mr. Chairman and Members of the Committee. My name is Stephanie Stoiloff. I am the Crime Laboratory Director at the Miami-Dade Police Department and I am responsible for managing the operation of a full service crime laboratory. In addition to my duties as a crime laboratory director, I am also on the Board of Directors of the American Society of Crime Laboratory Directors (ASCLD), which represents the interests of over 500 crime laboratory directors throughout the United States and overseas and plays an active role in ensuring the quality, integrity and credibility of forensic laboratories. I appreciate the opportunity to testify before your committee today and I am honored to be asked to speak to you about ensuring the effective use of DNA evidence to solve rape cases nationwide.

Crime laboratories and forensic scientists play a critical role in the criminal justice system by ensuring the proper collection, preservation, and scientific analysis of crime scene evidence. The successful investigation and prosecution of crimes is dependent upon quality forensic services. Crime laboratories also provide scientific analysis services in areas such as Controlled Substances, Crime Scene Investigation, Firearms, Latent Prints, and Trace Evidence. It is estimated that these additional (non-DNA) forensic service areas comprise almost 90% of a crime laboratory's annual caseload. A significant backlog exists in all areas of forensic science, not just DNA. Crime laboratories are facing great difficulties in their attempts to find the funding, staffing and other resources to analyze cases in all forensic disciplines.

DNA is a powerful investigative tool to solve many cases including sexual crimes. Federal funding has been a driving force in enabling laboratories nationwide to increase their capacity for DNA analysis. In fact, according to figures from the National Institute of Justice DNA Program, the capacity to process DNA cases has increased by 280% nationwide from 2005 to 2008. Unfortunately, the demand for testing has also increased by 260% over this same time period. While crime laboratories nationwide are working to reduce backlogs and increase their capacity to analyze the maximum number of cases possible, crime laboratories are also facing great difficulties in obtaining the resources necessary to analyze DNA as well as all other forensic disciplines.

The role of crime laboratories is two-fold: to provide investigative leads in order to remove dangerous offenders from the streets or exonerate an innocent suspect and to provide the

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results and interpretations resulting from these scientific examinations in a court of law. Crime laboratories face different challenges in order to provide this information in a timely manner. It is our practice at the Miami-Dade Police Department Crime Laboratory Bureau and many crime laboratories nationwide to prioritize cases. For the Miami-Dade Police Department, this prioritization begins at the Central Evidence Reception Facility. Cases are screened to determine if all evidence and standards have been submitted for a complete analysis. If the case is complete, the case is then forwarded to a Criminalist within the Forensic Biology Section for analysis. The Miami-Dade Police Department Crime Laboratory Bureau has a written prioritization policy and the highest priorities are violent crimes cases involving stranger offenders; that is, homicides, police shootings or sexual assault cases where the subject is unknown. All sexual assault cases are immediately assigned. If necessary, the Forensic Biology Criminalist then contacts the submitting investigator(s) to set up a meeting to clarify the details of the case in order for the Criminalist to determine which items are the most critical to the investigation. The Crime Laboratory Bureau makes every attempt to analyze the items most likely to yield information essential to the investigation first. The initial analysis of priority items enables the laboratory to work more efficiently and provide information in a timely manner, typically within a few days. After any/all items submitted as priority have been analyzed, additional items may need to be submitted for examination. The request of analysis of additional items could be critical to the identification of a subject or they can be items that are necessary for trial. The DNA analysis conducted to identify a subject who is an immediate threat to society has a higher priority than the analysis of samples for a trial that is years down the road.

In Miami-Dade County, the Crime Laboratory Bureau analyzes the evidence submitted by over thirty-five municipal agencies as well as federal agencies upon request. When faced with the decision of what to collect at a crime scene, the Crime Laboratory Bureau instructs submitting agencies to collect everything. As a result, evidence is collected that does not need to be analyzed because the analysis does not provide information critical to the case at that time; however, in the future, the analysis might be necessary and the evidence has been preserved. In large cases, particularly homicides, the determination of which items will be analyzed first will be decided in collaboration with the assigned Criminalist, the detective and the prosecutor. Any issues that arise as a result of submission are handled at the Central Evidence Reception Facility. The submitting entity is provided with a clear explanation of what information and/or sample(s) is needed before the laboratory will accept the case. The Miami-Dade Police Department Crime Laboratory Bureau also provides training as to evidence collection, packaging and submission. This training is provided in-house, at local trainings such as the Medical Examiner's Death Investigation Course, Crime Scene courses as well as other specific training provided for municipal agencies. These trainings provide valuable interactive sessions to improve the quality of evidence collection.

Crime laboratories are faced with insufficient personnel, facilities, equipment, training, and funding to meet the service needs and expectations of investigators, courts, and citizens. Forensic science has become an increasingly critical component of the successful investigation and prosecution of criminal cases. However, the timely disposition of cases is impacted by a lack of funding to support the staffing, equipment, training, and facility needs

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of forensic laboratories nationwide.

As a result of the glamorization of forensic science on television, DNA requests are made of the crime laboratory because the jury expects the evidence to be tested. There are many, many requests that are made of the lab to perform DNA testing when the identity of the subject is not in question. If identity is not in question, why drain precious laboratory resources? Prosecutors need to explain that television drama is just that: a dramatization of fictitious events and capabilities. In a perfect world with unlimited resources including staffing, space and supplies, every lab could analyze every sample from every case. However, the reality is quite different. There are resource issues nationwide that preclude the analysis of every item and of every case. Each case is evaluated separately and each case is different. For example, if a consensual sexual assault is submitted for analysis with an underage female and her adult boyfriend, should this receive the same level of attention as a stranger rape? Crime laboratories, as a whole, do not treat these cases the same way. We clearly understand the value of analyzing sexual assault evidence. This does NOT mean that a consensual sex case would not ever be analyzed but it does mean that the prioritization is necessarily different. If crime laboratories were to examine every case as they are submitted, then other cases would go unexamined.

The primary challenges that face crime laboratories? Backlogs exist within a crime laboratory. There is no single explanation that defines what makes up a backlog. Is it cases in-house that have not been opened? Cases that have not been assigned? Cases in progress but not yet complete? Cases never submitted to the laboratory? Crime laboratories can only manage the cases that exist. In our experience, a written prioritization policy allows the Miami-Dade Police Department to manage the backlog and triage the analysis of cases. This translates to a constant re-prioritization and continual juggling of priorities to meet the needs of the judicial system. This juggling is not performed in an arbitrary manner; there are defined priorities for all cases that enter a crime laboratory. Incoming priorities are the violent crimes; however, the cases that go to trial fastest are property crimes. The question is then posed as to why valuable resources are spent on the DNA analysis of property crimes. Data collected by the Florida Department of Law Enforcement revealed that 52% of violent offenders had a burglary in their past. The sooner the DNA from these subjects can be collected, the quicker the identifications are made and the offenders are convicted. The idea here is prevention. The earlier they are removed from society, the less opportunity they have to progress to violent crimes. Crime laboratories are actually victims of our own successes. At the Miami-Dade Police Department, we have made over 2,900 DNA hits; approximately 74% of these are to residential and commercial burglaries or auto thefts.

Training is essential to every aspect from collection of evidence to submission of evidence to analysis. The Miami-Dade Police Department Crime Laboratory Bureau provides training to investigators, attorneys and judges. Publications such as "Guidelines for the Collection and Preservation of DNA Evidence," and the more recent brochure and training CD entitled "What Every Law Enforcement Officer Should Know About DNA," developed by the Commission on the Future of DNA Evidence, explain the importance of DNA evidence; this information should be common knowledge among law enforcement and criminal justice personnel. Training curricula for every law enforcement recruit should include, as a matter of

56520.058

routine, procedures for the proper collection and storage of DNA evidence. In addition, cold case squads exist in many jurisdictions to review old unsolved cases for any biological evidence and, if available, submission to the forensic laboratory for analysis and entry into the Combined DNA Index System (CODIS).

Cold case violent crimes are important and Congress has repeatedly allocated funding to use current technological advancements to re-examine cold cases. The Miami-Dade Police Department has actively pursued federal funding under the Solving Cold Cases with DNA grant program and has successfully obtained over $1.1M to re-examine cold case violent crimes. Of the first 100 cold sexual crimes cases submitted to the laboratory, 68 DNA profiles were developed and uploaded into CODIS and 32 hits were made (47%). Forensic scientists apply for this funding to do more, to use our capabilities to identify subjects in cases where all other leads have been exhausted. The Miami-Dade Police Department Crime Laboratory has a cold case team consisting of members representing most forensic disciplines provided by the lab including DNA, Firearms and Trace Evidence. In addition, the Miami-Dade Police Department has cold case squads in both the Homicide and Sexual Crimes Bureaus; the combined experience of the detectives on these squads with regard to types of evidence that can now be analyzed for the possible presence of biological material has enabled the Miami-Dade Police Department to research and close many cases utilizing this funding. For example, one case involved a sexual assault/homicide of a victim from the 1980s; the subject was scheduled for release in 2013 but has since been sentenced to an additional 35 years as a result of a cold case that was re-submitted for DNA analysis. In another case, at least 8 sexual assaults were associated by DNA in the early 1990s. The cases were re-analyzed using current DNA technology several years ago; in 2009, almost 20 years later, the unknown male DNA profile matched to the DNA profile from an offender convicted of burglary in 2008.

The management of casework submitted to a crime laboratory is not only a law enforcement problem; it is an issue that must be addressed within the entire judicial system. Submission of every case to the crime laboratory with the expectation that every case can be worked is unrealistic. Every case needs to be evaluated separately and not every case needs to be analyzed. In addition, crime laboratories do not have the resources to evaluate every case or every sample from every case. The answer to case management does not lie in the hands of the Criminalists across the country who analyze these cases on a daily basis or in the hands of Crime Laboratory Directors. The responsibility for case management lies in the hands of the judicial system. If the cases are not going to be prosecuted, why expend the law enforcement and laboratory resources? The efforts within a crime laboratory should focus on how to produce results in a timely manner for cases where forensic science can provide critical investigative information. There is no effective "one size fits all" approach to case management; this is an ever-changing re-prioritization that must be fluid to meet the demands of the judicial system.

I appreciate the opportunity to appear before this Committee to provide this information. Thank you.

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