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REAUTHORIZATION AND IMPROVEMENT OF DNA INITIATIVES OF THE JUSTICE FOR ALL ACT OF 2004

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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REAUTHORIZATION AND IMPROVEMENT OF DNA INITIATIVES OF THE JUSTICE FOR ALL ACT OF 2004

THURSDAY, APRIL 10, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:07 a.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Conyers, Scott, Waters, Delahunt, Nadler, Johnson, Weiner, Jackson Lee, Davis, Baldwin, Sutton, Smith, Gohmert, Forbes, Sensenbrenner, Coble, Chabot, and Lungren.

Staff present: Mario Dispenza, Majority Fellow/Counsel; Karen Wilkinson, Majority Fellow/Counsel; Veronica Eligan, Majority Professional Staff Member; Caroline Lynch, Minority Counsel; Kimani Little, Minority Counsel; and Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. The Subcommittee will now come to order, and I am pleased to welcome you to the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on the Reauthorization and Improvement of DNA Initiatives of the Justice For All Act of 2004.

Today we will hear testimony about H.R. 5057, the "Debbie Smith Reauthorization Act of 2008," which is sponsored by the gentlelady from New York, Mrs. Maloney.

We will also hear testimony about issues surrounding the Innocence Protection Act—specifically, the hurdles that have impeded its implementation, the consequences of those hurdles and how to overcome them.

The Debbie Smith Act authorizes the Attorney General to provide grants to States to assist them in entering DNA evidence into databases.

As the Nation's police departments and prosecutors have come to recognize the value to DNA evidence in solving crimes, labs have collected DNA samples from increasing numbers of crime scenes and convicted offenders faster than they can examine and enter them into State and local databases.

In fact, Congress has funded State and local law enforcement agencies to test nearly 104,000 DNA cases from 2004 to 2007 and funded over 2.5 million convicted offender and arrestee samples.

Yet the backlog remains almost level. Consequently, a large backlog of samples exists around the Nation that could identify valid criminals at large.

There are no better examples of how to demonstrate how important DNA technology can be for solving crimes than the stories that two witnesses will share with us today.

Before service in Congress, the gentleman from Washington, David Reichert, was sheriff of King County, Washington sheriff's office where, through help of DNA technology, he helped solve the largest serial murder case in U.S. history, the Green River killer investigation.

And in 1989, Debbie Smith was kidnaped in her Virginia home and viciously attacked in nearby woods by a stranger. With remarkable courage and determination, she reported her attack.

The crime lab was able to preserve DNA evidence of her attacker. Eventually he was convicted of a separate violent crime and was required to provide a DNA sample which matched the sample collected from his attack on Ms. Smith, identifying him as the attacker.

The goal of the Debbie Smith DNA backlog grant program is to assist States in entering their DNA evidence timely so that they can solve more crimes and solve them as soon as possible.

The act was incorporated into the Justice for All Act of 2004, and that expires at the end of 2009. H.R. 5057 has strong bipartisan support and would authorize funding for the Debbie Smith Act, extending it through fiscal 2014.

The Innocence Protection Act authorizes the Attorney General to grant funding to States for post-conviction DNA testing to help ascertain whether individuals have been wrongly convicted.

To date, there have been 215 post-conviction exonerations through DNA testing in the United States, spanning 32 States. Sixteen of the 215 exonerees were on death row, and the true suspects or perpetrators have been identified in 82 of the DNA exoneration cases.

The most recent exoneree is Levon Brooks, who is here with us today. He spent 18 years in prison, wrongfully convicted of the murder of a child, until DNA evidence led to the discovery of the actual murderer.

The success of post-conviction DNA is evident by the exonerations it has yielded and its potential to exonerate hundreds more of the wrongly convicted.

Unfortunately, post-conviction DNA testing has been seriously under utilized due to unrealistic and unattainable standards for grant applications. Congress funded a total of $7 million for Innocence Protection Act grants from 2005 to 2007, but none of the funds were ever used for actual grants.

According to the Department of Justice Office of Justice Programs, statutory language of the act set standards for authorizing the grants too high for any State to meet.

Concerns have also been raised that the standard may have discouraged applicants from applying as there have been actually only three grant applications—Virginia, Connecticut and Arizona.

Consequently, $7 million that might have been used to free innocent people from prison have sat idle. This is unconscionable and we must correct it.

For fiscal year 2008, Congress appropriated an additional $4.8 million and inserted a temporary change in statutory language that OJP suggested so that applicant States may be able to meet the requirements for grants under the Innocence Protection Act.

Thus, there are now $11.8 million available, and new language to facilitate granting post-conviction DNA testing funds. There are also five new applicants for these grants, and we are looking forward to hearing testimony about these applications and their chance for success under the new standard.

I also look forward to working with my colleague to determine whether the temporary language established for 2008 should be made permanent or whether we should make some other correction in the law.

DNA technology has given us the means to identify the wrongly imprisoned. Now we have the responsibility to use those means.

The Debbie Smith Act and the Innocence Protection Act complement each other in that they use DNA technology to meet the shared goal of identifying those responsible for committing crimes.

DNA evidence is, indeed, an invaluable tool for ensuring that the guilty are identified beyond any doubt. However, like any tool, it is only useful as to the extent that it is employed, and we must do everything we can to ensure the availability of funding set aside to determine the guilt or innocence and make sure it is used to its fullest extent.

It is now my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott. And I do appreciate you holding this hearing on this reauthorization of the Debbie Smith DNA Backlog Grant Program and improvements to the Kirk Bloodsworth Post-Conviction DNA Testing Program.

I do want to welcome our distinguished witnesses and extend a special thank you to Congresswoman Maloney and Congressman Reichert.

And the incredible work that Congressman Reichert did in the Green River killer case has also been made the subject of a fantastic miniseries that I watched last weekend.

Anyway, maybe you would have done a better job, I am sure, in representing yourself, but it was quite a good miniseries.

But to the subject of what we have before us, March 11, 2003, President Bush announced his DNA Initiative to provide funds, training, assistance to ensure that DNA technology reaches its full potential to solve crimes, protect the innocent and identify missing persons.

The DNA Initiative awards grants to address several DNA backlog issues, including capacity enhancement, convicted offender DNA backlog issues, including capacity enhancement, convicted offender DNA backlog reduction, forensic casework DNA backlog reduction, and solving cold cases with DNA.

As a former prosecutor and judge, I know the value of the DNA evidence and how it serves in convicting violent criminals and providing some closure to victims, but also ensuring that those who are sent to prison are actually guilty of the crime.

The Debbie Smith and Kirk Bloodsworth programs help ensure that these goals of the criminal justice system are met.

I also saw the tremendous backlogs, the delay in justice from programs that were not fully equipped to address the DNA backlogs and the problems that created for State and local justice.

But we have all heard the adage that it is better to let 10 guilty people go free than to send one innocent person to prison.

Well, DNA evidence provides a level of certainty in criminal prosecutions that I hope would lessen or even eliminate the likelihood that innocent people are convicted for a crime they did not commit.

By now, we are familiar with the story of Kirk Bloodsworth that the Chairman has mentioned. It is also appropriate to mention Mr. Levon Brooks that the Chairman also mentioned, and we are delighted that he is here today to share his story and the horrible ordeal that he witnessed personally.

It is appropriate this program providing grants to States for post-conviction DNA testing is named for Mr. Bloodsworth. Since 1989, 215 wrongfully convicted individuals have been exonerated through the testing.

The Kirk Bloodsworth DNA post-conviction DNA testing program was authorized by the Justice for All Act of 2004, but in order to receive a grant under this program, the State must demonstrate that all jurisdictions within the State comply in practice with the requirements of the Bloodsworth provisions.

This is true even if only one jurisdiction within the State processes post-conviction DNA tests. This requirement apparently has been so restrictive that only three States submitted applications for the Bloodsworth grants in 2007, and none were approved.

To address the problem, Congress included language in the fiscal year 2008 Appropriation Act to lessen the grant requirements on applicant States.

Surprisingly, despite these less burdensome grant requirements, only five States submitted applications for post-conviction grants in 2008, and these five States requested only about $8 million of the roughly $11 million available.

And I know that there are more States that could use this help. I am interested to learn why so few States are seeking Federal grant assistance for post-conviction DNA testing, whether they are aware of the grant program, whether they are aware of the improvement to the grant language, whether they believe that for some reason they are still ineligible, or is it that they don't need Federal grant money for post-conviction DNA testing and, if so, why or why not?

I hope the Department of Justice can shed some light on these issues, and I look forward to hearing from our esteemed witnesses today and yield back the balance of my time.

Mr. SCOTT. Thank you.

Does the gentleman from Michigan have a statement? The gentleman from Michigan has 5 minutes.

Mr. CONYERS. Thank you, Chairman Scott and Judge Gohmert.

I will put my statement in the record and merely say this. Because of the increasingly bipartisan nature of the Judiciary Committee, we are very pleased to work more closely with the Department of Justice.

And I want David Hagy from the Department of Justice to know that we are all going to be continuing our good relationships, but you guys better get cracking on this subject matter here today.

And I guess I don't sound like I am kidding, and I am not, so my statement, you know, reiterates all of this.

I always have to notice that I only wish Carolyn Maloney—I think she wanted to go to law school as a kid, because she keeps coming before this Committee all the time. I think maybe it is DNA or genetic, I don't know.

And we are certainly glad to see Congressman Reichert here.

I am also happy to see Debbie Smith joining us here. This is a historic moment for our Committee. Levon Brooks is here. And so I am happy to join in this evaluation and continue our improving relationships with the leadership at the Department of Justice.

I thank you so much.

Mr. SENSENBRENNER. Mr. Chairman?

Mr. SCOTT. Thank you. I thank the——

Mr. CONYERS. Yes?

Mr. SENSENBRENNER. Mr. Chairman, if I can say a couple of words at the beginning of this hearing——

Mr. SCOTT. Does the gentleman from Michigan yield to the gentleman from Wisconsin?

Mr. CONYERS. Yes, of course.

Mr. SENSENBRENNER. Mr. Chairman, I thank the Chairman of the Committee for yielding.

I was the author of the Justice for All Act in 2004, and that act was an elaborately crafted conglomeration of bills that was designed to get the support of both houses, but particularly the other body, in order to get a number of very important initiatives passed.

And one of the linchpins of getting this passed was the DNA provision in the bill, and the Justice Department at the time didn't like it.

And basically, what the current Chairman and I as the Chairman at the time had to do was to go over to the Senate and basically give them some provisions on victims' protections which the Justice Department did like.

And I guess it is disappointing to me that after we had reached this compromise that passed both houses overwhelmingly the Justice Department has not been vigorously implementing the DNA part, and it has been almost 4 years since the President signed the legislation into law.

It was a good deal then. It is a good deal now. And foot-dragging by anybody, but particularly the Department of Justice, means that a good deal ends up being an incomplete deal. I hope it is complete.

And I thank the Chairman for yielding.

Mr. SCOTT. Thank you.

The time of the Chairman has expired.

The gentleman from Texas, Ranking Member of the full Committee?

Mr. SMITH. Thank you, Mr. Chairman.

I think I may have broken my microphone here. I am not sure.

Mr. Chairman, thank you for holding this hearing on the reauthorization of the Debbie Smith DNA Backlog Grant Program and improvements to the Kirk Bloodsworth post-conviction DNA testing program.

And I want to thank, of course, Congresswoman Maloney and Congressman Reichert for being here as well.

Congressman Reichert knows firsthand the value of DNA evidence in solving violent crime. Before he was elected to Congress, Dave Reichert, sheriff of King County, Washington State spent 20 long years hunting down the notorious Green River killer. By the way, I did not know about the miniseries that Louie Gohmert mentioned.

Gary L. Ridgway pleaded guilty in 2003 to killing 48 women, and it was advances in forensics and DNA evidence that ultimately helped Sheriff Reichert solve this case.

Carolyn Maloney has been a champion of reducing the DNA backlog for many years, and I am pleased to be an original co-sponsor of her bill, H.R. 5057, to reauthorize the Debbie Smith DNA Backlog Program.

And like the Chairman a minute ago, I would like to thank Debbie Smith for appearing here as well. Her willingness to share her courageous story gives hope to other victims of rape and sexual assault that they will see their attackers apprehended and brought to justice.

The Debbie Smith program, originally authorized in 2000, was expanded by the Justice for All Act of 2004 that former Chairman Sensenbrenner mentioned a minute ago. The program awards grants to State and local governments to reduce the DNA backlog of samples collected from crime scenes and the backlog for entry into the National DNA Database.

The program also assists State and local governments with increasing the capacity of their forensic labs and collecting DNA samples from arrestees and convicted offenders.

These grants and other parts of the President's DNA Initiative are working to reduce the DNA backlog, solve violent crimes and put offenders in prison.

Through DNA backlog reduction grants, State and local governments received funding to test approximately 104,000 DNA cases between 2004 and 2007. These grants have also funded the collection of 2.5 million DNA samples from convicted offenders and arrestees for inclusion in the National DNA Database.

The Department of Justice estimates that over 5,000 hits or matches are the result of this DNA backlog reduction. But it is clear that there is more work to do. Technology is always advancing, and so, too, is the use of DNA to solve crime.

As DNA use expands, so does DNA collection and the need for larger laboratories and increased storage capacity. We must continue our efforts to reduce the DNA backlog. It is necessary in order to bring offenders to justice and provide some solace to the victims themselves.

I look forward to hearing from our witnesses today.

And, Mr. Chairman, I will yield back the balance of my time.

Mr. SCOTT. Thank you very much.

Other statements can be submitted for the record.

We have two panels. Our first panel, the first witness will be the gentlelady from New York, Congresswoman Carolyn Maloney, who is a sponsor of H.R. 5057. I think I may have called it 56 at one time—5057.

She has been a Member of Congress since 1993 and was a driving force behind the Debbie Smith Act on numerous occasions in Congress before it was finally incorporated in the Justice for All Act in 2004.

The reason she is before us, Mr. Chairman, so often is she is a strong advocate for the protection of women in the criminal justice system, not only on this bill but many others. She has a bachelor's degree in education from Greensboro College.

And so thank you for being with us today.

Our second witness will be the gentleman from Washington, Congressman David Reichert, who currently is in his second term in Congress. In addition to his notable work on the Green River task force, he has over 35 years of public service to the people of Washington. He has a bachelor's degree from Concordia Lutheran College.

Both of the witnesses are familiar with the lighting system, so we would ask you to summarize your statements. The written statements will be entered into the record in their entirety.

So, Mrs. Maloney?

TESTIMONY OF THE HONORABLE CAROLYN MALONEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. MALONEY. Thank you so much, Chairman Scott, and thank you for your leadership on the Debbie Smith Act and so many other issues, and Ranking Member Gohmert and our distinguished Chair of the Committee, John Conyers, for his leadership on this and so many other areas, and Mr. Lamar Smith, who is the lead sponsor—one of the lead sponsors, along with many people on this panel of the reauthorization of Debbie Smith.

I must mention Mr. Sensenbrenner's and Mark Green's hard work on it, as well as Anthony Weiner and Mr. Nadler and many others.

I have been working on this since 2001 when I initiated a hearing before the Government Reform Committee, a Committee Mr. Conyers used to Chair, on the use of DNA to convict and to exonerate.

We reached out to a program called RAINN to find a rape survivor to testify. No one would testify, understandably. It is a traumatic experience. Yet Debbie Smith came forward, and she told her story.

And believe me, after that hearing, there wasn't a dry eye on the panel—and Congress Members are very strong people—because her story was so terrifying and one that we could all identify with.

Living in a suburban, quiet neighborhood, an intruder broke in while her husband was asleep upstairs—a police officer—dragged her into the woods, raped her and said, "I will come back and kill you if you tell anyone."

So for 6 years, she lived in utter fear that the intruder would come back, until finally through DNA processing a match was made, a cold hit, and her rapist was put in jail.

We put in a bill afterwards with the help of practically everyone on this panel that provided funding for the backlog. We found out there were roughly 500,000 rape kits sitting in police departments across the country that had not been processed, yet each rape kit represented a life such as Debbie's that was living in fear.

And the FBI told us that most rapists are very sick people. They will attack seven, eight, nine times. They continue to attack. So if you can make that conviction, you are saving the lives of seven, eight, numerous other women from the horror of what Debbie had to live through.

The FBI has told me that the second most horrendous crime in terms of destroying a life and recovering is rape, preceded only by murder. So this is a very, very serious issue.

It took us 4 years to pass this bill. And it was done with the great help and support of Debbie and her husband, Rob, who continue their work in helping rape survivors. They have started a foundation to really help with this effort.

Our bill that went forward with the Justice for All Act not only provided money for the backlog but provided money for S.A. nurses. There was documentation that with professional nurses, the police said they could make the conviction with the DNA. That was very important.

It included John Doe convictions so that rapists could be caught at a time in the future and still be convicted, and helped support the FBI's DNA research lab which shares DNA information across the States, since rapists don't know boundaries. They go from State to State.

And it has served as an invaluable tool. Many organizations of rape victims have told me that through this program they have finally found peace because their rapists have been caught. And it has been a wonderful tool for law enforcement to use.

Not only does it help convict, but through the Justice for All Act and the work of Mr. Delahunt and many others, and Mr. Conyers, it has been used to exonerate the innocent, those on death row. Now they must go through a DNA test, and many people have been exonerated when they find out that this is not the person.

Debbie's story was so moving that it was made into a movie, literally, by Lifetime Television called "A Life Interrupted," and they are making another movie based on the continuing effort with the Justice Department, with Members of Congress, with the police and all of the D.A.s and everyone who is working to really cure the backlog.

Because this ground-breaking program's authorization expires at the end of 2009, we have reintroduced the reauthorization which will extend the program to 2014, and I am very pleased that Congressmen Conyers and Smith and others have joined us, and certainly, Mr. Reichert and others, with the reauthorization.

Estimates place the number of unprocessed rape kits nationwide in the tens—and possibly hundreds of thousands. Each kit represents an innocent life and a rapist who may commit multiple rapes before he is caught.

DNA is remarkable evidence. It can't be intimidated. It never forgets. It is really our best tool for a conviction. And DNA never changes its story.

Debbie's bravery and dedication in working with me and others, which was no small feat, has already made a tremendous impact on our justice system, and I do want to compliment very much the efforts, continuing efforts, of Lifetime Television and RAINN as well as other dedicated groups to ending the violence against women.

April is Sexual Assault Awareness and Prevention Month. Tragically, only 6 percent of rapists will spend any time in jail, and Congress must continue to support programs like the Debbie Smith DNA Backlog Grant Program that helps to put rapists in prison and reduce violence against women.

I want to thank this Subcommittee and particularly Bobby Scott for his leadership on this action for many, many years, as well as many other issues we have been working on together along with Chairman Conyers.

And I look forward to working with you and supporting your efforts and the reauthorization of the Debbie Smith Act. Thank you for this great honor of appearing before this Committee.

I believe I am before this Committee so much, Mr. Conyers, because you really touch on so many important issues in our country. It is an incredibly important Committee.

Thank you for offering me the honor to appear before you today. Thank you.

[The prepared statement of Mrs. Maloney follows:]

PREPARED STATEMENT OF THE HONORABLE CAROLYN B. MALONEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Thank you Chairman Scott and Ranking Member Gohmert for holding today's hearing about DNA technology, which can help convict the guilty and free the innocent.

I have been working on this issue since 2001 when I, along with former Representative Steve Horn, held a hearing in the Government Reform Committee where we heard from the courageous rape survivor sitting at this table, Debbie Smith.

Debbie recounted her horrifying story . . . how an intruder broke into her home and raped her in the nearby woods. Six years later her assailant was charged with her rape because DNA processing techniques had produced a "cold hit."

Inspired by Debbie's story, I resolved to do something to combat the epidemic of violence against women in the United States, where a sexual assault occurs every two minutes.

I knew that DNA processing techniques could serve as conclusive proof in countless other rape cases. But I was outraged that a backlog of hundreds of thousands of rape kits, with DNA evidence already collected, were gathering dust in police stations and crime labs all over the country . . . all because of inadequate government funding.

It was for Debbie, and the thousands of rape survivors like her, that I authored "The Debbie Smith Act" to provide federal funding to process the unconscionable backlog of DNA evidence.

I first introduced this legislation in 2001. In 2004, it was signed into law as part of the "Justice For All Act," comprehensive DNA legislation that has helped bring justice to rape survivors and their families across the country.

The "Justice For All Act" accomplished several critical objectives including authorizing the necessary funding, $151,000,000 in each fiscal year from FY2005 through FY2009, to start processing the backlog of DNA evidence through the creation of the Debbie Smith DNA Backlog Grant Program. Since 2004, millions of dollars in funding have been appropriated under the Debbie Smith DNA Backlog Grant Program.

Because this groundbreaking program's authorization expires at the end of FY2009, I have introduced H.R. 5057, "The Debbie Smith Reauthorization Act of

2008," which extends the program through FY2014. I am pleased to have been joined in introducing the legislation by the Chairman and Ranking Member of the Judiciary Committee, Chairman Conyers and Ranking Member Smith. Resolutions have already been introduced or passed across the country in support of "The Debbie Smith Reauthorizaton Act" including in Vermont, Alaska, and the City of Easton in Pennsylvania.

Estimates place the number of unprocessed rape kits nationwide in the tens and possibly hundreds of thousands. Each kit represents an innocent life and a rapist who may commit multiple rapes before he is caught.

DNA is remarkable evidence. It doesn't forget, it can't be confused, it can't be intimidated and it doesn't lie. While an eyewitness can easily get mixed up about height, weight, hair color—DNA never changes its story.

Debbie's bravery and dedication to working with me to pass "The Debbie Smith Act," which was no small feat, has already made a tremendous impact on our justice system. We were joined in our efforts by *Lifetime Television* and RAINN, as well as other groups dedicated to ending violence against women.

April is Sexual Assault Awareness and Prevention Month. Tragically, only 6% of rapists will spend any time in jail. Congress must continue to support programs, like the Debbie Smith DNA Backlog Grant Program, that help to put rapists in prison and reduce violence against women.

I want to thank the Subcommittee for inviting me to testify today, and I look forward to working with you to move "The Debbie Smith Reauthorization Act" forward.

Thank you.

Mr. SCOTT. Thank you.

Mr. Reichert?

TESTIMONY OF THE HONORABLE DAVID G. REICHERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. REICHERT. Thank you, Mr. Chairman.

I want to thank Chairman Conyers and Ranking Member Gohmert, and Ranking Member Smith also, for the opportunity to testify today and first would like to say that I very much admire and respect Debbie Smith as a survivor and some of the other survivors who might be here today.

To have the courage to come and testify before Congress and push for important legislation that will be helpful to others in their lives takes a lot of courage. I have investigated these cases over my 33-year career as a police officer, but the one that I want to talk to you about today is one that I think really paints a picture of the great need for DNA funding.

I was a young detective in 1982 at 31 years old. Sometimes it is a hard story to tell—lots of bodies, and lots of victims, and lots of families torn apart, lots of bad memories in this case.

But if you think about—in 1982, at 31 years old—I had dark brown hair, by the way, back then. [Laughter.]

Standing on the riverbank—there was no computer. There was no—we were investigating this case and organized it by using 3x5 note cards and a Rolodex file.

And when I share this story with junior high and high school students, immediately I get a hand that says, "Sheriff, what is a Rolodex file?" They haven't got a clue.

But no DNA. There was blood typing. That was it. And if we got a blood type, it would narrow the suspect pool to millions. There was no automated fingerprint identification system when I started this case, no AFIS system. So it just tells you how far we have come from 1982 to today.

I agree with you, Chairman Conyers, this is an historical day, I believe, for your Committee. This reauthorization needs to take place.

We were able to collect bodily fluids from the riverbanks from three of the victims in this case. They were the only three bodies that had any flesh attached to it during this entire investigation, and that is the only reason we were able to collect the bodily fluids that would somehow come together with a gauze that contained saliva that the suspect was asked to chew on in 1987.

We collected those samples in 1982 and froze them. We had over 10,000 items of evidence collected during the investigation of this case over the 19-year period that we worked on this case, and I am proud to say that we found every one of them when it came time for trial. And that, my friends, is unusual, too.

But the bodily fluids frozen in 1982—spermatozoa—in 1987, Gary Ridgway was identified as a possible suspect out of 40,000 tip sheets. We interviewed him. He passed a polygraph test and he was released.

And we went on to investigate others. All the while, Gary Ridgway is in the mix. He is out there. He is still a part of what we are looking at. You know, the polygraph test is a tool that we use. He didn't fit the profile, by the way, the FBI profile, which is another tool that came along during this investigation.

I have 40 seconds left? I want to tell you that the science came together. The DNA science came together. On September 10th, the day before September 11th, 2001, my detectives came to my office and said, "Sheriff, we know who killed at least three of the women." DNA did that.

Now, it took 2 years for him to finally come to prison, but I spent 3 days—if I could just have a little bit more time—with each family member, 50 families, and explained to them what we want to do is make a deal, so no death penalty here, but we wanted answers to questions.

We were able to get an additional three cases matched through another science of paint evidence. It was a total of seven. He wanted to plead guilty. He wanted to save his life. Most of the families were in agreement to that.

But DNA provided the answers to the questions that these families have had for 19 years. Four of the families found out where the bodies of their daughters were for years that we couldn't find.

So to all the Members of the Judiciary Committee that have this decision to make, I wish I could have more clearly stated without such emotion the need for DNA testing and the relief that it brings to people like Debbie Smith.

There will never be closure. The memories are always there. The families of the victims in this case will never have closure. But they have got answers to questions. They were able to put their victims, their daughters, to rest, to go visit their bodies in a cemetery.

And my wish and hope is, of course, that no other young lady has to suffer at the hands of such a murderous monster. But if it happens, DNA is so essential.

We were actually recipients of a $1 million Federal grant to help with DNA testing. I went before my county council in Seattle and

asked for an extra $500,000. They didn't have it. I spent it anyway. We need your help.

I yield.

[The prepared statement of Mr. Reichert follows:]

PREPARED STATEMENT OF THE HONORABLE DAVID G. REICHERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Thank you Chairman Conyers, Ranking Member Smith, Chairman Scott and Ranking Member Gohmert for the opportunity to be here this morning. I am pleased to share with you my experience with forensic DNA technology and the critical role that technology played in bringing a serial killer to justice and providing answers to the questions the victims' families had been asking for many years.

Before coming to Congress, I spent over 30 years in law enforcement in the King County Sheriff's Office, in Seattle, Washington. I have personally witnessed how forensic DNA has closed unsolved rapes and homicides in Washington State. For 20 years I was involved in the case of the Green River Killer, in which at least 48 women were found murdered throughout King County, Washington; the first five were found along the Green River and so it was called the Green River Task Force. DNA evidence played a central role in this investigation and ultimately led to the conviction of Gary Ridgway.

Ridgway became a suspect early in the investigation but after passing a polygraph test and with no physical evidence to link him to the crimes, he walked free. Police collected bodily fluids from the first victims found in 1982, and first took hair and saliva samples from Ridgway in 1987. At the time, the technology did not exist to compare these samples with the evidence collected at the crime scenes. These samples were later subjected to DNA analysis. When the tests came back on September 10, 2001, the DNA from 3 of the 48 victims was attributed to one suspect, Gary Ridgway. It is incredible that nearly two decades later, thanks to advancements in DNA technology, a small saliva sample compared with the first crime scene evidence from 1982 would prove the key to unlocking one of the most notorious serial murder cases in our history. Gary Ridgway pled guilty to 48 separate counts of murder and later admitted to having sex with and killing over 70 women. He is now serving life in prison.

I cannot speak enough about the importance of DNA analysis to law enforcement and to the victims and their families. DNA analysis is a powerful tool that can potentially help solve hundreds of cases where no known suspect currently exists. Unfortunately, there is a severe backlog for DNA testing. It is a real tragedy that we have the technology needed to bring offenders to justice and peace to their victims, yet we're unable to fully utilize it.

For victims of rape and sexual assault, DNA promises the opportunity to finally reclaim their lives—their sense of security, confidence, and independence that only comes after knowing their offender is caught and behind bars. Today, an alarming 1 in 6 women and 1 in 33 men have experienced an attempted or completed rape, and 1 out of 4 college-aged women have been sexually assaulted. In 2006, there were over 270,000 victims of rape, attempted rape, or sexual assault in the United States. Sex crimes are one of the most personal, offensive, and destructive crimes. Often victims are never able to fully recover from the psychological and emotional distress associated with the offense. DNA has the unequaled ability to identify rapists, bring them to justice, and grant peace of mind to victims. We owe it to our daughters, sisters, and neighbors to do everything in our power to eliminate the DNA backlog so rapists are taken off the streets and prevented from claiming more innocent victims.

The bottom line is the FBI and state and local law enforcement must eliminate the backlog and get the DNA samples into the system. It is the only way the DNA does all that it's capable of.

I commend the Judiciary Committee for taking up this charge to eliminate the DNA backlog through the reauthorization of the Debbie Smith DNA Backlog Grant Program. This program goes a long way towards helping states and local government eliminate the current backlog of unprocessed DNA samples so that dangerous perpetrators like Gary Ridgway can be caught and communities across our nation will be safer.

Mr. SCOTT. Thank you very much. And we are certainly going to do what we can.

If there are no questions for our witnesses—thank you very much.

If the next panel will come forward.

Our next witness will be Debbie Smith, for whom H.R. 5057 is named. As a survivor, as we have heard, of a brutal attack, Ms. Smith has become a crusader, intent on helping other victims and preventing other persons from being victimized.

She speaks all over the United States and Canada in an effort to help others, and she is the founder and CEO of the H-E-A-R-T, Heart, Incorporated, a nonprofit foundation established to aid victims of sexual assault.

The next witness will be David Hagy, director of the National Institute of Justice. He oversees the research, development, evaluation of activities at the Department of Justice, including the authorization of grants under the Justice for All Act of 2004.

He holds a bachelor of science and economics from Texas A&M and a master of arts and Ph.D. in political science from Tulane.

The next witness will be Peter Malone, director of the Virginia Department of Forensic Science. He is a member of the Forensic Education Program Accreditation Commission for the American Academy of Forensic Sciences and the National Academy of Sciences Committee on identifying the needs of the forensic science community.

He also is Chair of the Consortium of Forensic Science Organizations. He has a bachelor's degree and master's degree in chemistry, each from the University of Pittsburgh.

Our next witness will be Mr. Levon Brooks, who is the 215th person to be exonerated through the use of DNA technology. In 1992, he was tried and convicted of a heinous child murder that he did not commit.

DNA evidence was used to solve other murders that had almost identical circumstances, which led to Mr. Brooks' exoneration. On March 13, 2008, Mr. Brooks was finally cleared of all charges, but only after serving the last 18 years in prison.

Our final witness will be Mr. Peter Neufeld, co-founder and co-director of The Innocence Project at the Benjamin Cardozo School of Law.

His work has shaped the course of case law across the country and helped to lead to an influential study by the National Academy of Sciences on forensic DNA testing, as well as important State and Federal legislation setting standards for the use of DNA testing.

He has a bachelor's degree from the University of Wisconsin and a law degree from New York University Law School.

Now, all of our witnesses statements will be entered in the record in their entirety. I would ask each witness to summarize testimony in 5 minutes or less.

And to help you stay within that time, there is a lighting device on the table which will start with green, go to yellow when there is 1 minute left, and it turns red to signal that the 5 minutes have expired.

Ms. Smith, it is good to see you.

TESTIMONY OF DEBBIE SMITH, CHARLES CITY, VA; MR. DAVID HAGY, DIRECTOR, NATIONAL INSTITUTE OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. SMITH. I want to thank you for allowing me to be here this morning and for the commitment of Congress that Congress has shown to the victims by funding the Debbie Smith Act.

I am deeply grateful to the House because you have consistently voted to fully fund this important piece of legislation, and your message was finally heard as last year, for the first time, Congress essentially fully funded the Debbie Smith Act.

It is truly a privilege to be given the opportunity to be a small part of this legislative process. It is also one of the most terrifying things I have ever done.

I truly believed that March 3, 1989 would be the last day that I would feel the loving touch of my husband's embrace or hear the precious voices of my children tell me that they loved me.

It was on a Friday that a stranger entered my home threatening to kill me if I screamed. He then abducted, blindfolded and led me to the woods behind my home where he repeatedly raped me and robbed me.

After being raped, I struggled with trying to live with the memories of that day. For 6½ years the smell of his breath, the touch of his cool, damp coat sleeve around my neck, the sight of his black rubber boots and the sound of his voice reminding me, "Remember, I know where you live, and I will come back to kill you if you tell anyone," were all stored in my mind, unwilling to be discarded.

I needed peace, security and to feel normal again. I had no hope that I would ever attain this vital relief. I had found the fate worse than death, and that was living with the memories of this day, living with the fear that he would fulfill his promise to return to kill me or, even worse, that he would he take out his revenge on my husband or my children.

I merely existed for those 6½ years as fear held my heart and soul within its grip, choking out any joy in life. I became suicidal, seeking peace and rest from the pictures that played without warning in my mind.

Finally, a cold hit, DNA cold hit, offered peace to my fearful heart and gave validation to my accusations, administered justice, and prevented this man from claiming another victim. With his conviction, the jury sentenced him to two life sentences plus 25 years with no parole.

But my problem here this morning is how do I convey to you something that is so deeply rooted in my heart that the only way I have found to express it is through action?

Perhaps if you can picture in your mind the reality of what I have seen in labs and police evidence lockers all across our great country, you will have a sense of the urgency that I feel for row after row of shelves, from floor to ceiling, holding boxes of every size, with numbers written in black ink, containing vital evidence, that are dusty and untouched.

These are not just boxes but they represent real people, people that are trying to live past the memory of the day that evidence was taken from their body.

These victims have family and friends who are watching them, watching the self-destruction that often comes from sexual assault, these people, who are waiting as I had waited. But for how many of them is it already too late?

When a rape victim submits to this very intrusive 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 another estimated 350,000 rape kits, each holding 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 I promise you they will. We simply cannot allow these women to feel violated again by our negligence to do all that we can to provide them justice and safety.

It is for the 65,000 victims in Alabama, the 40,000 in California and all those victims across our country who are still waiting for answers that my husband and I have sacrificed our income, our retirement and our time.

It is for them that we continue to return to your offices pleading for proper appropriation of funds and now for the reauthorization of this bill.

I am not a paid lobbyist. Living on a retired policeman's pay is not easy. In fact, if it were not for our foundations' fundraising efforts and the support from local and national businesses, we could not afford to be here today, as neither of us takes any type of salary or honorarium, but they help to provide the necessary expenses as we travel all over this country, training nurses, prosecutors, law enforcement and advocates on how to deal with victims and the value of DNA.

This is not a job for me. This is my life. This is my very heart. And I will do whatever it takes to give these victims a chance at justice.

Since passing the Debbie Smith Act, Massachusetts' crime lab has reduced their sexual assault backlog from 4,000 cases to 2,081 cases, solving cold cases and providing numerous offender profiles to be added to CODIS.

Atlanta, GA has reduced their DNA backlog from 33,000 to 5,000 cases in just less than 2 years.

After 19 years, a Texas victim was relieved when, in 2006, CODIS produced the identity of her attacker. Prosecution was not possible because of the statute of limitations, but her attacker's parole was denied because of this new DNA evidence.

We have made tremendous strides since passing the Debbie Smith Act, but our success has also been our own worst enemy.

As State legislators understand the power of DNA, they have broadened the types of offenses they have included in the database, and more States are beginning to include all arrestees.

Detectives recognize its enormous ability in solving no-suspect cases, and police officers are more aware of DNA's capabilities. Victims are grasping the connection between DNA and justice, giving them the courage to submit to the humiliating rape kit.

All of these wonderful achievements have caused a swell in the backlogs, though, across our country. I am fortunate to live in a State where the forensic scientists realized the potential of this valuable tool and found resources to initiate a program.

Unfortunately, these resources are not available in most States. The swell having subsided, with another 5 years of Federal funding, crime labs can begin to eliminate their backlog and the current unacceptable turnaround can be shortened.

As the success of this powerful tool continues, the public becomes more confident in the system, and State and local budget writers will have the data needed to begin paying for their own DNA programs without Federal assistance.

We have to continue to keep DNA a priority. Not to do so would mean that we are going to lose valuable momentum. This science is distinctive in that it is tied to a national database, and it requires involvement from Congress and State legislature to function.

When the original bill was passed, it provided for training money for all first responders, including sexual assault nurse examiners. These forensic nurses are vital in the collection and preservation of evidence, but this part of the bill is yet to be funded.

I would ask that you use the power afforded you to guide our wonderful country to using DNA to its fullest potential.

In closing, DNA is structurally a chain, yet this amazing piece of science breaks the chains of emotional imprisonment and becomes a chain of confinement for those who would violate innocent citizens.

DNA gives life. It administers justice, offers peace and validation, frees the innocent. And I believe it is one of the greatest crime prevention tools we have available today.

All victims of crime deserve the experience of this gift of renewed life that I received, and I know that DNA can offer that gift. To withhold that gift would be the act of denying our citizens that promised right of liberty and justice granted by our Constitution.

So I am honored and I am proud to be here with you today representing that hope of promised justice. Thank you.

[The prepared statement of Ms. Smith follows:]

PREPARED STATEMENT OF DEBBIE SMITH

Let me begin by thanking each of you for allowing me to be here this morning and for the commitment Congress has shown to victims by funding The Debbie Smith Act. I am deeply grateful to the House for you have consistently voted to fully fund this important piece of legislation. Your message was finally heard as last year for the first time Congress essentially fully funded The Debbie Smith Act. It is truly a privilege to be given an opportunity to be a small part of the legislative process . . . it is also one of the most terrifying things I have ever done.

My personal experience as a rape victim provides me with the understanding of the devastation of this crime. With understanding comes knowledge and with knowledge comes responsibility. This vivid understanding has changed my life forever.

I truly believed that March 3, 1989 would be the last day that I would feel the loving touch of my husband's embrace or hear the precious voices of my children say, "Mommy, I love you." It was on that Friday afternoon that a stranger entered my home threatening to kill me if I screamed. He then abducted, blindfolded and led me to the woods behind my home where he robbed and repeatedly raped me.

After being raped I struggled with trying to live with the memories of that day. For 61/2 years the smell of his breath, the touch of his cool, damp coat sleeve around my neck, the sight of his black rubber boots and the sound of his voice in my ears reminding me, "Remember I know where you live and I will come back to

kill you if you tell anyone" were all stored in my mind unwilling to be discarded. I needed peace, security and to feel normal again. I had no hope that I would ever attain this vital relief. I had found the fate worse than death and it was living with the painful memory, living with the fear that he would fulfill his promise to return to kill me or even worse that he would he take out his revenge on my children or my husband. I merely existed for those 61/2 years as fear 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 without warning in my mind. Finally a DNA cold hit offered peace to my fearful heart, gave validation to my accusations, administered justice, and prevented this man from claiming another victim. With his conviction the jury sentenced him to two life sentences plus 25 years with no parole.

How do I convey something so deeply rooted in my heart that the only way I have found to express it is through action? Perhaps if you can picture in your mind the reality of what I have seen in labs and police evidence lockers all across our great country you will have a sense of the urgency I feel. Row after row of shelves from floor to ceiling holding boxes of every size with numbers written in black ink containing vital evidence, dusty and untouched. These are not just boxes but represent real people . . . people trying to live past the memory of the day that evidence had been taken from their body. These victims have family and friends who may be watching the self destruction that often accompanies sexual assault. These are people who are waiting as I had waited but for how many was it already too late?

When a rape victim submits to the very intrusive 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 another estimated 350,000 rape kits each holding 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. We simply cannot allow these women to feel violated again by our negligence to do all we can to provide them justice and safety.

It is for these victims that my husband and I have sacrificed our income, retirement and time. It is for them that we continue to return to your offices pleading for proper appropriation of funds and now for re-authorization of this bill. I am not a paid lobbyist. Living on a retired policeman's pay is not easy, in fact if it were not for our foundations fundraising efforts and the support from local and national businesses we could not afford to be here today as neither of us takes any type of salary or honorarium for our labor. We travel all over our country training nurses, prosecutors, law enforcement and advocates on how to deal with victims and the value of this DNA. This is not a job for me . . . this is my life . . . my very heart. But I will do whatever it takes to give these victims a chance at justice.

We have made tremendous strides since the passing of the Debbie Smith Act but our success has also been our own worst enemy. As state legislators understand the power of DNA they have broadened the types of offenses they have included in the data base and more states are beginning to include all arrestees. Detectives recognize its enormous ability in solving no-suspect cases and police officers are more aware of DNA's capabilities. Victims are grasping the connection between DNA and justice giving them the courage to submit to the humiliating rape kit. All of these wonderful achievements have caused a swell in the backlogs across our country. I was fortunate to have live in a state where the forensic scientists realized the potential of this valuable tool and found resources to initiate a program. Unfortunately these resources were not as readily available in most states.

The swell having subsided, with another five years of federal funding crime labs can begin to eliminate their backlogs and the current unacceptable turn around time will be shortened. As the success of this powerful tool continues the public becomes more confident in the system and state and local budget writers will have the data needed to begin paying for their own DNA programs without federal assistance.

We must continue to keep DNA a priority, not to do so would mean losing valuable momentum. This science is distinctive in that it is tied to a national database, requiring involvement from Congress and state legislature to function. I would ask that you use the power afforded you to guide our wonderful country to using DNA to its fullest potential.

DNA is structurally a chain, yet this amazing piece of science, breaks the chains of emotional imprisonment, and becomes a chain of confinement for those who would violate innocent citizens. DNA gives life, it administers justice, offers peace and validation, frees the innocent and I believe that it is one of the greatest crime prevention tools we have available today. All victims of crime deserve the experience of this gift of renewed life and I know that DNA can offer that gift. To withhold

that gift would be the act of denying our citizens the promised right of liberty and justice granted by our constitution. So I am honored and proud to be here with all of you representing that hope of promised justice.

Mr. SCOTT. Thank you. Thank you.

Dr. Hagy?

TESTIMONY OF DAVID W. HAGY, DIRECTOR, NATIONAL INSTITUTE OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. HAGY. Thank you, Chairman Scott, Ranking Member Gohmert, and obviously the distinguished Members of the Subcommittee.

And I want to thank, obviously, people like Debbie Smith who have worked tirelessly to raise the profile of DNA and its importance in crime and justice issues.

Obviously, as they said earlier, NIJ's mission is to advance scientific research to meet the challenges of crime and justice, and I am pleased to be here to talk about the department's efforts in this area and forensic capacity, as well as—particularly as it regards to DNA.

As you are hearing in the stories today, forensic science plays a vital role in the criminal justice system in solving crime, protecting the innocent and identifying the missing.

Congress has repeatedly demonstrated its commitment to DNA technology, including the passage of the Justice for All Act in 2004, which includes the Debbie Smith Act.

Since fiscal year 2004, NIJ has provided over $575 million to support DNA and forensic-related activities. Through the initiative, State and local law enforcement agencies have tested, as many have said earlier, 104,000 DNA cases.

The NIJ has also funded the analysis of 2.5 million convicted offender and arrestee samples which will all be added to the National DNA Database. And again, as mentioned earlier, over 5,000 hits or matches to unknown profiles or other cases have resulted.

The NIJ has also supported many innovative research projects in human genetics, molecular biology and biotechnology.

The research has dramatically improved DNA testing of sexual assault samples, which—we have heard from Congresswoman Maloney and Debbie Smith how important that is—as well as those of small, degraded or compromised evidence which is used in missing persons and mass disaster cases.

Research in other forensic disciplines, such as impression evidence, toxicology, crime scene, other non-DNA areas have already greatly expanded. These research programs promise to revolutionize forensic science methods.

NIJ has provided funding to expand the long-term capacity of criminal justice agencies to process DNA evidence on their own, through the purchase of modern equipment, hiring of staff, training of new analysts, and we have delivered basic and advanced cold case and missing persons training for law enforcement.

NIJ produced an interactive resource tool entitled "Principles of DNA" for officers of the court to help lawyers and judges understand DNA and its implication. It doesn't just stop with a match. It has to go on and make sure it follows through the entire process.

In 2007, we launched the National Missing and Unidentified Persons System, which we call NamUs. It is the first national online repository designed to help medical examiners and coroners share information about missing persons and the unidentified dead.

The Department of Justice seeks to ensure that all Federal funds are spent wisely and that the criminal justice system can rely on the validity of forensic results.

One major step in this direction is Grant Progress Assessment Program through which NIJ assesses 100 percent of its grants over a 2-year cycle. Since implementing the GPA program, 854 reports have been generated, thousands of forensics results have been reviewed by independent experts, and many important improvements have been instituted in labs that receive the funds. It is kind of a best practices as well as auditing.

The Department of Justice has taken many other steps, such as ensuring accreditation of grantee laboratories, monitoring financial compliance, educating grantees about best practices and mandating the timely expenditure of Federal funds.

We are aware that the Committee is concerned about the Post-Conviction DNA Testing Program. Please be assured that the Department of Justice remains fully committed to exonerating wrongly convicted individuals.

The issue with the Kirk Bloodsworth Post-Conviction Testing Program has been with section 413 of the Justice for All Act. This section requires State applicants to demonstrate that they satisfy detailed and stringent eligibility requirements for preserving biological evidence and providing post-conviction DNA testing in connection with all State felonies.

In fiscal year 2007, as it was said earlier, we issued a solicitation under those requirements of 413. We got three applicants and none were considered eligible for the program.

With the benefit of the language that was provided in fiscal year 2008 appropriation, we eased the eligibility requirements for the post-conviction program.

One example is now a State must only address post-conviction testing and preservation of evidence in cases of murder, non-negligent manslaughter and rape, rather than all State felonies.

NIJ's fiscal year 2008 solicitation was issued in January. We conducted extensive outreach above and beyond what we normally do to ensure that people knew that this application was out there. Five States did submit applications.

And assuming the requirements are met—we are working on the peer review now—we expect to make those awards this year.

What we are also doing is trying to do a survey of the States that didn't apply. We are just as concerned as to why we only got five States that applied. We thought that the three would be improved as the requirements were eased.

So I just want to say we have made great progress. There is much more to be done. And it is this backlog, as mentioned earlier—the submission of violent and non-violent crime scene information, as well as the collection from offenders of violent crimes to all felons and now, in many cases, all arrestees is increasing that backlog. But we are working our best to do it.

And again, I want to thank you and just reiterate that whatever problems or concerns we have with the post-conviction program, it is not a lack of motivation on the very dedicated and bright staff of NIJ. I have the great privilege to work with them.

So I can assure you our motivations are pure, and we are working very, very hard to get that money out. So thank you for having me, and I will open up for questions.

[The prepared statement of Mr. Hagy follows:]

PREPARED STATEMENT OF DAVID W. HAGY

Statement of
David W. Hagy
Director
National Institute of Justice
Office of Justice Programs
Department of Justice

Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives

Concerning
Reauthorization and Improvement of
DNA Initiatives of the Justice for All Act of 2004

April 10, 2008

Chairman Scott, Ranking Member Gohmert, and distinguished Members of the Subcommittee, thank you for the opportunity to appear today on behalf of the Department of Justice's Office of Justice Programs (OJP) and National Institute of Justice (NIJ). NIJ's mission is to advance scientific research, development, and evaluation to enhance the administration of justice and public safety. NIJ provides objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the state and local levels. I am pleased to be here to discuss the Department of Justice's efforts to improve the forensic capacity of state and local criminal justice agencies, particularly with regard to harnessing the power of DNA technology.

From the crime scene to the courtroom, forensic science plays a vital role in the criminal justice system in solving crime, protecting the innocent, and identifying the missing. One of the most powerful tools in the forensic arsenal is DNA technology. The use of DNA technologies to

solve cold cases, identify missing persons, and protect the innocent has been long documented through independent evaluation and performance measurement.

DNA technology is identifying links to violent criminals rapidly as well as exonerating the innocent. Congress has repeatedly demonstrated its commitment to DNA technology, including through the 2004 passage of the Justice for All Act, which includes the Debbie Smith Act. The President's DNA Initiative and the Justice for All Act share many of the same goals.

Through the President's DNA Initiative, we are working to help ensure that DNA becomes a routine investigative tool for law enforcement. With the funding provided by Congress, NIJ funds State and local forensic laboratories to help reduce the backlog of untested evidence, identify missing persons, and is working to assist States to perform DNA testing in cases in which a person may have been wrongly convicted. NIJ is committed to continuing its efforts to build the capacity of State and local forensic laboratories to the point where federal assistance will no longer be required.

Since Fiscal Year 2004, NIJ has provided over $575 million to support DNA and forensic-related activities. The appropriated funding has provided our nation's criminal justice system with a tremendous increase in state and local crime laboratories' capacity to use DNA technology to solve crimes. Through the Initiative, state and local law enforcement agencies have been funded to test nearly 104,000 DNA cases from 2004 to 2007. NIJ has also funded the analysis of 2,500,000 convicted offender and arrestee samples which will be added to the national DNA database. Over 5,000 "hits", or matches to unknown profiles or other cases, have resulted from these efforts. In 2008, we expect to fund the testing of a further 9,000 backlogged cases and more than 834,000 backlogged convicted offender and arrestee samples.

We have also seen progress with our NIJ System Testbed (NEST) project. Through this project, we are evaluating software that automates the assessment of DNA data and facilitates the entry of DNA profiles into the Combined DNA Index System (CODIS), the National DNA database. NEST will boost laboratories' capacity to analyze DNA evidence.

NIJ has sought novel ways to help scientists obtain DNA profiles from biological material, especially when that material is damaged or limited in quantity. We have supported many innovative research projects in human genetics, molecular biology, and biotechnology. In 2006, NIJ-funded research led to the development of new technology which can generate a DNA profile from aged, degraded or damaged samples. This technology is now commercially available for identifying severely degraded human remains such as those found in missing persons' cases and mass disasters.

NIJ's efforts have made a difference in key DNA cases nationwide. In 2006, a DNA match led to the arrest of a Missouri man accused of raping a 15-year-old girl in 1997. Through NIJ funding the Center for Human Identification at the University of North Texas used "mini-STR" technology on the decomposed remains of a person found in 1984. The technology positively identified the remains as those of a Montana woman who had been missing for 22 years.

NIJ has provided funding to expand the long-term capacity of criminal justice agencies to process DNA evidence on their own, for example through the purchase of modern equipment, hiring of more staff, and training of new analysts. Training is a critical component of these programs because of the continuing shortage of analysts to meet the increasing demand for DNA testing and the need to ensure the integrity and validity of results reported from the crime

laboratory. NIJ has delivered basic and advanced cold case and missing person training for law enforcement so that police and forensic scientists can work together better on these cases.

NIJ also produced an interactive resource tool entitled *Principles of DNA for Officers of the Court* to help lawyers and judges understand DNA and its implications in different situations. Multi-site studies are examining how often forensic evidence helps identify suspects, whether forensic evidence influences a suspect's decision to confess, and whether jurors are more likely to convict in cases where DNA forensics testimony is given. These studies have shown that DNA can be a powerful tool to improve the clearance rate for burglaries by a very large margin. NIJ sponsored six Technology Transition Workshops during Fiscal Year 2007 to help crime laboratory practitioners evaluate and gain experience with cutting-edge technologies from NIJ's forensic research and development programs.

In 2006, on the fifth anniversary of the September 11 terrorist attacks, NIJ published *Lessons Learned from 9/11: DNA Identification in Mass Fatality Incidents*. The report highlighted the use of new DNA technologies to identify severely fragmented remains. NIJ widely disseminated the report in print, electronic and CD-ROM formats, and the response was tremendous, both in the U.S. and internationally. In 2007, the report won the top award from the National Association of Government Communicators.

One NIJ-funded DNA technology allows DNA profiles to be obtained from skeletal remains (for example, from missing persons investigations) and other severely damaged or degraded samples. In 2007, we launched the National Missing and Unidentified Persons System (NamUs). NamUs is the first national online repository designed to help medical examiners and coroners share information about missing persons and the unidentified dead. A recent story on

NamUs in the NIJ Journal recently won an award from National Association of Government Communicators.

Under the President's DNA Initiative, high-throughput DNA analysis, DNA testing of small or compromised evidence, and testing of sexual assault samples have all been improved dramatically. Another NIJ-funded project uses Y-chromosome technology to obtain DNA profiles from sexual assault evidence collected four or more days after a sexual assault occurs. Research in other forensic disciplines (such as impression evidence, toxicology, crime scene and other non-DNA areas) has also been greatly expanded with funding provided in recent years. For example, NIJ is developing a method to allow fingerprint examiners to report the statistical uniqueness of latent prints captured from crime scenes, and we are doing similar studies for handwriting analysis, ballistics identification and other forensic disciplines. These research programs promise to revolutionize the power, speed and reliability of forensic science methods in coming years.

The courts and the public must have a great deal of confidence in results reported from DNA forensic laboratories. The Department of Justice is committed to improving the practice of forensic science across all of the disciplines. Congress has appropriated over $61.75 million since 2004 for awards to State and local crime laboratories as well as medical examiners/coroners officers in all 50 states and territories. These awarded funds have been used to address laboratory backlogs and enhance the quality and timeliness of forensic services. Funds are used for purchasing new equipment, training and education, accreditation and certification, personnel, and renovations.

The Department of Justice seeks to ensure that all federal funds are spent wisely and that the criminal justice system can rely on validity of the forensic results reported from crime

laboratories. One major step in this direction is the Grant Progress Assessment (GPA) Program, through which NIJ assesses 100 percent of grants over a two year cycle. Since implementing the GPA Program, 854 GPA reports have been generated, thousands of forensic results have been reviewed by independent experts, and many important improvements have been instituted in labs that receive federal funds. The Department of Justice has taken many other steps, such as ensuring accreditation of grantee laboratories, monitoring financial compliance, educating grantees about best practices, and mandating timely expenditure of federal funds for maximum impact.

Please be assured that the Department of Justice remains committed to exonerating wrongly convicted individuals. We are aware that the Committee is concerned with the administration of the Post-Conviction DNA Testing grant program.

The issue with the Kirk Bloodsworth post-conviction DNA testing grant program has been with Section 413 of the Justice for All Act. This section requires state applicants to demonstrate that they satisfy detailed and stringent eligibility requirements for preserving biological evidence and providing post-conviction DNA testing in connection with all state felony offenses. For example, under one scenario, Section 413 requires state applicants to demonstrate not only that the state preserves biological evidence pursuant to state or local law or practice, but that it preserves biological evidence in a manner that ensures reasonable measures are in fact taken by all jurisdictions within the State to preserve such evidence.

In Fiscal Year 2007, NIJ issued a solicitation announcing its Post-Conviction DNA Testing Assistance Program including the stringent requirements of Section 413. Consistent with Section 413, it included detailed information regarding eligibility. After review, it was

determined that none of the three applicants had established eligibility for the program. As a result, NIJ was unable to make awards.

With the benefit of the language included in the Fiscal Year 2008 appropriation (which applies only to the FY 2006, 2007, and 2008 appropriations), NIJ eased the eligibility requirements for the Post-Conviction DNA Testing Assistance Program. For example, a state must now address (through certification) only post-conviction testing and preservation of biological evidence with regard to the offenses of murder, non-negligent manslaughter, and forcible rape (rather than all state felonies).

NIJ's Fiscal Year 2008 solicitation for this program was issued on January 23, 2008, with a March 24, 2008 deadline. My staff conducted extensive outreach to ensure that key state and local government officials as well as forensics professionals were aware of the solicitation. We also worked with organizations such as the American Society of Crime Lab Directors and the American Academy of Forensic Sciences to notify their membership about this program. Five states submitted applications. Assuming requirements are met, NIJ expects to make awards this fiscal year.

The Department of Justice's forensic programs have made great progress in the improvement of forensic practices through the DNA assistance and other programs, research and development, training activities, and the many related efforts. NIJ was recognized this past year with the prestigious Service to America medal for our accomplishments in the management of these forensic programs, which have assisted in the investigation of thousands of cases of violent crime and provided historic levels of support to the forensic laboratories. However, even with these successes, much remains to be done.

More law enforcement officers are realizing the importance of collecting, preserving, and submitting forensic evidence from both violent and nonviolent crime scenes, resulting in sharp increases of submissions of DNA evidence to the nation's crime laboratories. The passage of state statutes expanding DNA sample collections from offenders of violent crimes to all felons, and in many jurisdictions, to all arrestees, has further increased the workload of forensic science laboratories.

As the Committee is aware, a substantial number of convicted individuals have been exonerated using DNA evidence. This has led to concerns about eyewitness testimony, the reliability of other forensic methods, and the investigation of crime. In addition, NIJ research shows that most latent print (e.g., fingerprint) examiners work outside the crime laboratory and lack professional certification. Unlike DNA analysts, forensic practitioners in other disciplines may not be required to conform to national standards or work in accredited facilities.

Scientific research and development is critical to improvement of the forensic sciences. New technologies must be developed and transferred into practice in crime laboratories. Pursuant to the Fiscal Year 2006 Appropriations' Conference Report 109-272, Congress directed the National Academy of Sciences (NAS) to study the needs of the forensic science community, especially with respect to the gaps in the scientific underpinnings of the disciplines and national standards. We look forward to working with the NAS to respond to the study in a positive and proactive way.

OJP and NIJ remain committed to working with the Congress to ensure that State and local criminal justice professionals have the tools and resources needed to execute their missions. Thank you again for the opportunity to testify before the Subcommittee on this very important issue. I am happy to answer any questions you or other Members may have.

Mr. SCOTT. Thank you.
Mr. Marone?

TESTIMONY OF PETER M. MARONE, DIRECTOR, VIRGINIA DEPARTMENT OF FORENSIC SCIENCE, RICHMOND, VA

Mr. MARONE. Thank you, Mr. Chairman, Ranking Member Gohmert, other Members of the Committee.

I am director of the Department of Forensic Science, as the Chairman indicated, but I am also speaking today as Chairman of the Consortium of Forensic Science Organizations.

And what that is is six national organizations—the American Academy of Forensic Science, the National Organization of Medical Examiners, the American Society of Crime Laboratories, the International Association of Identification, American Society of Crime Laboratory Directors, Laboratory Accreditation Board, and maybe I missed somebody, but you get the idea. It is essentially the forensic science community.

Just this past Monday, Maryland joined a great number of States in adding arrestee testing to their databases. Now, this is good and bad, if you look at it from an operational standpoint, because what we have experienced is, as we progress, as we develop more sensitive and more direct science, more technology, and add to the databases that the various States are looking at, that is very good.

However, what it also does is it increases the number of cases that are available for laboratories to work. And with the databases, the number of hits that we have all talked about—and we have talked about the numbers—hundreds of thousands of old cases that are now worked.

And we are in a situation where laboratories are forced to struggle between the old cases, the cold cases, the post-conviction cases, court dates and everything else, and it is not that they wouldn't really love to be able to do everything, but the resources just aren't there.

The new services such as Y-STRs, mitochondrial typing, mini-STRs—all those methods go toward certainly new applications and the ability to be able to not only find the guilty but exonerate the innocent, and that is truly important.

The casework backlog, as has been stated before, is somewhere around 350,000. Again, when we originally started the funding in 2000 and 2001, there were about 400,000, 450,000 offenders, convicted offenders, in the CODIS databank. Now there are several million.

Virginia alone started out with a few thousand. And thanks to a lot of far-thinking legislators in Virginia—by the way, the Chairman was one of them at the time who established the Virginia databank, and found that money for Virginia to essentially test 240,000 of those samples prior to any Federal funding being provided.

The laboratories are catching up with the backlogs, but what is happening is—and I have heard the criticism; I am sure Mr. Hagy has heard the criticism—that in spite of the amount of money that has been funded to laboratories that the backlog is just not coming down.

What is happening is the number of cases that are being worked is certainly going up, but because of the influx of a significant number of cases, it is a losing battle of more cases coming in the door even though you are working more. The backlogs aren't coming down as quickly as we would like.

Virginia, for example, from 2003 to 2007 cut the backlog in half. That is at the same time that the receptions went up 50 percent, 60 percent.

There have been numerous success stories from Virginia that come out of the DNA funding under the Justice for All Act establishing many training positions that we funded under grant funding and, with projections, later on turned those grant-funded positions into fully funded positions under our FTEs.

I want to read this so I get it exactly right. The forensic science community enthusiastically supports the reauthorization of the Debbie Smith Act and encourages Congress to continue funding for DNA backlog casework and research development.

It would be impossible for us to keep up with this issue not getting that funding. While the Commonwealth of Virginia is fortunate to have our administrations—several—and legislatures—they provided significant support for us not only in positions but in facilities—other States aren't that lucky.

I would also like to address, then, the Bloodsworth Act, and maybe answer some of those issues with funding for post-conviction testing. Virginia was one of those States that applied. We have applied again.

And we have a significant—or should I say a very interesting issue in that the cases we are analyzing are cases for which we possess that evidence, so we know what that finite pool of cases is to be able to address for grant purposes.

What the other States don't have necessarily is a handle on what that number is. Funding for post-conviction testing is just as important as funding for any other type of DNA processing.

Thank you.

[The prepared statement of Mr. Marone follows:]

PREPARED STATEMENT OF PETER M. MARONE

United States House Subcommittee on Crime, Terrorism, and Homeland Security

Reauthorization and Improvement of DNA Initiatives of the Justice For All Act of 2004

April 10, 2008

Peter M. Marone
Chairman
Consortium of Forensic Science Organizations

Mr. Chairman and Members of the Committee:

Thank you for inviting me to speak. I am Peter Marone, Director of the Virginia Department of Forensic Science, but today I am also speaking as the Chairman of the Consortium of Forensic Science Organizations. The CFSO is the national organization which represents the American Academy of Forensic Sciences, American Association of Crime Laboratory Directors, National Association of Medical Examiners, Forensic Quality Services, International Association for Identification, and the American Association of Crime Laboratory Directors Laboratory Accreditation Board. For reference, I also am a member of the National Academies of Science Committee on Identifying the Needs of the Forensic Sciences Community.

The field of forensic science has received a tremendous amount of visibility and attention in the recent years, particularly in the television media. As a result of this attention, or as many refer to it as the "CSI" effect, the perceived capabilities of our laboratories have

grown and along with them, our caseloads have increased dramatically. We find that both law enforcement agencies as well as attorneys - both prosecution and defense, seem to be affected by this "CSI effect" and tend to request much more testing and analysis of crime scene evidence than has been required before. As a result, we have seen our case backlogs grow at a most alarming rate. For example, enhanced penalties for possession of a firearm with a drug arrest and the increased use of the National Integrated Ballistic Information Network (**NIBIN**) have increased the number of firearms cases almost exponentially. In addition, increased emphasis on anti child-exploitation has increased the need for digital evidence (computer forensics) capabilities far beyond existing resources.

Concurrently, the laws regarding DNA data banks are also expanding rapidly on a nationwide basis. This fact has, as well, caused an increased caseload for the data banks and the casework laboratories.

Unfortunately, this increase in backlog and caseload has not been accompanied by a commensurate increase in funding for our labs. It is difficult to obtain funding to cover both the large numbers of new cases that are being presented to our labs daily and the backlog of cases from the past that require a timely review. While the crime labs clearly understand and concur that post-conviction and cold cases from the past need to be reviewed promptly, to address both these and current cases is time consuming, costly, and logistically problematic.

We have also found that, as science progresses and crime labs expand their services to include Y STR, mitochondrial typing, and "mini STR" methods, "older" methods used by these labs are sometimes called into question. This, along with some deserved criticism, cause scrutiny regarding the capability of the labs as well as the integrity of the crime lab system. News coverage, including specialized programs or segments featuring expert witnesses have given a louder voice in the public arena which also leads to increased visibility. Scrutiny is welcomed when it assists a lab in improving services and the methodologies that are being employed. There is always a way to improve and any chance to do so is welcomed. However, one must be careful that change is not done merely for the sake of change and does not become unnecessarily cumbersome and time consuming, without a specific, valid purpose and useful result.

Mr. Chairman, the forensics community supports the re-authorization of the Debbie Smith Act and encourages the Committee to continue the funding for DNA backlogs, casework, and research/development. It would be impossible for us to keep up with this issue if not for that funding. While the Commonwealth of Virginia is fortunate in that our administrations and legislature have been willing to provide us support, other States are not so lucky.

Another issue I wish to address is the requirements established in order for a laboratory to receive federal funds to conduct post-conviction testing, specifically the Bloodsworth Amendment in the Justice for All Act.

Please bear in mind that the time permitted to respond to solicitations from the Department of Justice has been just four weeks. Unfortunately, the solicitation requirements were not available to any of the laboratories prior to the solicitation announcement; therefore four weeks meant four weeks. Further, compliance with these requirements many times has required implementation of new legislation or at least an amendment of existing statutes at the State level. The State of Virginia was able to comply with this because it had statutes in place already, which I have submitted for the record. We are confident that this provision meets the solicitation. If we had this funding in the timeline we had anticipated, it would have been a significant help in completing the project.

The Bloodsworth grant program is an extremely important program for the Commonwealth of Virginia. DFS is a laboratory system independent of any law enforcement agency that conducts testing for both governmental agencies and defendants (by court order). By state statute, improperly convicted persons are entitled to testing as are subjects of criminal investigations if the statutory scheme is followed.

Post-conviction cases can be problematic due to the detrimental effect they have on current casework. The post-conviction cases are primarily outsourced to private laboratories in an effort to minimize the impact on current casework. Outsourcing is extremely costly to DFS and the Bloodsworth grant program would help to alleviate the costs and allow for all casework / post-conviction testing to be completed in a timely manner. Ironically, Mr. Chairman, my State has been criticized by some in the State for not processing these cases more expeditiously.

The following is an excerpt from the fact sheet - The Presidents Initiative to Advance Justice Through DNA Technology - 2004 information. Issue #1:

"One of the issues facing the criminal justice system today is the backlog of unanalyzed DNA samples and biological evidence from crime scenes, especially in sexual assault and murder cases. Casework Sample Backlogs consist of DNA samples obtained from crime scenes, victims, and suspects in criminal cases. The National Institute of Justice (NIJ) estimates that the current backlog of rape and homicide cases - alone - is approximately 350,000.

Convicted Offender Backlogs consist of DNA samples obtained from convicted offenders who are incarcerated or under supervision. Currently, 23 states require all convicted felons to provide DNA samples. Preliminary estimates by NIJ place the number of collected, untested convicted offender samples at between 200,000 and 300,000. NIJ also estimates that there are between 500,000 and 1,000,000 convicted offender samples, which are required under law but not yet collected."

A study was conducted by WSU Department of Political Science /Criminal Justice. It was based on survey data taken from a scientific sampling of law enforcement agencies in all 50 states, as well as information reported directly by the 50 state and 70 local forensic laboratories across the country.

The findings reveal a growing backlog of unsolved felony cases nationally – including roughly 400,000 unsolved rapes and homicides going back two decades. More than half

those cases, researchers found, provide some amount of as-yet-untested biological evidence that could potentially reveal important DNA information.

Data from a CODIS Presentation by Doug Hares from the FBI (Oct 2007) noted, "Based upon the recent information in CODIS the statement that the NIJ funding is not doing anything is not totally true. When the NIJ funds originally became available in the early 2000-01 timeframe, CODIS has approximately 460,000 offenders in the Data Bank and 22,000 Forensic cases in the CODIS. As of Oct 2007 CODIS now contains 5 million offenders, 78,000 arrestees and 200,000 Forensic Cases profiles."

Numerous success stories from Virginia have come out of the DNA funding provided under other DNA Initiatives of the Justice For All Act of 2004. The establishment of many of the training positions and the funds for the training programs were the result of federal grants. The positions have since been converted to full time, state funded positions. Much of the justification for the establishment of state positions was based on the existence of grant funded positions already in place and productive. Please note the significant backlog reduction in DNA cases from 2004 to 2008. Currently there are 8 DNA examiners being trained. Because of the time involved in working each DNA case, which tends to be more complex than some of the other disciplines, the response to adding more staff is slower. Table 1 demonstrates the trend of case backlogs in the DNA Section, which should continue downward.

Year	Cases Received	Cases Completed	Ending Backlog
2007	4035	4593	1125
2006	3690	3561	1627
2005	3695	4315	1413
2004	4168	4447	1974
2003	4042	3697	2074

Table 2

In addition to the reduction in backlog, there is a significant decrease in the overall turn around time for DNA cases. **And yet, DNA analysis constitutes only about 10% of the casework of forensic laboratories.**

Another issue I wish to address is Oversight Boards for forensic laboratories. Many laboratories, if asked, will state that their oversight is provided by the accrediting body under which they operate. Some people would say that this is the fox guarding the hen house and there is something inherently wrong with this process. However every other oversight board, whether it be commercial, medical, legislative or the legal, has oversight bodies which are comprised of the practitioners in that profession. It makes sense that the most knowledgeable individuals about a particular topic would come from that discipline. But that does not seem to meet the current needs. The key to appropriate and proper oversight is to have individuals representing the stakeholders, but that these individuals must be there for the right reason, **to provide the best possible scientific analysis**. There cannot be any room for preconceived positions and agenda

driven positions. Unfortunately, we have seen this occur in some States. As a result, many States have taken it upon themselves to create their own commissions. Unfortunately, this means that no two States are following the same criteria.

Mr. Chairman, labs are staffed by truly dedicated individuals who are committed to finding the truth, whether exonerating wrongfully accused or uncovering the guilty. However, they are woefully under funded with an ever increasing caseload. We are looking forward to the recommendations from the National Academies of Science study and are confident that Congress will review those recommendations and act accordingly.

Thank you again for your consideration and for the opportunity to address the Committee. I will be pleased to answer any of your questions.

Below is the specific language from Innocence Protection Act of 2004 and applicable Virginia CODE Sections, regulations or practice (*In Italics*).

SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE.
For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 308, and 412 shall be reserved for grants to eligible entities that--

(1) meet the requirements under section 303, 305, 308, or 412, as appropriate; and

(2) demonstrate that the State in which the eligible entity operates--

(A) provides post-conviction DNA testing of specified evidence--

(i) under a State statute enacted before the date of enactment of this Act (or extended or renewed after such date), to persons convicted after trial and under a sentence of imprisonment or death for a State felony offense, in a manner that ensures a reasonable process for resolving claims of actual innocence; or

19.2-327.1 under the Code of Virginia allows for Scientific Analysis of Newly Discovered or Untested Evidence

requirements are that the petitioner (defendant) must show:
1 They were convicted of a crime
2 – There is evidence subject to a chain of custody, which has preserved the integrity of the evidence
3 – This evidence has not been previously subject to this type of testing
4 – This evidence is relevant and necessary prove the actual innocence of the defendant
5 –There was no unreasonable delay after the defendant either discovered the evidence or the testing became available at the Department of Forensic Science.

(ii) under a State statute enacted after the date of enactment of this Act, or under a State rule, regulation, or practice, to persons under a sentence of imprisonment or death for a State felony offense, in a manner comparable to section 3600(a) of title 18, United States Code (provided that the State statute, rule, regulation, or practice may make post-conviction DNA testing available in cases in which such testing is not required by such section), and if the results of such testing exclude

the applicant, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar such application as untimely; and

§ 19.2-270.4:1. Storage, preservation and retention of human biological evidence in felony cases.

This Virginia statute upon a sentence of death requires that the court order all human biological evidence or representative samples be stored at the Virginia Department of Forensic Science until execution of the sentence or until the sentence is reduced.

This statute further allows upon conviction of a felony that either party request that the court order preservation of the human biological evidence or representative samples for a period of fifteen years.

This statute would allow a defendant to petition the court at a later date for if a new method of testing become available and they meet the requirements of §19.2-327.1 (prove innocence, new type of testing, timely, etc.)

(B) preserves biological evidence secured in relation to the investigation or prosecution of a State offense--

under a State statute or a State or local rule, regulation, or practice, enacted or adopted before the date of enactment of this Act (or extended or renewed after such date), in a manner that ensures that reasonable measures are taken by all jurisdictions within the State to preserve such evidence; or

The Virginia Department of Forensic Science continually trains law enforcement regarding evidence handling and preservation. In addition the Department of Forensic Science has issues standards and guidelines for the preservation of human biological evidence.
This has been a practice of the Department of Forensic Science prior to the Justice for All Act and acts to ensure that reasonable measures are taken by all jurisdictions in Virginia to preserve evidence.

(ii) under a State statute or a State or local rule, regulation, or practice, enacted or adopted after the date of enactment of this Act, in a manner comparable to section 3600A of title 18, United States Code, if--

(I) all jurisdictions within the State comply with this requirement; and

(II) such jurisdictions may preserve such evidence for longer than the period of time that such evidence would be required to be preserved under such section 3600A.

Sec. 3600A. Preservation of biological evidence (a) IN GENERAL- Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

(b) DEFINED TERM- For purposes of this section, the term 'biological evidence' means--

(1) a sexual assault forensic examination kit; or

(2) semen, blood, saliva, hair, skin tissue, or other identified biological material.

(c) APPLICABILITY- Subsection (a) shall not apply if--

(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

(2) the defendant knowingly and voluntarily waived the right to request DNA testing of the biological evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

(3) after a conviction becomes final and the defendant has exhausted all opportunities for direct review of the conviction, the defendant is notified that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice;

(4)(A) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing; or

(5) the biological evidence has already been subjected to DNA testing under section 3600 and the results included the defendant as the source of such evidence.

§ 19.2-270.4:1. Storage, preservation and retention of human biological evidence in felony cases.

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This statute further allows upon conviction of a felony that either party request that the

court order preservation of the human biological evidence or representative samples for a period of fifteen years.

This statute would allow a defendant to petition the court at a later date for if a new method of testing become available and they meet the requirements of §19.2-327.1 (prove innocence, new type of testing, timely, etc.)

Mr. SCOTT. Thank you.
Mr. Brooks?

TESTIMONY OF LEVON BROOKS, WRONGFULLY CONVICTED OF MURDER AND EXONERATED THROUGH DNA EVIDENCE

Mr. BROOKS. Thank you, Mr. Chairman—my name is Levon Brooks. I was locked up for a crime I did not commit. I did 18 years, and I was exonerated in March of this year.

And to give you a little example on how it was when I was there—a nightmare—gave up one time but I had to fight with everything that I had, you know, to make it, even with all kinds of people that you are around every day.

But I had to do what I had to do to make it. But thanks to DNA, me and a lot of more guys—we were freed. And I am going to let this be short, because I am so happy to be out that I can't get my words out right.

But I am going to do the best that I can. And we don't get nothing for re-exonerated. We are not getting compensated or nothing. And it is really kind of hard on us, you know, just coming back to the street.

We ain't got nothing, so we try to make it—you know, the family that I got, you know—they trying to help me now, but I really need help on that issue. If you all could, you know, please help us out. And I think I could speak for the other guys, too.

But I want to thank the Innocent Project, Mr. Peter and Ms. Vanessa, that has helped me get through this ordeal on running the DNA tests and stuff like that to help me.

Then—to say thank you, God, I am here today. And DNA is a important thing, so that, like I said, that has freed me and a lot of more guys, and we are thankful.

And I won't take up too much of your time, and I thank you just for being here.

Mr. SCOTT. Thank you. And what State were you in? Were you in Mississippi?

Mr. BROOKS. Yes, sir.

Mr. SCOTT. Thank you.

Mr. BROOKS. Macon, Mississippi.

Mr. SCOTT. Thank you. Thank you for your testimony.

Mr. BROOKS. Thank you, sir.

Mr. SCOTT. And, Peter Neufeld?

TESTIMONY OF PETER NEUFELD, CO-FOUNDER AND CO-DIRECTOR, INNOCENCE PROJECT, NEW YORK, NY

Mr. NEUFELD. Good morning, Chairman Scott and Ranking Member Mr. Gohmert, Congressman Nadler.

Just to give you a little bit of background, because I think it is important here, back in the fall of 1990——

Mr. SCOTT. We are going to have a couple of votes in a minute, so we will conclude your testimony and then come back for questions.

Mr. Neufeld?

Mr. NEUFELD. Okay, sure. Back in the fall of 1990, in Mississippi, a 3-year-old girl was abducted from her house in the mid-

dle of the night. She is taken out. She is sexually assaulted. She is then killed, and she is dumped in a pond behind her house.

There was a logical suspect. There was a pedophile. There was a young man in the community who had sexually assaulted other young women. Nevertheless, that suspect was not pursued, and instead attention focused on the boyfriend of the mother of the 3-year-old girl.

And that young man was Levon Brooks. The only evidence used to convict Levon Brooks was the discredited testimony of a forensic dentist and local coroner and a pathologist, a pathologist who routinely testified in murder cases all over Mississippi, because he was the only one to do it at a discounted price.

It was a capital case. Levon Brooks was convicted of the capital murder, but because of residual doubt he was sentenced to live in prison without parole.

Eighteen months later, 1½ miles away in the same tiny, rural town in Mississippi, another 3-year-old girl is abducted from her home. She is taken out into the woods. She is sexually assaulted. She is then strangled and killed. And she is deposited in a creek behind the house.

Now, to anyone looking at these two crimes, you might think, "My goodness, they were obviously committed by a serial pedophile." But law enforcement in Macon, Mississippi didn't see it that way. And this time, they convicted a guy named Kennedy Brewer, who was the boyfriend of the second girlfriend.

And again, he is convicted on the same discredited testimony, the same corrupt forensic dentist, and the same discredited testimony and false testimony of the local pathologist who did all the autopsies for 80 percent of the prosecutors in Mississippi at that time.

He wasn't as lucky as Levon. He was sentenced to death and was sent off to Parchment death row to be executed. Years passed, and finally—finally—we got access to DNA, but not because there was a statute providing access to the DNA, not because there was a statute in Mississippi requiring them to preserve evidence.

Now, Brewer, the second guy, Kennedy Brewer, gets DNA testing because his lawyer, one of the very few, asked the court at the end of the trial, "Please preserve the biological evidence."

And then later on, when we requested testing, we couldn't get it until the Mississippi Supreme Court finally decided, "You know, in this case, you might want to do some testing."

And so Brewer gets testing on semen left by the perpetrator of the second crime, and it not only cleared Mr. Brewer, but eventually we called attention to this serial pedophile who was still out there at liberty, and DNA testing was done on him, and it matched him.

We tried to do DNA testing on Mr. Brooks' case, but unfortunately, again, because Mississippi did not have a preservation statute, the biological evidence was not adequately preserved.

But thank God for Mr. Brooks that, when the Attorney General took over the case and apprehended the real perpetrator just a couple of months ago, and started talking to the real perpetrator on videotape about the abduction of that little girl, Christine Jackson, in the Brewer case, he said, "You know, by the way, I did another

one, and the one I did was this little girl, Courtney Smith. It is the one that Levon Brooks was convicted of."

So it was serendipitous, if you will, because there was no preservation, and there was no access to the DNA, that Mr. Brooks, along with Mr. Brewer, was completely exonerated of this horrible, horrible crime.

And of course, we join with Debbie Smith and Carolyn Maloney and the other people here who understand the importance of DNA and also understand how unreliable forensic science evidence, like the type used in these two cases—okay?—should be discarded, should be improved, and hopefully Congress will do that, at the same time opening up the opportunity for people like Levon Brooks and Kennedy Brewer to get DNA testing.

Congress in its infinite wisdom passed the Justice for All Act and put aside a good pot of money so there would be testing. However, the executive branch gutted that, took away the financial incentives for poor States like Mississippi, like Alabama, to do DNA testing, left a small amount of money in the Bloodsworth grant, and that was it.

Eighty people have been—of the 215 people who have been exonerated, 80 other people were identified as the true perpetrators. And in every case, almost every case, those 80 people committed other serious violent crimes in the intervening years.

Congress knew that to get the States to allow for access to DNA and to preserve the evidence, there had to be financial incentives. But it was taken away by the President, and the small amount that was left was poorly managed by NIJ's OJP.

They put difficult obstacles in the way of most States, and they did it to the point that in the first year only 3 of 50 States even applied for the money, and now you have only 5 States, at a time when they say they have made it much easier to happen.

They haven't made it that much easier. It is still very difficult for the States to do it. Attorney generals for this money alone have to certify that they have met certain tasks, and when they certify it, they have to swear to it under penalty of criminal prosecution.

We have looked at other authorizations and requests for proposals from the Justice Department, and we have not seen anything quite that draconian. So as a result, you only have a few States doing it.

The law needs to be changed. Hopefully you will do that. Hopefully you will allow that other monies that people get to do DNA testing and laboratories get will be conditioned on providing access to post-conviction DNA testing or preserving the evidence.

Preservation is not just about the innocent. Preservation is also required so cold case units can look at old cases. It is a no-brainer. But they are not doing it.

So hopefully Congress will impose that requirement as a condition of getting these other monies like it was initially intended in 2004. Change that law so there won't be more Levon Brooks', so there won't be more Kennedy Brewer's, and there won't be more 3-year-old girls who didn't have to be executed if the police had done it right the first time in 1990. Thank you.

[The prepared statement of Mr. Neufeld follows:]

TESTIMONY OF PETER NEUFELD, ESQ.
ON BEHALF OF
THE INNOCENCE PROJECT

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND
HOMELAND SECURITY

APRIL 10, 2008

REGARDING
REAUTHORIZATION AND IMPROVEMENT OF
DNA INITIATIVES OF THE
JUSTICE FOR ALL ACT OF 2004

Testimony of Peter Neufeld

On Behalf of the Innocence Project

Before the House Judiciary Committee

Subcommittee on Crime, Terrorism, and Homeland Security

April 10, 2008

Chairman Scott, Congressman Gomhert, and Members of the Subcommittee, my name is Peter Neufeld and I am co-founder and co-director of The Innocence Project, affiliated with Cardozo Law School, and I am here to testify with regard to the Reauthorization and Improvement of DNA Initiatives of the Justice For All Act of 2004. Thank you for inviting me to testify before you today.

Passed with overwhelming and passionate bi-partisan Congressional support and signed by President Bush, the Justice for All Act of 2004 (JFAA) was a valuable legislative act, guiding the way for enhancement of victim services, aiding law enforcement and prosecutors, and protecting the innocent.

In my testimony today I will first provide some background about the development and importance of both post-conviction DNA testing and the practices for preserving biological evidence from crime scenes. I will then address Section 412 of the Justice for All Act, the Kirk Bloodsworth Post-Conviction DNA Testing Assistance Grant Program, and Section 413, Incentive Grants to States to Ensure Consideration of Claims of Actual Innocence, both of which were meant by Congress to encourage states to provide for post-conviction DNA testing, and to preserve biological evidence. Specifically, the Bloodsworth Program was authorized to provide federal funding to

states seeking to enhance their provision of post-conviction DNA testing; the Incentive Grant program was meant to encourage states to both preserve biological evidence and provide access to post-conviction DNA testing. I defer, of course, to Debbie Smith for her expert comment upon another important component of the Justice for All Act, the Debbie Smith Act of 2004.

Both the Debbie Smith Act and the Kirk Bloodsworth Post-Conviction DNA Testing Assistance Grant Program were named for individuals, representing thousands of others, whose long suffering was eased by the ability to conduct DNA testing on crime scene profiles.

Debbie Smith waited six and a half years for the true perpetrator of her vicious rape to be identified through DNA testing. Kirk Bloodsworth served eight years in prison – two of them on death row – before DNA testing proved his innocence of the horrible child rape and murder for which he had been wrongfully convicted. In the wake of these DNA testing breakthroughs, both of these individuals have become staunch advocates for the use of forensic DNA testing. For Ms. Smith, a backlog in Virginia's DNA processing required her and the public at large to wait years before knowing that the rapist – who threatened to harm her again – was identified, convicted, and incarcerated. For Mr. Bloodsworth, after years of proclaiming his innocence, it was not until he had access to a DNA test that he was able to prove his innocence, be freed from wrongful imprisonment, and enable the state of Maryland to identify the real perpetrator of that horrific crime.

The provisions of the Justice for All Act received such broad bi-partisan support because, as Senator Leahy noted:

> Post-conviction DNA testing does not merely exonerate the innocent, it can also solve crimes and lead to the incarceration of very dangerous

> criminals. In case after case, DNA testing that exculpates a wrongfully convicted individual also inculpates the real criminal.... The Justice for All Act is the most significant step we have taken in many years to improve the quality of justice in this country. The reforms it enacts will create a fairer system of justice, where the problems that have sent innocent people to death row are less likely to occur, where the American people can be more certain that violent criminals are caught and convicted instead of the innocent people who have been wrongly put behind bars for their crimes, and where victims and their families can be more certain of the accuracy, and finality, of the results.[1]

Since its U.S. introduction, forensic DNA testing has proven the innocence of 215 people who were wrongfully convicted of serious crimes they did not commit. The nation's wrongfully convicted proven innocent through DNA testing collectively spent more than two and a half thousand years behind bars for crimes they did not commit, with an average sentence of nearly a dozen years. As these wrongfully convicted people languished behind bars, the true perpetrators of these serious crimes eluded detection, in many cases only to commit additional serious crimes.

The results of post-conviction DNA testing have not only exonerated the innocent but have also helped law enforcement identify the real perpetrators. That has happened 80 times in the Innocence Project's cases to date and is occurring more frequently as techniques for extracting DNA from evidence rapidly improves and new DNA tests are developed. Indeed, as testing methods continue to evolve, so does the crime-solving potential of biological evidence left at crime scenes. Unfortunately, however, we are finding that the promise of DNA testing is hindered by inadequate and improper biological evidence retention procedures and practices. In many states, critical biological evidence is regularly prematurely destroyed, devastating innocence claims and denying crime victims the ability to learn who was responsible for their suffering.

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1 150 CONG. REC. S11609-01 (2004).

These facts made passage of the Justice for All Act innocence incentives a reason for celebration; unfortunately, the subsequent Executive undercutting of these programs – through Executive budgeting and Office of Justice Programs (OJP) implementation – are best characterized as an affront to justice.

I. Background:

A. The Importance of Access to Post-conviction DNA Testing

The traditional appeals process is often insufficient for proving a wrongful conviction. It is not uncommon for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in his case. Yet as the country now widely appreciates, when post-conviction DNA testing can provide compelling proof of a convicted person's innocence – or guilt – it should be conducted. Post-conviction DNA testing statutes therefore typically provide the only way a person can access the DNA evidence that can prove innocence, absent a protracted and very uncertain legal battle.

Post-conviction DNA testing has clear value for individuals whose cases predated the DNA era; indeed, DNA testing was not even admitted into the courts as evidence until 1988. What is less obvious is why post-conviction DNA testing is still relevant in the modern DNA age, when testing at the time of trial is more commonplace. In our work, it is not unusual for us to discover that DNA evidence, known to exist at the time of the defendant's trial, was never tested, even when DNA testing was available. There are many reasons why this may (not) have happened. Since the early and more rudimentary DNA methods available throughout most of the 1990's required a large sample in order to derive a result, an entire universe of cases that involved small samples

were never tested. Often, the methods of DNA testing used at the time of trial were inexact and yielded unreliable results. At other times the defendant may not have realized there was biological evidence to test. At others, the cost of such testing may have been prohibitive for the defendant and the court did not elect to pay for the testing. Suffice to say that it is not uncommon, even today, for biological evidence to go untested in serious cases.

But failure to test DNA at trial should never itself be a bar to post-conviction DNA testing. Today's more sophisticated technology can provide irrefutable results, where previously only inconclusive results were possible. Some new DNA testing methods are incredibly sensitive and can reveal a one-to-one match from a sample the size of a pin's head. Other novel methods are more discriminating, which means that the tests can statistically narrow down the frequency of a particular combination of genetic markers to a very small percentage of the population. Still other forms of newer testing methods allow for certain, targeted forms of testing that were not possible just a few years ago.

Y-STR testing, for instance, allows scientists to target only the DNA left by male contributors – and provides information on exactly how many male contributors there are in any given sample. This ability to target male-only DNA can play a crucial role in cases with mixed sex samples or multiple male profiles. Another new method, Mitochondrial testing, has made it possible to learn more than ever before from limited evidence. For example, a number of hairs found in a probative place, only one of which has a root, can be linked to each other by mitochondrial testing and then linked to an assailant through more traditional DNA testing of the hair with the root.

Additionally, a mask, or another piece of clothing found at a crime scene contains skin cells that have only recently (in the last five years at most) been subjected to DNA testing with any regularity. Such testing has resulted in the exoneration of wrongfully convicted people in a number of cases. Moreover, it has led investigators to the true perpetrators of crimes through hits to the national DNA database (CODIS), or to potential suspects through non-CODIS exclusion of the convicted and inclusions of other suspects.

Post-conviction DNA testing not only provides long-delayed justice to an innocent person, but also enables the police to recognize the fact the real perpetrator has eluded detection, and a re-investigation is necessary for public safety. In summary, dormant cases that would have remained forever unsolved can be, upon testing, cracked with a keystroke that can yield matches of DNA offender profiles to crime scene profiles held in computerized files.

Presently, forty-three states have post-conviction DNA testing access statutes. For those that do not, or for those that include improper deadlines for individuals seeking access, or limit post-conviction testing to only some crime categories, the JFAA has provided financial incentives to induce states to allow permanent post-conviction DNA testing access to qualified defendants. Unfortunately, as I will describe further below, the JFAA federal-to-state incentives for such testing have been thwarted by Executive budget decisions and OJP's reluctant, and then prohibitively stringent, offering of the Kirk Bloodsworth Post-Conviction DNA Testing Assistance Program.

B. The Importance of Preserved Biological Evidence

To be able to ensure justice, biological evidence must have been preserved, and saved in such a way that it can be located when necessary. Congress recognized the incredible value of preserved biological evidence in the emerging DNA era when it passed the Justice for All Act, which strongly enhanced preservation of evidence policies for federal crimes and authorized hundreds of millions of dollars for state grant programs for those states that properly preserved biological evidence.

During drafting of the JFAA, lawmakers understood that given competing priorities and politics, the only way to be sure to induce states to mandate the proper preservation of biological evidence was through the power of the purse. That is why as originally drafted, the preservation of evidence requirement was appropriately attached to many funding streams, as Congress appreciated that states would only act if large quantities of federal funding compelled them to prioritize the issue. In the course of subsequent negotiations, however, the number of grant programs that expressly required proper evidence retention practices was reduced to four. While these programs could well have served as the necessary incentive to states, three of those four programs were never funded, and while one was funded, no funds for that program have ever been disbursed.

Ultimately, therefore, and in contrast to Congressional intent, executive administration and recommended funding of the JFAA programs has effectively neutered that intent, providing states with essentially no incentive from the federal government to prioritize the statewide practice of properly preserving biological evidence. This is

because as implemented, the funding carrots are patently insufficient to serve as the incentive necessary.

The failure to preserve biological evidence has tragic consequences for both public safety and the innocent victims of wrongful conviction. Incredible public safety potential lies latent in biological evidence from past crimes. By properly preserving biological evidence, cold cases can be solved. Crime scene DNA can link an unknown perpetrator to other crimes – over time periods and across jurisdictions. And of course, preserved biological evidence can settle credible post-conviction claims of innocence.

Consider the following two examples of how preserved biological evidence – and virtually only preserved biological evidence – can enable justice long overdue.

Innocence Claims Hinge on Preserved Evidence: Scott Fappiano

Scott Fappiano was convicted of a rape in 1985. He consistently maintained his innocence throughout his incarceration. While a wealth of biological samples had been collected from the crime scene, DNA technology at the time was not sufficient to produce a result that would conclusively identity the perpetrator of the heinous crime for which Mr. Fappiano had been convicted.

There had been numerous trial exhibits that contained biological evidence. Some exhibits were returned to the King's County District Attorney's office; others were vouchered and sent to New York Police Department evidence storage facilities. Two items of evidence – the rape kit and a pair of sweatpants containing semen stains—were sent in 1989 by the DA's office to a now-defunct DNA laboratory called Lifecodes, which at the time performed rudimentary DNA analysis for the state of New York.

At that time DNA testing technologies were still limited, and although Lifecodes found semen to be present on the available evidence, they could not produce a conclusive result. In 1998, more advanced DNA testing methods had developed and the Innocence Project embarked upon a search for the original crime scene evidence. The DA's office fully cooperated with a search of its storage areas, but none of the original exhibits could be located. A similar search of NYPD storage facilities yielded nothing.

After a long and uncertain search, the Innocence Project ultimately contacted Orchid Cellmark, a private DNA laboratory in Texas which had, after a series of mergers, taken over the Lifecodes lab. Remarkably, in August of 2005, two test tubes containing biological samples from the crime scene were located. DNA testing of those extracts, using more progressive DNA testing methods, conclusively excluded Mr. Fappiano as the source of the semen. Based on this newly discovered evidence, he was freed from prison in October of 2006 – 21 years after his wrongful conviction, and 8 years after the post-conviction DNA testing could have been performed if the crime scene evidence had been properly preserved. Consistent with far too much traditional practice, most of the biological evidence had been lost or destroyed; on top of that, there were seemingly no records to indicate that what had happened to this evidence, or where it could be found. It was by pure chance that the evidence was located.

The nation's 215 DNA exonerees like Scott Fappiano are the lucky ones. The tortured are those wrongfully convicted persons for whom post-conviction DNA testing could prove their innocence, but for whom that evidence has been either lost or destroyed.

The Innocence Project recently conducted an analysis of a representative sample of our closed cases in order to determine why we close the cases that we do. We found that we were forced to discontinue our efforts to settle innocence claims in 32% of closed cases across the nation because critical biological evidence that could clearly indicate innocence or guilt had been destroyed or could not be found. In New York City alone, the Innocence Project is presently thwarted in its pursuit of 19 credible post-conviction claims of innocence because evidence custodians cannot locate the evidence.

What Mr. Fappiano's case demonstrates – and what Congress clearly appreciates – is that by simply preserving the small amounts of biological evidence from crime scenes, even years after a conviction the public can be provided with conclusive answers in the wake of lingering and credible claims of innocence. The power of DNA technology has transformed this evidence from a nuisance to modern day "silver bullet" for solving crime. Part of the JFAA's promise is to help federal, state and local policy nationwide keep up with the crime solving promise of that technology.

Solving Cold Cases Relies Upon Preserving and Locating Evidence: The Charlotte Police Department Experience

In December of 1995, the Charlotte-Mecklenburg Police Department was relocating its property room. Evidence held in the existing evidence storage space was in disarray and difficult to locate. Forward-thinking police officials recognized an opportunity to solve old crimes and launched an initiative to re-catalogue all of its evidence, including biological evidence. Each piece of evidence was bar-coded, and

when necessary, repackaged. Radio scanners were purchased so that evidence tracked on inventory forms with a barcode could be located in the storage room.

In nine months, all of Charlotte's evidence was re-catalogued and placed in one 6,700 square foot storage space. Biological evidence was segregated and neatly placed on retractable shelves in order to maximize storage space. Each envelope of evidence contained an individual property number, allowing easy access to decades-old kits, swabs, cuttings and clippings that held the promise of bringing to justice criminals who had successfully eluded apprehension for years. Following the re-cataloguing of old evidence, Charlotte's Police Department formed a Homicide Cold Case Unit in 2003. Police officials understood that the power of preserved evidence transformed their old evidence room into a crime-solving goldmine.

One such case involved the 1987 murder of a 19-year-old Charlotte woman named Jerri Ann Jones. While detectives had been stymied by her case, upon re-cataloging of the evidence facility, physical evidence connected to her case was readily located and submitted to the crime lab for DNA examination. The results were entered into CODIS, the national DNA database. This resulted in the identification of a suspect, Terry Alvin Hyatt, who was already in prison and, upon being confronted with the fact of the CODIS match, confessed to the murder of Ms. Jones. Closure finally came to Ms. Jones's family seventeen years after she was murdered.

States Can Readily Preserve Biological Evidence; Incentives and Guidance Are Needed

In today's modern DNA era, accessing properly preserved evidence from adjudicated cases has clear benefits. As DNA testing methods continue to advance,

enabling the creation of perpetrator profiles from even degraded crime scene evidence, the crime-solving possibilities presented by preserved biological evidence are tremendous. A review of the NIJ's list of objects where biological evidence can be found illustrates the variety of items that can be successfully tested with improved technology: fingernail scrapings analyzed with Y-DNA tests; skins cells in the hinge of eyeglasses; dandruff, saliva, hair, sweat, and skin cells from hats, bandanas and masks; saliva cells on tape or ligatures; traces of blood on a bullet; traces of blood and/or hairs on, or in the crevices of, a variety of weapons used to inflict injury; or even blood and tissue cells swabbed from the bullet inside a gun, identifying the person who might have last loaded it.[2] The list of these evidence items that are being successfully tested now – but could never have been tested successfully only a few years ago – is enormous.

The practice of preserving biological evidence is not itself "new," nor particularly challenging. Such evidence is in fact regularly preserved in jurisdictions across states, nationwide. What is lacking is consistency in practice across – and even within – jurisdictions. The federal regulations enacted pursuant to the JFAA make clear how biological evidence can be preserved simply, appropriately, and without need for excessive storage space or extraordinary conditions of storage.

The potential to properly preserve biological evidence lies latent in every state, like the DNA profiles lying latent in that evidence. Compared to the amazing probative power that can be harnessed through the proper preservation of biological evidence, the

2 In the 2002 report by the National Institute of Justice, "Using DNA to Solve Cold Cases" available at http://www.ncjrs.gov/pdffiles1/nij/194197.pdf, the authors identify some common items of evidence that may have been collected previously but not analyzed for the presence of DNA evidence. p. 21.

effort and resources necessary to do so are minor. What is missing is the commitment and inducement to act.

II. Overview of DNA Innocence Incentives in JFAA and Summary of Impediments to Effective Implementation

Section 412 of the Justice for All Act was crafted in response to the difficulties and costs confronting state inmates who wished to prove their innocence through DNA testing. Just as Congress had established a reasonable procedure for federal prisoners to obtain post conviction DNA testing, it was hoped that the **Kirk Bloodsworth Post-Conviction DNA Testing Program** would provide sufficient funds to pay for and encourage the states to implement their own post conviction DNA testing programs.

But in contrast to the Paul Coverdell Forensic Science Improvement Grant Program, where monies have been disbursed to all fifty states without meaningful OJP scrutiny of state compliance with the JFAA-created innocence protection requirements therein, OJP has created so many barriers to potential grantees for Bloodsworth funds that only three states bothered to apply for these much-needed post-conviction DNA testing dollars in 2006 - and all three were rejected, with no official explanation given for those rejections. Not a dollar of Bloodsworth funds have therefore been disbursed.

At OJP's urging, for FY 2008, Congress provided OJP with flexibility for disbursing Bloodsworth funds, but the significant barriers that now exist in OJP's FY 2008 Bloodsworth RFP suggest that far too many states needing those post-conviction DNA testing funds will not be able to access them.

Section 413 of the Justice for All Act was enacted to provide an incentive to the states in order to advance two crucial innocence practices: post-conviction DNA testing and the preservation of biological evidence. DNA testing to prove innocence cannot be conducted if the evidence has not been preserved. Nor can a detective use DNA to re-open a cold case if the evidence is destroyed. In the JFAA, Congress created a post-conviction DNA access program for federal prisoners, and a requirement to preserve biological evidence in federal crimes. Congress also used the JFAA to create **Incentive Grants to States to Ensure Consideration of Claims of Actual Innocence** provide four pools of funding meant to entice states to create schema for post-conviction DNA testing and the preservation of evidence. The four grant programs governed by Section 413 include JFAA Sections:

- Section 303, DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers;
- Section 305, DNA Research and Development;
- Section 308, DNA Identification of Missing Persons; and
- Section 412, Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.

Instead of funding these four programs under the JFAA, however, the President created mirror programs for Sections 303, 305 and 308, above, under the "President's DNA Initiative." By doing so – and securing funding for his Initiative as opposed to the mirror JFAA programs. The administration enabled states to access these important monies without properly preserving crime scene evidence or providing for post-conviction DNA testing. This maneuvering left Section 412, the Bloodsworth program,

as the only Section 413 grant program remaining. Given that the Bloodsworth funding alone provided barely a state incentive; that OJP's Bloodsworth grant application was prohibitively stringent; and that every state that applied for Bloodsworth funds in FY 2006 (the only year prior to 2008 it was offered) was rejected without explanation, the executive branch effectively undercut JFAA Section 413's effectiveness as an incentive for state innocence protections..

III. The Mechanics of Executive Subversion of Congressional Intent Regarding Justice for All Act Sections 412 and 413

Despite Congressional appropriations of approximately five million dollars per year for the Bloodsworth grant program in fiscal years 2006 and 2007, not one penny of these innocence protection funds to finance post-conviction DNA testing has been extended to states – despite a patent need for such support.

The Bloodsworth grant program was not offered at all in 2005. It was funded for 2006, and OJP issued a Request for Proposals (RFP) in the second half of 2006. For reasons likely related to the strict requirements placed upon applicants (which are described in greater detail below), only three jurisdictions applied for these funds. While it seems that at least some of these three states should have qualified for these funds, OJP rejected all three, providing no specific official reason for having done so. The Bloodsworth grant program had been funded by Congress for 2007, yet no RFP for 2007 was ever issued.

At a Senate Judiciary hearing on January 23, 2008, OJP Deputy Director John Morgan represented to Congress that although all previous grant applicants for

Bloodsworth monies had been rejected for funding in the last grant cycle, newly passed appropriations language would provide OJP with more discretion in interpreting the grant requirements and thus allow the monies to flow more freely.

Unfortunately, while the FY 2008 Bloodsworth RFP (and its reissue, dated February 12, 2008) has preservation of evidence requirements differing from its 2006 predecessor, other stringent – and seemingly intentionally intimidating – requirements of the 2008 Bloodsworth RFP have again discouraged many needy states from applying for these funds.

A. Changes to JFAA Section 413 are Needed; Congress Must Address Them, as OJP has Not Proven its Ability to Properly Disburse Funds Thereunder

In the FY 2006 Bloodsworth RFP, OJP interpreted its Congressional mandate for the Bloodsworth program so rigidly that only three jurisdictions attempted to apply for those important post-conviction DNA testing funds . Every single application was rejected. No specific official explanation for the denials were provided.

One significant reason that so few applied for this much-needed federal DNA support - and OJP's potential[3] justification for denying all funding for 2006 Bloodsworth applicants - seems likely to stem from the extraordinary hurdle that OJP set for applicants regarding how they were to "demonstrate" that they met the preservation of biological evidence requirements as established by Congress.

3 I use the term potential because it is impossible to know the actual reason for the denial of these grant applications, as no specific official reason was stated within the denial letters that we have seen, i.e. those provided to the Arizona and Connecticut applicants.

1. OJP has Failed to Effectively Administer the Only JFAA Grant Program Offered

a. OJP "Demonstration" Requirements Needlessly Onerous, and Thus Prohibitive

JFAA Section 413, in relevant part, requires that "For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 308, and 412 shall be reserved for grants to *eligible entities that*...(2) demonstrate that the State in which the eligible entity operates (preserve biological evidence and provide access to post-conviction DNA testing)."[4]

Yet instead of simply allowing eligible entities to demonstrate their compliance with this requirement, OJP went further than Congress in its FY 2006 Bloodsworth program RFP, requiring the following: "To demonstrate that the State satisfies these requirements, an application must include formal legal opinions (with supporting materials) issued by the chief legal officer of the State (typically the Attorney General), as described below. All opinions must be personally signed by the Attorney General."[5] The current 2008 solicitation now requires an "express certification" from the applicant state's chief legal officer, attesting to the presence of a statewide policies regarding post-conviction access to DNA testing and preservation of evidence. This express certification is the personal signature of that person, under a reminder that there criminal penalties will apply if the statement is found to be false. .

There are a number of reasons that both the previous and 2008 OJP interpretation of the Congressional requirement that eligible entities "demonstrate" that they meet these rquirements are onerous as applied to the Bloodsworth program:

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4 JUSTICE FOR ALL ACT § 413, 42 U.S.C. § 14136 (2004) (emphasis added).
5 U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, NAT'L INST. OF JUSTICE, Solicitation: Postconviction DNA Testing Assistance Program 10 (2007).

* Congress simply required that applicants "demonstrate" their compliance; Congress did not specifically require a role in grant application by the State Attorney General or chief legal officer. On this point, one must consider that of the 30 OJP RFPs identified by the Innocence Project to have been offered in FY 2006 where the applicant must "demonstrate" compliance, not one requires the applicant to do more than provide a simple narrative on that point.[6]

* To require either a "formal legal opinion" personally signed by a state's chief legal officer or Attorney General – or, in the alternative, as was made clear in the FY 2008 Bloodsworth RFP, to specify that a false statement in that regard could result in "criminal prosecution" – presents a tremendous procedural barrier to applications for these monies by the entities in states that sincerely need them. One could readily understand that of all people, states' Attorneys General or chief legal officers might not be particularly interested in efforts to prove (additional) wrongful convictions in their states (as doing so would obviously prove error by the state, and could likely expose the state to liability for such wrongful convictions).[7]

* The only other recent OJP grant program identified by the Innocence Project that requires such verification from a similarly high-placed State legal officer: the Office on Violence Against Women FY 2008 Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.[8] Notably, this program requires

6 Please see Exhibit A for a detailed list of those grant programs.
7 We cite this possibility, and the potential factors therefor, not to suggest any ill-intent by any such state official, but to suggest that requiring their work and personal signature on the grant application may simply have impeded realization of Congressional intent to disburse such funds to qualified applicants.
8 U.S. DEP'T OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, OVW FY 2008 Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program 5 (2007).

that certification of compliance with the laws specified by Congress come from such officials, *yet the requirement that such officer provide the certification is specified within the statute authorizing that grant program.*[9] Neither JFAA Sections 413 nor 412 specify the participation of these legal officers, and certainly not "certification" from any party. In short, if Congress wanted to require the signatures of those state officers it would have specified that intent.

* The stringent OJP interpretation of the requirements to access these Bloodsworth innocence protection funds stands in stark contrast to the extremely lax OJP enforcement of Congressional intent under the JFAA (Section 311(b)), where Congress required that applicants to the Paul Coverdell Forensic Science Improvement Grant Program *certify* that they have a government entity in place to conduct independent, external investigations upon allegations of serious negligence or misconduct… substantially affecting the integrity of forensic results.[10] Comparing the polar opposite OJP enforcement of the Congressionally intended innocence protections from these two different parts of the Justice for All Act, it is plain that OJP is selectively enforcing those provisions in such a way as to discourage states from honoring that Congressional mandate.[11]

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9 42 U.S.C.A. § 3796hh-1 (Westlaw 2007).

10 Despite what, based on Innocence Project research, seem to be significant and widespread State shortcomings in meeting this innocence protection prerequisite to State Coverdell funding, OJP has provided the funding to every state applicant with minimal regard for compliance with this requirement. See the two Department of Justice Office of Inspector General Reports criticizing OJP enforcement of this innocence protection requirement at http://www.usdoj.gov/oig/reports/OJP/e0602/final.pdf and http://www.usdoj.gov/oig/reports/OJP/e0801/final.pdf.

11 For a more thorough exploration of the contrast in OJP enforcement of these two Justice for All Act Innocence Protections, please see: *Oversight of the Justice for All Act: Has the Justice Department Effectively Administered the Bloodsworth and Coverdell DNA Grant Programs?* Hearing Before the Senate Judiciary Comm., 110th Cong. (2008). (Statement of Peter Neufeld, Co-founder, The Innocence Project).

While the Innocence Project strongly believes that applicants should be required to demonstrate that their states meet the thresholds of evidence preservation and post-conviction DNA law or policy specified under JFAA Section 413, specifically requiring that demonstration to come from the State Attorney General or chief legal officer in the manner it has is a significant and unnecessary obstacle that seems likely to have prevented qualified and needy applicants from properly pursuing the Bloodsworth grant program. This is particularly true in the wake of the unexplained rejections for every one of the FY 2006 Bloodsworth applicants.

Recommendation

Future interpretations of JFAA Section 413 as applied to the Bloodsworth program – and indeed, the other three programs also covered by Section 413, and which are still authorized to be funded as JFAA programs – must be designed by OJP less to discourage applicants and more to enable applicants' plain demonstration of having met the Congressional requirements. We realize that OJP has discretion in the administration of programs; we hope Congress will do all in its power to ensure that such discretion, particularly as applied to the Bloodsworth and other JFAA programs governed by Section 413 of the JFAA, be properly exercised.

b. OJP Did Not Successfully Employ the Discretion Provided by Congress Regarding Preservation of Evidence in Order to Enable Appropriate Disbursement of Bloodsworth Funds

The FY 2008 Congressional CJS Appropriations bill granted OJP, at OJP's urging, flexibility in interpreting the Bloodsworth program requirements in order to better enable disbursement of those funds. In short, while any disbursement would seem to be an improvement over OJP's utter failure to disburse funds from the FY 2006 grant cycle, OJP's FY 2008 Bloodsworth RFP requires too little of applicants regarding the preservation of evidence. Congress would do far better to amend the Section 413 requirements itself and direct OJP to craft their RFPs in a manner not likely to discourage both that needy applicants successfully submit applications, and that funds are distributed to those who simply yet clearly demonstrate their compliance with the Congressional requirements.

The FY 2006 Bloodsworth solicitation required applicants to "demonstrate" that their State satisfied post-conviction testing and preservation of evidence requirements pursuant to section 413 of the Justice For All Act.[12] The current 2008 solicitation requires that a State "certify" via statute, rule or regulation that it has a "reasonable" post-conviction testing and preservation scheme in relation to three crime categories only: forcible rape, murder, or non-negligent manslaughter.

The narrowing of required categories of crimes does indeed better enable potential applicants to seek Bloodsworth funding. Yet OJP balanced this easing of the path to qualification by also, in its original FY 2008 Bloodsworth RFP, removing language from the FY 2006 application (which had tracked the specific Congressional requirement) that would have enabled applicants to demonstrate compliance of post-conviction testing through State "practices" and demonstrate compliance of preservation

12 The JFAA required a post-conviction DNA testing scheme for all felony offenses and a preservation scheme for all State offenses.

of evidence practices through "local" rules, regulations or practices. Thus while part of the OJP language change made the Bloodsworth requirements easier to meet, in the same sentence they also made those funds – in a different way – less easy to meet.[13] It was only when the Innocence Project raised questions about the appropriateness of the latter change that OJP re-issued its solicitation to return that requirement to its rightful interpretation.[14] Had that not been done, it seems unlikely that such a change would have been made. The reissued solicitation was only made publicly available three weeks after its first release, and only five weeks before final applications were due. For those potential applicants that, based on the original FY 2008 RFP, believed they did not qualify for the funds, the loss of those three weeks of application time – for reasons including but not limited to the onerous chief legal officer certification requirement – may have made even the amended RFP seemingly unattainable.[15]

Simply put, OJP may have tinkered with its Bloodsworth RFP in light of the wide latitude it was provided by Congress, but if the Section 413 innocence incentives are to

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13 In the initial FY 2008 Bloodsworth RFP issued by OJP, applicant states could only demonstrate compliance with post-conviction testing and preservation of evidence requirements through a "State statute, or State rule or regulation," which represented a narrowing of means through which compliance could be demonstrated as compared with the FY 2006 Bloodsworth RFP.

14 OJP first released the Bloodsworth solicitation in late January of 2008. Our office submitted a series of concerns, in the form of questions posed to OJP's grants administrator, Charles Heurich, on February 6, 2008. In part, we were troubled by the removal of two previous allowances permitted to applicants in meeting eligibility requirements. [In the former solicitation from the previous 2006 grant cycle, compliance with post-conviction and preservation requirements could be demonstrated through State statutes, regulations, rules *or practices*. The new solicitation removed *State practice* as a permissible means of demonstrating compliance. In addition, in the former solicitation from the 2006 grant cycle, compliance with both post-conviction and preservation requirements could be demonstrated through *local* regulations, rules or practices or through statewide statutes, rules, regulations or practice. The new solicitation *removed the opportunity to prove compliance on a local level.*] On February 12, 2008, OJP re-released the Bloodsworth solicitation that addressed both of these concerns by incorporating two significant changes in the eligibility requirements section of the grant application. Now, on the basis of the amended solicitation, applicants can demonstrate compliance with post-conviction DNA testing requirements through the presence of a "State statute, or under State rules, regulations, or **practices**." In addition, applicants can demonstrate compliance with the preservation of evidence requirements through the presence of a "State statute, **local ordinances,** or State or **local** rules, regulations, **or practices.**" (All of the new language from the reissued solicitation is bolded.)

15 For those entities for which the original RFP requirements on this point did not create an obstacle, it does not seem that the amended application should have presented a new hurdle.

be meaningful and the Bloodsworth post-conviction DNA funds are to actually reach those states that need them, Congress should itself re-visit the Section 413 requirements and amend them in a manner that respects the original intent yet also meaningfully enables states to reach the carrot offered by Section 413.

Recommendation

Narrowing the crime categories to solely murder, rape and non-negligent manslaughter as was done by OJP in the 2008 Bloodsworth RFP was a quick fix, yet ultimately fails to serve crime victims, the innocent, and the public at large in many other categories of serious crime. We understand that the desire to preserve all biological evidence must be balanced with storage space realities, but that balance should not tip to the detriment of enabling the wrongfully convicted to prove their innocence where long sentences are at stake and serious crimes have otherwise been unsolved.

Therefore, we recommend that language pertaining to evidence preservation in the JFAA as applied to state applicants for the Bloodsworth grant program be amended. Instead of requiring preservation of evidence in all offenses, biological evidence should be preserved at least in all violent felony crimes, including all sexual assaults, for no less than the length of incarceration. The Innocence Project would be happy to share its experiences and understanding of this issue in greater detail with Congresspersons and/or staff as you request.

B. To Ensure Justice for the Wrongfully Convicted Nationwide, Congress Must Fund All JFAA Section 413 Grant Programs for FY 2009, and Re-Authorize Such Funding until FY 2014

Congress connected critically important state DNA program funding to the Section 413 preservation of evidence and post-conviction DNA testing innocence incentives because it knew that making federal funding contingent upon implementation of those innocence incentives was the most appropriate and effective way for Congress to induce such state action.

The Executive Branch, by separately offering three of those four grant programs[16] without the innocence requirements through "The President's DNA Initiative," and then interpreting the Bloodsworth requirements so torturously stringently as to deny all disbursements to date, has effectively neutralized that Congressional intent and incentive.

Congress not only respected the need, but actually did the hard work to generate strong bi-partisan support for state incentives to enable the wrongfully convicted to use preserved biological evidence and access to post-conviction DNA testing to prove their innocence. The Executive Branch has essentially negated that work, and the results intended to flow therefrom. We can only hope that the next administration, from whatever party it hails, will show more respect to Congressional intent on these issues and properly administer these programs. Regardless, however, the damage has been done; the Innocence Incentives of Section 413 of the Justice For All Act have not been meaningful incentives to state action on these issues.

16 These three grant programs are Justice for All Act Sections 303 (DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers); Section 305 (DNA Research and Development); and Section 308 (DNA Identification of Missing Persons).

But all is not lost. If Congress funds these grant programs for FY 2009, re-authorizes them with the Section 413 incentives for an additional five years (to replace the five years essentially lost because of the executive maneuvering) and appropriates the funds for those programs in those years, important progress can still be made to establish innocence protections in states across the nation. For as the Innocence Project has found, there are still many wrongfully convicted who have yet to be identified or proven innocent, for whom the biological evidence will need to be found, and for whom effective access to post-conviction DNA testing can still – finally – provide the proof of their innocence.

Recommendation

It is evident from our experiences working with states on preservation of evidence policies that they have not, to date, received the stimulus necessary to enhance preservation practices. We have found that State and local policymakers appreciate the general importance of preserving such evidence for solving cases (active and old) and enabling the wrongfully convicted to prove their innocence – yet their appreciation has not yet reached the level necessary to spur effective action. Clearly, the incentives to improve their preservation practices must be large enough to stimulate state action.

The only way that states can genuinely be compelled to properly preserve biological evidence is if this obligation is attached to large streams of federal-to-state monies. The Innocence Project recommends Congressional funding all four of the JFAA Section 413 grant programs for FY 2009; their reauthorization with the Section 413 incentives for an additional five years (to replace the five years essentially lost because of

the executive maneuvering); and the appropriatation of funds for those programs in those years.

This reauthorization and appropriation should also be complemented by NIJ leadership regarding best practices for the preservation of biological evidence. Through work with many jurisdictions, the Innocence Project has seen that the will to properly preserve and catalogue preserved evidence exists, yet jurisdictional unfamiliarity with best practices for doing so been a significant contributing factor to the failure to act. Federal guidance – perhaps on the basis of a series of recommended protocols identified by a national working group or other expert entity – should be offered to states to specifically explain how biological evidence can be consistently and properly preserved.

With Congressional support and federal guidance, the discovery of preserved biological evidence – to protect the innocent and the public at large – will no longer have to rely on serendipity and happenstance.

IV. A Case Study Demonstrating the Lingering Need for the Section 413 Post-conviction Access to DNA Testing Incentive: Kennedy Brewer and Levon Brooks

Even in states that have demonstrated barriers to post-conviction DNA testing through the absence of a post-conviction DNA testing law, DNA exonerations are beginning to emerge. I would like to leave you today with the story of one of the nation's most recent DNA exonerations, which is representative of the depth of the problem that Congress intended to address with these innocence protections, and puts a human face on the policies we hope you will re-visit in order to protect the innocent – and help catch the

true perpetrators of the serious crimes for which DNA evidence can prove innocence or guilt.

Just this year, Kennedy Brewer became Mississippi's first person exonerated through DNA testing. He was arrested in 1992 and was subsequently convicted – based almost entirely on questionable bite mark testimony evidence - of raping and murdering his girlfriend's three-year-old daughter, Christine Jackson.

Mr. Brewer was sentenced to death. Despite his innocence, and despite the existence of biological evidence, as well of that of DNA technology that could strongly indicate his innocence, there existed no law or policy in Mississippi requiring the preservation of the biological evidence in Mr. Brewer's case. Nor did there exist a statutory path, much less a statutory right to

Fortunately, his trial lawyer moved for preservation of the biological evidence; fortunately, the court chose to order that the evidence be preserved. The Mississippi Supreme Court, upon considering the motion for re-trial sought by Mr. Brewer, ultimately indicated its interest in seeing the preserved biological evidence re-tested. In 2001, advanced DNA testing, requested by the Innocence Project, was conducted on semen recovered in 1992 from the victim's body. The tests produced results excluding Brewer as a possible perpetrator and revealed an unknown male profile. No subsequent effort was made to identify the real perpetrator.

It took a year after these test results were received for Mr. Brewer's conviction to be vacated. When it was, he was moved from death row to pre-trial detention in the local jail. The prosecution intended to retry Brewer for capital murder, but was not brought to

trial for a full five years. Because the capital charges were not dropped during those five years, Mr. Brewer was forced to serve that time behind bars.

As the Innocence Project prepared to handle Brewer's re-trial, another man was implicated as the real perpetrator through DNA testing. The unidentified DNA profile discovered in 2001 matched to Justin Albert Johnson, one of the original suspects. When confronted with this fact, Johnson then confessed to Christine Jackson's murder; he also confessed to the rape and murder of another child in the same county, that of three-year old Courtney Smith. Johnson told the investigators that he acted alone in both crimes, which were committed 18 months apart.

Courtney Smith's mother's boyfriend was Levon Brooks. Mr. Brooks had been charged and convicted of Courtney's rape and murder. His conviction, too, rested in large part on the strength of questionable bite mark analysis performed by the same forensic odontologist in Mr. Brewer's case.

On February 15, 2008, charges against Kennedy Brewer were dropped and he was exonerated. On the same day, the Innocence Project, along with Mississippi Innocence Project co-counsel, won Levon Brooks' release from prison. Brooks was subsequently exonerated in March 2008, and he sits in this room with us today.

Mr. Brewer and Mr. Brooks are fortunate that their horrifically horrible luck in being wrongfully convicted was outmatched by their incredible luck that the biological evidence in Mr. Brewer's case was preserved and located, and that the District Attorney finally allowed the post-conviction DNA testing to be conducted. Mississippi has no law, rule, or standard practice statewide for the preservation of biological evidence. Nor does the state provide statutory access to post-conviction DNA testing. In some cases

evidence is saved; in some cases it isn't. In some cases a prosecutor will allow post-conviction DNA testing, in some he or she won't.

With passage of the Justice for All Act, Congress recognized and acted upon its belief that the truth and justice that can be arrived at through post-conviction DNA testing of biological evidence should not be subject to luck, or serendipity. It should be established at the federal level, and states should be encouraged to provide the same. That is why it created Section 413, and attached it to appropriate sources of funding that are important to states. While Congressional intent on this count has been frustrated by the executive branch, Congress can and should follow through on its effort to ensure that the wrongfully convicted nationwide have the ability to prove their innocence – and enable their governments to recognize that the real perpetrators of those crimes remain unidentified, and still need to be held to account for their crimes.

APPENDIX A
OJP-NIJ 2006 RFPs That Use "Demonstrate"

RFP Name	Detail Page #
1. Data Resources Program 2006: Funding for the Analysis of Existing Data	2
2. Forensic Casework DNA Backlog Reduction Program	3
3. Social Science Research on the Role and Impact of Forensic Evidence on the Criminal Justice Process	3
4. Research and Evaluation on the Abuse, Neglect, and Exploitation of Elderly Individuals, Older Women, and Residents of Residential Care Facilities	4
5. Social Science Research on Terrorism	5
6. Process and Outcome Evaluation of G.R.E.A.T.	6
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9. Public Safety Interventions	9
10. Research and Evaluation in Community Corrections: A Multijurisdictional Study of Reduced Caseload and Related Case Supervision Strategies in Managing Medium- and High-Risk Offenders	10
11. Research on Sexual Violence and Violent Behavior in Corrections	11
12. Study of Administration of Justice in Indian Country	12
13. Sexual Violence from Adolescence to Late Adulthood: Research, Evaluation, and the Criminal Justice Response	13
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15. Evaluation of OJJDP's Commercial Sexual Exploitation of Children Demonstration Program in Atlanta/Fulton County	15
16. Research and Development on Crime Scene Tools, Techniques, and Technologies	16
17. Research and Development on Impression Evidence	17
18. Sensor and Surveillance Technologies	18
19. Biometric Technologies	19
20. Forensic DNA Research and Development	20
21. Electronic Crime Research and Development	21
22. Corrections Technology	22

23. School Safety Technologies 23

24. Pursuit Management Technologies 24

25. Modeling and Simulation Research and Development: Software for Improved Operations, Operational Modeling, Speech-to-Text Recognition, and Training Technologies 25

26. Enhanced Tools for Improvised Device (IED) and Vehicle Borne IED Defeat 26

27. Less Lethal Technologies 27

28. Communications Technology 28

29. Information-Led Policing Research, Technology Development, Testing, and Evaluation 29

30. Forensic Science Research and Development Targeting Forensic Engineering, Forensic Pathology, Forensic Odontology, Trace Evidence, Controlled Substances, and Questioned Documents 30

1 Data Resources Program 2006: Funding for the Analysis of Existing Data

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

2 Forensic Casework DNA Backlog Reduction Program

Required Documents

The program narrative must address the project objectives, expected results, and the implementation approach. The narrative **should** also **demonstrate**, specifically and comprehensively, how the requested funds will reduce backlogged DNA samples. The narrative must also state clearly the number of forensic cases – forcible rape and murder/non-negligent manslaughter – currently awaiting DNA analysis and the number of cases that can be analyzed within 12 months using the Federal funding requested in this Fiscal Year 2006 application. This number should reflect the number of cases that can be analyzed above and beyond those that can be analyzed using other sources of funding. The 12-month period begins October 1, 2006.

3 Social Science Research on the Role and Impact of Forensic Evidence on the Criminal Justice Process

Successful **applicants must demonstrate** the following:

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3 Feasibility of proposed project and awareness of pitfalls

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2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

4 Research and Evaluation on the Abuse, Neglect, and Exploitation of Elderly Individuals, Older Women, and Residents of Residential Care Facilities

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

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5 Social Science Research on Terrorism

Successful applicants **must demonstrate** the following:

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Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

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2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

6 Process and Outcome Evaluation of GREAT

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

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1 Well-defined plan for the grant recipient to disseminate results to appropriate

audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

7 Evaluation of Technologies

Successful **applicants must demonstrate** the following:

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1 Awareness of the state of current research or technology

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8 Outcome Evaluations of Violence Prevention Programs

Promising programs and strategies with some evidence of effectiveness in the prevention of violence to and by youth are a necessary aspect of this solicitation. To be considered "promising," programs selected for outcome or impact evaluation under this solicitation must have already been developed, implemented and **demonstrated** to be effective in the prevention of violent behavior. For example, the Blueprints Project at the University of Colorado has identified promising programs using criteria from various organizations and agencies (http://wwwcoloradoedu/cspv/blueprints/matrix/overviewhtml). Although organizations may vary in the way these criteria are applied, to be labeled "promising" usually requires that quasi-experimental or experimental research designs were used in producing the evidence that programs are effective in reducing violent behavior and victimization. Selection priority will be given to outcome evaluations of programs and strategies **demonstrated** to be promising according to these types of criteria In this regard, proposals to conduct replications and external evaluations of existing programs are encouraged.

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

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Dissemination strategy

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9 Public Safety Interventions

NIJ seeks process and outcome evaluations of situational crime prevention interventions; that is, interventions that focus more on the situational causes of crime and less on the dispositional causes of crime Interventions can be focused on a particular type of crime, on a situational crime prevention technique, or on a particular location. Situational interventions often address the environmental and opportunity factors involved in offender decisionmaking. Proposals **should demonstrate** an understanding of how situational crime prevention principles are understood and used by law enforcement practitioners. Applicants are especially encouraged to include the following elements as part of their proposed evaluations:

Displacement and diffusion analyses

Cost analysis

Longer follow-up periods (most are 6-12 months)

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

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3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

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2 Potential for significant advances in the field

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3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

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Budget

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3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

10 Research and Evaluation in Community Corrections: A Multijurisdictional Study of Reduced Caseload and Related Case Supervision Strategies in Managing Medium- and High-Risk Offenders

NIJ anticipates funding one multijurisdictional project. Although the study sites will be determined after the grant is awarded and in consultation with NIJ and its Federal partners, the proposal should identify potential candidate jurisdictions that follow evidence-based practices and where, at a minimum, reduced caseload size can be studied Site selection **should** focus primarily on probation agencies that have **demonstrated** a commitment to evidence-based policies and practices. A minimum of three sites will be necessary to achieve the goals of the study. Successful **applicants must demonstrate** how the proposed research will advance knowledge, practice, and policy on the management and supervision of medium- to high-risk offenders in a general supervised probation population

Applicants for this project **must have** a strong record of successful applied research in community corrections and a **demonstrated** capacity to work effectively with State and local community corrections agencies, as evidenced by past consultative and collaborative efforts. Applicants must have the organizational capacity to carry out a multisite research project, to collect and appropriately analyze the wide range of data such a study will produce, and to effectively disseminate the results of the study to different audiences through a variety of approaches.

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

3 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

4 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

11 Research on Sexual Violence and Violent Behavior in Corrections

Since the passage of the Prison Rape Elimination Act of 2003 (Public Law 108-7), NIJ released three solicitations seeking proposals for quantitative research on prison sexual violence in correctional facilities Though the objectives of the Prison Rape Elimination Act focus on sexual violence, it is clear that sexual violence occurs within the broader context of violence in correctional institutions NIJ is seeking proposals that examine sexual violence as it pertains to violent behavior in correctional settings Successful **applicants must demonstrate** how the proposed research will advance knowledge, practice, and policy in addressing the topic of sexual violence in corrections

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

12 Study of Administration of Justice in Indian Country

Applicants must have a strong record of successful projects in Indian Country and be recognized at the national level in this area They **must demonstrate** the capacity to work effectively with tribal authorities at all levels, as evidenced by past consultative and collaborative efforts The **applicant must** be culturally competent and **demonstrate** the ability to recruit Native American or other staff who have experience working in each of the selected sites and who have a working knowledge of the language and culture at those sites The applicant must have the organizational capacity to carry out a multisite, national case study design, collect and appropriately analyze the wide range of data such a study will produce, document the case studies, and effectively disseminate the results of the study to different audiences through a variety of approaches

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

13 Sexual Violence from Adolescence to Late Adulthood: Research, Evaluation, and the Criminal Justice Response

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

14 Transnational Crime

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

15 Evaluation of OJJDP's Commercial Sexual Exploitation of Children Demonstration Program in Atlanta/Fulton County

A critical aspect of the formative evaluation will be significant involvement and participation of program staff, local government, community representatives, and the federal government in the entire evaluation process The proposed approach should, therefore, reflect the philosophy of this type of evaluation and **should demonstrate** a practical recognition of the role of the evaluator as facilitator, collaborator, and learning resource to the program staff Both quantitative and qualitative methods of inquiry are encouraged **Applicants should demonstrate** competency in conducting this type of evaluation In addition, **applicants should demonstrate** experience and competency in conducting culturally sensitive research in diverse and vulnerable communities

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

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2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

16 Research and Development on Crime Scene Tools, Techniques, and Technologies

Applicants to this solicitation **must demonstrate** an appreciation and familiarity with crime scene examination procedures and must also demonstrate knowledge of the costs of implementing and maintaining the proposed technology and training required NIJ **strongly** encourages researchers to seek guidance from or partner with appropriate State or local crime laboratories Such associations foster a greater understanding of the issues and may strengthen the scope of the proposed research plan

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Inclusion of appropriate scientific and legal citations to **demonstrate** awareness of the problem and the potential contribution of the proposed research to the forensic community

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

17 Research and Development on Impression Evidence

Applicants to this solicitation **must demonstrate** an appreciation of and general familiarity with existing forensic technologies as they relate to the proposed research topic They **must also demonstrate** knowledge of the costs of implementing and maintaining the proposed technology and of the training required NIJ strongly encourages researchers to seek guidance from or partner with appropriate State or local crime laboratories Such associations foster a greater understanding of the issues unique to the field of forensic science and may strengthen the scope of the proposed research plan

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Inclusion of appropriate scientific and legal citations to **demonstrate** awareness of the problem and the potential contribution of the proposed research to the forensic community

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

18 Sensor and Surveillance Technologies

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

1 Identification and description of the specific criminal justice need that the technology will address

2 Description of the operational environment in which the technology will function

3 Description of the specific benefit anticipated (eg, 10% reduction in a specific crime) and how the technology will produce that benefit

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

19 Biometric Technologies

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

1 Identification and description of the specific criminal justice need that the technology will address

2 Description of the operational environment in which the technology will function

3 Description of the specific benefit anticipated (eg, 10% reduction in a specific crime) and how the technology will produce that benefit

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

20 Forensic DNA Research and Development

Applicants to this solicitation must demonstrate an appreciation of and general familiarity with the technologies currently used for analyzing DNA evidence They should have an understanding of issues such as chain of custody, courtroom admissibility, degraded or limited DNA, and mixtures of DNA from multiple tissues or individuals **Applicants should also demonstrate** an appreciation of the costs to implement and maintain the proposed technology, as well the training that will be required NIJ **strongly** encourages researchers to seek guidance from, or partner with, appropriate State or local crime laboratories Such associations foster a

greater understanding of the issues unique to the field of forensic DNA and may strengthen the scope of the proposed research plan

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance
Inclusion of appropriate scientific and legal citations to **demonstrate** awareness of the problem and the potential contribution of the proposed research to the forensic DNA community

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

21 Electronic Crime Research and Development

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

22 Corrections Technology

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

23 School Safety Technologies

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Successful applicants will take into consideration the school setting and its diverse populations (ie, students, administrators, visitors) for all technology proposals This solicitation requires applicants to address the needs of schools with affordable and suitable technology solutions

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

1 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

24 Pursuit Management Technologies

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable

(eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

25 Modeling and Simulation Research and Development: Software for Improved Operations, Operational Modeling, Speech-to-Text Recognition, and Training Technologies

NIJ is seeking concept papers for applied studies in the modeling of the operations of criminal justice organizations including police, corrections, or court operations, or linkages between them The purpose is to develop widely applicable methodologies that (1) criminal justice organizations can use to **demonstrate** the utility of funding innovations in technology and operations, and (2) innovators can use to evaluate how best to design new technology

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

The proposal must state the current status of research or technology, and the contribution of the proposed work Whenever applicable, a brief literature review with references is expected

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

26 Enhanced Tools for Improvised Device (IED) and Vehicle Borne IED Defeat

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

A literature review is not necessary for this solicitation; however a thorough understanding of the problem and how it relates to the bomb technician is required

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, demonstrated productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 Demonstrated ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

27 Less Lethal Technologies

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

1 Identification and description of the specific criminal justice need that the technology will address

2 Description of the operational environment in which the technology will function

3 Description of the specific benefit anticipated and how the technology will produce that benefit

4 Scientific references concerning the effect that will be produced by the device Key supporting references should be included in the concept paper's attachment

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

1 Potential for significant advances in the field Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

2 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

3 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

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3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

28 Communications Technology

NIJ is seeking concept papers to research, develop, and **demonstrate** emerging technology solutions for interoperable voice communications for public safety agencies Solutions to inadequate and unreliable wireless communications are of particular importance Technologies that help increase coverage, bandwidth, and functionality by extending current technology or by developing new technology are of interest

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

The proposal must describe the current status of research and technology and the expected contribution of the proposed work Whenever applicable, a brief literature review with references is expected

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

29 Information-Led Policing Research, Technology Development, Testing, and Evaluation

Peer-review panelists will evaluate concept papers using the criteria listed below Following this assessment, NIJ will then invite selected applicants to submit full proposals Full proposals will also be peer reviewed NIJ staff then make recommendations to the NIJ Director The Director makes final award decisions

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

2 Potential for significant advances in the field

3 Relevance for improving the policy and practice of criminal justice and related agencies and improving public safety, security, and quality of life

4 Affordability and cost-effectiveness of proposed end products, when applicable (eg, purchase price and maintenance costs for a new technology or cost of training to use the technology)

5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, **demonstrated** productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 **Demonstrated** ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

30 Forensic Science Research and Development Targeting Forensic Engineering, Forensic Pathology, Forensic Odontology, Trace Evidence, Controlled Substances, and Questioned Documents

Applicants to this solicitation **must demonstrate** an appreciation of and general familiarity with existing forensic technologies as they relate to the proposed research topic **They must also demonstrate** knowledge of the costs of implementing and maintaining the proposed technology and training required NIJ **strongly** encourages researchers to seek guidance from, or partner with, appropriate State or local crime laboratories Such associations foster a greater understanding of the issues unique to the field of forensic science and may strengthen the scope of the proposed research plan

Successful **applicants must demonstrate** the following:

Understanding of the problem and its importance

Inclusion of appropriate scientific and legal citations to demonstrate awareness of the problem and the potential contribution of the proposed research to the forensic community

Quality and technical merit

1 Awareness of the state of current research or technology

2 Soundness of methodology and analytic and technical approach

3 Feasibility of proposed project and awareness of pitfalls

4 Innovation and creativity (when appropriate)

Impact of the proposed project

1 Potential for significant advances in scientific or technical understanding of the problem

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5 Perceived potential for commercialization and/or implementation of a new technology (when applicable)

Capabilities, demonstrated productivity, and experience of applicants

1 Qualifications and experience of proposed staff

2 Demonstrated ability of proposed staff and organization to manage the effort

3 Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used

4 Successful past performance on NIJ grants and contracts (when applicable)

Budget

1 Total cost of the project relative to the perceived benefit

2 Appropriateness of the budget relative to the level of effort

3 Use of existing resources to conserve costs

Dissemination strategy

1 Well-defined plan for the grant recipient to disseminate results to appropriate audiences, including researchers, practitioners, and policymakers

2 Suggestions for print and electronic products NIJ might develop for practitioners and policymakers

Mr. SCOTT. Thank you, Mr. Neufeld.

As I indicated, we have votes in just a minute. If someone wanted to be recognized for a minute or so before we come back——

Mr. CHABOT. Mr. Chairman?

Mr. SCOTT. The gentleman from Ohio?

Mr. CHABOT. Mr. Chairman, yes, I think I can do this in 1 minute. I appreciate the opportunity to make a very brief statement.

I would like to thank you for holding this hearing on such a critical topic, and the opportunities that have been made available to the criminal justice system through DNA technology are significant and quite remarkable.

I have a constituent. Her name is Debra Culberson. Her daughter, Carrie Culberson, was murdered. Her remains were never found—never been located, and she has been an inspiration to many people in our community in trying to locate her daughter and deal with this terrible situation.

And I appreciate and support H.R. 5057. I am a co-sponsor. However, there is one aspect of the DNA Initiative that I want to emphasize, and that is the use of DNA testing to identify and locate missing persons and human remains.

More than 40,000 sets of unidentified human remains rest in laboratories or offices, often times sitting in a box or something on the shelf, across the Nation.

Section 308 of the Justice for All Act was intended to encourage jurisdictions to use the technology for the purpose of identifying this and to submit the samples to the FBI missing persons database so that there was one central repository to which jurisdictions could access information.

To date, this remains an underutilized component of the DNA Initiative, and I would just like to urge this Committee to focus appropriate attention on this important issue.

And I thank you for yielding, and I yield back my time.

Mr. SCOTT. Thank you.

Mr. DAVIS. Mr. Chairman, I can probably do this in 45 seconds.

Mr. SCOTT. The gentleman from Alabama?

Mr. DAVIS. I don't have additional questions for the panel, but I have a constituent of mine, Angelo Della Manna, who is the chief of forensic biology and DNA for the Alabama Department of Forensic Sciences, who believes very much in this program, has found it enormously helpful in my State.

And he has submitted written testimony to the Committee that I would ask to be placed in the record.

Mr. SCOTT. Without objection, so ordered.

[The information referred to follows:]

PREPARED STATEMENT OF ANGELO DELLA MANNA, CHIEF OF FORENSIC BIOLOGY & DNA, ALABAMA DEPARTMENT OF FORENSIC SCIENCES, BIRMINGHAM, AL

WRITTEN TESTIMONY OF

ANGELO DELLA MANNA

CHIEF OF FORENSIC BIOLOGY & DNA
ALABAMA DEPARTMENT OF FORENSIC SCIENCES
BIRMINGHAM, ALABAMA

TO THE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

THURSDAY, APRIL 10, 2008

Chairman Scott, Ranking Member Gohmert and Honored Members of the Subcommittee:

Thank you for this opportunity to provide the Subcommittee on Crime, Terrorism, and Homeland Security with my written testimony for this Hearing on the Reauthorization and Improvement of DNA Initiatives relating to the *Justice For All Act of 2004*.

I submit this testimony to you today as a practicing Forensic Scientist, one who actively works cases, specializes in the field of Forensic Biology and DNA analyses, and who directs the State of Alabama's Forensic DNA Program that is responsible for the analysis of DNA cases and convicted offenders from throughout Alabama.

For the past 16 years I have dedicated my professional career to the forensic examination and analysis of DNA casework, primarily involving cases of sexual assault and homicide. During this time I have conducted the forensic examination on thousands of forensic cases, both before and after the passage of the *Justice For All Act of 2004*. Since the passage of this Act, I have directed Alabama's DNA Grant Program and developed our strategy for DNA backlog reduction as well as the capacity enhancement initiatives for our Forensic DNA laboratories. As such, I feel I can

provide the Subcommittee with a unique perspective that is based on my experiences 'from the crime scene to the courtroom' as you consider the reauthorization and improvements to forensic DNA initiatives.

During the course of my testimony I hope to compare and contrast the 'real world' forensic DNA experience of a fully functional forensic laboratory, both *pre-* and *post-* the passage of the *Justice For All Act*. I believe our laboratory setting within Alabama is indicative of the vast majority of forensic DNA laboratories throughout the US, and as such, hope that our experience over the last several years will aid you in developing an accurate, concise picture of both the undeniable progress made to date in utilizing forensic DNA technology to solve crime as well as the potential future issues facing the forensic DNA community.

Some of the *key points* I would like to expand upon during the course of my testimony to the Subcommittee include:

- Alabama's ability to decrease the DNA casework backlog *35% Statewide* as the result of Federal assistance obtained from passage of the *Justice For All Act*.
- Alabama's strategy to utilize Federal funding to decrease the turn around time on DNA casework from approximately 3 years to 6-9 months since the Acts passage.
- Alabama's success in *drastically* reducing the backlog of convicted offender samples awaiting DNA testing from *70,000* to a manageable level.
- Alabama's effective approach to DNA casework and convicted offender analyses, resulting in an impressive 'hit rate' against unsolved casework of ~30-40%.
- Alabama's implementation of balanced laboratory initiatives, highlighted by our 'hits' to unsolved casework in *35 different States*.

The Alabama Department of Forensic Sciences (ADFS) is a well established, Statewide forensic science laboratory system with a long and reputable 73 year history of service to the citizens of the State of Alabama. ADFS is the only forensic science system present within the State of

Alabama and is charged with the responsibility of analyzing biological evidence recovered by all 452 local and state law enforcement agencies statewide.

Since ADFS is the only agency tasked with the responsibility of analyzing DNA evidence in criminal cases statewide, ADFS is an essential and integral component of the judicial process within the State of Alabama. Prior to the passage of the *Justice For All Act*, the ADFS DNA laboratories were suffering from a tremendous backlog of approximately 2,000 DNA cases statewide. The inability of the Agency to provide timely DNA results for these backlogged cases had a deleterious effect on Alabama's criminal justice system.

Absent the DNA results, oftentimes cases could not be properly investigated and/or subsequently adjudicated in a timely manner. The statewide backlog of DNA cases was steadily increasing and was delaying the timely identification of the perpetrators of these crimes through a search of State and National DNA databases (CODIS), thereby causing undue hardship on crime victims. Rapes, sexual assaults, and simple assaults alone had contributed over 4,500 cases to Alabama's crime laboratory system over a 4 year period prior to the *Justice For All Act*.

In the years preceding the passage of the Act, the increase in the incidence of sexual assault and related DNA casework throughout Alabama had not coincided with the hiring of additional qualified DNA personnel, an experience shared by the vast majority of forensic DNA laboratories throughout the US. The repercussions within Alabama and the remainder of this nation from the combination of these events was a clear and defined need for Federal assistance in addressing the backlog of DNA casework.

With the welcomed passage of the *Justice for All Act,* and the downstream Grant initiatives provided by the Office of Justice Programs' National Institute of Justice (NIJ), Alabama

implemented an aggressive two (2) pronged strategy aimed at utilizing Federal funding to reduce the backlog of DNA casework and convicted offender samples in the short term, while simultaneously engaging in capacity enhancement directives designed to provide a laboratory architecture that would prevent the creation of future backlogs.

Through NIJ's gracious allocation of Federal funding to ADFS, the effectiveness of Alabama's judicial system as a whole has been significantly enhanced through funds received as a direct result of the passage of the *Justice For All Act*. The capacity of each of our DNA laboratories, as well as the timely scientific analysis of DNA cases and offender samples by the Department of Forensic Sciences has been drastically improved. A summary of the strategy utilized, and the performance realized by the State of Alabama in our backlog reduction efforts relative to this Act, are outlined below.

REDUCING THE BACKLOG OF DNA CASEWORK

Perhaps one of the most overlooked advantages to reducing a DNA casework backlog is the fact that in the course of processing forensic casework, DNA technology *routinely excludes a submitted and identified suspect as the source of crime scene stains.* These individuals had previously been identified as viable suspects, usually by interrogative or conventional techniques employed by investigating agencies, and had their DNA sample submitted to the laboratory for comparison in connection with a specific case. A corollary benefit to *reducing* a backlog of DNA casework then is the consequential *reduction* in the time required for the forensic DNA laboratory to provide investigating agencies with the critical information that their previous suspect had been excluded as a potential source of a relevant crime scene stain. By providing this information to local law enforcement in a timely manner, agencies may re-visit case specifics to identify additional viable suspects, if a search of DNA databases does not provide this for them, while the initial suspect is then rightfully allowed to resume their life with minimal disruption.

Unfortunately, prior to the passage of the *Justice For All Act*, the turnaround time for forensic DNA casework to be analyzed and reported to local law enforcement was approaching three years. Numerous cases unfortunately awaited DNA testing on property room shelves, while investigating agencies routinely moved onto newer cases as they waited for forensic DNA test results. As these initial suspects were subsequently eliminated by DNA testing, local law enforcement suffered in their efforts to identify additional viable suspects due to the insurmountable delay in processing their case.

With the Acts passage, Alabama secured Federal funding assistance and developed a strategy to reduce the DNA casework backlog by simultaneously utilizing Federal funding to build a laboratory infrastructure designed to prevent the creation of future backlogs, while also utilizing Federal funding to purchase reagents and equipment to drastically reduce the current backlog.

By implementing this aggressive two pronged strategy, I am pleased to report to the Subcommittee that our forensic DNA laboratories have reduced the backlog of forensic DNA casework *by over 35%* in the last 3 years alone, and decreased the turnaround time from evidence submission to the issuance of a laboratory DNA report from almost 3 years to approximately 6-9 months. Additionally, we have implemented state of the art technological advances in DNA testing that allow the forensic scientist to develop DNA profiles from extremely small, hardly visible crime scene stains. As law enforcement realized the forensic laboratories new level of sensitivity in detection, the number of cases submitted to the laboratory increased as well. Many of these cases would have never been submitted as recently as a few years ago, but have been successfully tested due to the advances in DNA technology implemented as a direct result of this Acts passage.

Since Alabama's receipt of Federal funding associated with the *Justice For All Act*, we have succeeded in significantly reducing our backlog, even while the number of case submissions from local law enforcement has increased 23% over the same time period. Equally important is the fact that we have maintained the highest level of quality within our laboratory that each case submitted deserves. Unfortunately, to date the many successes of our forensic DNA efforts and the reduction in the backlog of DNA casework statewide has not coincided with an increase in State level funding for our forensic DNA program. As such, if Federal assistance was to be reduced, our DNA casework backlogs would rise to new levels. This would largely be due to the shortage of funding for the DNA test reagents, as well as our recent increases in case submissions, a by product of our own success.

Perhaps the most unfortunate reality of a potential decrease in Federal assistance would be the resurgence of the unacceptable delay in notifying the Justice system of DNA test results – specifically when the suspects submitted by local law enforcement are subsequently *eliminated* as the source of the crime scene stains in a particular case. This scenario would unfortunately cause undue hardship for that individual, while severely impacting the law enforcement efforts to identify other viable suspects as a result of the time delay in delivering test results.

REDUCING THE DNA BACKLOG OF CONVICTED OFFENDER SAMPLES

Prior to the passage of the *Justice For All Act,* the State of Alabama had a DNA backlog of approximately *70,000* convicted offender samples that had been collected primarily from individuals convicted of a felony offense, which were awaiting DNA testing and subsequent entry and upload to the State (SDIS) and National DNA Index System (NDIS), for routine searching against unsolved casework. A large portion of these samples originated from individuals who were under the supervision of the Board of Pardons and Parole, and as such, these convicted offenders were 'out on the street' while their DNA sample resided in the backlog – awaiting

testing, upload and searching. At that time, in the winter of 2003 Alabama had less than 5,000 convicted offender DNA profiles residing at NDIS. The backlog existed solely due to the following contributing circumstances: (i) the lack of State level funding to test the samples, and (ii) the lack of high throughput instrumentation within the laboratory to conduct DNA testing in a streamlined, efficient and cost effective manner.

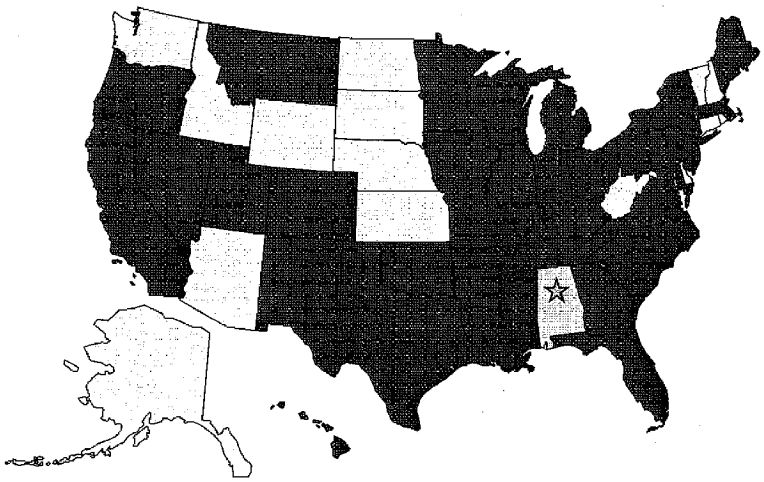
The passage of this Act, when coupled with the downstream receipt of Federal funding and Alabama's aggressive approach to backlog reduction and capacity enhancement – allows me to report to the Subcommittee, with great pleasure, that the backlog of convicted offender samples awaiting testing has been drastically reduced and that Alabama has now contributed over *155,000* DNA profiles originating from Alabama convicted offenders to NDIS. Perhaps one of the greatest metrics to evaluate the impact of the receipt of Federal funding is to compare the number of convicted offender 'hits' to previously unsolved cases prior to passage of the Act, and today.

For the *10 year period* prior to the *Justice For All Act*, Alabama had accumulated approximately 250 'hits' between unsolved casework and a convicted offenders DNA profile. In the last *three years alone*, as our DNA backlog of convicted offender samples has dwindled, Alabama's 'hits' between DNA profiles originating from unsolved casework and a convicted offender has skyrocketed to ***over 1,600*** – per capita, one of the most successful DNA programs in the country. Our offender 'hit rate' to unsolved casework remains approximately ~30-40%. Additionally, an often overlooked, yet very informative statistic for strategic planning, is that our 'forensic hit rate' where an unsolved case's DNA profile matches another unsolved case's profile, thereby linking these cases together as *serial cases* with one perpetrator, *is approaching 10%* for sexual assault cases. While these 'hits' don't initially provide the law enforcement agencies with the identity of the perpetrator, they do provide them with critical information from the one (or more) matched

serial cases, thereby allowing law enforcement from multiple jurisdictions, and oftentimes different States, to coordinate investigative activities.

The following map illustrates the *thirty five (35) States* Alabama has assisted to date by identifying the perpetrator against that States previously unsolved casework:

States with Unsolved Cases Matched to Alabama Offenders



As the map clearly illustrates, offenders from within Alabama do indeed engage in violent criminal activity in other States - in fact, it is noteworthy that they have offended *and been identified through a search of the DNA database,* in every State represented on this Subcommittee.

Similar to our successes in DNA casework, the unfortunate reality is that the reduction in the backlog of convicted offenders has also not coincided with an increase in State level funding. As a result, if Federal assistance were to be reduced the backlog of convicted offender samples awaiting testing, uploading and searching would again drastically increase. The resurgence of this backlog would undoubtedly result in testing delays, thereby hampering our currently successful efforts to aid the Justice system. The increase in backlogged convicted offender samples would undoubtedly contribute to additional violent cases being perpetrated, an unfortunate reality.

RECOMMENDATIONS

In conclusion, while the receipt of Federal assistance has significantly improved the State of Alabama's ability to quickly identify perpetrators and resolve many serious crimes throughout the United States, much remains to be done. DNA case submissions continue to rise, convicted offender samples continue to be collected and submitted, and while we are committed to the work before us, we respectfully request the Subcommittee's support for the reauthorization of DNA initiatives within the *Justice For All Act.*

Since the passage of the *Justice For All Act*, Alabama's strategy has always been focused on utilizing Federal assistance as a temporary measure, utilizing the Federal dollars to reduce current backlogs and build capacity, and we have been very successful in these efforts to date. I believe we have been excellent stewards of the Federal dollar, and our successes are undeniable. It remains my hope that this Federal assistance will be a temporary measure, and that legislative bodies at every State level would swiftly recognize and appropriate a sufficient level of funding to continue to build upon the momentum of the *Justice For All Act*, and add to the growing list of success stories.

In Alabama, the process of obtaining State level funding has recently begun in earnest, largely due to the heightened interest and attention garnered from our many successes. Currently, HB51 is being debated in the Alabama legislature, and if adopted, would appropriate increased funding *dedicated* to the DNA program. I believe several States are embarking on developing a dedicated funding stream for forensic DNA analyses as well, and it remains my hope that these would be adopted and implemented within the next 5 years. This tiered strategy of continuing to utilize Federal assistance in a cost effective and efficient manner while the individual States continue to work towards securing an independent funding stream will ultimately allow us to continue to make a profound impact upon the judicial system, capitalize on the true potential of CODIS, and provide some measure of closure for an untold number of victims of violent crime.

Again, thank you to the Honorable members of the Subcommittee on Crime, Terrorism, and Homeland Security for affording me the opportunity to share my thoughts and provide you with written testimony today as you consider this important matter.

Should you require additional information, or have any other specific questions where I may be of assistance, please do not hesitate to contact me at your convenience.

Mr. SCOTT. And we will recess for approximately 15 minutes, and we will be back as soon as the voting is over.

[Recess.]

Mr. SCOTT. The Subcommittee will come to order. We will now proceed with questions from the Members, and I will recognize myself for 5 minutes.

Dr. Hagy, there is obviously a bipartisan consensus that we need to deal with this backlog of DNA samples. How much do we need to appropriate to effectively eliminate the backlog, consistent with the DNA technology that we have?

Mr. HAGY. I am sorry?

Mr. SCOTT. How much money would we have to appropriate to deal with the backlog? We have a bipartisan consensus, I believe, that we ought to be doing something. We have got these hundreds of thousands of kits floating around all over the place.

How much would we need to appropriate to effectively deal with the backlog?

Mr. HAGY. I don't even know if I could make a guess at that. I will tell you how we spend our money, because as an agency that Congress and the American gives money, what we try to do is focus our efforts on those things that have the biggest impact—our research and development, our capacity-building, measures to increase the throughput in the processing.

So we really focus on those efforts first, and then whatever—I mean, we always do, but we also want to send money out to the labs, and the equipment and some things that you buy in the field.

So I really can't pick a figure. What I can say—we try to——

Mr. SCOTT. Can you go back and try to pick out a figure? Because we would like to eliminate the backlog. As we have heard, because people are doing a better job in gathering samples, the backlog is not really—we are not really even chipping away at the backlog.

How much would we have to appropriate to effectively eliminate the backlog?

Mr. HAGY. I couldn't even get at a number. I apologize. It could be any amount. Like I said, the money we have now—we are trying to efficiently and effectively spend it. We will spend what we get, and we are fully committed to it, but it could be any number.

And again, I don't know the future. We have some agencies that are having trouble spending their money. Some are spending more, and I——

Mr. SCOTT. Well, let me ask you about the grants that are outstanding. Are we effectively spending the money that we have already appropriated in terms of grants? We had the technical problems before.

Are there technical problems that may occur that would prevent you from releasing the funds that we have already appropriated?

Mr. HAGY. I don't see really technical problems. Beyond the post-conviction issue that we are aware of, I don't see a lot of technical problems. We do see some States that you see in most grant programs—procurement issues, training of analysts so the casework can move faster is one of the concerns we have.

Also, I think last year we had some money that is still out in the field. We try to keep a running total of what is out in the field because the budgets are coming later in the year.

I think the analyst concern, procurement policies—those somewhat slow it down. But I think as far as technically, we are getting the money out the door.

Mr. SCOTT. Mr. Marone, can you help us in what would be needed to deal effectively with the backlog, how much money you need?

Mr. MARONE. Unfortunately, I tend to agree with Dr. Hagy about the dollar figure issue, because what he doesn't have control of—what Congress doesn't have control of and what the field desperately needs is cooperation at the State and local level.

He can give me money. If I can't get the FTEs, the positions, to train those people under grant funding, or I don't have the facilities or the maintenance, the under-all maintenance, to do that, that is the problem.

Mr. SCOTT. Well, yes, but that—again, you get to money. What do we need to do as Members of Congress to effectively deal with the backlog? All we are getting is mumbo-jumbo.

Mr. MARONE. Well, okay. What we need do is, then, incentivize the situation.

Mr. SCOTT. How much money do we need?

Mr. MARONE. He just told me you are utilizing $150 million now. I would say probably three times that might be—but the key is——

Mr. SCOTT. So for less than $1 billion we can get rid of the backlog.

Mr. MARONE. Yes, sir. Well, that will help to get rid of the backlog.

Mr. SCOTT. Well, if somebody can come up with some suggestions, we would like to hear them, because we are trying to eliminate the backlog, and all we get is—you know, I asked a simple question, and 5 minutes is almost up. I haven't gotten an answer yet. We are looking for a number.

Mr. MARONE. It is not a simple answer. That is the problem. No, seriously, States——

Mr. SCOTT. It is a number.

Mr. MARONE. The problem is that States have to cooperate in this to agree to provide support. In addition to the Federal funds, there have to be buildings, there have to be people.

And so Federal funds in and of themselves aren't going to correct that situation. That is the problem.

Mr. SCOTT. Federal funds can build buildings.

I will reserve the balance of my time for the next round.

Mr. Gohmert?

Mr. GOHMERT. Well, thank you, Mr. Chairman.

First, let me go to Ms. Smith.

And I was honored to have the chance to meet you and visit with you during our break for votes.

But you know, something was mentioned earlier when you mentioned about self-destructive tendencies after a sexual assault, and I think it speaks volumes for you that you have turned that into a positive to help so many across the country who have been victims.

But I did as a judge see repeatedly that self-destructive tendency which was then used against victims or attempted to be used against victims when they went to testify at trials.

So thank you for—I know it hasn't been easy, and closure doesn't mean complete closure. It just means a chapter. But thank you for what you are doing.

And if at any time—let me just tell this to all our panelists. Your testimony doesn't have to end today. The question has been put by the Chairman—we are trying to get to the bottom and get to a solution. You can submit us things in writing. This is how you can help the program.

And so I want to follow up what the Chairman was trying to get to. Let me go to Mr. Marone.

Rather than a number, I am going to try to find out what do you think would be the most helpful change we could make to Federal law? I heard you say something about well, we don't have adequate training in the State and local areas.

Do we need to have some of this money go for training programs? Is that something that needs to be part of the fix?

Mr. MARONE. Absolutely. Actually, I have to be very, very careful what I say, because I sit on the National Academy of Sciences Committee looking at these very issues, and we have been knocking these issues around for the last year, now——

Mr. GOHMERT. Well, I would have thought you would have an answer ready.

Mr. MARONE. And so what I see is it is a combination of all these things. The Chairman said Federal money can building buildings. Right now, I can use Federal funds to expand existing space I have or renovate it to make labs. I can't build a new building with it. That is one of the issues.

Training is certainly, in essence, a very, very important part of the aspect there.

Mr. GOHMERT. But do you think it is the most important? That seemed to be where you were going a moment ago.

Mr. MARONE. They are all equally important. You have to have facilities to put people in. You have to have positions in order to train people.

Over the last 2 years, Virginia got 34 positions, and it has taken us a couple of years to incorporate all those positions into now productive positions, not just for DNA but for other positions also.

So for example, like firearms examiners take a year, DNA—or, excuse me, 2 years, DNA examiners take a full year, maybe 9 months, to train them. So once you have the position, it takes almost a full year to get them into speed where they are in a position to work those cases.

Mr. GOHMERT. So you are hiring people that aren't trained and equipped to do the DNA study?

Mr. MARONE. You are hiring college graduates and having to train them. The pool of experienced, qualified examiners is so small—yes, I can steal them from the next State over if I offer them more money, and that will help, but on the national level it doesn't help to trade people around. You have to produce new people.

Mr. GOHMERT. It just seems like the training could go a lot quicker than two to 4 years.

Mr. MARONE. Well, a year for DNA folks. No, sir, it can't. You know, maybe 9 months on the outside, but on the inside——

Mr. GOHMERT. Is there any college program in the country that would have people trained to do DNA studies in the criminal forensic area when they come out of college?

Mr. MARONE. They have all—and yes, there are. I actually also sit on the Committee that accredits college programs for just this thing, but——

Mr. GOHMERT. So you all are not accrediting—I mean, you have accredited people that are preparing people that are unprepared.

Mr. MARONE. You are accrediting colleges to have the appropriate programs to do this, yes, sir.

Mr. GOHMERT. But you have got to come back and train them before they are——

Mr. MARONE. You still have to screen them on the particular applications. They learn all the theory. They learn the genetics, the molecular biology, the biochemistry, but they don't know the specifics.

And there are no college programs now that teach specifically the application. That is the key.

Mr. GOHMERT. Well, that sounds like that is a problem, so if——

Mr. MARONE. It is.

Mr. GOHMERT [continuing]. You are on the board to do an accreditation, then you need to tell them, "We are not going to accredit you unless you can prepare people to go do these jobs when they come out," and not cause them to have to get more student loans or more training for 4 years after they get out.

And let me just say, because my time is running out, Mr. Brooks, nobody could wish on anybody what, you know, you have been through for 18 years.

I know some States like mine have programs where if you are wrongfully convicted, there is no amount of money that is going to give you back your 18 years, but at least, my goodness, you don't walk out with nothing, struggling as apparently you have.

At least there are funds to help someone like you wrongfully convicted to at least have some seed money to get a start, and I am sorry that you have had to deal with that issue and for what you have been through.

Mr. Neufeld, from your position, do you see—what do you see that needs to be done, the most important thing, to fix this legislation to where we address the DNA backlogs?

Mr. NEUFELD. On the DNA backlog or on the inability of people like Mr. Brooks to get access to evidence and post-conviction?

Mr. GOHMERT. Well, yes, I am asking what do you see is the most important fix we can do to Federal legislation to address the DNA backlog the quickest so we don't have people languish 18 years?

Mr. NEUFELD. The one point I would agree with Mr. Marone on is that, really, what has to happen—and Congress is going to probably do this—the sooner, the better—is realize just how critically important forensic science is not only as a matter of public safety,

not only to identify innocent people and help them, but also to fight terrorism and everything else involved in——

Mr. GOHMERT. Okay. Let's assume we have got that realization. Now how do we fix the legislation?

Mr. NEUFELD. You are going to need an infusion of capital to allow for the training and education on a massive level in the United States of all the people who can do not only DNA work but all the other valuable forensic disciplines that are utilized in laboratories like the one that Mr. Marone runs and other people run around the country.

You are going to have to have a program where better forensic science is utilized so we don't have the kind of situation that Mr. Brooks had to suffer, where you have an incompetent dentist and an incompetent pathologist providing false testimony to——

Mr. GOHMERT. Well, we are still at 30,000 feet. We are trying to get down to fixing the words in the law that make those things possible. We have got the realization among these folks.

Mr. NEUFELD. The Innocence Project is not involved, sir, with all due respect, in thinking about how to clear up the DNA backlog, which obviously we join in wanting to do, but it is going to be taking people like NIJ and numbers crunchers there to offer you the kind of assistance that you seek.

Mr. GOHMERT. Okay. I thank you.

Mr. SCOTT. The gentleman from New York, Mr. Nadler?

Mr. NADLER. Thank you.

First of all, Mr. Neufeld—well, first of all, let me say that I feel very strongly about this whole subject. Back in February of 2002, I introduced an amendment to the Judiciary Committee's budget views and estimates to put the Committee on record as supporting full funding to eliminate the backlog of DNA evidence.

And in March of that year, I introduced the Rape Kit DNA Analysis Backlog Elimination Act to provide $250 million for that purpose, and that was all folded into the Debbie Smith Act.

But let me ask you, Mr. Neufeld, you mentioned that in Mr. Brooks' case and in other cases, this dentist and pathologist testified, and they testified in a lot of cases. Did they testify knowingly falsely or they were just incompetent?

Mr. NEUFELD. We realized in the two cases involving Mr. Brooks and Mr. Brewer—cases that they testified falsely and—not only did they testify falsely, but it appears to experts who reviewed the evidence that they have testified deliberately falsely.

Mr. NADLER. Have they been punished?

Mr. NEUFELD. They haven't been punished yet, although we filed a complaint with the medical licensing boards of Mississippi this week seeking Dr. Hayne's medical license, and we have asked——

Mr. NADLER. I assume the statute of limitations on perjury has long since passed.

Mr. NEUFELD. No, it hasn't, because under Mississippi law, for instance, there is an exception for fraud.

Also, we have asked the Federal Government—we have asked everybody we can to look into the possible criminal penalties for these people who used known falsehoods to convict innocent people and, frankly, of capital cases.

Mr. Brewer, the other gentleman, went to death row. You know, as far as I am concerned, on a personal level, if you fabricate evidence in a capital case with the intent to send an innocent person to death row, you are committing the crime of attempted murder.

Mr. NADLER. Yes. And you have been unsuccessful in getting prosecutions?

Mr. NEUFELD. So far we have.

Mr. NADLER. In your general work with proving other people innocent, have you found perjury to be a major problem or just rarely?

Mr. NEUFELD. Well, you know, that depends on what you mean by perjury.

Mr. NADLER. Deliberate false testimony.

Mr. NEUFELD. Right. We have found that one of the significant causes of wrongful conviction has been police and prosecutorial misconduct, where either people suborned perjury or people get on the witness stand and——

Mr. NADLER. And as to people who have been proven innocent because of improper conduct, do you find that generally remedial action is taken, or is it just shrugged off?

Mr. NEUFELD. There has been historically very little remedial action, particularly, unfortunately, among prosecutors.

A lot of prosecutors are very conscientious and are doing the right thing, but on those occasions when they step out of line and do the wrong thing, there is no discipline.

In fact, in our State, like most States, even when a case is reversed for prosecutorial misconduct, there is no disciplinary action. There is no remedial action. There is nothing done to the offending prosecutor.

Mr. NADLER. Would you think it might be a good idea for Congress to condition aid to States for justice matters on some sort of a record of disciplining people who bring about wrong convictions because of deliberate misconduct?

Mr. NEUFELD. I think it would be very good for Congress to do everything they could to create financial incentives on the States to take remedial action to eliminate or seriously reduce the causes of wrongful conviction.

Misconduct is certainly one of those. Lawyers who are asleep in the courtroom is another. Police who secure false confessions is a third. Sloppy identification procedures which generate false—misidentifications is a fourth.

All those causes need to be addressed. Congress can certainly get involved with that and create financial incentives for the States to eliminate those causes.

Mr. NADLER. Let me ask you one other—thank you. Do you think it would be a good idea also for Congress to incentivize States to—we passed, as you told me in the break—Congress passed a bill a number of years ago to provide for compensation for Federal prisoners who have been wrongly imprisoned and urged States to do so, but almost—but very few States have done that.

Do you think that the Federal Government should condition grants to States on their establishing programs to compensate people who spend significant amounts of time after wrongful convictions in State prisons?

Mr. NEUFELD. I think you can incentivize States to do the right thing with respect to compensation, because there is no question that the notion of compensation enjoys wide bipartisan support.

No one feels that somebody like Levon Brooks, who spent 18 years in prison—I mean, the crazy thing about Mr. Brooks here is 1 month before he went to prison, he was accepted into art school.

He was about to leave a town of 350 in rural Mississippi, move north to go to art school. Instead, he spent the next 18 years in some of the worst prisons in America. He obviously deserves some measure of compensation to try and get his life——

Mr. NADLER. Thank you. And finally, you said that the executive branch had gutted the act, that it eliminated financial incentives to States. Only five States have applied for Federal money. What changes do you think should be made in the reauthorization act?

Mr. NEUFELD. Well, what happened very specifically was that in 2004, when Congress—it was the will of Congress in the Justice for All Act—had four different revenue streams that would go to the States to incentivize them to provide access for DNA testing and to preserve biological evidence, which was not only good for the innocent, but it was also good for police that want to do cold case units.

What happened after Congress did that is the President did an end run around that legislation in the Justice for All Act by eliminating the incentives for three of the four parts, and those were the——

Mr. NADLER. By eliminating, you mean just not funding it.

Mr. NEUFELD. So they weren't funded at all—no, no, no. What happened is he gave them the funding but they no longer had, as a condition of receiving the funding, have to either preserve the evidence or authorize——

Mr. NADLER. Was that legal under the act?

Mr. NEUFELD. Excuse me?

Mr. NADLER. Was that legal under the act, or did the President break the law?

Mr. NEUFELD. No, no, no, the President—through the President's DNA Initiative, which was basically appropriating money—ignored the original authorization willed by Congress that said that these four pots of money would be conditioned on preservation and access, and said we are just going to give you the money without the condition.

I don't know anything about congressional authorizations and appropriations that I would take a step——

Mr. NADLER. Okay.

Mr. Chairman, can I have unanimous consent for 1 minute for one question to Mr. Hagy?

Mr. SCOTT. Without objection.

Mr. NADLER. Thank you.

Mr. Hagy, you just heard Mr. Neufeld say the Administration gutted the law by ignoring the incentivization. Can you tell me why and what you will do to fix that?

Mr. HAGY. I can't tell you why because I am not familiar with the parts of the legislation in 2004. I wasn't involved in the initiative.

Mr. NADLER. Can you get back to us on that?

Mr. HAGY. I can.

Mr. NADLER. On the specific statements that Mr. Neufeld made about we gave incentives in the law for access to DNA and for various other things, the Administration made an end run around that by removing the incentives, and what you plan to do to obey the law by changing that end run.

Mr. HAGY. I will get you an answer to that.

Mr. NADLER. Thank you.

I yield back.

Mr. SCOTT. The gentleman from Alabama, Mr. Davis, I think was here next.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Neufeld, let me have a conversation with you, if I could, about a case in Alabama that caught my attention. It involved someone named Thomas Arthur. You are aware of that case, I know.

Mr. NEUFELD. I am aware of it.

Mr. DAVIS. Most of the questions are going to be coming to you, so you might be better leaving your mike on so you won't have that keep happening to you.

I know the Innocence Project has gotten involved in this case, and it caught my attention for two reasons.

These are the facts. There is a death penalty defendant in Alabama who was convicted in 1982 of a rape-murder, and at the time he was convicted DNA tests were not widely available in my State, and he has never had the benefit of a DNA test.

He has argued that the State should conduct these tests under Alabama law. The Governor of the State has enormously broad authority in any matters for which he may issue a commutation or pardon. Actually, even the Attorney General of Alabama concedes that the Governor has the legal authority to order DNA testing.

The Governor has declined to do that, and it caught my attention because—I would like unanimous consent, Mr. Chairman, to introduce into evidence a Birmingham—or to put into exhibit, rather, at the hearing—I am used to my courtroom days—a *Birmingham News* editorial dated Thursday, November 29, 2007, "DNA Testing for Arthur."

[The information referred to follows:]

al.com
Everything Alabama

The Birmingham News

DNA testing for Arthur

Thursday, November 29, 2007

THE ISSUE: It's inconceivable that the state of Alabama won't order DNA testing before executing a Death Row inmate who claims to be innocent.

Thomas Arthur may absolutely be guilty of a 1982 murder for which he was sentenced to death. Arthur emphatically claims he is not; a jury concluded he was.

The truth is, there's at least some evidence to suggest guilt and other evidence that makes you wonder. Unfortunately, the jury that decided Arthur's fate didn't have the luxury of DNA testing that might have helped them sort through the complicated facts of the case.

Had the technology existed at the time of his trial, surely DNA tests would have been conducted on the evidence, which includes hair and semen. It's routinely used now on the front end of criminal cases to confirm guilt or to eliminate suspects.

It boggles the mind, then, that the state of Alabama won't order DNA tests before proceeding to execute Arthur on Dec. 6.

True, the U.S. Supreme Court this week denied Arthur's legal bid for DNA testing. But the courts are bound by legal timelines and rules. We may not always like those constraints, but at least we can see the reasoning behind the decision.

Gov. Bob Riley is under no such rules. He can order DNA testing in this case, and there's no good reason for him not to do it.

Arthur is accused of killing Troy Wicker, at the behest of Wicker's wife and Arthur's lover, Judy. Judy Wicker at first claimed someone broke into her home, raped her and killed her husband. But later, under a deal to get out of prison, Judy Wicker testified she paid Arthur to do the deed.

Testing evidence recovered in the case - including semen taken from Mrs. Wicker - may merely confirm Arthur's guilt. But it might also implicate someone else or at least lend credence to Mrs. Wicker's first version of the crime. In other words, it could bolster Arthur's claims of innocence. Either way, what does it hurt to do the testing before carrying out Arthur's execution?

Even the victim's family has supported Arthur's efforts to get the evidence tested, expressing uncertainty about the truth in the case.

Other factors the governor should consider: Judy Wicker, who under the prosecutors' theory of the case is as guilty as Arthur, served only 10 years in prison for her husband's murder. The prosecutor who tried Arthur had been a private attorney representing Mrs. Wicker.

And while Arthur asked for the death penalty - in an effort, he said, to ensure more appeals court scrutiny of the case - he was one of the inmates on Alabama's Death Row who missed crucial appeals deadlines because he did not have a lawyer. (Alabama is alone in not making sure condemned inmates have lawyers at every stage of the appeal process, but that's an editorial for another day.)

Arthur's date with death may be held up anyway as a result of a larger court case over the particulars of lethal injection. But it's worth it to hold off on the execution just to allow time for DNA results.

Indeed, if Riley had ordered the test when the request was first made, we'd already have the answer.

Mr. DAVIS. It is interesting because, candidly, it is the only time I recall the *Birmingham News* ever criticizing the Governor of Alabama. They are a very, very, very, very, very strong supporter of his.

And the only time I have ever seen them criticize him on their editorial pages was over his refusal to order DNA testing.

So I want you to talk with me a little bit about, first of all, a broad proposition. Is there any cost to the criminal justice process in terms of efficiency—is there any unusual burden that is imposed from a State ordering DNA tests for someone who never received them?

Mr. NEUFELD. Well, first of all, you are absolutely right about Alabama. Alabama is one of those States, for instance, that doesn't have a statute authorizing post-conviction DNA testing.

And so the only way that somebody can get post-conviction DNA testing, even if they are on death row in Alabama, is if the Governor on his own decides to do it.

And so we went to the Governor and asked him to exercise that authority, because we don't know if the man is innocent or guilty, but DNA can answer that question.

Mr. DAVIS. And there is no dispute about his authority. He said he didn't have it, but the Republican Attorney General says he has it.

Mr. NEUFELD. No, he has the authority, okay? And obviously, everybody wants to get to the truth, or you would expect that everybody would want to get to the truth.

The consequences of doing DNA testing financially only err to the benefit of the State. Obviously, if you have the wrong guy, you are not going to have to pay to house him in a prison any longer.

If you have the wrong guy and you can do DNA testing and get a CODIS hit and identify the real perpetrator who is out there on the street committing other violent crimes——

Mr. DAVIS. Give me a number, just to put it in perspective. How much is a DNA test, or how much would a DNA test cost for——

Mr. NEUFELD. In that case, it would be a couple thousand dollars, in that case, given the nature of the evidence. And we have offered to pay for it as well, so it wouldn't even be an expense of the people of the State of Alabama—but simply refuses.

Mr. DAVIS. What is the Governor's basis for refusing?

Mr. NEUFELD. The Governor's original basis for refusing was that he didn't want to delay the execution.

Mr. DAVIS. It has already been delayed.

Mr. NEUFELD. Well, once the Supreme Court decided to take up the issue of lethal injection, and he knew it would take 4 months at least before that was decided, it would only take 4 weeks to do the testing, he then didn't offer another justification.

Mr. DAVIS. Because it has been delayed. The Supreme Court has delayed it. They delayed it last December. So is there any reason why the State couldn't conduct the test now in the interim?

Mr. NEUFELD. All he has to do is authorize it.

Mr. DAVIS. Let me just end with this observation. I differ from some of my colleagues on this side of the aisle. I am a supporter of the death penalty, and that puts me in the minority on this side of the aisle.

But when I look at a case like this, I am compelled to make an obvious point. If we can put in place a more regular procedure at the State level and incentivize States to do it, Congress can incentivize States to put in place a more regular procedure to allow, certainly, capital defendants to receive DNA testing when it was not available at the time of original conviction, that strikes me as not an unreasonable course of action—in fact, it strikes me as a reasonable course of action—I suspect—Mr. Chairman, if I can just finish this point up, I suspect the reason that it hasn't occurred is that, you know, those of us in the political world don't want anyone to say that we are soft on crime, we don't want anyone to say well, we are trying to provide some delay in the criminal justice system.

But it strikes me a $2,000 test that would have the effect of either exonerating someone or at least possibly casting a major doubt around his case is not a major burden to the system.

And your point, Mr. Neufeld, I think is that if individual prosecutors have to make the decision, they can't always be counted on to want to reexamine their cases. If Governors have to make the decision, they can't always be counted on to reexamine decisions.

So maybe we do have to have in place a procedure that is more hospitable, that doesn't require a political actor to make the ultimate decision on review.

Mr. NEUFELD. The only thing I would take issue with, sir, is that I don't believe it is a question of being soft on crime. For instance——

Mr. DAVIS. I didn't say it was. I said that was what—let me finish my point.

Mr. NEUFELD. Debbie Smith, for instance, has been a longtime supporter of our efforts to get post-conviction DNA testing——

Mr. DAVIS. Yes. Well, I——

Mr. NEUFELD [continuing]. Incentivize the States to do that testing.

Mr. DAVIS. I am not sure if you didn't hear me or—I wasn't saying it was a matter of being soft on crime. The point that I was making was that that is often the fear, and I don't think you would doubt me that is often the fear, of people who decline to wade into these issues.

I am trying to agree with you more than I am not. I am trying to make a very basic point that if we can put in place some kind of procedure with more regularity that doesn't require, as in Alabama, an ad hoc decision by a Governor or a prosecutor, it would seem to be in the interest of the system.

I have no idea whether Arthur did or did not do what he was accused of doing. There is evidence on both sides. But it would seem that the State does have some interest in a $2,000 test to find out.

Mr. GOHMERT. Would the gentleman yield?

Mr. DAVIS. Yes.

Mr. GOHMERT. I would submit that this former mean, tough, law-and-order judge would be glad to co-sponsor legislation to work on that with you, if you were interested.

Mr. DAVIS. Well, I appreciate the gentleman's thoughtfulness.

Mr. GOHMERT. I might give some cover for anybody that is worried about political——

Mr. DAVIS. Well, I appreciate the gentleman's thoughtfulness, and I have never considered him to be mean or ornery anyway. [Laughter.]

Mr. SCOTT. The gentleman's time has expired.

The gentleman from New York?

Mr. WEINER. Thank you, Mr. Chairman.

The Chairman and Ranking Member asked the seminal question on the legislative fund, and I am going to try to endeavor with some questions to answer it.

The first question was how much money is necessary. Part of the problem we have always had with this issue is the general reluctance of law enforcement agencies that have backlogs to do press releases trumpeting that fact.

So when we originally passed the first legislation ever to fund DNA testing by Congress, one of the things that was included was a study to go and take a look. And even that study that came up with this number, 542,000—it didn't say this police agency has this much, this one has this much, this one has this much.

And it did comment about how reluctant some agencies were to talk about it. And as Mr. Neufeld's organization knows, sometimes they are reluctant to even admit that they are not—that they are reluctant to admit it.

You know, it is getting them to say we have got this—it is not something a lot of sheriffs' departments want to talk about.

We also learned in that study a couple of interesting things. We learned that in England their average start to finish, when they take the piece of evidence, submit it to the lab, until they get a result back is about 33 days. In the United States, it is 30 weeks. So that is the difference.

And that is even assuming that you have had a law enforcement agency that is really fired up. They get the thing, and it doesn't sit.

We also have the experience of New York where we had, in the early—in the late 1990's, almost a 6-year backlog, when you literally had kits sitting like shoe boxes in a vault in—several of them, actually, in Queens.

Literally, each one of them had a number. It represented a woman—in most cases, a woman waiting for justice in their case. And they, to their credit, didn't wait, got some Federal money, but mostly city and State money, and then went to work on trying to clear out the backlog, and they have done it.

But I want to ask Mr. Hagy and—and, Mr. Marone, you can jump in, too—a couple of things that I am going to be offering in the next version of this bill that perhaps Mr. Gohmert and Mr. Scott would be interested in.

And I just want you to answer as briefly as possible whether you think it would help improve the backlog. And these are things that aren't in the current law that perhaps they should add.

One, should we give priority to labs with demonstrated training and personnel needs, meaning labs that are doing their best but can show that they are overburdened, meaning it would incentivize them to say, "Here is our backlog, here is why we need it?"

Would it help to clear the backlog if we gave more money and more priority to those labs?

Mr. HAGY. You are asking me?

Mr. WEINER. Yes.

Mr. HAGY. Yes, we do that. As we do our formula grant program, which is the largest portion of the DNA money, they actually apply.

Mr. WEINER. Right.

Mr. HAGY. They give us information on what they are doing. But I do think if—we do it by needs. It is generally a formula grant, but we do see a budget.

Mr. WEINER. No, I understand, but the idea was to give your priority to those labs in the grant-making process.

Mr. HAGY. Yes.

Mr. WEINER. The second thing is expand the eligibility of funding to cover salaries for existing employees.

You know, frankly, you are competing—you know, there are salary needs for employees that are already on the books, not just the need to hire new folks, meaning as salaries rise, as competition gets higher for technical skills, to expand eligibility for those.

That is the second thing. Do you think that might help?

Mr. HAGY. Salaries are something we cover as well.

Mr. WEINER. The next thing is—but these are all things that are not in the present Debbie Smith Act that we would add as the next evolution.

Next, add some money for grants for technology. You know, one of the things that is happening is bar code technology that really does help speed the English system—if you get that type of technology, and you get labs to invest in that, not just keeping more people pounding away at the same technology, do you think that might help with the backlog?

Mr. HAGY. Absolutely.

Mr. WEINER. The next is a technical thing. Under the present law, the Attorney General has to sign off in advance that a State provides post-conviction testing and biological evidence before States are eligible to get some grants.

Would it not be, as a technical matter, sufficient to have that process going on, that approval process going on, and still let them ramp up with some Federal money, and worst comes to worst, you just say, "You don't get next year if you don't meet certifications?"

This is something Mr. Marone might be able to comment on.

Mr. HAGY. Yes. This year we gave an extra month—when we reformed this post-conviction in trying to improve the process, we gave them extra time to work on getting the actual certification.

We go to the Attorney General, because these are State laws and practices they are speaking to, and they are most of the time the most appropriate person to gather——

Mr. WEINER. But a few States have said to me that it is a little bit of a headache that they are waiting while that A.G. process is going on.

Next I want to talk to you about a couple of things, relatively small things, that I think would not only add to the cases that Mr. Neufeld has and prove experiences of victims like, unfortunately, Ms. Smith has.

Oughtn't we be ramping up a little bit the sexual abuse nurse examiners that need to be out there, the experts that sit in hospital emergency rooms that are on call for police agencies, that realize that dealing with women who are victims of sexual assault not only have very important emotional needs as victims of crimes, but also there are specific forensic things that you need to do to collect information for those women?

Would it not be helpful this time to ramp that up a little bit, so it is not just something that you find in big cities, but in small towns as well?

Mr. HAGY. I can speak to how important that is, and we actually are with the Office on Violence Against Women at the U.N. as we speak, presenting a tool that we formed together.

It is a practicum as well as a C.D. on how to do sexual assault forensic exams and actually improve that process, not only to help the victim but to lead to convictions of innocent people—I mean guilty people that have done these acts.

And that is actually both our office and the Office on Violence Against Women presenting that tool, which is amazing, and that is——

Mr. WEINER. And let me add one other thing.

And I appreciate the Chair letting me run a little over.

The other thing is R&D into DNA technology. You know, we talked a little bit about bar codes and things like that, but you know, it strikes me that if we took a fraction of our R&D budget for some things and just put it toward trying to figure out ways to mechanize the system a little more—we need the next big advance.

And frankly, the private sector is not getting incentivized to do it, because there is such a drip, drip, drip of dollars that people are putting it to getting as many tests as they can get done with the existing people.

If you create an R&D fund that says to technology firms, "Go out and try to improve this," I think that that would help a great deal.

And if I can take one additional moment just to ask Mr. Neufeld about one case that captured a lot of our attention in New York, isn't there also a problem of DNA and evidence of all sorts sitting in completely disorganized, uncategorized boxes and bins in a lot of places?

You had a fairly famous case that was tragic of having to go back to—of a piece of evidence that you knew existed, but the police agency—and I am not sure—I don't remember which one it was—frankly just couldn't find it, for years and years.

And they kept telling you, "Court order, court order, court order," and they kept saying, "We can't really find it."

Is there a way that we—using this popular hook of DNA, which everyone looks at through their own lens—say let's also figure out ways either to require agencies to retain evidence better or to incentivize them?

How would you recommend we do that?

Mr. NEUFELD. The easiest way to incentivize them is the way that you initially wanted to do it in 2004 but then, unfortunately, with the end run, it don't happen, which is to give the money to the States to do all this DNA testing, but simply condition it on two things.

One is come up with a kind of preservation procedure—the bar coding, for instance, that you just described a moment ago, is fantastic.

But don't just do it prospectively. You have got to do it with the 10,000 items that are currently sitting in your property clerk warehouse, because if you don't do it with those items, not only will you not exonerate people, but you are also depriving your cold case units from reopening old cases.

So obviously, you want to incentivize that. Congress can incentivize that. They should do it.

And that is why poorer States, you know, like Alabama, for instance, don't have a preservation statute, don't have a DNA access bill either, because they need the money. They need the basic money for infrastructure that you are describing.

But if Congress can appropriate those kind of funds, yes, I think it will all happen.

Mr. WEINER. I thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

Mr. Marone, how often do you get cold hits?

Mr. MARONE. Cold hits, lukewarm hits, 40 a week, 40 to 50 a week.

Mr. SCOTT. And if you had——

Mr. MARONE. Excuse me, a month, 40 or 50 a month.

Mr. SCOTT. If you had more of these in the database, you would get more cold hits.

Mr. MARONE. We saw a significant increase as the database went from 100,000 to 250,000. We saw a significant increase in the number of hits. Obviously, the bigger the database you are looking at, the more chances you have to match things.

Mr. SCOTT. Mr. Neufeld, are John Doe indictments helpful?

Mr. NEUFELD. John Doe indictments are very helpful. They have obviously been very helpful to prosecutors, and in a good way, because you don't have the statute of limitations problems.

You have DNA. Obviously, if it is a rape case and it is collected in the right way, it is the pivotal piece of evidence.

You do a DNA profile. You get it. You run it through CODIS. You don't get a hit, but you know this is the perpetrator. You indict the DNA profile. And if and when you identify the person that goes with that profile, he can be prosecuted.

Mr. SCOTT. How often are John Does identified?

Mr. NEUFELD. I am sorry?

Mr. SCOTT. Do you know how often John Does are identified?

Mr. NEUFELD. I don't have that information, sorry.

Mr. SCOTT. You and the Innocence Project hear from a lot of people who claim to be innocent. What portion of the people who claim to be innocent do you find are actually innocent?

Mr. NEUFELD. Well, that is a good question. In about one-third of our cases that we take on—we get about 3,000 requests now a year for post-conviction DNA testing, but it can take many years before we actually get to do the testing.

In one-third of our cases, we have to close them out because the evidence has not been preserved in the intervening years.

But in the cases that actually go to lab and we do the testing, it turns out that the DNA testing exonerates people about 50 per-

cent of the time, and about 50 percent of the time it confirms their guilt.

Some people might wonder why are you doing it if it confirms guilt 50 percent of the time. It is a good thing to confirm guilt.

But on the other hand, if we are getting an exoneration rate of 50 percent, that is extraordinarily high also. Who would imagine that 50 percent of the people who write to us, where we then locate the evidence and go to lab, actually end up being exonerated by the testing?

Mr. SCOTT. Are there chain of custody issues?

Mr. NEUFELD. In terms of the integrity of the evidence?

Mr. SCOTT. Right.

Mr. NEUFELD. In sexual assault cases, there is no real chain of custody issue at all, because there are internal controls that are part of the DNA test.

When you are talking about the rape kits that Debbie Smith was talking about, for instance, the rape kits are a mixture of DNA from the victim and from the assailant.

And they can actually differentiate, if you will, in these laboratories between sperm DNA and all other kinds of DNA, so first of all, when you find this kit 20 years later, and it could be wedged behind some prosecutor's desk, the first thing you want to do is when you do that separation, does the non-sperm fraction match DNA from the reference sample taken from the victim.

If it does, you have got the right case. If it doesn't, you have got the wrong case, and that answers your question.

Secondly, let's look at the sperm. It is sperm DNA, okay? If it was me, if I was the real perpetrator, there is no way that science has figured out that I can get in there and somehow separate and extract my sperm out of that mixture and then substitute somebody else's sperm to make it look like they did the crime.

So those two internal controls, by its very nature, give DNA a kind of integrity that other types of forensic evidence simply lack.

Mr. SCOTT. Mr. Marone, is there a problem with preservation and deterioration of the evidence?

Mr. MARONE. No, sir. Once the materials have all been dried—and that is the key, that they are dry. And I am assuming we are not talking about blood tubes, but the swabs and such, slides.

Essentially, office environment, room temperature, with a, you know, decent humidity—what you have to stay away from is high humidity, warm temperatures.

But essentially, like what we are in here now would be certainly appropriate to be able to store evidence for a significant time period.

I would like to address the one thing that Mr. Neufeld spoke about. One of the biggest issues we see with some of these post-conviction testing is that although we might be able to get results, you are not getting full profiles from the crime scene samples, and quite often you are getting not full profiles from either the victim or the suspect.

And what is problematic is going back and trying to get new good samples from those individuals, especially with the victims, who really don't—you know, they many times don't want to have to go through that all again.

So it is very problematic. It is a touchy issue to go back and talk to the victims of cases that are, you know, 15 years, 20 years old.

Mr. SCOTT. Mr. Neufeld, you mentioned Alabama. Is there a right to post-conviction evidence now, to test the evidence?

Mr. NEUFELD. No. We got a decision from the Ninth Circuit Court of Appeals 5 days ago saying there is a constitutional right to post-conviction DNA testing. There are three other circuits who share that position. There are one or two circuits who disagree. We will wait and see what happens.

Mr. SCOTT. Does the Effective Death Penalty Act serve as a barrier? Because under that, you have to show clear and convincing evidence of innocence, which you don't have until the test is done.

Mr. NEUFELD. Well, the Effective Death Penalty Act has been an obstacle to a lot of types of post-conviction relief that people seek, including DNA testing.

The hope is, in part, that the U.S. Supreme Court decision last year in the House, which said that there is something qualitatively different about DNA and other types of new evidence, will move Congress in the direction of removing some of those obstacles created by AEDPA and make it easier for people to get DNA testing.

Mr. SCOTT. Mr. Marone, is there a—are there any problems in the conforming State-by-State what people are—the profiles? Are the tests done in Virginia comparable and compatible with the tests done in other States?

Mr. MARONE. Absolutely, sir. There is no problem with compatibility nationwide. In fact, there are searches that are done internationally.

Mr. SCOTT. Any problem with false negatives? If you do a test—if somebody claims they are innocent, if you do a test and get a result, is it possible for it to be a false negative?

Mr. MARONE. I would never say never, but I can't think of a particular situation where that would be applicable.

As Mr. Neufeld said, you have an internal checks and balances system with the cases that you are looking at.

Mr. SCOTT. Would there be any value to a central testing lab where people can send samples from across the country to a central lab?

Mr. Neufeld?

Mr. NEUFELD. You know, it is funny. Historically, there was one. Before all the States got money to open up their own laboratories, the FBI had a central repository and started doing testing in 1988, but quickly became overwhelmed, and the backlog was much worse than it is today.

And the determination was made that by having this process localized in the States and cities, you are going to have much better throughput than you would if you have one central laboratory.

Mr. MARONE. The key, sir, is to have them all working off the same sheet of music.

Mr. SCOTT. The gentleman from Texas?

Mr. GOHMERT. Thank you.

Well, I am following up on that line. I know in our court, in my court back in Texas, if you feel like you have got a perpetrator—a prosecutor does—well, everybody is interested in getting results as quickly as possible.

And you know, delays of 90 days may not seem much to some, but if you are really wondering if this is probable cause here, then it means a lot of difference whether it is 90 days or 180 days.

And so what seemed to happen there is, you know, the prosecutors would see we have got a State lab that can do this more quickly, a DPS lab, or will the FBI lab help, so I was, different cases, hearing from the FBI lab folks and in some other cases DPS lab people in Texas, whoever could get to that case the quickest.

And so you know, after hearing so much difficulty from our witnesses putting their finger on exactly how we can get the greatest good done by this law, I am wondering well, are we back to saying, "Maybe we need localized FBI labs," where we can do the greatest good?

And the problem with training programs, Federal dollars—well, you know, do these need to—Federal repository, FBI labs—do we need those more localized and just let those do it, if we have got a problem with getting people properly trained to do the work?

So let me ask my friend from A&M, what percentage of DNA tests in the United States are currently being done by FBI labs, do you know, or DOJ labs?

Mr. HAGY. Yes, I don't know the answer to that. I mean, there is 100 and some—80—FBI labs that can enter into CODIS that are qualified, and then there is State labs, so I could try to work on an answer for you to that. I don't know that off the top of my head.

But just to your other concern about what really works, what we really look like—and back to Congressman Weiner's point about technology—this high throughput technology, as well as the process research that we do—and we do as much as we can on the general—not only in DNA, but general forensics as a whole, can really have a tremendous impact on the labs' ability to get those DNA samples tested.

So we really try to start with that, those processes. Training is good, but you do have turnover, and you continually have to train. And buildings are good and all that. But I think a real focus on the R&D technology and those types of processes could really help move all of the labs.

One other thing that—just while I have got—just a quick chance on the things we are talking about, any time we use money to incentivize behavior—which we do; I mean, that is a very important part of our grant programs—but that adds restrictions to the money.

So we always have to balance what we try to do with the money and, obviously, getting it to the local governments and making sure they can do it. So we always try to balance that as a grant maker.

Mr. GOHMERT. Well, and that brings up another issue I was concerned about. I appreciate my friend from New York actually doing some concrete thinking that not everybody always does, but—on trying to figure out what can we put in the law to make it better, make it work, what language? Will this work, and will this work?

But I would only submit that what I have seen when we provide incentives or priorities to labs with a demonstrated need, it means often times they are doing a sorry job, they are taking forever, and throwing money at labs that have some real problems doesn't nec-

essarily fix the problem, because sometimes it is the personnel and money is not going to fix it.

It is just going to incentivize more bad work, whereas it seems to me when you find labs—maybe they are understaffed but they are doing good quality work, doing it in a timely manner, and maybe that is where we need to put some money.

But I appreciate the efforts at trying to innovate and come up with places to fix this law.

And I would make one other observation about expert testimony. It seems like we do have some experts that will go around, hired guns. What normally happens with bad experts is they are not intentionally perjuring themselves. They are just doing bad work and shoddy work.

And you have got people at risk. Sometimes you find people who have perjured themselves. But when you find people who have done shoddy work and that has been shown to happen, well, as the U.S. Supreme Court has made clear, the judge has an obligation as the gatekeeper to determine whether somebody is truly an expert and should be allowed to testify.

And we do need to have more judges that make the finding, "This guy, you know, is a snake oil salesman. He is not going to testify in my court and put people at risk when he has done that way too freely in the past."

And I wonder about the term "false negative" also. I mean, do we have false negatives? And I am wondering if that ends up being like can somebody crazy know that they are really crazy.

You know, if you have got a false negative, how do you really know it is a false negative. And I don't know if there is a good way to know that.

Mr. MARONE. Let me attempt to answer that. My answer would be I don't think you can get a false negative, but I would never say never, because things happen.

Mr. GOHMERT. How would you know if you had a false negative?

Mr. MARONE. Well, you would have a lot of controls, and you look at the process. You have got positive and negative controls in the system. You have got reagent blanks. You have got blanks all over the place.

And if you were going to find something that would come up, you would expect to see it in those blanks where, you know, you are not supposed to see anything.

So you have got a number of controls that would——

Mr. GOHMERT. But a false negative is probably going to create a reasonable doubt once that comes into evidence, and it would come into evidence because that would be exculpatory evidence.

Mr. MARONE. Well, yes, if you have a result that is not supposed to be there, my estimate would be you would pick that up as a whole process, and it would be a question on the examiner's part what—they may not know what they have, but they know they don't like what they have, and so probably just kind of inconclusive at that point with the results that you have.

One of the things I would like to address—and it is, as you said, the seminal question. What is it going to take to fix this? And that is something that, as I said, the National Academy has been working with, and it is truly a complex issue.

I will stick with the public testimony so I don't step on anybody's toes. It is very comprehensive. You need training examiners. You need certification of examiners. They meet certain minimum criteria.

You need accreditation of laboratories. Every laboratory meets a certain standard. And that gets to your question of are they doing bad work or are they just doing good work but not enough of it.

You need educational opportunities. Start with the pool. Make sure the educational programs are supplying the examiners.

You need research and support at all those levels. You need more training and certifying of attorneys and judges to understand scientific aspects. So you are looking at all those things.

It is not a single, quick-fix thing. You need more facilities, more people and everything. So it is an extremely complex program. You asked us to give a top of the head in 5 minutes.

This is an issue that people have been dealing with—if you looked at our report, the 1994—that folks did, it said the same thing as the report that was done in 1999, and the same thing of a report that was done 2 years ago with the forensics—what is called the 180-day study. And these are the issues that the National Academy of Sciences is dealing with.

And that gives you a general direction as to where we need to go. There are a number of things. It is not a simple, quick fix. It is an overall national process.

Mr. GOHMERT. Well, and I understand that, but just to correct one thing you said, I didn't ask for an off the top of your head. Some of us have more off the top than others. But I didn't ask for an off the top of your head in 5 minutes.

I asked for concrete suggestions. And I also pointed out to everybody on this panel—it doesn't stop in 5 minutes. It doesn't stop at this hearing.

If you have got suggestions, everybody up here is interested in fixing the law, and we would welcome your input, not just here but well into the future.

Mr. SCOTT. Thank you.

Dr. Hagy?

Mr. HAGY. Just one comment on some of the things we have tried to do. We combined our capacity and casework grants to make it easier, make it more flexible for our grantees, so we did that last year when they used to be two separate grants, to make it a little bit easier.

We have also extended some of our grants to allow property crimes, which you—talk about a growing backlog. We are going to have some studies coming out about the effectiveness of DNA used in property crimes.

And it is going to show some tremendous results, and so we are also allowing—some of the bigger labs are caught up on their backlog on their violent crimes, and they are moving into that—some of the bigger labs. So we are doing some of that as well.

Mr. SCOTT. Thank you.

The gentleman's time has expired.

The gentleman from New York?

Mr. WEINER. Thank you, Mr. Chairman.

Just so I understand, there are for-profit labs that are unaffiliated with the government, right, that do this work?

Mr. HAGY. Private.

Mr. WEINER. Have we learned any lessons? Are they better?

Mr. MARONE. I would say they are no better, they are no worse. Because they have to meet the same Federal criteria that public labs meet, they do the similar kind of work.

Mr. WEINER. Is it good business? Are there more people going—are there big companies investing in this? Are there publicly traded outfits that do it?

Mr. MARONE. I found it not to be—from what I hear from those companies, not all that profitable to do. There is an awful lot of man-hour intensive type work, and because all these—or the majority of these cases are done grant-funded, they have to do it with very tight overhead.

Mr. WEINER. But if you have—did you want to weigh in on this, Peter?

Mr. NEUFELD. Just for 1 second on that, you know, we are also a user group. We go out to lots of laboratories all over the country, government laboratories and private sector laboratories, to do post-conviction DNA testing.

And I have to tell you, in all candor, that they are not all the same, that some are a lot better than others. There are some government laboratories that are better than other government laboratories, and there are some private laboratories that are great and other private laboratories that are awful.

Mr. WEINER. If you had a client who came to you—and I know this rarely happens in your line of work—that said, "Money is no object, I am prepared to go out and get the best, fastest—I want it quickly, I want top-notch, I want the best," and they wrote you a blank check, can you go to your Rolodex and say, "All right, I am going to call this lab, get it back in a couple of days, and it is going to be bust-out great?

Are there labs like that?

Mr. NEUFELD. No, unfortunately, the laboratories that we have found that do the best quality work have also been the slowest.

Mr. WEINER. I guess that is not necessarily counterintuitive. I mean, maybe you expect it to be a little bit slow.

Can I open up a can of worms as we end this hearing? There are no cops on the panel.

Peter, maybe I can put you in the category of a civil libertarian. We arrest somebody for jumping the turnstile, and we now, in New York City, put them through the system, meaning we take their fingerprints and check to see if they committed any other crimes when they are arrested.

Should we have arrestee—should we take DNA from arrestees? Does anyone have a position on that?

And then obviously, if they are—you know, like a fingerprint—if you are found not to be guilty of the crime, or there is no hit on something else, you know, we can go ahead and destroy it. But who knows? Maybe we will find someone that jumped a turnstile also raped somebody.

Do you have a position on that, Peter?

Mr. NEUFELD. Well, I mean, first of all, as an organization, we do not have a position on it. Personally, I mean, obviously, in any situation like this, one has to do a cost-benefit analysis.

There is no question that if you had a universal database, if you had DNA testing from every Member of Congress, for instance, you would probably solve more crimes, okay, even though they haven't been arrested, much less convicted of anything.

That is the reality. That is just simple statistics. And no one would disagree with that. But for certain reasons, we choose in our society to exclude certain groups of people from having to give up that privacy right, whether they be Members of Congress, or people who have been arrested and are entitled to the presumption of innocence, or people who are simply stopped on the street, not even arrested, okay, like they are in Great Britain—if you are simply stopped and not even arrested, they can take your DNA sample.

So we as a Nation will have to decide what we are willing to give up in order for certain benefits. That national discussion has not been had yet.

Mr. WEINER. Well, to some degree, it has, because we take fingerprints when people are arrested.

Mr. NEUFELD. Well, no, but we haven't decided as a Nation do we want to have a universal DNA database.

Mr. WEINER. No, no, but I am——

Mr. NEUFELD. But, Congressman, you have to do that. And the reason you have to do that is you put on the one side of the scale solving crime, and if that is your goal, and it is simply to solve crime, there is no question, if you have everybody's DNA in the databank, you are going to solve more crime. There would be no disagreement in the country.

Yet we don't do that, so there must be certain concerns that we have——

Mr. WEINER. Well, wait a minute. Hold on a second. When you are arresting someone, you are trying to solve a crime.

Mr. NEUFELD. Well, you are trying to solve——

Mr. WEINER. Right? So that specific task that you are pursuing is to solve a crime. I am not saying, "Go out and do everyone."

But right now, I guess what I am puzzled by is are we making a difference—a distinction where none really exists when we do take identifying information from someone when they are arrested, and then just like if they are found not to be the guy, we destroy it and move on—I mean, I guess I am putting you in the position of kind of hashing this out with me.

But I mean, we have kind of already made the decision as a society we do want to take information when we arrest somebody.

Mr. NEUFELD. Well, one of the concerns—and if you want, I would be happy to have this discussion any time and any place.

Mr. WEINER. Right.

Mr. NEUFELD. But I am not speaking for the organization. One of the problems and concerns in your State, for instance, and my State, New York, is that our Attorney General did a study and discovered that, in fact, people of certain races were being disproportionately singled out for stops and arrests.

And so there is a danger that if you are simply making an arrest the criteria or condition for DNA testing that you will have some-

thing called pretext arrests, and you will have a disproportionate number of black and brown people being stopped and their DNA ends up in the databank, whereas White people's do not.

Mr. WEINER. Right.

Mr. NEUFELD. And that is why you are constantly doing that kind of cost-benefit analysis. I am not making it. I am not going to do it. We will have to have that bigger dialogue. But I don't think we are going to resolve that here.

Mr. WEINER. Here.

Are we going to resolve it here, Mr. Scott?

Mr. SCOTT. Well, we have had a little bit of that before, because there used to be a line at serious violent felonies, and Virginia found that most of the people for which there were hits were nonviolent crimes.

Mr. Marone?

Mr. MARONE. Actually, the way the statute is written, it is just that. It is for arrestees.

Mr. SCOTT. Right.

Mr. MARONE. For arrestees, it is for the serious felony crimes. In Virginia, that equates to about 12,000 arrestee samples per year. Of those 12,000, about 50 percent after a period of time are pulled back out, just as the congressman indicated. If it is null pros, if it is dismissed or whatever, pled down, those samples are pulled out.

From 2003, with those numbers coming in over the years, there have been 400 hits on arrestee samples.

Mr. SCOTT. Well, yes, but for people convicted of a felony, if you go to prison, everybody, regardless of the charge——

Mr. MARONE. Yes.

Mr. SCOTT [continuing]. And it used to be it was only those in prison for the violent felonies, but then you expanded it to everybody. I am not sure exactly——

Mr. WEINER. Will the gentleman yield?

I mean, look. There are five States that still don't take it from all felons. And one of the questions that we have on a Federal level is the ability to solve a crime in Texas being hindered because people in New York make a decision to have a smaller group of arrestee samples.

And one of the opportunities that we have with this legislation is to say, "Listen, if you want to be part of the database, you have got to make sure that we are all sharing the same types of information so that we can crack these cases."

And I think that it is true, you know, we are on the precipice of a much larger discussion here. Mr. Hagy is exactly right. More and more information—little blood specks at a burglary scene are being added on the crime lab side.

So this conversation is going to be thrust upon us, in some degree, how much we grow this universe. But I think at some point we are going to reach a point where—you know, and I agree with you, Mr. Neufeld, you know, the pursuit of what are called 250's in New York, must stop and frisk as a policing tool, has problems.

But I am not saying don't—I am not weighing in on that. I am saying I think there are real problems with how you do it. I am saying that if you are going to take certain information from arrestees, should you take other.

I mean, should you say to someone who is a felon, but a white-collar felon—I mean, I, frankly, think you should. I don't think since it is a—I think it is a distinction that we shouldn't make.

But I thank you for the extra time.

Mr. SCOTT. Mr. Hagy?

Mr. HAGY. I was going to say our study of these burglaries and these property crimes are showing much more serious criminals are being caught as well. It is a limited study of about five cities and 500 cases in each city, but we are also finding that they have much more serious criminal records than just burglary.

Mr. SCOTT. Thank you.

The gentleman from Texas?

Mr. GOHMERT. Yes, I wasn't going to ask another question, other than asking that Mr. Weiner's original question, if we could get an answer, because I thought it was a good question, Mr. Neufeld.

Not asking what the Innocence Project's position is, but as I understood him to ask originally, should we take DNA samples from people who are arrested? And as I got your response, it was, "We need to have that national debate."

But I would like to know your answer to that question. Do you think we should take DNA samples from anyone who is arrested? Understanding it would not be an answer for Innocence Project, but just for Peter Neufeld, with all your experience.

Mr. NEUFELD. Yes, I have not fully thought out and resolved that issue, for two reasons. One is because I do think it is a much more complicated question, and I was trying to apprise you all of some of the complexities, okay, because you have to decide literally what is the priority——

Mr. GOHMERT. So your answer is you can't answer that at this point.

Mr. NEUFELD. Well, that is one. Two, okay, it is not just the philosophical issues and policy issues, but there is a fiscal issue. And the fiscal issue is you are talking to these folks today because they can't even deal with the backlog of cases of rapes and murders, okay?

And if we can't—and I think we would all agree that the number one priority is getting——

Mr. GOHMERT. Okay, I understand that. I just didn't know if you had an answer specifically to that question.

Mr. NEUFELD. I do not.

Mr. GOHMERT. And because it is—that answer would then—if it were yes, then we would be looking at a bill to try to make sure that there was adequate repositories.

Mr. WEINER. Would the gentleman yield?

Mr. GOHMERT. Sure.

Mr. WEINER. One of the questions here is what drives what. It could be that as Congress or as States drive for more and more testing, it then creates more labs, it then creates more funding. And who knows what drives what here?

And I happen to think of all the areas of the lab process that is most given to being mechanized and improved and speeded up, it is this idea, offender sample, which you have one standard for, and one standard swab, one standard slide.

So you are right, we would have to make that decision. I think this larger—it is a larger philosophical and a moral question, and it is one that crosses party lines, about how much information do you want to—it is a civil—I mean, it is a big issue.

And then how you preserve or don't preserve that information—and remember, unlike a fingerprint, you are getting a heck of a lot more information on that little piece of evidence. And do we want government having that, you know?

And I mean, as you know, there is so much DNA around this room right now of Members of Congress. What a frightening laboratory this would be if it were ever opened up to the experts.

Mr. NEUFELD. Congressman, just to give you one additional piece of that puzzle, which is very complicated, for instance, in New York there are a number of laboratories—and across the country—for instance, you have a serial murder or a serial rapist, and so the police, as part of a proper investigation, will go out and ask hundreds of people to consent to give biological specimens so they can be excluded as the perpetrator, which will enable the police, then, to refocus their investigation.

In Florida, for instance, when they had a serial rapist, several thousand—and they knew the assailant was a Black man. The police approached several thousand Black men in Miami and asked them to give samples. They all gave samples. They all consented. They were all excluded.

And eventually, the police identified and captured the real perpetrator. But those several thousand samples, DNA samples, were never destroyed. And the rationale was, "Hey, we got it legally. It is only being used for law enforcement purposes. What is the big deal?"

Well, if you can accept that, which perhaps you do, then you can accept that maybe we should have a universal database so we wouldn't have to have racial distinctions or other kinds of distinctions. We will just have everybody's DNA on file.

Mr. GOHMERT. Well, and I appreciate that. Sometimes people come up here to preach. I really didn't want to ask questions—and I think the key is Mr. Weiner's question.

I am familiar with all the different sides and exactly the things you are pointing out. I understand the philosophical discussion. I can have that debate entirely by myself and have my wife come in and go, "Who are you talking to?" And she does that often.

And so I can play both sides. But once we answer Mr. Weiner's question, then we can move forward with appropriate legislation to deal with the issue. And that is why I was curious, as a civil libertarian, as Mr. Weiner indicated, how you felt about that.

I have got mixed emotions. Like I say, I can debate that from both sides. But I just wondered where you were, and your jury is still out. So thank you very much.

Mr. NEUFELD. And I debate with myself whether I am even a civil libertarian.

Mr. SCOTT. Thank you.

Let me make one further comment on Mr. Brooks' situation, having been exonerated. Yesterday the President signed the Second Chance Act which gives assistance to those who have been convicted of crimes job training and other kinds of things.

The unfortunate thing is someone who has been exonerated may not be eligible for even those little provisions. There is legislation pending specifically to help exonerees.

We are going to see if we can't move that along so that people in your situation don't get the worst of both worlds.

So I want to thank all of our witnesses for their testimony today. Members may have additional written questions which we will forward to you and ask that you answer as promptly as you can so the answers may be made part of the record.

Without objection, the hearing record will remain open for 1 week for submission of additional materials.

And without objection, the Subcommittee stands adjourned.

[Whereupon, at 1:17 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

The DNA initiatives of the Justice for All Act serve three critical goals: to identify the guilty, to ensure that the innocent are not erroneously convicted of crimes, and to exonerate the wrongfully convicted.

While Congress has funded these initiatives and much progress has been made to achieve these objectives, I am very concerned that so much remains to be done.

Let me identify three major shortcomings with the present system. First, although the Debbie Smith Act and other legislation intended to eliminate the backlog of DNA samples has resulted in more than 2½ million samples being registered, a significant backlog remains.

As DNA technology has become more widely available, police departments are collecting increasingly more samples. Consequently, the backlog has remained almost level over the past several years, which hinders our first goal, identifying the guilty.

The longer it takes to identify a violent offender, the greater the risk posed to society. The gentleman from Washington (Mr. Reichert), who headed the Green River Task force before coming to Congress, will likely describe how the Green River Killer remained at large for nearly 20 years before the Task Force, using DNA evidence, proved his guilt. It's common sense: quicker data entry facilitates quicker matches of offenders to evidence collected from crime scenes, and less opportunity for violent criminals to remain at large undetected.

Second, the backlog also undermines our second objective, eliminating the innocent as suspects. If police agencies cannot rely on the timely use of DNA technology, they waste scarce investigative resources pursuing innocent people as suspects.

And let us not forget that, when an innocent person is accused of a crime, his or her life can become a nightmare. Besides the obvious threat of imprisonment, these individuals risk losing their jobs, and the support of family and friends.

The backlog also undermines the third objective, to exonerate the wrongfully convicted. To date, more than 200 people in 32 States have been exonerated as a result of DNA testing, one of whom is with us today. Third, I am very concerned that the States have received none of the $7 million that Congress appropriated for post-conviction DNA testing grants under the Innocence Protection Act.

The Justice Department advised us that a flaw in the language of the Innocence Protection Act was making it difficult to make the grants. So Congress passed a temporary clarification that the Justice Department recommended, also increasing the funding level to nearly $12 million.

But no amount can do any good unless it can be put to use. So I very much look forward to hearing from our Justice Department witness today about whether this temporary change has now facilitated funding for the States.

If the temporary change is effective, we may need to make it permanent. If it is not working, we must find a solution that does work and implement it as soon as possible.

I

110TH CONGRESS
2D SESSION

H. R. 5057

To reauthorize the Debbie Smith DNA Backlog Grant Program.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2008

Mrs. MALONEY of New York (for herself, Mr. CONYERS, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To reauthorize the Debbie Smith DNA Backlog Grant Program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Debbie Smith Reauthorization Act of 2008".

SEC. 2. REAUTHORIZATION OF THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.

Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (c)(3)—

(A) by striking subparagraphs (A) through (D);

(B) by redesignating subparagraph (E) as subparagraph (A); and

(C) by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

"(B) For each of the fiscal years 2010 through 2014, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section."; and

(2) by amending subsection (j) to read as follows:

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for grants under subsection (a) of this section $151,000,000 for each of the fiscal years 2009 through 2014.".

○

Wednesday, April 16, 2008

The Honorable Robert C. Scott
Chairman, House Judiciary Subcommittee on Crime, Terrorism,
and Homeland Security
1201 Longworth House Office Building
Washington, DC 20515

The Honorable Louie Gohmert
Ranking Member, House Judiciary Subcommittee on Crime, Terrorism,
and Homeland Security
508 Cannon Building
Washington, DC 20515

Testimony submitted to The House of Representatives Subcommittee on Crime, Terrorism and Homeland Security by Kirk Noble Bloodsworth, Program Officer, The Justice Project

Dear Chairman Scott and Ranking Member Gohmert,

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to present testimony regarding The Justice for All Act and in particular Title IV, The Innocence Protection Act (IPA). One of the provisions in this groundbreaking legislation bears my name, The Kirk Bloodsworth Post-Conviction DNA Testing Program. Eight years ago, when the IPA was first introduced, I testified before Congress about the importance of DNA technology as it applied to my case and strongly urged the passage of a law to allow others like me an opportunity to prove their innocence through DNA testing. I am deeply appreciative of your efforts and those of this Subcommittee in ensuring that this important legislation was signed into law.

As you know, it took almost five years of hard work by members of this Subcommittee, respective staffs and a number of interested individuals and organizations like mine, The Justice Project, to pass this legislation. Passage of the IPA marked a dramatic departure from decades of congressional debate regarding the death penalty, for the legislation was designed to strengthen – not weaken – procedural protections for death row inmates. The day President Bush signed The Justice for All Act into law was one of the proudest days in my life, and I believed it was a fitting end to a chapter in my life – my 20 year struggle – from convicted murderer, to the first death row inmate exonerated based on DNA evidence, to finding the real killer and to having a law passed in my name that would greatly assist others in proving their innocence.

The truth be known, I expected that the next time I testified before Congress would be in support of the IPA's reauthorization. I expected that I would be able to testify to the tremendous success in implementing the provisions of the IPA. However, given my life experience I should have known that the struggle for justice never ends. I should have

known that success is not measured in the mere passage of legislation. Success is measured in ensuring that a law is fully funded and most importantly that the law is properly implemented. I also should have known that this Administration and the Department of Justice (DOJ) have quite a history in ignoring Congressional directives.

Make no mistake about it, the failure of this Department of Justice to grant states money under the Bloodsworth program is not accidental, nor is it the result of the states' failure to comply with the grant's provisions. The DOJ has been against this program from the very beginning. They opposed it when it was introduced, opposed it when the legislation passed the Senate and House Judiciary Committees, opposed it when the House passed the legislation in a resounding vote of 393 to 14, opposed it when it passed the full Senate, and opposed it when the bill was signed into law. Specifically:

- They opposed the Bloodsworth program in 2006 when they placed unnecessarily strict requirements on state applications, and now they continue to oppose the program by holding its funding hostage.

- Of the three states that applied for funding in 2006, not one was granted assistance. In fact, since IPA's inception, DOJ has sent none of the $14 million appropriated to the states filing requests.

- Despite failed disbursement of funds in previous fiscal years, excessive requirements continue to burden the act, deterring states from applying for the much needed funding.

The bottom line: DOJ is denying people with claims of innocence the chance to prove it.

Post-conviction DNA testing has not only led to the exoneration of over 200 wrongfully convicted individuals, it has also brought many truly guilty people to justice. It is a powerful means for ensuring public safety and serves as a vehicle for truth. When states are denied funding for post-conviction DNA testing they are being denied the truth. I feel a personal responsibility to each state that has been denied this grant money for post-conviction DNA testing. As this program bears my name I feel it is my obligation to ensure that this program is funded and implemented as it was meant to be.

The Innocence Protection Act under which the Bloodsworth program falls is a landmark piece of legislation that holds the potential to correct serious errors in our criminal justice system. Not only does the law provide for post-conviction DNA testing, but the IPA also authorizes a federal grant program to improve the quality of legal representation provided to indigent defendants in state capital cases. These two programs fully funded and properly implemented would greatly increase the fairness and accuracy of our system of justice. I deeply appreciate your efforts, Mr. Chairman, and those of Representative Gohmert, Chairman Conyers, Representative Sensenbrenner, Representative Smith, and all the members of the Subcommittee in ensuring funding for the Bloodsworth program. I wish I could say the same for the funding for the counsel provisions in the IPA. Despite your extraordinary efforts it was only in this year's Omnibus Bill that funding for the

Capital Litigation Grant Program was finally tied to the provisions of the IPA as Congress intended it to be. Again, I appreciate your efforts, Mr. Chairman, and those of your staff in making this happen.

Given the Department of Justice's history of opposition to this law, I strongly implore the Congress to make sure that the DOJ regulations regarding this grant program are in line with the spirit of the IPA as Congress originally intended. To explain its reluctance to provide the funds that Congress authorized, DOJ initially went beyond the IPA's requirement that applicant states demonstrate eligibility by setting extremely onerous criteria. Currently, the Office of Justice Programs (OJP) allows the state chief legal officer the option of express certification of compliance with preservation of evidence requirements. But OJP still warns the signing chief legal officer that she or he risks criminal prosecution if their express certification is found to be false. This requirement is not found in most other OJP requests for proposals. Unless this program is fully funded and implemented in a way that gets money to states, serious injustices in our criminal justice system will go uncorrected.

I know first-hand about the injustices of our criminal justice system. I also know that if a program like the Bloodsworth program had been in place at the time of my arrest I would not have spent nearly 20 years trying to prove my innocence. Mr. Chairman, you and the Members of this Subcommittee know the vital role post-conviction DNA testing plays in the criminal justice system. In my case it was not only a means to prove my innocence but also a way to find the true perpetrator of the crime for which I was accused, convicted, and sentenced to death.

On July 25, 1984 nine-year-old Dawn Hamilton was brutally raped and murdered in the woods near her home. I had never met Dawn or the Hamilton family. I did not know where they lived, and I did not know anything about the crime. At that time I was a 23-year-old, newly married, former Marine, who had never been arrested for anything in my life. I never envisioned the nightmare I was about to enter into.

A composite sketch of the perpetrator was distributed among Dawn Hamilton's neighbors. An anonymous tip led the police to my door. The police arrived in the middle the night on August 9, 1984. I would not see my home again until my release in 1993.

I knew I did not resemble the composite sketch. The suspect was described as having dirty blonde hair and a slim build. At the time I had fiery red hair with long sideburns and I was not slim. Still, I spoke with the police, asserted my innocence, allowed them to take my photograph, and offered hair samples. Later, my picture would be selected by several witnesses claiming I was the last person seen with Dawn Hamilton that morning.

At the time of my first trial, DNA testing was not very advanced. It was not an option. My only option was to proclaim my innocence and hope justice would prevail. I told anyone who would listen that I was innocent of this crime. Despite my alibi witnesses claiming I was with them at the time of the murder I was convicted and sentenced to death. My conviction was overturned because of prosecutorial misconduct but a second

jury would again find me guilty and a judge would sentence me to two consecutive life sentences. By 1992, DNA technology had advanced significantly and my attorneys requested that the evidence from my case be released for testing. Had it not been for those tests, I would have died an innocent man in prison.

In trying to prove my innocence, luck was definitely on my side a lot of the time. I was lucky to have a lawyer who was interested in my case and worked hard for me even though I was not paying him. I was lucky that the judge from my second trial kept Dawn Hamilton's clothing and the blanket in which she was wrapped in a cardboard box in his chambers, lest it be destroyed. To this day I am grateful to Judge James T. Smith for saving the evidence that proved my innocence. I was lucky that the laboratory was able to find a small sample of semen – a sixteenth of an inch in size – which was large enough to test.

All of the years since my release can not make up for the time I lost while wrongfully incarcerated. I lost a lot while I was in prison, including time with loved ones which can never be replaced. My life was taken from me and destroyed. I was separated from my family and friends. My mother and father – who loved me and always believed in my innocence – spent their entire retirement savings on my defense. My mother never heard the DNA results. She died five months before my release. I was only allowed to view her body before the funeral for five minutes – in handcuffs and shackles.

I do not have all the answers to the problems facing our criminal justice system, but I do know there are other cases like mine out there. Our criminal justice system is not perfect but no one should have to wait 20 years for justice. The Kirk Bloodsworth Post-Conviction DNA Testing Program was meant to prevent innocent people from ending up on death row and to ensure that the truly guilty were caught. One would think that this simple principle would be enough to convince reasonable individuals to allow states immediate access to these important funds. However, it is clear that the Department of Justice does not agree with that simple notion and continues to drag its heels even after telling Congress this last January that it would ease its regulations.

Mistakes in the criminal justice system are not a new concept. Even the United States government has acknowledged that serious imperfections in our system of justice exist by including programs in the Innocence Protection Act designed to correct these mistakes. The Justice Project and I have been studying the leading factors of wrongful convictions and advocating for meaningful reform to prevent further miscarriages of justice and to fix mistakes that have been made. Post-conviction DNA testing offers the unique opportunity to correct the mistakes of our criminal justice system while helping it to become more fair and reliable. Offering quality legal representation to indigent defendants helps prevent mistakes before they happen. Why aren't these principles of fairness, justice and accuracy in our criminal justice system at the top of every lawmaker's list of priorities? With states being denied access to the appropriated millions for these programs, errors will likely go uncorrected and further mistakes are certain.

I know it takes time to effectively implement programs like the Kirk Bloodsworth Post-Conviction DNA Testing Program. But I also know what it's like to wait. I waited 8 years, 11 months, and 19 days in prison before DNA testing proved my innocence. I waited another 10 years for the prosecution to run the DNA profile of the perpetrator in state and federal databases. I waited those 10 years to find out that the real rapist and murderer of Dawn Hamilton was a man in my cell block who was in prison for another assault. The family of Dawn Hamilton and I both waited almost 20 years for justice to be recognized.

But I am done waiting. Time is a luxury that many who would benefit from this program cannot afford. The Kirk Bloodsworth Post-Conviction DNA Testing Program needs to be implemented as Congress directed it to be. States need access to the millions of appropriated dollars they were promised. Moreover, the Capital Litigation Program needs to be fully funded and implemented as directed by the Innocence Protection Act. The United States Congress and the Department of Justice need to eliminate the bureaucratic hurdles and follow through on their promises – they need to follow the law.

Thank you.

MEMORANDUM

To:	Members, Subcommittee on Crime, Terrorism & Homeland Security
From:	Stephen Saloom, Policy Director
Re:	Supplement to Testimony of Peter Neufeld (Hearing of April 10, 2008)
Date:	April 16, 2008

At various points throughout the April 10, 2008 hearing before the Subcommittee on Crime, Terrorism, and Homeland Security regarding the reauthorization and improvement of DNA initiatives of the Justice For All Act of 2004 (JFAA), several committee members requested concrete recommendations from those who provided testimony addressing the concerns they outlined. In light of that discussion, we are providing with you with a brief overview of our recommendations.

The preservation of biological crime scene evidence is critical to both solving old or "cold" cases and to settling claims of innocence.[1] Post-conviction DNA testing is critically important to enabling the wrongfully convicted to prove their innocence.[2] Yet many states do not adequately address these important concerns.[3]

Congress used the JFAA to create Incentive Grants to States to Ensure Consideration of Claims of Actual Innocence. This created four pools of funding meant to entice states to create policies to ensure access to post-conviction DNA testing and the preservation of evidence. The incentives attached to these funding streams have been, however, completely neutralized by Executive maneuvering, as detailed in the testimony provided by the Innocence Project. The Innocence Project recommends the following Congressional actions:

1. Congress Should Re-Authorize the Fourt Grant Programs Governned by JFAA Section 413 for Another Five Years, and Fund them Annually.

The four grant programs governed by Section 413 include JFAA Sections:

1 Please see Attachments A & B, which contain national news stories describing both old cases solved because of preserved biological evidence and other cases, where unpreserved evidence prevented justice from being served. Please also refer to Attachment C, which contains a set of news stories describing how technological advances continue to enhance the crime-solving potential of biological evidence.
2 This remains a pressing need in states across the nation. Many states either do not provide for post-conviction DNA testing, or they do so in a significantly limited manner.
3 While OJP represented to the Subcommittee on Crime, Terrorism & Homeland Security at the April 10, 2008 hearing that it had conducted extensive outreach to ensure post-conviction DNA testing assistance funds would be disbursed, a preliminary survey conducted by the Innocence Project indicates that relevant stakeholders, i.e. those actively seeking post-conviction DNA testing for clients, were not reached, that grant requirements were onerous, and that there remains an extensive need for post-conviction testing funding in states across the nation

Barry C. Scheck, Esq. and Peter J. Neufeld, Esq., *Directors* **Maddy deLone, Esq.,** *Executive Director*
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- Section 303, DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers;
- Section 305, DNA Research and Development;
- Section 308, DNA Identification of Missing Persons; and
- Section 412, Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.

States still need these funds; the vast majority also still need to improve their state laws and practices regarding the preservation of evidence and meaningful access to post-conviction DNA testing. The only way that states can genuinely be compelled to provide access to post-conviction DNA testing and properly preserve biological evidence is if the obligations required by Section 413 for federal funding is attached to all four grant programs.

The Innocence Project recommends Congressional funding of all four of the JFAA Section 413 grant programs for FY 2009; their reauthorization with the Section 413 incentives for an additional five years (to replace the five years essentially lost because of the executive maneuvering); and the appropriation of funds for those programs in those years.

2. To Enable Compliance While Maintaining Valuable Preservation of Biological Evidence Policies, Congress Should Redefine the Crime Categories for Which Preservation of Biological Evidence is Required Under JFAA Section 413

OJP has continuously represented that preservation of evidence requirements under the JFAA prevented them from disbursing funds under the Bloodsworth grant program. Narrowing the crime categories to murder, rape and non-negligent manslaughter as was done by OJP in the 2008 Bloodsworth RFP was a quick fix, yet fails to serve crime victims, the innocent, and the public at large in many other categories of serious crime.

The Innocence Project recommends amending the language pertaining to the preservation of biological evidence in Section 413 of the JFAA. Instead of requiring preservation of evidence in all offenses, biological evidence should be preserved in at least all sexual assaults and felonies involving physical harm and/or weapons for no less than the length of incarceration.

We would be glad to discuss these issues with the Committee Members, staff, and other interested parties. Please do not hesitate to contact me at 212.364.5394 or ssaloom@innocenceproject.org if that would be of help to the Committee.

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April 9, 2008

The Honorable Robert C. Scott
Chairman, House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
1201 Longworth House Office Building
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The Honorable Louie Gohmert
Ranking Member, House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
508 Cannon Building
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Dear Chairman Scott and Ranking Member Gohmert:

We are writing in support of HR 5057, a bill to reauthorize the Debbie Smith DNA Backlog Grant Program. Congress can continue to show leadership in addressing sexual violence by renewing federal funding to reduce rape kit backlogs. Testing rape kits can lead to the identification of perpetrators of rape and hold them accountable for their crimes; bring justice to rape victims; and, in some cases, exonerate innocent defendants convicted for a rape that a kit reveals was committed by someone else.

Since the Backlog Grant Program was signed into law in 2004, Congress has appropriated millions of dollars to reduce rape kit backlogs in states across the country. According to Department of Justice (DOJ) documents obtained by Human Rights Watch, state and local law enforcement entities that have received backlog grant funds are using them to submit more tests to crime labs, hire personnel trained in sophisticated DNA analysis, and purchase updated crime lab equipment. These steps are important as police and crime labs continue to adapt to the use of DNA as forensic evidence.

States that are better equipped to use rape kit testing to help identify perpetrators of rape and bring them to justice can also provide victims with a better chance of having their rape cases resolved. Human Rights Watch recently spoke with a woman who was raped in her Texas home by a stranger in 1998. After he raped her, the man warned her that if she told anyone what had happened to her, he would "come back and kill" her. The woman went to the hospital and a rape kit was taken. The woman was unable to identify her assailant

since he had pulled a pillowcase over her head during the attack. Without a suspect, the case went cold, and the woman's rape kit remained in an evidence storage room. In 2006, the woman's jurisdiction applied for and received DNA Backlog Grant funding, which it used to test her kit. When law enforcement submitted the profile from her kit to CODIS, they obtained a cold hit to a prisoner serving time for burglary.[1]

In an interview with Human Rights Watch, the woman explained what having her rape kit tested meant to her: "A huge weight was lifted from me. I felt free for the first time since I was raped. I no longer have to look at each man that passes me on the street, wondering if they were the one that raped me. I don't have to worry anymore about whether he will come back and kill me."

But there is still much work to be done in the effort to reduce rape kit backlogs. Experts have told Human Rights Watch that the current backlog is estimated to be as large as 500,000 untested kits. In many crime labs across the country, the steady stream of new DNA evidence submitted for testing and added to the backlog outweighs the number of backlogged items submitted for testing, which is why a number of entities that received DNA backlog grants nevertheless reported a net increase in backlogged cases. This fact does not reduce the importance or necessity of the Debbie Smith DNA Backlog Grant Program—the rape kit backlog would be much larger without it. But as Congress considers the reauthorization of the DNA Backlog Grant Program, it should also consider ways of strengthening federal law to address this persistent problem. This involves creating better reporting requirements for states that receive Backlog Grants, and adding funding for an annual study and report to Congress on the state of the rape kit backlog.

Currently, entities that receive federal funding to reduce their DNA backlogs are not required to identify by category the backlog or the cases that get sent to the lab for testing. Some entities voluntarily break down their backlog in their funding report to reflect the number of rape kits contained in their backlog, but they are the exception. Congress should require states that receive Backlog Grants to account for the number of rape kits in their backlog at the start and end of the grant period, the number of rape kits submitted to CODIS, the number of those that returned a hit, how many of the hits were cold, and how many led to prosecutions.

Human Rights Watch knows of no authoritative study of the number of backlogged rape kits in the US or the factors causing such backlogs. Given the power of DNA to contribute to holding those responsible for sexually violent crimes to account, it is important for Congress to authorize an annual study that accounts for the number of

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1 CODIS is the acronym for the Combined DNA Index System, a database containing DNA profiles collected by federal, state, and local law enforcement from offenders, crime scenes and, in some states, arrestees. A cold hit is the term used when a DNA profile obtained at a crime scene in a suspectless case is uploaded into CODIS and matches an offender profile in the database.

untested rape kits in the United States, and the various factors that have prevented them from being tested.

As an organization committed to ending sexual violence around the world, Human Rights Watch urges the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security to support and fully fund HR 5057, the Debbie Smith DNA Backlog Grant Program.

Sincerely,

David C. Fathi
Director, US Program

ATTACHMENT A

Press Clippings: Crime-Solving Potential of Preserved DNA Samples

The following news stories demonstrate the value of preserved evidence in solving cold cases, as witnessed in various states across the nation. It has become clear that amazing crime solving potential resides, latent, in biological evidence from crime scenes. "No subject" cold cases can be solved and true culprits can be identified. In addition, crime scene DNA can also enable law enforcement to link an unknown perpetrator of a given crime to other crimes - across time periods and across jurisdictions.

The Akron Beacon Journal June 5, 2006
Cold Case Squad Looks Into 18 Unsolved Murders
Associated Press
http://www.ohio.com/mld/beaconjournal/news/state/14740891.htm

DAYTON, Ohio - A group of southwest Ohio law enforcement agencies is taking a new look at 18 unsolved murders, some from decades ago, with the help of a federal grant that funds genetic testing.

Investigators on the Montgomery County Cold Case Task Force are looking for DNA on non-blood evidence, such as sweat-stained clothing, chewed gum and sealed envelopes.

"I believe historical cases will be solved with this unit," said Ken Betz, director of the county coroner's office. "It allows us to do the legwork to re-interview witnesses, re-examine evidence."

The task force was launched in October and will operate through the end of the year with the $210,000 grant. Betz said further funding will be sought to support the task force into 2007.

The group includes the offices of the coroner, sheriff and prosecutor, the Dayton Police Department, the Miami Valley Regional Crime Laboratory and the state attorney general. Similar cold case units operate in the Toledo and Akron areas.

"The hope is, you take a fresh look at some of these old cases developing new leads, new suspects that weren't there the first time around," said Bob Beasley, a spokesman for the attorney general's office.

In Akron, the work of the cold case unit led to the indictment in February of death row inmate Donald Craig in the 1995 strangling death of 13-year-old Malissa Thomas of Akron. Also in February, Akron police said DNA evidence in the 1999 murder of 37-year-old Rhonda Jones was linked to Bouchard Kindall, 24, who was fatally shot in 2005.

The Montgomery County unit, so far, hasn't been as lucky. The group used test results to arrest 44-year-old David Wysor of Beavercreek in January in the 1985 stabbing death of John Guinn, 20, of Dayton. However, a grand jury declined to indict the suspect on a murder charge and he was released.

Assistant Prosecutor Robert Deschler said the grand jury asked for more information, and the case remains open.

"Cold case investigators felt there was enough evidence to make an arrest," Betz said. "There was a variety of evidence, including DNA. DNA, like all evidence, is just a piece of the overall case."

Betz said the focus on non-blood evidence comes after local authorities, over the past years, already conducted DNA tests on blood evidence and entered results into a national database.

The results from non-blood items also can be entered into the database.

"We have an obligation to the public to pursue (the cases)," Betz said. "If there's any way, let's do it."

Westport Crime Spree | DNA evidence sheds new light on old crime

Man charged in 13th attack from 1980s

Shy Bland, already serving time for rape, is accused in a growing list of other cases.

By CHRISTINE VENDEL

The Kansas City Star

DNA tests have linked Shy Bland, who last year was charged with a string of sexual assaults in the Westport area in the mid-1980s, with a 13th victim.

Jackson County prosecutors on Monday announced they had charged Bland with sodomy, attempted rape and rape in connection with an attack on Jan. 25, 1986. Bland now faces 36 criminal charges in connection with 12 attacks on women between April 1985 and December 1986.

Those charges are in addition to a 115-year prison sentence Bland is serving for rape and seven other convictions from 1987. Bland became eligible for parole in that case last year, when prosecutors charged him with 33 crimes related to 11 additional attacks.

The newest charges stem from an attack on a 27-year-old woman who lived in an apartment in the 4400 block of Roanoke Parkway.

The charges were not filed last year with the others because police had to wait for special DNA testing on two hairs found on the victim's bed. Police sent the hairs to Federal Bureau of Investigation experts, who analyzed the mitochondrial DNA from the hair shaft.

The level of certainty in the match is not as high as in the other cases because there was no root tissue left on the hair, prosecutors said.

Sex crimes Sgt. Kevin Kilkenny gave this account of the attack on Jan. 25, 1986:

The victim was asleep with her 18-month-old daughter when she woke up just after 2 a.m. and saw a man standing in her bedroom. The man jumped on top of her and threatened her with a knife.

The man told her to keep her screaming toddler quiet, then sodomized and raped her on her bed as her daughter lay on the bed beneath her.

A neighbor heard the commotion and called police. Officers knocked on the door as the attack was ending. The rapist ran out a back door, and the victim answered the front door.

The rape was the fourth of the 13 attacks now linked to Bland. Although Bland was convicted on a 1987 attack that was believed to be connected to a serial rapist, DNA technology was not available. The Kansas City Crime

Lab received a federal grant in 2003 to look at backlogged, unsolved cases with DNA evidence, which led to the testing of cases now linked to Bland.

The Denver Channel -- July 10, 2006

Police: Rapes Of 84-Year-Old, 56-Year-Old Finally Solved
Colorado Cold Cases From 1994 Resolved Through DNA
http://www.thedenverchannel.com/news/9494150/detail.html

DENVER -- The Denver district attorney has charged a man for several unsolved assaults that occurred 12 years ago.

Blias Reddin, 41, is accused of raping an 84-year-old woman and a 56-year-old woman in 1994. The attack on the elderly woman occurred in May 1994. The 56-year-old woman was sexually assaulted in June 1994 and then again, two months later.

The district attorneys said that in each case Reddin made his way into the victim's home through a window, sexually assaulted them, then fled.

Reddin is charged with three counts of first-degree sexual assault. He is currently serving a 10-year prison term for assault.

The recent charges are the result of Denver's Cold Case DNA Project, which is an ongoing collaborative effort involving Denver police detectives, the police crime lab and the Denver District Attorney's Office, with grant funding through the National Institute of Justice.

WREG TV News July 16, 2006

Alleged Killer To Face Charges In 20-Year-Old Mississippi Murder
Associated Press
http://www.wreg.com/Global/story.asp?S=5156587&nav=3HvE

LAUREL, Miss. Two decades after 7-year-old Cookie Dean was raped and murdered, Mississippi authorities say they have finally found the man responsible for the attack.

Reginald Calhoun was formally charged with the slaying Saturday in Laurel Municipal Court.

Calhoun is already serving a life sentence for murder plus another 30 years for armed robbery for crimes he committed in 1984.

He has been incarcerated in the Wilkinson County Correctional Facility since 1987.

The 38-year-old Calhoun is currently being held in the Jones County Adult Detention Facility in Ellisville.

Dean was reported missing in January of 1985 after her mother, Willie Mae Dean, sent the little girl on errand and she did not return.

The child's body was found the following day in an overgrown lot.

Dean had been raped and her throat cut.

Scores of people were interviewed and then discounted as suspects, and for years detectives pursued leads but were not able to connect anyone to the physical evidence.

Authorities say that changed last year when new DNA technology connected Calhoun to the crime.

The Charlotte (NC) Observer July 15, 2006

Man To Face Charges In '97 North Carolina Rape Case
DNA Evidence Led To Ex-Charlotte Resident Becoming A Suspect
STEVE LYTTLE
http://www.charlotte.com/mld/observer/news/local/15044505.htm

A former Charlotte resident is in a California jail awaiting extradition to North Carolina to face charges in a rape that happened more than eight years ago.

California police arrested Terrance Clovis, 45, in Palm Springs on Thursday.

Warrants for his arrest had been issued last weekend by Charlotte-Mecklenburg police, who say Clovis' capture was the result of work by the Police Department's Cold Case Sexual Assault unit and the PD's Crime Lab.

Clovis faces charges of rape and burglary.

The rape happened late on the night of Dec. 7, 1997, police say.

They say the victim was a 61-year-old woman who lived in Earle Village, on North Myers Street.

The woman was alone at home when a man forced his way into her residence and sexually assaulted her. When he left, the woman locked her door, but police say the attacker returned a short time later, kicked down the door and started assaulting the woman again.

This time, police say, neighbors heard the noise and rushed to the victim's aid, and the attacker fled.

No suspect was identified in the case until recently.

Police Sgt. Darrell Price said DNA evidence helped police identify a suspect. Clovis had been arrested at least twice in Charlotte, and his DNA had been entered into the police data bank.

Price said DNA from the original crime was matched with Clovis' DNA profile late last year, and police then began searching for the suspect.

Local police say the Ventura County Sheriff's Department and the Palm Springs Police Department helped arrest Clovis. He is in jail in Riverside, Calif. Police say Clovis lived in Charlotte from 1988 to sometime last year, when he moved to California.

The Journal News (NY) July 19, 2006

Ramapo Police Turn To Science To Solve Decades-Old Murder
By Laura Incalcaterra
The Journal News
http://www.thejournalnews.com/apps/pbcs.dll/article?AID=/20060719/NEWS03/607190318/-1/NEWS

Town of Ramapo (New York) police hope forensic science will give them the break they need to solve a 30-year-old homicide.

The victim has never been identified, and that has stymied the investigation into the man's death.

His body was found March 4, 1976, in the woods, about 50 feet off Route 17, just south of the New York village of Sloatsburg in the unincorporated section of Ramapo, Detective Lt. Brad Weidel said. A passing driver saw the remains and called police.

The victim had multiple knife wounds to his head and face, and his hands and feet had been severed. His badly decomposed feet were later found near the Thruway. His hands were never found.

Police, working with the Rockland County (NY) Medical Examiner's Office, have sent a sample of the victim's DNA to the New York State Police Forensic Science Laboratory for analysis.

Police are optimistic that new DNA testing techniques will assist their investigation.

"That's really our hope, to try to identify this individual 30 years later," Weidel said.

Ramapo detectives have been assigned to teams that are working to solve older homicide cases, Weidel said. Five such "cold cases" remain.

Police say they believe there is a chance that some of the cases will be closed with the aid of both new technology and old-fashioned police techniques, such as reinterviewing a victim's relatives and associates.

"We are very much interested in closing all of our older homicides," Weidel said. "I am very much determined that we will."

The victim found off Route 17 was described as a Hispanic man, about 5 feet 8 inches tall, weighing 160 pounds, between 30-40 years old, with black hair and brown eyes.

The man's DNA might not be registered with any data bank, but a relative's might be, Weidel said. If so, it could help police finally determine the victim's identity and his killer.

Ramapo detectives determined, as part of the 1976 investigation, that similar types of homicides had occurred in and around New York City, and that they were drug related.

Daily Bulletin (CA) -- July 24, 2006

A Cold Case Turns Hot
Suspect Held In Unsolved 1987 Slaying
Gina Tenorio, Staff Writer
http://www.dailybulletin.com/ci_4087008

Susan Marie White was a flower child.

Free spirited and independent, she loved to press flowers, make apple butter and ride around in the Volkswagen Beetle she and her ex-husband had painted to resemble the American flag.

"She cooked all the time," said her daughter Michelle White of Stoneham, Mass. "She crocheted and made preserves."

Then, as if by an invisible hand, 33-year-old Susan White disappeared in late June 1987 after hitching a ride in Barstow on her way home to Grand Junction, Colo. Days later, her remains were found in the desert near the shoulder of Interstate 15 near Nipton Road in San Bernardino County. She had been sexually assaulted and repeatedly stabbed.

After 19 years, there seemed little hope that her killer would ever be found, and the case remained cold until this month.

DNA evidence has finally led sheriff's investigators to a suspect Paul

Zamora, 60, who authorities said is a registered sex offender. Zamora was arrested July 5.

John Thomas, a San Bernardino County deputy district attorney, ordered the review of the DNA. He did not disclose what DNA evidence led to Zamora's arrest.

He would only say that there was enough to try him and that he felt confident in the case. Susan White, he hopes, will be one in a string of solved cold cases.

"The beginning of the year is when we started looking at (the cold cases)," Thomas said. "We started realizing there were more cases we could solve through DNA."

Susan White was among the first.

DNA evidence was collected at the scene all those years ago, Thomas said, and investigators entered it this year into the federal Combined DNA Index System.

It matched a DNA sample from Zamora that had been entered into CODIS, Thomas said.

For Thomas, the news was encouraging. And he started to build the case. In March, the case was turned down in Barstow Superior Court because of a lack of evidence.

Investigators went back to gather more.

"We did turn up a little more evidence from search warrants and from interviews," he said.

Zamora was arraigned July 6. He pleaded not guilty and is not scheduled to be back in court until Sept. 19 for his next hearing.

The sudden developments of the case have left White's family members stunned. They learned of the arrest through news reports. Barbara Cummings, 47, Susan White's sister, first learned of it from a friend who saw it in a Colorado newspaper.

"She called and left a message," Cummings said. "I was like, 'OK.' I didn't know.

I was in a little bit of shock, really. But there is definitely a sense of relief."

The fact that Zamora is already listed as a sex offender weighed heavily on the family.

Cummings' imagination sometimes gets the best of her when she thinks back to the day when, sheriff's deputies said, her sister got into a tractor-trailer at Brownie's Market at Highway 58 and Irwin Road in Barstow. That was the last time anyone saw Susan White alive, according to previous news reports.

Thomas believes Zamora was the man behind the wheel of the truck that picked up the free-spirited mom that night. Just before she got into the truck, Susan White had gotten into an argument with her boyfriend as the couple drove from Porterville to Colorado.

"She had gotten into a fight with her boyfriend over gas money," Thomas said. "She decided she was too upset to be in the car and decided to hitchhike."

Zamora was on his way from Los Angeles to Las Vegas on his truck route, Thomas said.

"We believe he eventually killed her near Nipton Road," he said.

News of her death hit the family hard. Michelle White, who was 14 when her mother vanished and is now the same age as her mother when she disappeared, remembers how her father struggled to deliver the news to her and her brother, Tim White.

DNA in '84 Texas case crucial Killer Robert Browne's attorney moves to halt investigators' questioning

The physical evidence could support the felon's claims that he's a serial killer. The lawyer's action may end any further interviews.

By Erin Emery

Denver Post Staff Writer
DNA evidence in the 1984 murder of a Texas girl may provide the most promising evidence yet to bolster claims by Robert Charles Browne that he killed as many as 48 people.

The DNA evidence becomes even more crucial in the murder of Nidia Mendoza, 17, whose dismembered body was found Feb. 6, 1984, in Sugar Land, Texas, since Browne's attorney, public defender William Schoewe, sent a letter Friday to El Paso County sheriff's investigators asking them to stop talking to Browne.

"We have all of the fingernail scrapings, the bodily swabs that were taken at the time of the autopsy, and we have some articles of clothing that were collected from the crime scene that appear to have bodily fluids or blood on them," said Capt. Gary Cox, commander of investigations for Sugar Land police.

The evidence was submitted to a state lab three months ago, and authorities are waiting for results.

Cox said a lot of information that Browne provided in the Mendoza case was never publicized - including information that he did not sever her arms.

"It tends to corroborate what happened with our case. We're optimistic that we can have some of the physical evidence support that statement," Cox said.

Browne, 53, is serving a life sentence for the 1991 murder in El Paso County of Heather Dawn Church, whom he now denies killing. Over the past four years, he has told investigators that he killed up to 48 people. Police say seven of those cases, not including the Church case, have been corroborated, but Browne has been charged and convicted only in the Church case and one other.

William Earl Hilton, sheriff of Rapides Parish, La., said he planned to come to Colorado Springs this week in hopes of talking to Browne about a body found Dec. 15, 1980. But after Schoewe's letter, Hilton does not know if he'll make the trip.

"We're kind of waiting to see if we're going to be able to talk to him. I don't want to make that trip without being able to interview him," Hilton said.

Hilton said he has a hunch that Browne may have been involved in the 1980 murder.

Browne, who grew up in Coushatta, La., told El Paso County investigators that he killed as many as 17 people in his home state.

In conversations with Charlie Hess, 79, the cold-case investigator from El Paso County who wrote letters and talked to Browne over a four-year period, Browne mentioned that "New Orleans was fertile ground," according to an arrest affidavit.

But he offered details about only one murder in the area - the strangling of a prostitute at a Holiday Inn in the 1970s.

Capt. George Waguespack, who heads the New Orleans homicide unit, said investigators have reviewed old case reports, trying to determine whether Browne is responsible for unsolved homicides around 1977.

In Texas, the brother-in-law of Melody Bush, a 22-year-old Browne claims to have killed near Flatonia, Texas, in 1984, said his older brother, Robert Bush, was broken up by his wife's murder and was considered a suspect.

"They put him in jail because apparently he had broken his probation by drinking. They locked him up for six months, I think, just due to the investigation," Walter Bush said Monday. "You know they had a child and they took the child away because they thought (Robert) did it," he said. "He hasn't seen that kid in probably 22 years. He was 4 years old when that happened."

Walter Bush said he doesn't know for certain where his brother is now.

Raymond Browne, one of Robert's older brothers who lives in Idaho, said the family is stunned by news that their brother is a serial killer.

"We were shocked. We can't understand it any way. We were raised well. Our parents were great parents. We know the difference between right and wrong, and we were taught that," Raymond Browne said.

Raymond Browne said that while his father and his brother Donald worked in law enforcement, neither one ever knew anything of Robert's crimes.

"Before any of these happened, my dad was already dead. He died in July 1974," Raymond Browne said. "All of these occurred after that fact, other than the one he said he did in South Korea, which is no proof or anything."

KXLY TV News (WA) -- August 1, 2006

DNA Helps Solve 1982 Washington State Murder Case
KXLY Staff and Wire Reports
http://www.kxly.com/news/

SPOKANE -- A man already serving a life sentence in the state of Washington for the rape and kidnapping of an eight-year-old girl in 1983, confessed Monday to murdering another girl in 1982.

Sixty-two-year-old Arbie Williams agreed to a plea agreement in exchange for 20 years in prison for the murder of 15-year-old Linda Strait.

Strait was reported missing on September 26, 1982 after she failed to return home from a walk in Spokane Valley from the 800 block of West Avon to a nearby Safeway store.

The following day her body was discovered in the Spokane River and despite having several persons of interest in her murder, all were cleared and the case went cold. In 1998 however, Major Crimes Detective Tim Hines discovered there was potential DNA evidence recovered at the time of the murder.

Because of technological advances since Strait's murder, that evidence was resubmitted for examination and a match to Arbie Williams was made using the Washington State Patrol's DNA data bank.

Williams was returned to Spokane Monday and pleaded guilty to 2nd Degree Murder.

Green Bay (WI) Press-Gazette -- August 3, 2006

Labatte Upset Cadigan Murders Are Unsolved, Lawyers Say
Woman Exonerated In 1991 Deaths Of Sisters
By COLIN FLY
The Associated Press
http://www.greenbaypressgazette.com/apps/pbcs.dll/article?AID=/20060803/GPG0101/608030550/1978

MILWAUKEE - A woman who spent 10 years in prison for the 1991 deaths of two elderly sisters in eastern Wisconsin is frustrated that the crime hasn't been solved, her attorneys said Wednesday.

Charges against Beth LaBatte, 39, in the deaths of Casco residents Ceil Cadigan, 85, and Ann Cadigan, 90, were dropped Tuesday after DNA evidence retested through an effort by the University of Wisconsin Law School's Innocence Project exonerated her.

LaBatte's second trial was scheduled to begin in September.

"She needs some time for this to sink in," said Henry Schultz, first assistant state public defender. "It's going to be her decision when she wants to talk."

Attempts to reach LaBatte on Wednesday were unsuccessful.

However, she was emotional on Tuesday just after the Outagamie County court hearing when she told WBAY, Channel 2, in Green Bay that she will not be able to live a normal life.

"This will always be over my head," LaBatte said. "It won't be over until whoever murdered these women are caught."

John Pray, a co-director of the Innocence Project, said Wednesday the excellent preservation of the evidence was important in allowing testing to be conducted years later. Hopefully, it can provide additional clues, he said.

"She desperately wants this case to be solved," Pray said. "While she's legally innocent and presumed innocent under the system, there are people who are always going to think that she had something to do with the crime."

Kewaunee County District Attorney Andrew Naze said in a release the decision to drop the charges came because key witnesses in the case have died and he didn't think a successful outcome at a new trial was likely.

Naze, who did not return immediately messages to his home or office Wednesday, said without elaborating that they would continue to investigate and find new evidence to bring the perpetrators to trial.

LaBatte was arrested for the murder of the retired schoolteachers in 1996 and was convicted and sentenced to life in prison for each count of first-degree intentional homicide.

She did not take the stand, but proclaimed her innocence at her sentencing hearing.

"God knows I am innocent," she said at the time. "Whoever committed these crimes knows I am innocent."

The law school's Innocence Project won motions to have the evidence reanalyzed using current DNA technology. Tests conducted by the state crime lab found that LaBatte's DNA wasn't on a shattered piece of a pool cue thought to be the murder weapon.

It was also absent from a pair of socks used to wipe up one of the victim's blood and on material on a hair found on one of the victim's shirts.

"Her DNA was not anywhere at the crime scene," Schultz said.

DNA foresight key in solving 1996 murder
Aug. 4, 2006 12:00 AM
Cold case of the week: The discovery of an 84-year-old woman's brutalized body found inside her Willcox home on July 4, 1996. **Circumstances:** A Willcox patrol officer found an abandoned vehicle belonging to Bessie Graham on a dirt road July 4. When he couldn't reach the car's owner, the officer contacted her son, Jack, for help. The men went to Graham's home and found that she had been savagely beaten and strangled to death.

When & Where: Graham was killed sometime late July 3 or early July 4, 1996.

Summary: Those who knew Bessie Graham described her as a private woman who was dedicated to family and friends in this small, close-knit community about 50 miles east of Tucson.

Her brutal murder shook the town to its core, said Willcox Police Chief Jake Warner. He was a patrol officer at the time of Graham's death.

"Any type of homicide is a tragic event, and I think it's magnified more so in a small community where everyone knows each other," Warner said. "There was definitely a lot of apprehension."

Investigators meticulously sorted through the Graham home to find any speck of evidence, any detail that could lead them to the killer.

Fingernail clippings, bedding, a mattress top and other samples from the crime scene were submitted to the state Department of Public Safety's Southern Regional Crime Laboratory in Tucson.

Criminalist Curtis Reinbold set aside a small bloodstain on the mattress and the fingernail clippings for later testing. The technology wasn't there at the time, but Reinbold knew it was coming soon.

In September 2000, Reinbold reanalyzed the evidence for DNA. The result: It wasn't Graham's, and there was no match in the Combined DNA Index System, or CODIS, a national repository where law enforcement can exchange DNA information.

Authorities weren't deterred. More than a year later, a "cold hit" resulted in a DNA match to Alejandro Bracamonte Gutierrez, now 48, who was serving a prison term in the Arizona Department of Corrections for an unrelated burglary. His DNA information had been entered into CODIS upon his felony conviction.

Willcox police took hair and blood samples taken from Gutierrez by court order to compare with samples taken from the murder scene.

In 2005, Gutierrez was indicted by a Cochise County grand jury for the first-degree murder of Bessie Graham. He pleaded no contest and was sentenced last month to 22 years incarceration per a plea agreement.

According to Warner, Gutierrez doesn't recall what happened the night of the murder, and investigators have not identified a motive.

Warner and two other officers employed with the department are the only ones who remain from the original group in 1996. Graham's was the last homicide investigated by the agency.

Warner said he's grateful for the investigators and others who "stuck with it."

"We never gave up," he added.

USA TODAY -- August 8, 2006

Retired Sleuths Heat Up Cold Cases
By Martin Kasindorf, USA TODAY
http://www.usatoday.com/news/nation/2006-08-07-cold-case_x.htm

LOS ANGELES — On the TV police drama Cold Case, Philadelphia detective Lilly Rush needs less than an hour to unmask the killer in a decades-old murder every Sunday night.

Real life is different. It can take years to turn dusty boxes of evidence into an accusation that stands up in court. And the cold-case investigators who have made headlines with recent successes aren't sleek Hollywood actors. They're retired cops in their 60s and 70s.

From Los Angeles to Maryland, the hot trend in cold cases is special units of retired detectives who are coaxed off the golf course to comb old files for new leads.

These retreaded sleuths usually work two days a week as unpaid volunteers to bone up on DNA evidence and other new wrinkles in a case. They combine science with their street savvy in questioning witnesses to relieve overloaded staff detectives of some of law enforcement's most tedious work.

Two of these special squads showed last month that they can get results in resolving mysteries:

• Robert Charles Browne, 53, has been in a Colorado prison since he pleaded guilty in 1995 to killing a 13-year-old girl. Charlie Hess, 79, a retired FBI and CIA agent, volunteers at the El Paso County Sheriff's Office in Colorado Springs. Hess, through four years of correspondence and 20 prison visits, persuaded Browne to admit to 48 additional slayings.

Browne gave Hess enough evidence of one previously unrecorded murder to charge him with the 1987 slaying of a 15-year-old girl who had been listed as missing in Colorado Springs. Browne pleaded guilty to that crime July 27. Nine more of Brown's claimed slayings have been verified in several states, says Lou Smit, 71, who volunteers in the cold-case unit with Hess and Scott Fischer, 60.

• At the Los Angeles County Sheriff's homicide bureau, retirees Bob Wachsmuth and Richard Adams had a hunch that a photographer on death row since 1988 for slaying two aspiring models may have killed others. In old case files, the detectives found pictures of more than 50 unidentified women who had posed for William Richard Bradford between 1975 and 1984. The sheriff's department released the photos to the public, triggering hundreds of tips.

A fresh set of eyes

Capt. Ray Peavy, homicide bureau commander, says the public has identified 36 of the women. Peavy says most are alive, but family members may have pinpointed "two more potential victims" by providing names for "Jane Doe" women in unsolved homicides in 1979 and 1980. The manner of killing in those local cases was "very similar to what Bradford did," Peavy says.

"Even if we get most of these girls alive and well, it's significant if we get one murder out of it," Wachsmuth says.

Bradford, through his attorney, Darlene Ricker, denies killing anyone.

Police agencies nationwide "are recognizing that these old cases are not to be filed away and lost," says Max Houck, director of a forensic science program at West Virginia University. "Many of them can be rejuvenated. Retired investigators have time to go back and reflect on interviews and

photographs."

Wachsmuth, 62, retired in 1998. "I gardened for almost two years, and I almost went crazy," he says. Now he's one of 14 retired detectives working under Peavy on one-year contracts for hourly wages and no benefits.

Peavy says the retirees provide "a fresh set of eyes, but these fresh eyes happen to be with some old, grizzled homicide detectives. They may see information that got missed originally."

"If you've developed some level of acumen, why would you just let it drift away and find yourself sitting on a couch and watching TV?" Hess says. "You owe it to the public."

Smit, who investigated the 1996 slaying of 6-year-old JonBenét Ramsey in Boulder, Colo., says he has set up retiree cold-case squads south of Colorado Springs in Pueblo County, Colo., as well as in Titusville, Fla., and Laurel, Md.

Pueblo County Sheriff Dan Corsentino says his three retirees would "rather be doing this than playing golf."

Bob Curtis, 69, a retired detective in Corsentino's unit, says, "There's some gray hairs in this squad." Curtis says the squad has made progress in three cases that date as far as 1976, with no arrests yet.

DNA changed everything

Wachsmuth says crime-fighting has changed. "Today, it's all technology — fingerprint enhancement capabilities, firearms identification advances and the big one, DNA."

Peavy has some of the veterans rifling through old files for items that might contain DNA. "As recently as 1990, a cigarette butt or a sweaty T-shirt picked up at the scene would not have meant much. But if it was saved, today we can take it to the crime lab and get an identification through DNA," he says.

The retirees are so effective at spotting such items that "we've provided more cases than our crime lab is capable of dealing with at this time," Peavy says.

Departments often assign a full-time detective to work with the old-timers. Hess says that as his talks with Browne began revealing new homicide cases, Sheriff Terry Maketa put investigator Jeff Nohr in charge of the volunteer unit and sent him with Hess into Browne's cell. Nohr was needed "to guide us through the minefield of what had transpired in the judicial process since we dinosaurs were on the street," Hess says.

Hess' trips to chat with Browne were an exception for a cold-case volunteer. In most cities, retirees stay in the squad room and provide tips for full-time detectives to follow up.

"Because of their ages, we don't send 'em out on the street," Peavy says. "They'd love to, but for insurance purposes, we can't. I've got one guy back that's 75 years old — my ex-partner."

South Florida Sun-Sentinel -- August 14, 2006

DNA Evidence Helps Link Florida Man To Murder Of California Girl In 1972
By Brian Haas
South Florida Sun-Sentinel
http://www.sun-sentinel.com/news/local/broward/sfl-ccoldcase14aug14,0,4652258.story

Shannon Ritter was only 12 years old on Sept. 30, 1972. She was babysitting four children in an apartment in Rancho Cordova, Calif. Someone strangled Shannon and drowned her in a bathtub while the children slept. Then he was gone, leaving little more than questions in the little city just outside Sacramento.

Detectives say they found the answers 34 years later and 2,525 miles away in a Lauderhill, Florida neighborhood. With the help of forensic science, Sacramento County and Lauderhill police detectives on Thursday named their man: James Calvin Gaines, 57, a real estate agent who has been living in South Florida for at least 15 years. Neighbors were shocked that Gaines could be implicated in such a crime.

California detectives said they knew better. Gaines was arrested and held briefly in 1972 as the sole suspect in the case, but a lack of evidence forced authorities to release him without charges.

Ten days ago, Lauderhill police set up surveillance on Gaines so California authorities could take him in. Officials said they now had the evidence they needed.

A case grown cold

Shannon had just entered seventh grade and was excited about playing the clarinet at school functions such as football games.

A search warrant application for a DNA sample filed this April in Florida's Broward County by detectives spells out in detail what police believe happened 34 years ago:

On Sept. 30, 1972, Shannon was a new babysitter for Margarita Doporto, who left her four children, ages 3 to 7, with Shannon so she could enjoy a night at the Officer's Club at Mather Air Force Base. Doporto left about 9:30 p.m.

Throughout the night, neighbors checked in on the children. One neighbor stopped by about 11:30 p.m. and saw a strange man in the home with Shannon. Shannon said the man was waiting for Doporto.

Doporto arrived home about 1:30 a.m. and found her front door ajar. She walked inside. Water poured down the staircase.

She ran up the stairs, following the water to a bathtub overflowing with the water still running. She saw Shannon, dead, floating on her side.

Police later determined Shannon had been strangled and drowned. It didn't take long for investigators to develop a suspect: Gaines, who lived in the same apartment complex as Doporto, was identified as the man the neighbor saw with Shannon. Gaines gave conflicting alibis and smoked the type of cigarettes found in the apartment.

But it wasn't enough for detectives to go on. The case involving the murder of a 12-year-old girl grew cold. [NOTE: The news items does not explain why the crime scene evidence was not sent to the Crime Lab for DNA analysis for many years after that procedure became available to California police.] But something finally happened six months ago.

In February, the Sacramento County Sheriff's Department started a pilot program to tackle cold cases that could be solved with modern technology. Shannon's case met the criteria. Investigators declined to discuss what forensic evidence led to Gaines' arrest. However, the search warrant application indicates pubic hair, found 34 years ago, might have provided a DNA reference point.

If only they had a fresh DNA sample from Gaines.

Gaines lives in a well-manicured home in northwest Lauderhill. Neighbors say he was a whiz around the yard and would often mow other neighbors' lawns as a favor. He's lived in the home since 1995.

He had been working most recently as a real estate agent. His license, which he has held since 1991 without complaints, is listed as inactive in state records.

But Gaines had several encounters with police since Shannon was killed. He spent four years in a California prison starting in 1975 for kidnapping, attempted rape and attempted homicide. Gaines accumulated a short criminal record in Florida since 1991. Those arrests helped detectives track Gaines to his Lauderhill home in April. They showed up with a search warrant, and Gaines gave up a DNA sample.

Detectives again surprised Gaines on Aug. 5 when they showed up, this time with a murder warrant. On Thursday, the man police say killed Shannon almost 34 years ago finally arrived in Sacramento County. He's being held there without bail on an open murder count.

Knox News (TN) -- August 16, 2006

DNA Links Inmate To 21-Year-Old Tennessee Murder
By The Associated Press
http://www.knoxnews.com/kns/state/article/0,1406,KNS_348_4920882,00.html

DYERSBURG, Tenn. — A Dyersburg man was indicted for a 21-year-old murder based on a cold hit that linked him to the crime.

The Tennessee Bureau of Investigation charged Harold Bernard Schaffer,

42, with the 1985 stabbing death of William "Junior" Pierce at his Dyersburg hardware shop.

Schaffer, who is currently serving time on cocaine and forgery charges, was indicted Monday by a Dyer County grand jury on a first-degree murder charge.

John Mehr was TBI's local agent when Pierce's body was found by a customer on May 17, 1985. Mehr continued pursuing the case using DNA evidence found at the scene.

The evidence provided a blood sample that was initially too small for testing. In February of 2005, Mehr resubmitted the sample to the Crime Lab for a more sophisticated DNA scan that matched it to a Tennessee inmate serving a 13-year sentence.

Mehr said finding a suspect for a 20-year-old crime "is an example of how we can reap the benefits of scientific advances." Schaffer has a lengthy criminal history dating back to 1982.

As a juvenile, he was convicted of involuntary manslaughter in the 1980 beating death of an 18-year-old high school student. He has been in and out of prison since 1988 on forgery, robbery, burglary and drug charges.

Nevada Appeal -- August 19, 2006

Suspect In 1982 Nevada Murder Arrested
By F.T. Norton
Appeal Staff Writer
http://www.nevadaappeal.com/article/20060819/NEWS/108190069/-1/rss02

Twenty-four years after teenage beauty queen Sheila Harris was found slain in her east Carson City apartment, the complex's former handyman was arrested on the Caribbean Island of Trinidad on a warrant charging him with her murder.

David Winfield Mitchell, 60, made his first court appearance in Trinidad on Friday. He is scheduled for another court hearing Wednesday.

In 1982, Harris, 18, was found dead in her apartment. An autopsy revealed she had been sexually assaulted, beaten and strangled.

An old boyfriend, and Mitchell, a maintenance man at Harris' apartment complex, were both suspects, but investigators were unable to find physical evidence linking them to the crime.

Investigators even went so far as to track Mitchell to New York where he'd moved with his family. There, they obtained a DNA sample.

In 1999, Detective Lt. Bob White asked officials in the the Carson City Sheriff's Department,to allow him to review cold cases.

About the same time, the victim's mother contacted the detective division and asked if evidence in the case could be submitted for DNA testing.

"It was eerie. She came in the same week I began to review the case," White recalled Friday after learning Mitchell was in custody.

In July 1999 the Washoe County Crime lab processed all the evidence with technology that was not available 18 years earlier. Among the evidence was DNA found on Harris' body and underclothing.

"Comparison of the DNA profiles obtained from the physical evidence and the known samples obtained from David Winfield Mitchell revealed Mitchell is the source of the DNA from the sperm fraction obtained," the affidavit in support of the federal arrest warrant reads.

In 1982, Mitchell, who was in the country illegally, was deported from New York to Trinidad.

When the results of the DNA testing came back in 2000, Mitchell's whereabouts were unknown. In 2003, Carson City investigators tracked down Mitchell's ex-wife in Hawthorne. She said she last had contact with Mitchell in 2000 in Trinidad.

In January 2005, at the request of Carson City authorities, Interpol found Mitchell living in the Mount Hope area of Trinidad and working as a night watchman at the Ministry of Works.

In January 2006, a murder complaint charging Mitchell with open murder with the use of a deadly weapon was filed in Carson City Justice Court.

No date has been set for Mitchell's return to the U.S.

San Diego Union-Tribune -- August 25, 2006

Cold Case Murderer Sentenced
By Dana Littlefield
UNION-TRIBUNE STAFF WRITER
http://www.signonsandiego.com/news/metro/20060825-9999-7m25elder.html

A Florida man was sentenced yesterday to 26 years to life in prison nearly two decades after he repeatedly stabbed a San Diego woman and left her to die on the floor of her downtown apartment.

A San Diego Superior Court jury convicted Mark Francis Elder, 48, on June 19 of first-degree murder for killing Janet Moore, 27.

Prosecutors argued during the trial that Elder, a self-employed carpet installer, raped Moore in her 17th Street apartment. When she tried to escape, Elder stabbed her 39 times.

The DA told the jury that Elder had a history of violent sexual behavior and habitually raped prostitutes. She presented testimony from four women – all Florida prostitutes – who said Elder picked them up, drove them to isolated areas and suddenly attacked them.

Police had few suspects until 2003, when blood and fluid samples from Moore's body and her apartment were analyzed using new technology at the San Diego crime lab. A DNA profile of the person believed to be Moore's killer was entered into a nationwide databank but yielded no hits.

In November 2004, a Florida prostitute told police she was raped by a man who picked her up on a Daytona Beach highway. The woman was examined and DNA was collected and entered into the Florida database.

In April 2005, Florida Crime Lab scientists found that the rapist shared the same DNA as Moore's killer. Later, they linked Elder to the rape and the San Diego slaying after a Daytona police officer stopped him for driving with an expired license and found a partially smoked marijuana cigarette inside his van.

California investigators matched DNA from saliva on the cigarette to DNA from the November 2004 rape and from Moore's slaying.

"So justice long delayed finally endured," the judge said, adding that he will recommend that Elder never be paroled.

Rome (GA) News-Tribune -- August 25, 2006

DNA Tests Lead To Rape Arrest In Georgia
By Heath Hooper
http://news.mywebpal.com/partners/680/public/news742598.html

Georgia police think they've cracked a 13-year-old cold case, thanks to some new technology and solid police work.

Wayne Allen Crawford, 44, was in jail Thursday night on charges of rape and aggravated sodomy in connection with the decade-old case in Rome, Georgia.

The incident for which Crawford is charged occurred in 1993 when an unknown assailant crept up on a woman as she slept. "She was asleep on the couch, and the guy broke in, woke her out of her sleep and blindfolded her," said a detective with the Rome Police Department.

The assailant then raped and sodomized the victim, who could not identify the man because she was blindfolded.

Police collected DNA evidence from the woman and interviewed a number of people but weren't able to come up with any real suspects. After 13 years, it seemed unlikely they would ever have one.

That all changed in January when Crawford's DNA profile popped up on CODIS as a match for the DNA from the rape.

Since 2000, DNA swabs have been taken from almost all Georgia felons when they enter the prison system. The convicts' profiles are then placed in the Federal Bureau of Investigation's Combined DNA Index System or CODIS.

CODIS acts like a fingerprint database for DNA profiles, enabling local, state and federal law enforcement agencies to compare profiles electronically.

When Crawford had a swab taken as he entered Dooley State Prison on unrelated charges, his DNA profile was entered into CODIS. It matched the profile of the rapist.

For the assigned detective, the cold hit was a welcome surprise. The incident was her first rape case as an investigator more than a decade ago.

But the hit itself wasn't enough. A second test was needed to confirm the results, and detectives had to find the victim and see if she still wanted to press charges.

Neither proved to be a problem. "Once we found her she was more than willing to go forward with it." Because the state's statute of limitations doesn't apply in cases with DNA evidence, the case can go proceed.

The police placed a hold on Crawford. Following his release from prison, he was brought to Floyd County Jail for additional testing. Notification on the second set of DNA samples from Crawford came through Wednesday. There was again a match.

The Star Press (Indiana) -- September 1, 2006

DNA Matched To Suspect Nine Years Ago
By NICK WERNER
http://www.thestarpress.com/apps/pbcs.dll/article?AID=/20060901/NEWS01/609010324/1002

MUNCIE -- Forensic scientists linked Richard Keith Corbin nine years ago to semen recovered from murder victim Kim Weatherspoon's body and their certainty grew with advancements in DNA technology, according to testimony Thursday in the Muncie man's murder trial.

Corbin, 49, is on trial this week in Indiana for the murder and rape of Weatherspoon in her apartment on Feb. 9, 1996.

Forensic scientist Jenny Wood, who formerly worked in an Indiana State Police Crime Lab, testified that in 1997 she determined there was a 1-in-66,000 chance that semen recovered from Weatherspoon belonged to a black man other than Corbin.

The odds of the DNA belonging to a white man were 1 in 430 million, Wood said.

When the DNA was retested and compared again in 2004, those odds grew exponentially, ISP forensic scientist Carl Sobieralski said.

"The technology back then was accurate, but its ability to tell one person from another was not that great," Sobieralski said. "We're able to form a better picture and make it more unique."

Current analysis shows that in the absence of an identical twin, Richard Corbin is the source of DNA to a reasonable degree of scientific certainty collected from Weatherspoon, Sobieralski said.

The statistical odds of the DNA belonging to another black man were 1 in 66 quintillion, or 6.6 multiplied by 10 to the 19th power.

Statistical odds for members of white or Hispanic races were even higher, Sobieralski said.

When the DA asked Sobieralski to write 66 quintillion in numeral form on a 2-by-3 flip chart for the jury to see it, the scientist ran out of room on his first line.

Sobieralski said the laboratory bases its statistics on previous genetic studies.

Corbin's public defender argued in opening statements that the DNA connection only proves that his client had sex with Weatherspoon in the five days before her death, but not that he committed rape.

All other evidence against Corbin, the attorney said, was circumstantial.

Corbin was arrested in the Weatherspoon slaying last December while serving a 50-year sentence for a 1998 burglary conviction, stemming from a 1996 break-in and rape at a woman's apartment.

Windsor Star -- September 8, 2006

DNA Solves 21-Year-Old Canadian Murder Case
Dalson Chen, CanWest News Service
http://www.canada.com/topics/news/national/story.html?id=cfadd0b6-df47-4b88-b0ee-5cc31adff2cd&k=43475

WINDSOR, Ont. - New information and a preserved semen sample have resulted in Canadian police identifying the killer in a 21-year-old murder case.

Judy Sawchuk was 25 years old when her battered and sexually assaulted body was found lying on the floor of her downtown Windsor apartment on Jan. 7, 1985.

On Thursday, superintendent of investigations Dave Pickford said the man responsible for the crime was Gerald Dennis Hillman a Windsor resident who died of a suspected drug overdose on Sept. 16, 1986.

Pickford said samples taken last month from Hillman's exhumed corpse were compared with semen that had been seized from the crime scene and stored at the Centre of Forensic Science in Toronto.

The centre confirmed a DNA match on Thursday morning.

"As the Sawchuk case has proven, cases can be solved years after the crime has been committed," Pickford said.

Pickford said investigators were led to Hillman by a male witness to whom Hillman had confessed about three years after the murder.

The witness came forward to police in 2003. "He had expressed concern that he may be implicated. That's why he withheld information for some time," said Staff Sgt. Norm Burkoski, an investigator in the case.

The announcement ends more than two decades of uncertainty that saw police investigate a number of suspects, including Sawchuk's former boyfriend, Dr. Mark Albus.

Albus, a dentist, had been in a relationship with Sawchuk a dental hygiene student for more than five years.

Albus had complained of police harassment after being investigated.

"We re-interview and we talk to our suspects," Pickford said. ``If they view that as being hounded, well, I can understand their frustration. But keep it in mind that we have a job that we have to do. And we have to talk to these people, as much as they don't like it."

10TV News (Knox County, Ohio) -- September 13, 2006

Ohio Police Get Major Break in 1966 Murder
Reported by Patrick Bell
http://www.ohionewsnetwork.com/?sec=news&story=sites/10tv/content/pool/200609/493891278.html

10TV News has just learned exclusive details about a major break in an unsolved murder committed nearly 40 years ago in Ohio.

In October of 1966, the badly beaten body of a female teenager was found along a Knox County road. They case has remained unsolved over the years and decades. But authorities believe the crime scene DNA evidence now surfacing is the break they so desperately need.

Linda Kohlmeier was a 19-year old dancer from the Mount Vernon area. Her body was found on the morning of October 30, 1966.

DNA evidence taken from the body was retained all these years and recently sent to the Crime Lab for DNA analysis. Forensic scientists extracted a DNA profile and when they ran it through CODIS they got a cold hit -- a match to a convicted sex offender.

But the Ohio investigators found that this convicted offender died in Michigan in 1997.

San Francisco Chronicle -- DNA links felon, 60, to 1981 murder case -- September 24, 2006

By John Cote

San Jose police believe they've found the man who raped and killed Ines Sailer more than 25 years ago, when she disappeared walking home to her Haight-Ashbury apartment in San Francisco from a New Year's Eve party.

DNA evidence from the 23-year-old German woman's clothing has been matched to a sample in a state database from Melvin Forte, a 60-year-old convicted felon currently in prison on robbery and murder charges, San Jose police said.

Sailer's body, shot multiple times with a small-caliber handgun, was found in an east San Jose carport the morning after the party, on New Year's Day 1981. San Jose police believe she was killed somewhere else, but breaks in the case were hard to come by until advances in forensic science helped investigators, Lt. J.R. Gamez said.

"Over the years it was a whodunit because we were focusing on San Jose suspects," he said. "There was no nexus."

Police resubmitted Sailer's dress for testing in 2005 and matched the DNA to Forte, he said.

"It was conclusive that the rape actually occurred," Gamez said. "Back then they did not have the means to do the sophisticated testing that we do now."

Forte has been charged in Santa Clara County Superior Court with Sailer's slaying and will likely be transferred to San Jose for arraignment, Gamez said.

Authorities declined to give details about the case, but said Forte, in a police interview in prison, placed himself in a location along Sailer's route home after she left a Richmond District party alone that night.

Authorities found a loaded small-caliber handgun and ammunition in Forte's car when he was arrested in San Francisco eight months after Sailer's death, San Jose police said.

In February 1982, Forte shot a couple -- killing the man and wounding the woman -- as they returned to their San Francisco-area home and discovered him in their garage, Gamez said.

The next day, Forte robbed a business in Milpitas and within weeks had committed armed robberies in Los Altos and Burlingame, where he shot a security guard, San Jose police said.

Ballistics tests matched bullets from the Los Altos and Burlingame robberies and shootings to the 1982 shooting of the couple -- crimes Forte is now in prison for, police said.

Detectives later learned that Forte had family and friends living in east San Jose between the mid-1970s and 1982 and visited the area frequently, police said.

Chicago Tribune -- October 1, 2006

DNA Test Results In Charges In 1984 Indiana Murder
Associated Press

MARTINSVILLE, Ind. -- Relatives of a man stabbed to death in Indiana in 1984 were surprised to learn that murder charges have been filed against two men after a DNA test linked one of them to the crime.

No one had previously been charged in the killing of Frederick David, but his family never forgot that day twenty-two years ago.

The two men charged with the homicide -- Ronald Glenn, 43, and Alphonzo Easley, 44, -- made their initial appearances Friday in Morgan Circuit Court and denied killing the victim or knowing each other.

An investigator re-examining the case in 2003 found blood samples that were taken from the scene of the attack and submitted them to the Indiana State Police Crime Lab for DNA testing. The DA says those results matched Easley, who has a 1997 conviction for battery.

Glenn is in State Prison serving a three-year sentence for drug possession. Police said he was a suspect soon after David's death and gave differing accounts of whether he was involved and had implicated two different men in the attack.

Easley's defense attorney said he doubted the DNA findings alone would bring a conviction. "We're relying on the same State Police lab that lost the murder weapon in this case to confirm that Mr. Easley had anything to do with this case. If they have lost the murder weapon, I think its very suspect the balance of what they've got in this case."

South Florida Sun-Sentinel October 5, 2006

DNA Solves 1990 Rape-Murder Case
By Laurin Sellers

Sophisticated DNA testing by Florida forensic scientists has solved a 1990 rape and murder of an elderly woman who was attacked in her Cocoa, Florida home while caring for her 106-year-old mother. Edwin Soto, 43, was arrested early today at a Florida State Prison where he is serving a 40-year sentence for burglary.

Police said Soto, who has been in jail since 1999, was linked through DNA to the rape-murder of the 74-year-old victim. She was attacked in her Cocoa home shortly after 2:30 a.m. on Sept. 7, 1990. A string of detectives had worked the case before a cold hit on the Florida DNA Database lead to today's arrest of Soto.

Dayton (Ohio) Daily News October 18, 2006

DNA Helps Police Solve 1970 Ohio Murder
But Suspect Died In 2002
By Amy Picard

DAYTON — More than 36 years after a woman was murdered in her Columbus, Ohio apartment, police have identified her killer.

"Virtually everybody said at this late date they didn't expect the case to be solved," said the victim's brother. "But I want people to know the police did their job and got the guy. It should give other people hope."

In September 1970, the victim's husband found her dead in 8 inches of water in the bathtub with twine tied around her neck. A 21-year-old senior at Ohio State University, the victim had married her husband and moved to Columbus from Dayton only nine months before the slaying.

While the police had several suspects at the time, including several construction workers, no one was ever charged with the crime.

Last weekend, Crime Lab scientists matched DNA collected 36 years ago from the crime scene to the DNA of James A. Keifer.

According to a Columbus PD detective, Keifer had been questioned at the time of the murder and later charged with a similar crime making him an immediate suspect.

But in 2002, 53-year-old Keifer died and was cremated, making it nearly impossible for police to gather DNA. Detectives, however, obtained permission from Keifer's parents to compare their DNA with that found at the time of the murder.

NBC4 News (Maryland) November 2, 2006

DNA Evidence Leads To 1992 Rape Arrest
http://www.nbc4.com/news/10214461/detail.html

DNA evidence was used to help Maryland investigators make an arrest this week in a Montgomery County rape case from 1992. Gerald Anthony Smith, 36, was arrested Monday after his DNA matched DNA evidence collected from the victim at the hospital after she was attacked.

The rape occurred in November 1992. A 21-year-old Silver Spring woman said she was walking in the area of Castle Boulevard when a man grabbed her from behind. She said he showed a handgun, threatened her with physical violence and demanded that she take him to her home. Once there, the man forced her into her apartment, where he sexually assaulted her, according to the woman. The man then searched her apartment for money, but didn't find any before leaving, the woman said.

A DNA profile was extracted from the evidence taken from the victim at the hospital. When it was run through the State DNA Database this year there was a cold hit -- a match to Smith's profile already in the Database. An arrest warrant for Smith was issued on Oct. 24. The Montgomery County Police and the U.S. Marshals Service tracked down Smith, and he was arrested Monday. He is being held at the County Detention Center on $1 million bond. [This news item provides no explanation as to why it took 14 years to effect an arrest for a serious sexual assault.]

The Boston Globe -- November 10, 2006

Man Is Convicted Of Raping Student 16 Years Ago
DNA Cold Hit Led To His Arrest
By Suzanne Smalley, Globe Staff
http://www.boston.com/news/local/massachusetts/articles/2006/11/10/man_is_convicted_of_raping_nu_student_16_years_ago/

A Massahusetts Superior Court jury convicted a 56-year-old man yesterday for the 1990 rape of a Northeastern University student, based on DNA evidence that investigators preserved for 16 years.

Michael Brown of Brooklyn, N.Y., was identified in December 2003 as a suspect in the rape, after Boston investigators submitted the victim's stained underwear to the Crime Lab. Scientists extracted a DNA profile and when they ran it through CODIS there was a cold hit -- a match to Brown's DNA profile. Massachusetts officials did not know late yesterday what led to Brown's profile being in CODIS.

Brown was arrested in New York in April 2004. The victim, who is 38, married, and living in Massachusetts, testified against Brown during the two-day trial and is expected to deliver a victim impact statement to the court on Monday, when Brown is to be sentenced. He could face life imprisonment.

Suffolk DA Daniel F. Conley hailed the verdict, calling it an example of his commitment to prosecuting sexual predators. "It went unsolved for well over a decade," he said in a statement, "but it was never forgotten." [The dates in this news item seem to suggest that the crime scene evidence was "forgotten" for a number of years. The news item provides no explanation for the long delay in apprehending a dangerous sexual predator

The Charlotte Observer November 11, 2006

Cold Hit Leads To Arrest In 1987 North Carolina Rape
By Katy Stafford

Nineteen years ago, a woman was abducted at gunpoint from a mall parking lot in Charlotte, North Carolina. She was raped as her 3-year-old daughter watched. Now, thanks to a phone call the victim made to a detective -- and to Crime Lab scientists -- police have arrested a suspect. Wednesday's arrest of William Darryl Lippard Jr. is the fourth this year by the Charlotte-Mecklenburg PD's sexual assault cold case unit.

The 1987 case was reopened about five months ago when the victim read about the new cold case rape unit and contacted the detective in charge of the division. That officer sent crime scene evidence from the 1987 sexual assault to the Crime Lab. Scientists extracted a DNA profile from the evidence and ran it through the State DNA Database.

There was a cold hit -- a match to Lippard whose DNA profile was in the Database because he had been convicted for an unrelated 1992 sexual assault. The 1992 case was strikingly similar to the 1987 one, police said. In 1987, the woman was attacked in the parking lot of a mall most Charlotteans remember as Midtown Square, which has been demolished. In the 1992 case, Lippard, a pastor of a Baptist Church in Burnsville, at the time, was convicted of sexually assaulting a 16-year-old girl in the parking lot of a mall in Gastonia. He served five years and was released from prison in 1999.

Since 2001, Lippard, 52, has been living about 50 miles north of Charlotte, and working in Charlotte. Police charged him Wednesday with several crimes in the 1987 case, including first-degree rape and first-degree kidnapping.

The cold case rape division, which was launched in January, is one of only a few nationwide that focuses on sexual crimes, a PD spokesperson said. It's trying to make a dent in about 2,000 rape cases dating back as far as 1980.

Arrests so far include:

• In August, the unit identified Alfred Showell III, 34, as a man suspected of a 1995 rape on Nations Ford Road. He's serving time in an S.C. prison on a drug conviction; police said they intend to charge him in the rape when he's released.

• A month earlier, the unit arrested Terrance Clovis, 45, in California in a 1997 rape in Earle Village.

• In May, police arrested Michael Joseph Shmaruk, 30, a convicted sex offender, in a 1995 rape off Johnston Road.

In all three cases, the unit used DNA evidence to identify the suspects.

The Gainesville Sun November 21, 2006

Prosecutors Rely On DNA In 32-Year-Old Massachusetts Murder Case
By Adam Gorlick

Ronald Dame has spent the last three decades knowing Massachusetts police suspected him of fatally stabbing a woman he once dated while her 3-year-old son was nearby.

Now 60, Dame is finally charged with the 1974 murder of Clara Provost. Wearing a T-shirt advertising his tree removal and plowing business, long hair and a bushy white beard, Dame -- heavyset and handcuffed -- was arraigned yesterday.

"He's been under investigation for a long time," Dame's attorney said after his client pleaded not guilty and was ordered held without bail.

Prosecutors say they now have the DNA evidence they need for a conviction. The 23-year-old victim's body was found in her apartment by her mother. The victim's 3-year-old son was also there - unharmed - but reportedly covered in his mother's blood.

Nelson Provost Jr., who was separated from the victim at the time of the killing, said that the couple was reconciling. He said his wife was expected to move back to their home in Keene, N.H., where she had always lived before moving to Massachusetts.

During her split with her husband, the victim had dated Dame for about a month. The victim's sister said she believed Dame was angry about being rebuffed.

The DA said the victim's door had been forced open the night of her murder, and Dame had scratches on his face when police first interviewed him. Dame insisted his wounds came from playing with his niece. But multiple witnesses placed Dame at a bar during the time he said he was with the little girl.

The DA said DNA samples taken from underneath the victim's fingernails matched Dame's DNA. But defense counsel said those tests were done several years ago, and officials recently did more DNA testing. The DA would not say when the DNA testing was done or why it took 32 years to arrest Dame.

Defense counsel, who did not know if Dame ever volunteered a DNA sample, said he'll likely challenge the validity of the genetic testing. "It's over 30 years old. They're talking about testing that was done a substantial amount of time after the collection of evidence."

WHIO TV News (Ohio) -- December 6, 2006

DNA Helps Solve 10-Year-Old Cold Case

DAYTON, Ohio -- Police in Dayton said they have solved a 10-year-old murder, and now the suspect is behind bars. A 20-year-old woman was found slain behind an elementary school in October of 1996. Now, DNA evidence has led to a suspect in the cold case.

The Montgomery County coroner said DNA evidence from the suspect and the victim is what is linking the two together. The victim died from blunt force trauma to the head and a stab wound to the chest. The suspect, Lavone Hooper, 28, was indicted Tuesday on charges of rape, kidnapping and murder.

Detectives said Hooper is in jail after being indicted on rape charges for an unrelated incident that happened earlier this year.

San Jose Mercury -- December 7, 2006

DNA Connects Convicted Killer To 1972 California Murder
Associated Press

SANTA ANA, Calif. - A convicted killer whose DNA was linked to a decades-old murder of a southern California woman was sentenced to life in prison. An Orange County Superior Court judge on Wednesday sentenced Edwin Dean Richardson, 70, who had earlier pleaded guilty to killing a 23-year-old woman on Oct. 29, 1972.

The victim, who was raped and strangled, was wrapped in carpet and dumped some 15 miles from her home in Stanton, about 35 miles southeast of Los Angeles.

The case was unsolved until 2004 when authorities ran his DNA through CODIS and it matched DNA taken from the victim's body. At the time, Richardson was serving 15 years to life in an Ohio prison for the 1977 murder of a 21-year-old woman and the abduction of two teenage girls.

Richardson was eligible for parole in Ohio when he was charged with the California murder. He will begin serving time in California after completing his sentence in Ohio. He was extradited to California to face trial.

Baltimore Sun -- December 14, 2006

DNA Evidence Snares 2 Men In 1986 Rapes
By Jennifer McMenamin

Two convicted rapists pleaded guilty yesterday to abducting two women 20 years ago and raping them in the woods of northern Baltimore County.

The long-cold cases were solved when police matched DNA evidence from the 1986 sexual assaults to DNA samples collected from the two men in the course of other criminal cases, the Baltimore County DA said.

Martin Fedric Czosnowski, 41, of Essex and Anthony Klanavitch, 43, of Dundalk are scheduled to be sentenced in March.

The men met the victims at a bar and asked the women whether they wanted to "party." The women declined but accepted the men's offer for a ride home. "That ride home turned into a ride up Interstate 83 to the woods of northern Baltimore County near Pennsylvania," the DA said.

There, she said, Czosnowski and Klanavitch raped the two women, who eventually escaped, hid in the woods overnight and found their way to York Road at dawn. The women went to a hospital, where they submitted to rape examinations and police collected the clothing they had been wearing during the attacks. From there, the cases went cold.

In 2003, Baltimore County police received a federal grant that enabled the department to assign a detective to review unsolved sex crimes for DNA evidence. At least a dozen men have been charged as a result and several have been convicted. One man, convicted this year of a rape 25 years earlier, was sentenced in June to 90 years in prison.

Czosnowski and Klanavitch were charged last year with rape, kidnapping and other sex crimes in the 1986 attacks. The Crime Lab matched evidence from the 1986 attacks to a DNA sample provided by one of the suspects as part of the state's routine collection of DNA samples from convicted offenders. As investigators combed one man's criminal record, they found that he had often been arrested with the other, the DA said.

When the lab compared cheek cells collected from the second man as part of another case to DNA evidence from the 1986 rapes, they got another match, the DA said.

WJZ TV News (Baltimore) December 16, 2006

Cold Hit Solves 1985 Rape-Murder
Associated Press

Baltimore, Md. police believe they have identified the killer of a 26-year-old nurse who was raped and murdered in January 1985. Orrell Youmans, 50, was arrested later in 1985 and charged with another and unrelated rape. He was convicted and is serving a 40-year State Prison sentence. He has a release date of 2015.

This month, police charged him with the rape and murder in January 1985. In February 2002 the Baltimore PD Cold Case Squad sent the January evidence to the Crime Lab. Sometime thereafter, a DNA profile was extracted from this evidence and then run through CODIS. Two months age the lab reported a cold hit -- a match to Youmans. Last month, an officer armed with a warrant, took a blood sample from Youmans. That DNA profile also matched. Youmans is scheduled for a court hearing in January.

Kansas City Star -- December 16, 2006

Cold Hit Leads To Arrest In 15-Year-Old Missouri Homicide
Associated Press

Hannibal, Mo. - A 44-year-old man was charged with first degree murder on Friday, after a Missouri Crime Lab matched his DNA to a sample recovered from the clothing of a rape victim who was murdered 15 years ago. Michael E. Dowell is charged with first-degree murder in the 1991 death of an 18-year-old woman, whose partially naked body was found alongside a Lincoln County road.

The case remained unsolved until last month, when Dowell submitted a DNA sample at the request of his probation officer for an unrelated crime. Lab scientists said that Dowell's DNA profile matched a DNA profile taken from the victim's clothing in May 2000. Dowell denied having any involvement in the rape or death. He is being held in Lincoln County Jail. No bond has been set.

KTVU TV News and Bay City News – December 29, 2006

Cold Hit Solves 1977 California Murder

Santa Clara police Friday announced that a registered sex offender has been arrested in connection with the 1977 sexual assault and murder of a 17-year-old girl at War Memorial Park. DNA evidence from the crime scene was submitted to the Santa Clara County Crime Lab in 2005 and on Wednesday the lab informed detectives of a cold hit -- a match to Richard Armand Archibeque, 47. He was arrested on Wednesday for the murder. His DNA profile was in the State Database because he had been required to submit a DNA sample to authorities because of a conviction in an unrelated case.

WGRZ TV News (Buffalo, NY) -- February 1, 2007

Spit on Sidewalk Solves 33 Year Old New York Murder
http://www.wgrz.com/news/news_article.aspx?storyid=44738

Buffalo PD detectives have arrested a suspect in the killing of a mother of two, 33 years ago. The victim was found raped and stabbed 20 times in her Riverside home in 1974. Leon "Rusty" Chatt was arrested Thursday afternoon by members of the Buffalo PD Homicide Cold Case Squad. The detectives had identified Chatt as a suspect. One day recently they began following him. After they saw him spit on the sidewalk, they recovered the saliva and sent it to the Crime Lab. The lab scientists extracted a DNA profile and compared it to a DNA profile extracted from crime scene evidence that had been preserved since 1974. There was a match that lead to Chatt's arrest today.

The Houston Chronicle -- April 25, 2007

DNA Cold Hit Solves Two 1994 Houston Rape Cases
By Ruth Rendon

A 44-year-old man remains jailed today after being charged with sexually assaulting a woman in 1994. Police said two women in their early 30s were assaulted a week apart at Memorial Park after having been offered a ride home from a South Houston night club by their attacker. The two cases with the Texas police had been dormant until a recent DNA development.

Physical evidence was gathered during the investigations but the technology to match DNA was still under development. A recent examination of evidence from the case by the Harris County Medical Examiner's Office resulted in a

DNA profile. That information was entered by the Texas Department of Public Safety into its DNA Database.

A match was reported on Feb. 28 that allegedly linked the DNA to Roger Dale Brown, who was living in Abilene. Brown's DNA had been entered into the system following his parole from prison in 2005 after a conviction for sexual assault. U.S. Marshals arrested Brown at his home in Abilene and returned to Harris County on Tuesday. He is being held without bond.

KESQ TV News (CA) May 22, 2007

DNA Solves 1985 Cold Case Murder
By Arnell Dimaandal

Police and family members now have closure to a gruesome murder that happened in Banning, CA more than 20 years ago. The crime committed in 1985 was almost forgotten until about two years ago when it was reassigned to two Banning PD officers. They sent crime scene evidence to the Crime Lab for DNA testing.

Like pieces to a puzzle, it all came together almost a quarter of a century after the crime. The final piece came from Santa Maria in Santa Barbara County Friday night when 46-year-old Patrick Michael Pearse reportedly killed himself inside his car. "He was found in his car with a gunshot would to the head."

Pearse was the prime suspect in the murder of the 39-year-old woman back in 1985. She lived in a house on George Street in Banning. In July of 1985, authorities found her bloodied body inside. Police say her head was smashed with a bowling pin and her body stabbed several times.

The big break in the case came when the Banning PD officers submitted the crime scene evidence a few months ago that eventually pointed to Pearse up in Santa Maria. Pearse went missing after talking to police about the 1985 murder. When police found him, he had apparently taken his own life. His motive for allegedly killing the woman remains a mystery

DNA evidence showed traces of Pearse's semen on the victim's bed. Before he died, Pearse had already spent six years in prison for an unrelated manslaughter.

Ann Arbor (MI) News -- May 23, 2007

Cold Hit Results In Arrest For 1983 Michigan Murder
By Susan L. Oppat

Twenty-four years ago, Laura Jean McBride was walking from her apartment to the Eastern Michigan University campus when she was raped and stabbed to death. Police said they considered several suspects in the ensuing years, but the case grew cold. That changed in 2004 when the Crime Lab matched DNA from the crime scene with that of a 49-year-old man already serving a life sentence for a 1995 rape and assault case.

After three years of building a case, Jimmy Eric Green has now been charged. The DA on Friday authorized charges against Green for felony murder and first-degree criminal sexual conduct in the 1983 stabbing death of the student. A police official said he expects that Green, an inmate at the Southern Michigan Correctional Facility at Jackson, will be arraigned at the Washtenaw County Jail on May 30.

Police said the victim, a 26-year-old junior and U.S. Air Force veteran, was walking from the Green Road apartment she shared with her sister to an 8 a.m. class on May 23, 1983, when she was killed. Her body was discovered by fishermen in Peninsular Park, near a path along the Huron River, a day after her sister reported her missing.

Shortly after her slaying, police said they interviewed three people who spoke to the man they believe murdered the victim that day. Investigators said those people -- including a woman who said the man asked her for a light despite not having a cigarette -- talked to the stranger in the area about 30 minutes before the victim walked through the park.

Three composite sketches of the stranger were circulated, but failed to generate any leads. In 2005, Ypsilanti Police revealed they had re-opened the cold case, hoping new DNA technology could provide a break in the investigation. Detectives said Green's name emerged during the initial probe at the time of the murder, but he was not linked to the slaying until semen evidence from the scene was entered into the database and matched Green's DNA.

Since the DNA match, detectives have been tracking down witnesses and updating the victim's family. The life sentence Green is already serving stems from a 1995 case in which a woman was bound and gagged and her roommate was raped. Green was captured several months later in Chicago.

Sacramento Bee -- June 20, 2007

Cold Hit Results In Conviction For 1972 Murder Of Baby-Sitter
By Ramon Coronado

A California Superior Court jury Wednesday convicted a former Mather Air Force airman of the sexual assault and murder of a 12-year-old girl 35 years ago. The Sacramento jury took eight days to convict James Calvin Gains, now a 58-year-old retired handyman and father of three. He faces life in prison at sentencing on Aug. 24.

Typically called a cold-DNA hit case, Gains was linked with his DNA from a cigarette butt to the murder of the girl, whose body was found Sept. 30, 1972 in a bathtub of a Rancho Cordova home where she was baby-sitting.

Gains, who lived around the corner from the murder scene and was 23 at the time, was arrested in October 1972 and subsequently released. He wasn't charged until last August after detectives reopened the case with a DNA match. The DA told jurors in his opening statement that DNA testing was not only accurate, but the procedures used were reliable.

Gains matched witness descriptions of the suspect, and at the time his demeanor during his detective interrogation was nervous and incriminating, prosecution witnesses testified. During the month-long trial, defense counsel maintained that the DNA tests only proved that Gaines was a smoker not a killer.

WJZ TV News (Baltimore) June 28, 2007

Cold Hit Solves 1987 Baltimore Rape Case
Richard Sher

Twenty years after a Maryland Cup Corporation security guard was attacked and raped, Baltimore county police have made an arrest in the case. Two years ago the detectives sent the victim's clothing to the Crime Lab. A DNA profile was extracted from a semen stain. When the profile was run through CODIS, there was a cold hit on Tuesday -- a match to 47-year-old Stephen Lawrence Sellman. He was arrested last night in the Edmondson Village area of Baltimore.

When the attack took place on October 8, 1987, the victim was 38-years-old. The report stated the victim was approached at her security booth by an unknown male who told her he was waiting for someone to pick him up. When she turned away from him, he entered the booth and held a screwdriver to her throat and forced her to perform sexual acts, then raped her.

The victim was transported to GBMC Hospital and was later released. An extensive search for the suspect at the time did not identify or locate him. This week detectives were notified by the Maryland State Police Forensic Services Division that a CODIS match had been made identifying Sellman as the DNA match. He was taken before a court commissioner early Thursday morning where he was denied bail and taken to the Baltimore County Detention Center.

Akron Beacon Journal -- June 30, 2007

Rapist Indicted For Murder Previously Blamed On Innocent Man
Associated Press

Akron, Ohio -- A convicted rapist was indicted on charges of killing a woman in a separate crime that was initially blamed on another man who later received $1 million from the State of Ohio in a wrongful incarceration settlement. Earl Mann, 34, could face the death penalty if convicted in the 1998 strangulation death of Judith Johnson, 58, and the rape and beating of her then-6-year-old granddaughter in Barberton, 40 miles south of Cleveland.

The indictment Friday by a Summit County grand jury comes two years after prosecutors said new DNA evidence linked Mann to the crime scene. His children lived with their mother in a home near Johnson's.

The DNA evidence, taken from a cigarette butt that Mann had discarded at the Mansfield Correctional Institution, was collected by inmate Clarence Elkins, who had been convicted of killing Johnson, his mother-in-law.

Elkins, 44, was exonerated and freed in 2005 after serving nearly seven years of a life sentence. His then-wife raised more than $20,000 for private DNA tests and asked the University of Cincinnati's Ohio Innocence Project to investigate her husband's case.

The state later conducted its own DNA tests, concluding that Elkins could not have committed the crimes and awarded him the settlement. Elkins said he does not understand why it took prosecutors so long to seek an indictment against Mann when "it didn't take them maybe a couple of hours to come after me."

"I'm angry. At the same time glad they're doing the right thing," he said. Elkins, who was convicted largely on the 6-year-old's testimony that he raped her, an account the girl later recanted, said he favors the death penalty and will attend Mann's trial. The DA said the investigation was deliberate and not rushed because Mann was already incarcerated.

Mann, who is serving a seven-year sentence for raping three girls, was indicted on charges of murder, rape and burglary. Mann has said he is innocent and that he does not know how DNA from the crime scene matched that on the cigarette butt.

Ann Arbor News -- July 11, 2007

DA Claims DNA Links Defendant To 1983 Rape-Murder
By Amanda Hamon
News Staff Reporter

A 26-year-old Eastern Michigan University student was stabbed to death in Ann Arbor on May 23, 1983. Twenty-four years later, thanks to DNA evidence, a suspect was ordered to stand trial for the crimes at the conclusion of a preliminary hearing Tuesday. Jimmy Eric Green, 49, is accused of raping and repeatedly stabbing the victim that morning in Peninsular Park, near the Huron River.

The DA presented evidence that Green's DNA matched the DNA collected in a rape kit after the victim's death. But no other evidence was outlined in court tying Green to the slaying of the victim, a U.S. Air Force veteran.

The victim's body was found by fishermen in Peninsular Park, with 23 stab wounds and signs of sexual assault. Green faces charges of first-degree murder and first-degree rape. He is already serving a life sentence for rape in an unrelated case.

The police officer who was assigned the case in 2001 said Green was never a suspect in the original investigation When lab tests on seminal fluid matched Green's DNA profile in the national database in 2003, police began building their case against him.

Heather Vitta, a Michigan State Police Crime Lab forensic scientist, said the profile from the samples unmistakably matched Green. Green's court-appointed defense attorney argued that the DA had limited evidence to tie Green to the

murder. She said the DNA evidence may have been the result of consensual sex.

"So far we've heard no proof he killed her or even that he was in the area at the time," defense counsel said. But the judge said there was sufficient evidence for Green to stand trial and set a pretrial hearing for Aug. 28.

Atlanta Journal-Constitution -- July 14, 2007

DNA Cold Hit Leads To Break In 1987 Georgia Rape Case
By Saeed Ahmed
The Atlanta Journal-Constitution

The case languished for two decades, and the woman who was gang-raped wondered whether her attackers would ever be brought to justice. "She's had to spend all these years looking over her shoulders, wondering whether the delivery man or the person she saw on the street was the same person who attacked her," said the Fulton County DA.

Police now say they've come one step closer to solving the case. On Wednesday, they arrested a man who's a contractor at the Georgia Aquarium. Authorities allege David E. Briney, 45, is one of three men who sexually assaulted the then-25-year-old woman that day in 1987.

When the woman returned from taking out the trash, three men forced their way into her apartment and bound her with neckties. At first, the men demanded money. When they didn't find much, the three of them took turns raping her. The woman could not positively identify her attackers. And when she reported the incident, "the impression we get from looking over the records is that for some reason, people did not appear to have believed her for a large degree," the DA said.

The case went unsolved for two decades, until the Fulton County Multi-Agency Cold Case Squad decided to look into it. The squad was created in the hope that developments in DNA testing could help solve old and challenging homicide and sexual assault cases. Of the 11 arrests it has made so far, five have gone to trial. Each has resulted in a conviction.

The Squad sent the crime scene evidence to the Crime Lab. The extracted DNA profile was run through the Database and resulted in a cold hit -- a match to Briney. He had served time for an armed robbery in Fulton County in May 1989, and had been sentenced to 20 years in prison.

After serving 13 years, Briney, a contract worker with a food services company at the aquarium, was released on parole. On Wednesday, squad detectives had his parole officer call him in for a meeting, and he was taken into custody.

After noticing how similar Briney looked to the composite sketch that was put together with the rape victim's recollection, authorities now plan to release the sketches of the other two men. "When you see the sketch," the DA said, "it's kind of shocking how much it looks like him."

San Francisco Chronicle -- August 17, 2007

Recent Cold Hit Results In 1985 Rape-Murder Trial In San Francisco
Rape Kit In Storage 18 Years Before The Cold Hit Pointed To Defendant
Jaxon Van Derbeken, Chronicle Staff Writer

Jurors heard closing arguments Thursday in a 22-year-old San Francisco murder case in which the only evidence against the defendant was DNA he allegedly left behind during the rape of the 28-year-old victim. The DA said the odds that someone other than the defendant, John Davis, committed the Dec. 4, 1985, burglary, rape and fatal stabbing of the victim were in the quadrillions-to-1 and quintillions-to-1, based on the rarity of his DNA pattern.

"Modern science has finally caught up with Mr. Davis," the DA told the jury in San Francisco Superior Court. "Modern science tells you who raped and murdered the victim." But Davis' defense attorney challenged the reliability of the DNA evidence while at the same time suggesting several theories, including that the victim may have had consensual sex with Davis sometime before the slaying and that someone else committed the killing.

Davis told police, however, that he did not know the victim and had never been in her home. He told investigators, "I don't remember raping nobody." The Deputy Public Defender called the case "very troubling," saying the passage of time since the killing had prevented him from finding witnesses to testify on Davis' behalf or give him an alibi. "There are no witnesses to cross-examine. You cannot under these circumstances prove that this man didn't do it."

Counsel suggested a number of other possible killers -- an unknown stalker, relatives of Davis or even the victim's domestic partner -- suggestions the DA dismissed as "ridiculous." The victim was 28 and was building a career in

commercial photography when she came home from a trip to the store and apparently surprised a burglar in her Potrero Hill home.

She was raped, stabbed several times and her throat was slashed to the point of near-decapitation. The killer took her purse, which was later found in a crawlspace to a housing project where Davis lived. In 2003, investigators concluded that rape evidence kept in storage for 18 years pointed to Davis, who is now 40. He could be sentenced to life in prison without parole if convicted.

Davis already is doing time for a string of crimes, including a 1993 robbery in San Francisco and an attack in prison in 2001 that landed him in Pelican Bay, one of the state's highest-security lockups. Before being charged with the 1985 killing, he had been scheduled to get out of prison by 2008.

Chicago Tribune -- September 1, 2007

Cold Hit Results In Arrest For 1982 Illinois Rape-Murder
By Monique Garcia and Lolly Bowean | Tribune staff reporters

On April 8, 1982 Carbondale, Illinois police were called to the apartment of a 23-year-old Southern Illinois University student. Her front door was ajar and her nude body lay inside. After police initially issued a statement saying, "this incident does not indicate foul play," the student's family had flown her body to Chicago for an autopsy by the Cook County Medical Examiner.

The ME found the young woman was strangled and suffered blows to the head, and determined the death a homicide. No leads were developed and the case went cold until last February when an investigator sought permission to take another look at the case.

His hope was that DNA technology might provide a break. Evidence from the murder scene was retested. A match was made, and on Thursday, the investigator traveled to an Illinois State Prison to arrest Timothy Krajcir, 62, for the 1982 sexual assault and strangulation of the SIU student.

Police gave few specifics Friday about what led them to Krajcir, other than to say DNA collected from the murder scene and sent to the Illinois State Police Crime Labs in Carbondale and Springfield linked him to the crime. Krajcir, an Allentown, Pa. native, has been in prison in his home state and Illinois since 1983.

He enlisted in the Navy in February 1962 and was stationed at the Great Lakes Naval Training Center. He was 18-year-old cook when he was arrested for the rape and attempted murder of a Lake County woman. He admitted to attacking 16 other women in Illinois and the burglaries of seven homes in Pennsylvania before he joined the Navy. He was sentenced to 25 to 50 years in prison in 1963.

His release date could not be determined, but according to Illinois Department of Corrections records, he was imprisoned on another rape charge in 1972. Again, a release date could not be determined.

In 1979, Krajcir was jailed in Illinois and deemed a "sexually dangerous person." He was paroled two years later over the objections of the Jackson County DA. Police say he murdered the SIU student in 1982 shortly after being released, before returning to Pennsylvania. At the time of the slaying, Krajcir was taking justice administration classes at SIU.

In July 1982, Allentown police said Krajcir sexually assaulted three women in two incidents. He spent five years in prison for the assaults and an unsuccessful attempt to escape the Lehigh County Prison with another inmate on May 1, 1983. During his August 1983 sentencing, a judge ordered that Krajcir needed continued psychiatric care. In 1988 he was transferred back to Illinois for violating parole, and has been in custody ever since. At a news conference Friday, Carbondale police acknowledged the bumpy start in its investigation.

Chesterton (Indiana) Tribune -- September 20, 2007

DNA Solves 1979 Double Homicide In Indiana
But Police Learn Two Suspects Are Now Dead

The use of DNA technology has solved a 1979 double murder in Merrillville, the Indiana State Police said, but the suspects will never face justice in this world. Both are dead, one having died in prison while serving a term for an unrelated crime. The homicides occurred on Feb. 1, 1979, at the apartment of the 20-year-old victims, who were found beaten and strangled in an upstairs bedroom. Despite an exhaustive investigation, the ISP said, investigators were never able to secure enough evidence for an indictment.

In the more than quarter century since the crime, however, forensic technology has vastly improved, and DNA evidence recovered at the scene was recently submitted to the Crime Lab. A DNA profile was extracted and run through

CODIS. A cold hit was linked to a man who died in prison, the ISP said, while a warrant was issued to obtain a DNA sample from another suspect who recently died. The latter's DNA was similarly consistent with a second DNA profile obtained at the scene.

The ISP did not release the names of the two suspects. "The families of the victims have been made aware of these findings and the case has been closed," the ISP said in a statement released today.

CODIS "blends forensic science and computer technology into an effective tool for solving violent crimes," the ISP said. "It enables federal, state, and local crime labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders. These DNA indexes are from individuals convicted of certain crimes, such as rape, murder, and child abuse, and are entered into the DNA database. This gives law enforcement officers the ability to identify possible suspects when no prior suspect existed."

The Buffalo News September 18, 2007

DNA Leads To Arrest For 1993 Murder Of Woman In Buffalo
Commissioner Calls It Another Great Arrest By The Cold Case Squad
Family Long Suspected Victim's Estranged Husband Was Involved
DNA Now Exonerates Husband -- But He Died In 2000
By Stephen T. Watson

A 55-year-old Kenmore man was arraigned on a second-degree murder charge today, after detectives from the Buffalo PD Cold Case Squad cracked the 1993 slaying of a South Buffalo woman. Dennis Donohue was arraigned in Buffalo City Court this morning in connection with the 1993 killing of Joan Giambra.

DNA evidence that came to light last year led investigators to the suspect, the Deputy Police Commissioner said. "It was another great arrest by the Cold Case Squad. We do have DNA evidence. That's all I'll say."

News of the arrest cheered Giambra's family, which has been waiting for justice since the 42-year-old woman was found dead Sept. 9, 1993, inside her Hillside Avenue home. The case, which was to be featured on the "America's Most Wanted" television program, had puzzled investigators and family members for 14 years.

Giambra's body was found in her home after two co-workers at a Church food pantry went to check on her because she failed to show up for her shift. Giambra and her daughter, who was found lying on top of her mother's body, were both naked, but police said that there was no sign of sexual assault.

Joan Giambra had been bound, strangled and then untied. Her siblings initially suspected that Joan's estranged husband, Sam, was involved in some way with her slaying. Sam Giambra, who was never identified by police as a suspect, died in 2000.

The case was reopened last year, when improved DNA technology turned up new evidence at the scene. Detectives said that they found DNA samples from three men -- one from under the victim's nails and two from cigarette butts found near the bodies. The genetic material did not match Sam Giambra's DNA, a sample of which was obtained from his autopsy. However, the DNA found under the victim's fingernails did lead police to the suspect they now have in custody, said a Giambra family member.

Newsday -- October 3, 2007

DNA Leads To Arrest For 1976 Rochester (NY) Rape-Murder
DNA Extracted From Suspect's Recently Discarded Cigarette
By Ben Dobbin

Rochester, NY -- A 64-year-old Florida Keys man whose DNA was obtained from a discarded cigarette has been charged with strangling a 7-year-old girl in Rochester 31 years ago, authorities said Wednesday. The girl, who was raped before being killed, vanished in the middle of an April night in 1976 from an apartment building where James Pressler worked as a caretaker.

Her mother said she left her alone at around 2 a.m. to buy cigarettes at a bar and called police an hour later when she returned home to find the girl's bed empty. Pressler, who lives in Big Pine Key near the southern tip of Florida, was arrested and charged Tuesday with second-degree murder and will be returned to New York for trial.

The girl's partially clothed body was found in a grassy area near the apartment building soon after police were alerted and Pressler was at the scene when investigators arrived. The DA said yesterday: "He lived in the same building as the victim and was talked to by the police, but basically the technology just didn't exist to get the link that we ultimately got to tie him to this crime."

New York investigators recently developed undisclosed evidence about Pressler and sheriff's deputies in Florida recently trailed him and collected DNA from a cigarette he discarded that matched evidence gathered in 1976. Pressler, who has lived in Florida for more than 20 years, was being held on a fugitive warrant from New York State. His home was searched and some unspecified items were confiscated.

Tampa Bay News -- October 10, 2007

Cold Hit Results In Arrest For 1994 Florida Rape
Resubmission To Crime Lab Part Of Cold Case Review
Crime Scene Fingerprints Also Match Suspect
By Suzette Porter

Pinellas County, FL – Thirteen years ago a woman who lived in the Lealman area was sexually assaulted by an unknown assailant. Thanks to new advances in DNA technology, Pinellas County Sheriff's Office detectives finally have a suspect. David Allen Ginther, 37, was arrested about 1:35 p.m. on Oct. 9 at his Clearwater home.

The victim, 26, had been sleeping along with four children in her home located in a multifamily dwelling on June 15, 1994, when the suspect entered the home through an unlocked bedroom window about 4:30 a.m.

Detectives said the suspect placed a metal object to the victim's throat and told her that he would kill her if she did not cooperate. The suspect then blindfolded the victim and led her out of the room where two children slept. The victim was taken into a vacant bedroom, where she was sexually battered for an hour. The suspect then fled from the scene.

Investigators submitted the crime scene evidence for DNA analysis. However no suspect was identified and the case remained unsolved. Detectives resubmitted the evidence for DNA testing in May 2007 as part of a cold case review. Newer DNA technology was used to analyze evidence that had previously been tested 13 years ago.

In August, the Crime Lab extracted a DNA profile from the evidence and ran it through the State DNA Database. There was a cold hit -- a match to Ginther's profile. Detectives then resubmitted latent prints lifted from the crime scene. They also matched Ginther's.

Monterey (CA) Herald -- October 16, 2007

CODIS Cold Hit Results In Arrest Of Convict For 1991 Albuquerque Murder
The Associated Press

Albuquerque -- A prison inmate has been charged in the slaying of a man in Albuquerque 16 years ago, thanks to CODIS that tracked him through the California prison system to Wyoming. Mark Allmond was charged Sunday with murder.

The 43-year-old victim was fatally stabbed Aug. 31, 1991. Dirk Manuel, who was convicted of first-degree murder in the killing and sentenced to life in prison, said the victim owned him $50 from a drug purchase. Manuel told detectives that he and a friend named Frosty sneaked into the victim's apartment and that Frosty took Manuel's knife and cut the victim four times.

Last spring, Albuquerque police requested the Crime Lab to do a DNA analysis of blood collected from the murder scene. A DNA profile was extracted and entered into CODIS. There was a cold hit. Albuquerque police received a call from the California Department of Justice saying the profile matched that of an ex-convict named Mark Allmond.

Police tracked Allmond to Wyoming, where he is incarcerated at the state penitentiary at Rawlins. He was sent to prison after his probation was revoked Feb. 22 for driving a vehicle under the influence of alcohol in Laramie County.

Seattle Post-Intelligencer -- October 24, 2007

Cold Hit Solves 1978 Seattle Murder; Victim's Clothes Held For 30 Years
Victim's Brother Prompted Detective To Send Evidence To State Crime Lab
DNA Profile Extracted And Run Through Database; Cold Hit Results
By Tracy Johnson

A 15-year-old girl was abducted near a bus stop and stabbed to death almost 30 years ago. Seattle police say DNA evidence now points to Clarence E. Williams, who killed a young woman less than three months later. On Wednesday, King County prosecutors charged him with murdering the girl in 1978. He will be arraigned Nov. 7 in King County Superior Court.

On Tuesday, a Seattle PD cold case detective paid Williams a visit in a Minnesota prison where more than 400 Washington inmates are being housed. The 62-year-old man -- who has a chance for parole in less than eight years --

insisted he didn't kill the woman he's convicted of murdering and had nothing to say about the girl's death, he said.

On July 2, 1978, the victim and a girlfriend saw a movie downtown and took the bus back home to Ballard. She was last seen walking from the bus stop toward her house. Her body was found the next day in the men's room of a gas station more than a mile away. She'd been stabbed in the neck, chest and head.

Police concluded she'd almost made it home. A neighbor reported hearing a scream and the screech of tires. Her purse and clogs turned up in an alley. At the time, police made a public plea for clues. Her father and others later offered a $5,000 reward for information, but the case eventually reached a dead end.

A detective began looking into the girl's unsolved killing after a call a few years ago from the victim's brother, who'd occasionally checked with police over the years. He tracked down old reports and remnants of the investigation: The denim outfit she had worn -- a ticket stub for "Damien: Omen II" still tucked into a pocket -- and the key: microscopic evidence that she may have been sexually assaulted.

He sent the evidence, found inside the girl's clothing, to the Washington State Patrol Crime Lab, where scientists and today's DNA technology revealed a genetic profile. They entered it in a database of convicted felons' profiles last year and found a match with Williams.

On Sept. 25, 1978, a jury found, Williams kidnapped a woman from the Beacon Hill 7-Eleven store where she worked, stabbed her 19 times and left her body in the closet of a boarded-up house. At the time, police identified Williams with the help of a surveillance photo taken at the store.

The man maintained his innocence right up to his sentencing. His voice filled with emotion, he said, "I feel I'm being made an example of for somebody else's crime." Police are now looking into whether he killed anyone else in the Seattle area, where he lived for at least four years, and have contacted detectives in his hometown of Milwaukee.

The Seattle Times -- October 26, 2007

Cold Hit Results In Arrest For 1981 Seattle Murder
Most Of The Crime Scene Evidence Destroyed By PD In 1980s
By Jennifer Sullivan

The Seattle Police Department's Cold Case Unit had long struggled to solve Wilma Williams' 1981 slaying. Solving the crime was a challenge because the murder weapon, bloody clothes and other crime scene evidence had been destroyed by the Seattle PD in the 1980s. Not destroyed were just six sperm left as evidence from the crime. Detectives knew that solving the case would be virtually impossible unless there were technological advances in examining DNA.

A private lab in Virginia managed to obtain a full DNA profile from the sperm. When the extracted profile was run through the Washington State DNA Database, there was a cold hit -- a match to a felon named Darrell Lowe. The 53-year-old convicted offender was charged with first-degree murder and is scheduled to be tried next year.

The new case marks the eighth time King County prosecutors have filed murder charges in long-unsolved homicides since early last year, when four deputy prosecutors were assigned to handle such cases exclusively.

Worcester (MA) Telegram & Gazette – December 14, 2007

DNA Sample From NY Prisoner Produces Cold Hit That Solves 1984 Massachusetts Murder
DNA Again Proves A Valuable Detection Aid
Shared Databases Made Possible Rapid Comparison Of DNA Crime Scene Evidence Collected In Countless Cases Around Nation

While the basics of crime detection and prosecution have remained fairly constant for centuries, the combination of DNA typing and computerized data sharing is proving to be highly potent weapon in the crime fighter's arsenal.

That was demonstrated this week when DNA evidence in a New York case led to a potentially decisive break in the stabbing death of a 79-year-old murdered in Worcester 23 years ago. The break came when the DNA profile of a man convicted of a sex crime in New York matched that of blood evidence taken from the Worcester murder scene. Craig Minggia, 47, of the Bronx, lived in the same building as the murder victim in 1984.

Systematic police procedure was critical. Although DNA testing was still a tool of the future, investigators scrupulously preserved the blood evidence that now has linked the two crimes.

Even with most careful evidence handling, however, it is exceedingly unlikely the two crimes — committed two decades and hundreds of miles apart — ever would have been linked before shared databases made possible the rapid comparison of DNA and other crime scene evidence collected in countless cases around the world. DNA data sharing is only one of the crime fighters' weapons, but the message to criminals is clear: You can still run, but it is becoming increasingly difficult to hide.

Indianapolis Star -- January 28, 2008

Innocent Man Exonerated By DNA Evidence Freed Today From Indiana Prison After 24 Years
Same DNA Identifies Real Killer Who Was Arrested Friday
By The Associated Press

Terre Haute, Ind. — An inmate who spent more than two decades in prison for a brutal slaying walked from a Terre Haute courthouse a free man after DNA evidence exonerated him. Thirty-nine-year-old David L. Scott appeared in Vigo County Superior Court today for a release hearing. Prosecutors said DNA evidence clears him of the 1984 killing of an 89-year-old woman. The evidence instead shows that Kevin Mark Weeks of LaGrange, Ky., was the person who bludgeoned Keith to death in her bed with a hydraulic jack. Weeks was arrested Friday. Scott and his family avoided reporters after the judge ordered his release and he left the courtroom.

The Dallas Morning News -- January 30, 2008

DNA Reveals True Rapist In 1982 Dallas Case; Clears Wrongly Convicted Man Of Charges
Third Case In Dallas Where DNA Also Identified True Perpetrator
Nationally, Actual Perpetrator Found 40% Of Time When Someone Is Exonerated By DNA
Finding True Assailant Where DNA Exonerated Wrongfully Convicted Person Remains A Priority For Dallas DA
By Jennifer Emily / The Dallas Morning News

DNA tests show that a transient serial rapist wanted for sex crimes in several states is the perpetrator in a case in which DNA revealed another man was wrongfully convicted of sexual assault, the Dallas County district attorney's office said Tuesday.

But there will be no justice for Sidney Alvin Goodyear in that 1982 sexual assault and burglary. He died 10 years ago in a Texas prison, even as Steven Charles Phillips sat behind bars for a crime he didn't commit, said Mike Ware, who oversees the conviction integrity unit for the DA's office. Phillips, 49, is one of 15 men exonerated by DNA testing in Dallas County since 2001 – more than any other county in the nation. "He's glad they identified the right person," said his attorney.

Phillips had also pleaded guilty to eight related cases that authorities believe were committed by Goodyear. His attorney said he pleaded guilty to the other crimes because he feared an even longer prison term after losing two jury trials. He added that he hopes to clear his client in those cases as well.

Phillips, who was paroled in December in the last of those cases, had no criminal record from before the string of sex crimes, although he admitted to police that he had been a Peeping Tom. Goodyear was serving a 45-year sentence for burglary with intent to commit sexual assault out of Harris County when he died of liver cancer in 1998 at age 50.

During the time between the 1982 rape for which Phillips was wrongly accused and when Goodyear was arrested in Harris County in 1984, Goodyear committed numerous sexual assaults and burglaries in California. The crimes he committed in California in late 1982 were very similar to those committed in Dallas. In one of the California cases, he forced two women who had been playing tennis to take off their clothes. He also held 14 women at an exercise

class at gunpoint and sexually assaulted some of them. He sexually assaulted a clerk at a bathing suit store and exposed himself to schoolchildren.

A California prosecutor called Goodyear a "sick, sick man." He was arrested while working as a teacher at a California church camp in December 1982. He escaped from a court holding cell in January 1984. He was arrested the next month in Harris County and was jailed until his death. He was also wanted for prosecution in Kansas, Georgia and Missouri on numerous sex crimes.

Goodyear was extradited to California from Texas in 1985 and sentenced to 20 years in prison. He pleaded guilty to 10 sexual assaults and robberies. His job, possibly as a construction worker, allowed him to travel throughout the country, Ware said.

Authorities who investigated the case for which Phillips was wrongfully convicted believed that a single attacker victimized as many as 61 people at apartment complexes, gyms and spas in Dallas and Kansas City during a six-week period in April and May 1982. In those incidents, an armed man threatened to shoot his victims. In some cases, he left after forcing them to strip. He forced others to pose nude. He fondled them or forced them to fondle others.

Victims in the cases spoke of the perpetrator's striking blue eyes. Goodyear's eyes were blue. Phillips has green eyes. Goodyear was a suspect in the Dallas County case for which Phillips was convicted. A warrant was issued for his arrest but was never executed. Ware said that records he has reviewed don't indicate why Goodyear was never arrested.

After Phillips was cleared of the sexual assault and burglary last year, the DA suspected Goodyear might be the perpetrator. Prosecutors asked for the DNA from the sexual assault to be compared with blood saved from Goodyear's autopsy. A Texas Department of Criminal Justice spokeswoman said it's common for a sample of an inmate's DNA to be preserved from an autopsy.

Of the 15 DNA exonerations in Dallas County, this is only the third case in which prosecutors have identified the true perpetrator. Jason Kreag of the Innocence Project in New York, another of Phillips' attorneys, said that nationally, the actual perpetrator is found just less than 40 percent of the time when someone is exonerated by DNA. Of the 212 DNA exonerations nationally, the real perpetrator was found in 80 cases, Mr. Kreag said.

In two other Dallas County exonerations, the men believed to be responsible have died. Entre Nax Karage was pardoned in 2005 for the 1984 murder of his girlfriend. DNA showed another man, now deceased, was responsible. In the case of James Curtis Giles, who was exonerated last year in a gang rape, another man pleaded guilty just after Giles was convicted. But two other men prosecutors say are connected to the crime died.

Ware said the district attorney's office could be close to finding the perpetrators in other cases, but he declined to discuss them. He said finding the true assailant in cases where DNA exonerated a wrongfully convicted person remains a priority for the district attorney's office. "It's extremely important," he said. "It's equally as important as exonerating the right person."

Michelle Moore of the Innocence Project of Texas, who handles post-conviction DNA requests for the Dallas County public defender's office, said that it's likely that the actual perpetrators in other cases in which Dallas County men were wrongly convicted are still alive. "At some point, the DNA is going to come back to someone who isn't dead. It will be interesting to see how they handle it and what they do with these cases."

Journal Inquirer (Connecticut) -- January 30, 2008

Long Delayed Cold Hit Leads To Arrest For 1996 Connecticut Rape-Burglary
Police Official Explains 12-Year Hiatus: "There's A Kind Of Priority Of Backtracking DNA Cases. They're Slowly Weeding Through All This DNA That They've Had For Years And Years"
By Robert D. Muirhead, Journal Inquirer

Manchester, CN - Officers arrested a Bristol man Tuesday in connection with a decade-old rape case when DNA from the case matched his during a routine check of the DNA database. Police arrested the man, Robbie Quinones, 32, after a routine check of old cases against a DNA database found him to be a match, according to a spokesperson for the Manchester Police Department.

The case goes back to the early morning hours of April 7, 1996, when a Manchester woman reported to police that she had just been raped. The woman had been sleeping when she heard someone moving around in her apartment. The woman assumed it was a friend of hers, but a man who she told police was unknown to her entered her bedroom with a knife. The man held her at knifepoint and raped her, she told police, before leaving the apartment.

Officers initially investigating the incident could find no sign of a break-in, and developed no suspects, the spokesperson said. The results of a routine rape kit gave officers a DNA profile, but no further identifying information. However, 11 years later, routine DNA checks of backlogged police cases netted officers a match. "There's a kind of a priority of backtracking DNA cases," the spokesperson said. "They're slowly weeding through all this DNA that they've had for years and years."

According to the spokesperson, investigators regularly check backlogged cases against a DNA database. The database contains the identifying DNA information of every felon who enters the prison system. On May 26, 2007, Manchester officers got a suspect for the 1996 case. "Pretty much the investigation was done years and years ago, before any of us wound up with it," the spokesperson said. Quinones was being held on $500,000 bond and was to appear in Manchester Superior Court today.

The Ann Arbor News -- January 31, 2008

Vaginal Swabs Placed In Paper Envelope Years Ago; Swabs Recently Tested Failed To Yield DNA Profile
But Stain On Envelope Yielded DNA Profile That Produced Cold Hit Resulting In Arrest For 1983 Michigan Rape-Murder
By Susan L. Oppat The Ann Arbor News
http://www.mlive.com/news/annarbornews/index.ssf?/base/news-26/120179402672500.xml&coll=2

The case against Jimmy Green hinged on a single piece of evidence - and the ingenuity of a Michigan State Police Crime Lab scientist. The case was made by Heather Vitta, supervisor of the biology and DNA division of the MSP lab in Northville. After the crime lab tested vaginal swabs taken from the body of the victim in 1983 for blood type - DNA testing was still several years away - the evidence went back into a property room.

More than 20 years later, Vitta opened the paper envelope containing the swabs. Evidence is stored that way so it will air dry rather than be degraded by bacteria that can develop in a plastic bag. Vitta testified that she found some DNA in the swabs, but not enough for a definitive match.

Then she found a stain on the envelope - one that commonly develops when a wet swab is placed in a paper envelope. In cold cases, Vitta said, "sometimes

all of the evidence available at the time of the crime is no longer available, and we are required to think of other ways of obtaining the same information."

She's never heard of anyone else trying it, but Vitta tested the stain - and found enough DNA for a match to Green. His DNA was already in the Combined DNA Index System - CODIS - from a previous rape conviction. "It's very rewarding when we can provide some closure to the families of victims of such heinous crimes," she said.

Newsday -- March 14, 2008

DNA Helps Convict Man Of 1974 Buffalo Murder; Victim's Children Asked PD Cold Case Squad To Look At Case
DNA Profile Extracted From Pubic Hair Found At Crime Scene And Preserved In Evidence Room For More Than 30 Years
Detectives Followed Suspect Until He Spat On Sidewalk Early Last Year; Picked Up Saliva With Cotton Swab; Matched To DNA Taken From Hair

Buffalo, N.Y. (AP) _ A man long suspected of killing his sister-in-law 34 years ago has been convicted on a murder charge brought after detectives collected his saliva from a sidewalk and matched his DNA to old crime scene evidence. A jury deliberated two days before convicting Leon "Rusty" Chatt, 62, in the March 1974 death of Barbara Lloyd. "This means the world to me," the victim's husband said after the verdict Thursday evening. "I knew who did it before. I always knew."

The victim's husband was interrogated at length before being ruled out as a suspect after finding his wife's body in their Buffalo home, a kitchen knife protruding from her chest. The 27-year-old victim had been raped and stabbed at least 16 times as her two small children slept nearby.

"Finally it's his turn now and he has to do the time for what he did," the victim's son, who was three when his mother died, said after a state Supreme Court jury convicted Chatt of second-degree murder. The son and his sister who was 18 months old at the time of the murder, asked the police cold case squad in 2003 to take another look at their mother's death and Chatt, who they had suspected through the years. Chatt was married in 1974 to the victim's sister.

Investigators followed Chatt until he spat on a sidewalk early last year, then picked up the saliva with a cotton swab. It was matched to DNA taken from pubic hairs found on Lloyd at the murder scene and preserved in an evidence room for more than 30 years.

"Ultimately, there was no reasonable, innocent explanation for the defendant's DNA to be found within six inches of the victim's body," the DA said. At trial, defense counsel accused victim's husband of killing his wife to end a dysfunctional marriage. Chatt and his wife eventually moved to Georgia and Arizona and divorced. He spent time in prison on a 1984 forgery conviction and again on a 1994 burglary conviction before returning to Buffalo, where he worked as a stagehand. An earlier trial ended in a mistrial in October. Chatt faces a maximum prison term of 25 years to life when he is sentenced May 14.

WASHINGTON
LEGISLATIVE OFFICE

April 17, 2008

The Honorable Robert C. Scott
Chair
House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security
Washington, D.C. 20515

The Honorable Louie Gohmert
Ranking Member
House Subcommittee on Crime, Terrorism, and Homeland Security
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Dear Chairman Scott and Ranking Member Gohmert,

Thank you for your attention to forensic DNA databanks at your April 10th hearing entitled, "Reauthorization and Improvement of DNA Initiatives of the Justice for All Act of 2004." As you know, DNA databanks have significant implications for our criminal justice system, as well as for civil liberties.

A question was raised during the hearing by Rep. Weiner as to whether DNA should be taken from all individuals who are arrested. In particular, Rep. Weiner asked whether an individual who is arrested for jumping a turnstile should be required to provide a DNA sample, and whether the taking of DNA is analogous to current requirements to provide fingerprints.

The ACLU, an organization representing 600,000 members, is strongly opposed to the expansion of DNA databases to arrestees on grounds of privacy and constitutionality, as well as practicality.

In America, people are 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. While U.S. courts have generally ruled that DNA banking of convicted felons is permissible because a person who has been convicted of a crime has a "diminished expectation of privacy," this cannot be said for those persons who have simply been arrested.[1]

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[1] *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* note 6, at 308.

The privacy stakes associated with collecting and warehousing law abiding individuals' DNA are far greater than for fingerprints. While fingerprints are two-dimensional representations of the physical attributes of our fingertips that can only be used for identification, DNA samples can provide insights into personal family relationships, disease predisposition, physical attributes, and ancestry. Repeated claims that human behaviors such as aggression, substance addiction, criminal tendency, and sexual orientation can be explained by genetics render law enforcement databanks especially prone to abuse. These concerns are driven by current law and laboratory practice, where the offender biological samples are retained along with the generated DNA profiles.

Law enforcement already has ample authority to collect a DNA sample from an arrested individual in those cases where a court-issued warrant supported by probable cause is obtained first. DNA samples collected under these circumstances may be tested and compared with the 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 lifelong genetic surveillance unless or until he or she is convicted of a crime.

The expansion of DNA databases to arrestees would also perpetuate racial biases that are systemic to our criminal justice system. The persistent and well-documented practice of discriminatory profiling in law enforcement[2] combined with expanded DNA collection would result in an increasingly skewed criminal database in which minorities are overrepresented.

Privacy and racial justice issues aside, encouraging the states to expand their databases to arrestees is at best impractical and perhaps impossible. As was well demonstrated throughout last week's hearing, laboratories across the nation are facing extraordinary backlogs. These backlogs, caused primarily by the heedless expansion of the state databases to ever more categories of individuals, have led to extensive delays in the processing and testing of rape kits and other crime scene evidence.

Lengthy delays in testing DNA from crime scenes can have tragic outcomes. For example, an emergency report issued last year by the California Commission on the Fair Administration of Justice, a bi-partisan panel of criminal justice experts and practitioners, documented enormous backlogs of approximately 160,000 untested DNA samples arising from the expansion of California's databank to all felons. In addition, the panel reported that "delays of six months or more have become the norm" in analyzing rape kits. In one case, a rapist attacked two more victims, including a child, while his DNA sat on a shelf awaiting analysis.[3]

As you might recall from the hearing, the expert witnesses could not even provide a ballpark estimate for the amount of federal funding that would be required to eliminate the current

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[2] For example, a U.S. Department of Justice survey conducted in 2002 found that black and Hispanic drivers were subjected to searches, arrests and use of force more often than white drivers. Bureau of Justice Statistics, *Contacts between Police and the Public: Findings from the 2002 National Survey*.

[3] California Commission on the Fair Administration of Justice, *Emergency Report and Recommendations Regarding DNA Testing Backlogs*, Feb. 20, 2007.

backlog. As such, it would be fiscally irresponsible for Congress to promote in any way the collection and analysis of DNA from all 14 million individuals who are arrested every year in the United States. Moreover, a massive expansion of this sort could undermine law enforcement practices by diverting resources from other important programs and rendering our already underfunded and understaffed crime laboratories vulnerable to quality assurance problems and increased error rates.

DNA testing is an extraordinarily important tool that can and should be used for solving crime. But each time we expand a criminal DNA database to include more categories of people and more DNA samples, concerns for privacy, legality, practicality, and cost escalate while returns to law enforcement diminish. Crossing the line from convicted offenders to arrestees or other innocent persons renders a database a tool for surveillance rather than one for investigating crime and should not be tolerated.

Please feel free to contact Jesselyn McCurdy, Legislative Counsel, at (202) 675-2314 or jmccurdy@dcaclu.org for more information or to discuss the ACLU's concerns about expanding DNA databanks.

Sincerely,

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Director
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ATTACHMENT B

Press Clippings: Victims of Lost DNA Evidence

When biological evidence is improperly preserved, and is therefore unavailable for DNA testing, there are many victims. The wrongfully convicted cannot get crime scene evidence connected to their cases subjected to post-conviction DNA testing; crime victims of unsolved cases will never know who is responsible for their suffering; and the public at large will never be safe from violent criminals who elude detection. The following news stories demonstrate the consequences of improperly preserved, lost or destroyed evidence and speak to the need to address this vital issue nationally.

Bill would require new trial if DNA evidence destroyed – March 25, 2008

The Associated Press

DENVER—Convicted criminals would automatically get a new trial if DNA evidence is destroyed under a bill given initial backing by the Colorado Senate.

The measure was inspired by the case of Clarence Moses-EL, who says he was wrongly convicted of a 1987 rape in Denver. Police destroyed evidence in the case after a judge ordered it be tested further.

The bill has broad bipartisan support, but is opposed by prosecutors. Crime victims and their families worry they would have to go through another trial even if there's other strong evidence in the case.

Republican Sen. Josh Penry says clemency should be considered in Moses-EL's case but the Legislature shouldn't change the law to respond to it. Democratic Sen. John Morse says the change is needed because the case has uncovered a hole in the current system.

The bill must pass another vote in the Senate before it goes to the House.

Dayton Daily News February 3, 2007

Evidence Missing From Court File Of Death Row Inmate
By Tom Beyerlein

SPRINGFIELD — For the second time, evidence in Ohio death row inmate Timothy Coleman's 1996 murder case has turned up missing from Clark County's custody just as Coleman's defense was seeking to have it scientifically tested.

A federal judge in September granted a defense request to have independent DNA testing conducted on crime scene evidence, including the murder victim's shorts and underwear. But defense attorney Kelly Culshaw said she learned in mid-January that when Clark County Clerk of Courts officials looked for the items, they found the evidence box for Coleman's case was open and, while other evidence was present, the shorts and underwear were missing.

"I've been doing this for 10 years and this is the first case I've had where evidence has gone missing," said Culshaw of the Ohio public defender's office. "It's certainly disconcerting that three pieces of evidence have come up missing. Did it have helpful evidence for us — is that why it disappeared? (Or) is it just poor record-keeping?"

Culshaw has asked the federal judge to allow her to take a sworn deposition from the Court Clerk about how evidence is handled there. The Ohio attorney general's office has not objected. The Court Clerk admitted the evidence is "not that well protected. We're still digging around, trying to see if we can recover it, but so far it hasn't come up at all." Boxes of evidence from long-ago crimes are kept in public areas alongside public records at the Clerk's office. He said it's his understanding that such evidence is considered public record.

Several years ago, it was learned that Clark County lost a tape of a statement Coleman made to police. The defense wanted to have the tape electronically enhanced in hopes of hearing "big hunks" of inaudible conversation that may have helped Coleman, defense counsel said.

Coleman, now 37, was sentenced to death for the Jan. 2, 1996, execution-style murder of a Woman who was a police drug informant and who was to testify against him. The DNA testing is important because in 2001, years after Coleman's conviction, another death row inmate from Springfield swore in an affidavit that he killed the victim after having sex with her. If William Sapp's DNA is found on the crime scene evidence, it would bolster his story and cast doubt on Coleman's involvement, the defense argues.

Bode Technology Group is already testing a rape kit that was part of the victim's autopsy and a malt liquor bottle found near her body. A previous DNA test on those items was inconclusive, but the victim's garments were never tested.

Coleman, in a phone interview Friday with the Dayton Daily News from the Ohio State Penitentiary in Youngstown, proclaimed his innocence and said witnesses who testified at his trial that he bragged about killing the victim had reason to lie, because they were also facing drug charges and wanted to curry favor with police. He also said he was "set up" for the murder by authorities. "The box has been opened and the stuff is gone," Coleman said of the evidence. "I'm innocent — they set me up."

Sapp, 44, is on death row for the notorious 1992 murders of two preteen girls and of a Springfield woman named Belinda Anderson. The Ohio AG said last month he's certain of Coleman's guilt.

The Story Of Adam Walsh

In the summmer of 1981 the Walsh family was living the American dream. Adam was a happy 6 year old. John was building a successful marketing career and Reve was soon to learn that they were expecting their 2nd child.

The abduction and murder of Adam Walsh is perhaps one of the most famous child abduction cases. It is certainly one of the most frustrating. Over the years a grotesque serial killer confessed and recanted several times. But 25 years later, Adam's murder is still unsolved.

In the summer of 1981, Adam Walsh was a typical six year old boy whose life revolved around baseball and Star Wars. Adam lived with his parents, John and Reve Walsh, in a comfortable three bedroom home on McKinley Street in Hollywood, Florida, a growing city with a small town feel. In the Walsh household that summer, Reve and John had celebrated their 10th wedding anniversary, and they had decided to have another baby, a brother or sister for Adam.

July 27th started like any other summer morning for the Walshes. John, a marketing director, went to work at his office in Bal Harbor. Reve planned her day over a cup of tea, while Adam watched cartoons on the family couch. Reve was heading to the gym, but needed to run a few errands before dropping Adam off with John's mother, who they all affectionately called "Gram."

Reve fed Adam a hotdog and told him to get dressed. She had laid out for him a red and white striped short-sleeved IZOD shirt, green running shorts and his sneakers. Instead of his sneakers though, Adam put on his yellow flip flops. Rushed for time, Reve let it go. Adam was also wearing his beige captain's hat. It was way too big for him, and almost covered his eyes, but he loved it. And besides, it was hot, in the 90's already. Reve and Adam got into the family car, a grey Checker cab, and took off to run errands.

After dropping off Adam's tuition check at his school, St. Mark's, Reve drove to the

Sears and Roebuck store in the Hollywood mall, to see about some brass lamps they had on sale. Reve parked the Checker where she typically parked at the north side of the receiving dock. They entered the store and walked past receiving and the catalogue desk and entered the toy department. It was around 12:15pm.

There was a display of new video games at the toy department and Adam asked if he could stay there and play with the other boys. Reve said it was okay. She told Adam she would be in the lamp department -- only three aisles away. After shopping, Reve promised her son they would go into the mall and get ice cream.

Adam's Last Known Moments

Only minutes after Reve left Adam in the toy department, a fight broke out between the boys over the controls of the video game. Sears personnel called for security to break up the fight. 17-year-old Kathryn Shaffer-Barrack, who had only been a security guard for a short time, responded.

Approaching the boys, Kathryn told them fighting wasn't allowed in the store. She asked two black boys if their parents were in the store and they said 'no.' She assumed the two blond, white boys -- a 10 year old and 6-year-old Adam -- were together, and asked them if their parents were in the store. The older boy answered no.
Kathryn directed the black boys and the white boys to leave by separate exits of the store.

Adam didn't tell the security guard his mother was in the lamp department; he followed the older boy out of the West exit of Sears into the parking lot. John and Reve believe Adam didn't tell the security guard about his mother, because he was a timid child and mindful of authority. Knowing their son, they believe he may have been too scared to say anything.

Whatever the reason, 6-year-old Adam Walsh was now standing outside of Sears at an entrance he was unfamiliar with, quite possibly waiting for his mother to find him.

The story Toole told detectives that night is what would lead the Hollywood Police Department to announce a few days later, that they had their man.
Where Could He Be?

This is the last known photo of Adam. Taken about a week before his murder, it shows his new missing tooth.

Only five to ten minutes after Reve left her son in the toy department she returned. Adam was nowhere to be found. Reve's frantic search for her son that hot July afternoon has grown into a 25-year search for answers: Who took her son? Why did they kill him?

On July 27th 1981, John and Reve Walsh launched what is still considered today the largest manhunt for a missing child in the state of Florida. But two weeks later when Adam's severed head was discovered in an irrigation canal by two fisherman, one hundred miles away in Vero Beach, the harsh reality set in. Ronald Wright, the Broward County medical examiner ruled Adam's death a result of asphyxiation; the severing of his head was done post mortem. But Wright believes that Adam was more than likely murdered the very day he disappeared.

Mindful of the fact that Adam's remains could help catch his killer, the Walshes held a Mass of Angels for their son days later with only a symbolic casket. No burial followed. Adam's skull rests, to this day, at the Medical Examiner's office in Broward County.

On November 14, 1981, Adam would have turned seven. A few weeks later, around Thanksgiving, Reve discovered she was pregnant. Meghan Walsh was born to John and Reve on July 15, 1982. Reve told the local newspapers "there is no substitute for Adam. The new baby "will make me miss Adam more. He always wanted a sister."

Finally, A Break?

Two years went by with little progress on Adam's case. Then a drifter from Jacksonville, Florida named Ottis Elwood Toole confessed to killing Adam. It was the beginning of a whole new emotional roller coaster for John and Reve Walsh.

On October 10, 1983, Toole, the crime partner and homosexual lover of infamous serial killer Henry Lee Lucas, was serving a 20-year sentence for arson at Union Correctional Institution in Raiford, Florida. He'd been in and out of the system most

of his life and had known Jacksonville Detective Buddy Terry for 18 years. He told Det. Terry that he was responsible for killing a young boy in the Ft. Lauderdale area.

At the time, Henry Lucas, was on trial for the murder of a ranch owner in Williamson County, Texas. During the summer and fall of 1983, the two men confessed to committing hundreds of murders during a four-year crime spree across the US.

Hollywood Detectives quickly traveled to interview Ottis Toole. In a midnight interview, Toole told Det. Jack Hoffman and Det. Ron Hickman the lead detectives on Adam's case, that he and Lucas had abducted a young boy they saw running frantically around a Sears parking lot.

Toole implicated his partner Lucas in the abduction of the boy. Toole said he drove their 1971 white Cadillac north on the turnpike toward Jacksonville, while Lucas terrorized the child, who was sitting between them in the front seat of the car. Toole said it was Lucas who had cut off the boy's head in a wooded area they found off the turnpike. He said Lucas used a machete; Toole said he held the boy down.

Toole described the boy as being between the ages of 7-10. He said he was "pretty" looking and was dressed in dungarees, a blue shirt and sneakers. The detectives were skeptical of Toole's story. Adam was only 6 and a half and was wearing shorts and flip-flops that day. When they showed Toole a picture of Adam he did not initially think he was the same boy.

Shortly after the interview, detectives learned that Henry Lucas couldn't have been involved in Adam's abduction and murder, because at the time he'd been in a Virginia jail for car theft. When confronted with this information, Toole admitted to the detectives he had lied. He now said the he, not Lucas, had abducted and killed the boy.

The story Toole told detectives that night is what would lead the Hollywood Police Department to announce a few days later, that they had their man.

Ottis Toole's Twisted Tale

Over the years, Ottis Toole confessed and recanted time and again to the murder of

Adam Walsh. To this day he is still the prime suspect.

Toole claimed to Dets. Hoffman and Hickman that he abducted and killed Adam Walsh. He said he had seen the child on the west side of Sears. He said he coaxed the boy to his car after 15 minutes of conversation in the Sears parking lot. Toole said he had promised Adam candy and toys. When he got Adam in his Cadillac, Toole locked the windows and doors, then drove 10 minutes on Hollywood Blvd to the turnpike entrance and got on heading north toward Jacksonville.

Toole said Adam was initially quiet but became restless and wanted to return to the store after they stopped at the toll booth. Toole continued driving, but Adam started yelling and Toole said he had to slap him several times because "the kid was getting on my nerves." Toole said he pulled off the turnpike at a service plaza and choked the boy to knock him out. Toole said he drove an hour looking for a place to kill the child. Toole was fearful because he felt the boy was smart and would have recognized Toole if he let him go.

Toole said he found an area where he could pull his car off the turnpike and be protected by the cover of woods. He laid Adam on the ground and using a machete, he kept under the driver's seat of the Cadillac, he chopped the boy's head off. Toole said it took 4 to 5 blows to sever the head and he had to use two hands. Toole said he buried the body and placed Adam's head first on the front floorboard and then on the rear floorboard of the Cadillac.

Toole said he threw the head in a canal a short distance from where he left Adam's body, and then returned to Jacksonville.

"Had the boy regained consciousness after Toole choked him?" investigators asked. "No," Toole said. Detectives thought it was quite reasonable to assume that Adam was probably already dead in the car, long before he and Toole even reached the woods.

Toole told detectives he took the boy because he wanted to raise him as his own son. He said he had lied about Henry Lucas' involvement to "get even with his ass." Lucas had recently admitted to murdering Toole's favorite niece, 15-year-old Becky Powell. Like Adam, Becky had been decapitated.

Detectives noted Toole's demeanor while talking about Adam. He was crying and remorseful. A much different Toole, than what other detectives had seen. In confessing other homicides Toole openly bragged about what he had done, relishing

the grizzly details of mutilation, including in some cases, acts of cannibalism.

Detectives noted that Toole's description of the murder weapon and the number of times he used it to sever Adam's head was consistent with the Medical Examiner's findings. There was no mistaking that Toole knew details of Adam's murder that only the killer would know.

The Infamous White Cadillac

Detectives quickly located the 1971 Cadillac Toole had once owned. It was in a Jacksonville car lot. Initial luminal testing indicated the presence of blood on the front and rear floorboards of the car -- exactly where Toole said he had laid Adam's head. The Hollywood Police department asked the Florida Department of Law Enforcement lab in Jacksonville to handle the evidence for them. The Cadillac was sent to the FDLE lab for processing and seven squares of carpeting were removed for further testing.

On October 21, 1983, under tight security, Toole was taken to Hollywood, Florida. He walked detectives through his steps that fateful July afternoon. Toole identified the correct Sears store where he said he had abducted Adam. He correctly identified the canal where he said he had thrown Adam's head. Toole also showed detectives a woody area in a citrus grove where he said he had severed Adam's head and then buried the rest of Adam's remains.

Short-Lived Closure

That very night at a dramatic news conference, Hollywood Police Chief Sam Martin told South Florida citizens what they'd been waiting two years to hear: The man responsible for Adam Walsh's murder had been located and he had confessed. A photo of Ottis Ellwood Toole was released to the media. John and Reve Walsh thought they were on the way to closure in the case.

John Walsh addressed the media the following day, "My heart will always be broken for the rest of my life. I miss Adam more now, than when he went missing, because the reality hadn't set in at that time." John said he prayed that the "criminal justice system will not break down and that Adam will receive justice."

But 25 years later, there is still no justice for Adam Walsh. Without physical evidence to tie Toole to the murder, the State Attorney refused to prosecute the case.

An exhaustive search of the wooded area where Toole said he had buried Adam's body turned up nothing. Then, Toole's story started to change. He began to wonder

aloud to police whether he had in fact killed Adam, "because if I had killed Adam, I would be able to find his body." Toole later told police he had taken Adam's remains with him to Jacksonville and cremated him in an ice box in his mother's backyard, then discarded the charred remains at the city dump.

On January 6, 1984, three months after his first confession, Toole recanted, saying he did not kill Adam Walsh.

Evidence Lost, A Painful Mystery Remains

What may be the most bizarre twist in the Adam Walsh case occurred a few weeks later. The FDLE transferred the carpet samples and Toole's 1971 Cadillac to the Jacksonville Sheriff's Office. Since Toole had recanted his confession, someone deemed the evidence no longer viable and the carpet samples were thrown out. The vehicle was sold to a used car lot and eventually junked for scrap.

With the loss of evidence, the opportunity to do DNA testing of the carpets to determine once and for all if Adam was ever in Toole's white Cadillac is now gone.

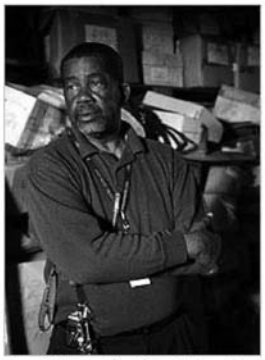
Ottis Toole died at Raiford Prison in September 1996, taking the truth of whether he was Adam's killer or just a false confessor to his grave. His family said he suffered from cirrhosis of the liver and AIDS and had been ailing for many years. However, Toole's death took Hollywood Police by surprise and now they had lost their opportunity to do a death bed interview.

The investigation of Adam's murder was riddled with mistakes and missed opportunities, not because of a direct maliciousness towards the family, but because like many small town police departments the Hollywood Police Department held onto their pride, wanting to handle the case their way. Many believe Hollywood PD lacked the experience to investigate a homicide, and now as it is painfully aware, they lacked the experience to even know when to ask for help.

It is a heart break for John and Reve Walsh, who will never know what really happene happened, and most importantly to have his remains so that they can lay him to rest.

New York Times - November 21, 2006

NEW ORLEANS — Seventeen months ago, when Edward Augustine was arrested with what the police said were marijuana and crack cocaine in his pocket and a handgun in his waistband, he seemed like just another run-of-the-mill drug suspect: easy to prosecute, easy to lock up.



Lee Celano for The New York Times

Warren E. Spears, the clerk in charge of the evidence rooms, in a part not damaged after Hurricane Katrina. Mr. Spears said a cleanup contractor was hired to gather flood-damaged evidence and clean off the mold.

But two months later, the floodwaters rushed through the labyrinth of evidence rooms in the courthouse basement here, scattering tens of thousands of items and leaving a fetid mess. When Mr. Augustine finally came to trial in October, the authorities could no longer find the three things they needed most: the small bag of marijuana, the rocks of crack and the gun. The judge threw out the case, and Mr. Augustine walked free.

As the judge, Lynda Van Davis, put it, Mr. Augustine, 18, had lucked out. But he is not the only lucky defendant in New Orleans. As the city's criminal justice system slowly gears back up after Hurricane Katrina, as many as 500 defendants, mostly in drug, theft and assault cases, have been freed because of problems with evidence, including difficulty in finding the witnesses who have moved away.

Law-enforcement officials say a few of those who were freed could potentially be violent, a cause for concern in a city battling a surge in drug-related killings. And some judges say that missing witnesses and damaged evidence, like spoiled DNA samples and rusted guns, will almost certainly lead to more acquittals, even in cases of murder, rape and armed robbery.

"It's amazing that for every case I've walked into lately, there's evidence missing," said Rick Tessier, a defense lawyer.

Several judges have jettisoned cases like Mr. Augustine's over the last few weeks. And in acquitting him, Judge Van Davis chastised prosecutors for going ahead without the drugs or the gun.

"This is ridiculous, absolutely ridiculous," she said from the bench.

But the district attorney, Eddie Jordan, responded in an interview, "We can't just tuck our tails between our legs and run just because it's difficult."

Mr. Jordan said that under state law, testimony from the arresting officer, and a laboratory report that confirmed Mr. Augustine had possessed illegal drugs, should have been enough to convict him. He added that although the evidence problems might seem to be "an Achilles' heel," he did not think "that the overwhelming problems that some of the critics have speculated about have materialized."

While 800 suspects have pleaded guilty to various crimes since the New Orleans courts reopened in June, only about 90 trials have been held, about a third the normal number. More than 2,000 people arrested before Hurricane Katrina are still waiting for their cases to be heard, and at least 400 of them remain in jail. And 1,500 cases have been temporarily set aside because the defendants, who were out on bond, apparently evacuated and never returned.

Court officials say other delays have come from a shortage of jurors and from limits on how many inmates can be brought to court each day. And the public defender's office is so overwhelmed that it is recruiting law students from across the country to conduct interviews with long-neglected clients who cannot afford a lawyer.

But a growing source of delays and acquittals has been the lack of witnesses and evidence.

After Hurricane Katrina hit in August 2005, the evidence rooms at the Orleans Parish Criminal District Court sat in chest-high water for two and a half weeks. Only recently have court officials begun to realize the extent of the evidence problems within the old Beaux-Arts courthouse, which was closed for nine months and is still not quite back to full operations.

Warren E. Spears, the clerk in charge of the evidence rooms, said in an interview that before the storm only about 10 percent of the hundreds of thousands of items had been sealed in plastic bags. The rest were in paper bags and scrap boxes holding clothes, guns and drugs, some of which disintegrated in the swirling waters, Mr. Spears said, dumping their contents into heaps on the floor.

Clothing from murder and assault cases took "a brutal beating," Mr. Spears said. Photo lineup cards used to identify suspects stuck together and could not be separated. Stacks of assault weapons turned to rust, he said, and holes had to be punched in duffel bags filled with rotting marijuana to let the water out.

The court hired a cleanup contractor to gather the evidence, clean off the mold and place it in plastic bags and fresh boxes. Court officials have estimated that 8 percent to 10 percent of the evidence was a total loss.

Mr. Spears added that a number of the workers spoke little English, and that he could only gesture to them as they guessed which items should be packaged together.

Water also seeped into safes, he said, rotting a great deal of paper money that had to be freeze-dried to remove the moisture.

At separate police evidence rooms nearby, some DNA samples for rape and murder cases were held for months without refrigeration, possibly ruining their usefulness, other officials said.

Given shortages in staffing, the condition of the evidence comes to light only as each case approaches trial.

The problems are starting to make life easier for the city's defense lawyers.

Pamela R. Metzger, a member of a state board that oversees the public defender's office, said she had learned about the evidence problems after asking Mr. Spears about a suspected crack pipe that was missing in one of her cases. Ms. Metzger, who is also a law professor at Tulane University, said she was urging the public defense lawyers, who handle the vast majority of the court's cases, to raise more challenges about the condition of the evidence and how it had been handled.

"I think you'll see more and more and more of that," she said.

Mr. Jordan, the district attorney, said his office had taken the lead in dismissing 400 to 500 cases recently, mainly because crucial witnesses, like the victims or the arresting officers, had moved away.

"Many of my prosecutors had held on to those cases until the last minute in hopes that we'd be able to go to trial," he said. "But I thought that if we had not been able to contact the victim since before the storm, then it was unlikely we'd be able to reach them now."

Mr. Jordan also said his office had won about 60 percent of the roughly 90 trials since the courts reopened. While several judges have been tough, others recently convicted suspects on cocaine and burglary charges even though the physical evidence had been lost, he said.

Of one recent jury case, he said: "We weren't certain we had the same gun from the crime scene. But we were able to find a gun that fit the description. And we found a photo of the original gun, and the jury found the defendant guilty as charged."

Still, Mr. Jordan said he had recently hired a former federal prosecutor to assess the strength of the 2,000 pre-hurricane cases to see how many more should be dropped.

Mr. Tessier, the private defense lawyer, said he had recently taken on a widely publicized murder case in which his client and another man were charged with stabbing a Tulane student in 2002.

The lawyer said the files had indicated that an important piece of evidence was a shirt stained with a drop of his client's blood. But Mr. Tessier said that neither Mr. Spears nor the New Orleans Police Department, which is temporarily storing evidence in rental trucks, had been able to find the shirt.

Katherine Mattes, another Tulane law professor, said the lost or damaged evidence could also make it harder for innocent people to shake off charges filed against them. She said, for instance, that a rusted gun might no longer fire, making it impossible to conduct new ballistic tests that might show it could not have been used in a murder.

"What people say when you describe all the evidence problems is how terrible it will be if we have people who committed crimes and can't be prosecuted," she said. "But it also can work the other way."

KOAA TV News First (Colorado Springs) – May 11, 2006

Victims Of Destroyed Evidence Are Being Notified
http://www.koaa.com/news/view.asp?ID=5031

11,000 pieces of evidence were accidentally destroyed in the Colorado Springs Police Department.

On Wednesday, News First introduced you to the first family to come forward, after finding out the police department actually destroyed evidence, against a man who robbed and assaulted them. They are the first of many families who will get that phone call, as police start their internal investigation. And on Thursday they met with prosecutors.

Jason and Rachel Spencer got that call earlier this week. In 2002, Jason spent four days in a coma with head wounds, after a robber assaulted him and his wife. Thursday, the District Attorney's office confirmed that in the Spencers' case, 14 out of the 18 pieces of physical evidence, were among those accidentally destroyed by the police department.

They say it's too early to tell what that means for the case, but they remind us that while

evidence helps put criminals in jail, it's not the only factor. Lisa Kirkman, the Chief Deputy District Attorney explains, "I would estimate 90-percent of our cases don't require physical evidence. Physical evidence is nice but it's not necessarily vital from our perspective. However there are some cases for instance where identity is an issue, and your only evidence would be DNA. And if you were to lose the DNA, then that would be death for your case."

Using information the police are providing them, the D.A.'s office should be done notifying all the victims who might be affected by the end of the week. But then, they'll send their own investigators into the police department, to look at the evidence that's left in each case. Police, meanwhile, are trying to figure out how it all happened. To hear what Police Chief Luis Velez has to say click on the watch video button.

Colorado A.G. Disatisfied With Department's Missing Evidence Review – June 13, 2006

MILES MOFFEIT

The Denver Post

The Colorado attorney general, responding to deepening concerns among Colorado Springs leaders about the improper destruction of evidence in hundreds of criminal cases, will begin his own investigation Monday.

At least two representatives of John Suthers' office are scheduled to visit the city to begin examining the city Police Department's recently released internal review, which largely laid blame at the feet of an evidence room supervisor. City leaders sought the outside probe after publicly criticizing that audit, released two weeks ago, as too superficial and falling short of exposing weaknesses at higher levels of the police agency. Some council members also are concerned that a veteran homicide detective has been demoted after voicing concerns to them about the audit.

Meanwhile, missing evidence in two dozen major crime convictions wending their way through Colorado appellate courts has El Paso County prosecutors alarmed that some criminals could go free if cases are sent back for new trials.

In a memo to Colorado Springs police authorities, District Attorney John Newsome ranked 25 cases on appeal as his "biggest concerns" emanating from the evidence-destruction debacle. He detailed possible pitfalls, including several lost DNA samples central to convictions.

"The potential impact on victims and the serious nature of these cases are a really explosive combination," Newsome told The Denver Post on Friday.

Appellate reversals aren't common, but Newsome and his staff are chilled by the prospect that improperly discarded evidence could be used as a basis for appeals or - in a more likely scenario - cripple prosecution attempts if any new trials are ordered as a result of other trial errors.

Among the cases causing worry:

Lost 911 tapes in the case against Cesar Deanda, convicted of killing 18-month-old Donavin Bader in 1995. The discarded tapes could prove pivotal in a pending appeal related to his counsel's effectiveness, according to the DA's memo.

Forty-five discarded pieces tossed in the 2003 case against Julian Garcia, convicted of kidnapping and sexually assaulting a 19-year-old Colorado Springs woman. Appeals are pending.

"If reversed, a significant impact" on a retrial is expected, according to Newsome's memo.

Twenty-two of 24 pieces destroyed in the conviction of Adolph Sherrod for attempted murder in 1999. Though the missing evidence could pose serious problems in a new trial, the DA still pledges to pursue prosecution if it comes to that. Sherrod is in the process of appealing his conviction.

The losses, including a previously reported missing gun linked to two homicide cases, continue to fuel concerns of prosecutors about the improper destruction of evidence in more than 500 cases by Colorado Springs police. City officials have termed the destruction, believed to be the accidental result of pressures to relieve a lack of space, as a "colossal" law enforcement breakdown.

And the number of affected cases is expected to grow as thousands of additional ones not previously disclosed by police have come under review at the request of Newsome.

At least three felony cases - two forgeries and a drug case - so far have been dismissed or thrown out of court as a result of missing evidence, while several other cases are believed to be facing postponements or hang in a legal twilight state. More than a dozen homicides or suspected killings have incurred losses.

There also have been frequent scares, Newsome said. As staff members pore over case files to measure impacts, they have discovered discarded evidence in some of the city's most notorious cases, including some handled by Newsome himself.

One involves the so-called "Memorial Hospital rapist," David Lee Johnson, serving a 55-year sentence for the 1998 rape of a nurse in the facility's parking lot. While a cigarette containing his DNA was destroyed, the forensic traces had been separated from the butt, so the impact shouldn't be major, Newsome said.

"When his name showed up on the list, I can tell you there was a lot of concern," Newsome said. "Just one item was improperly disposed in the grand scheme and will not have a major effect. But it points to the dangers of the disposal that took place."

Other cases pose problems, however. It is possible that some defendants will try to wage an ineffective counsel argument on appeal if their lawyers did not seek to verify that evidence within a case was present, said Lisa Kirkman, chief deputy DA.

In the memo to police, the DA's office expressed concern that the Deanda case could pose ineffective counsel issues. He is accused of fatally abusing the child of a girlfriend then giving five different accounts of what led to the injuries. The young Bader is believed to have died from shaken baby syndrome.

The fact that a huge portion of the evidence in the Garcia case was tossed makes it particularly troubling to prosecutors, Kirkman said.

Among the lost pieces: victim's clothing, recordings of the suspect, victim photos and biological samples from both.

"It would be tough" to prosecute if the verdict were overturned, Kirkman said. "Plus, there are issues in locating the victim."

Attorneys in the Garcia case and others could not be reached for comment.

Meanwhile, a veteran police officer with the major-crimes unit was reassigned last week, only days after the release of an internal review of procedural lapses that led to the purge.

According to City Council member Jerry Heimlicher, the detective was demoted almost immediately after he criticized the Police Department's internal audit in personal conversations with Heimlicher and other council members.

The New York Times -- July 6, 2005

New York Fails at Finding Evidence to Help the Wrongfully Convicted
By JIM DWYER
http://www.nytimes.com/2006/07/06/nyregion/06evidence.html?_r=1&oref=slogin&pagewanted=all

Alan Newton, a former bank teller from the Bronx, is due to leave prison today after serving 22 years for a rape he did not commit — a victim first of mistaken identification, then of a housekeeping problem of epic scope.

For more than a decade, Mr. Newton, 44, pleaded in state and federal courts for DNA testing that was not available when he was tried, but New York City Police Department officials said they could not find the physical evidence from the case. That evidence, a rape kit taken from a woman who was kidnapped and assaulted, was located only after a special request was made last year by a senior Bronx prosecutor to a police inspector.

The rape kit, it turned out, was in its original storage bin from 1984, Barrel No. 22, in the same police warehouse that the authorities said they had searched at least three times since Mr. Newton first asked in 1994.

The long-delayed DNA tests proved the innocence of Mr. Newton, who had refused to participate in a sex-offender treatment program in prison, ruining his chance for an earlier parole. He plans to come to court today dressed in one of the suits he wore to work half his lifetime ago.

At least 17 other people who have been convicted of serious crimes in New York City, and who maintain that they are innocent, have been unable to obtain DNA testing because the authorities say they cannot find the evidence, said Vanessa Potkin, a staff lawyer with the Innocence Project at the Benjamin N. Cardozo School of Law in Manhattan, a legal clinic that helps convicts get DNA tests.

By the Innocence Project's tally, the city has one of the worst records in the country for finding old evidence when it is sought by people seeking to clear their names:

Of the New York City cases that the project has been unable to resolve, 50 percent involved DNA evidence that had been lost or destroyed, compared with an average of 32 percent nationally.

"It has been much more difficult for us to locate forensic evidence in New York City than any other jurisdiction," Ms. Potkin said. "Mr. Newton could have been proven innocent in 1994."

A police official, Deputy Commissioner Paul J. Browne, said the department was investigating why the rape kit had not been found earlier. "Beginning five years ago," he said, "the Property Clerk's Office improved its procedures regarding DNA evidence, which includes approximately 17,000 rape kits, by segregating DNA evidence and storing it separately from all other evidence."

With more people and more crime than any other American city, New York also stores more evidence — over 1 million pieces in a central warehouse in Queens, and more in satellite facilities in each borough — and until recently, its inventory system consisted of handwritten ledgers and index cards. Besides storerooms run by the Police Department, the Office of the Chief Medical Examiner also keeps some biological evidence.

One man who, with a co-defendant, has unsuccessfully chased evidence through the criminal justice system, said he appreciated that vast amounts of material must be stored but said even tiny fractions of it could have the power to right lives.

"I understand there's megatons of evidence all over the place," said the man, Reginald Connor, 38, who was paroled two years ago. "But these are people's lives that are being turned upside down because of stuff like this. Where is the stuff that can overturn our case and show we are innocent?"

Except for the outcome, Mr. Newton's case in the Bronx has a number of parallels to the case of Mr. Connor in Brooklyn, where he was convicted with another man, Everton Wagstaffe, of kidnapping a young woman in 1992. She was found murdered, but a judge dismissed homicide charges against them for lack of evidence.

Both the Bronx and Brooklyn crimes took place late at night, on streets in high-crime neighborhoods, and the prosecution cases were based almost entirely on the testimony of a single eyewitness. Both show the high stakes and perplexing difficulties of tracking down old evidence.

In the Bronx case, a woman leaving a bodega around 4 a.m. was forced into a car by a man who sexually assaulted and robbed her in a park. After she walked away, the attacker struck again, this time taking her to an abandoned building, where he then severely cut her face.

Mr. Newton, who had a criminal record from a fight as a teenager, was picked out of a photo array, then identified by the victim. Although she later said she was unsure if Mr. Newton was the assailant, the prosecution's case rested almost entirely on her testimony and a fleeting identification by the bodega clerk; Mr. Newton offered an alibi, saying he had spent the night at the home of a woman in Queens. No biological evidence was presented at the trial, and he was convicted in 1985.

In 1994, Mr. Newton filed the first of his own motions to seek DNA testing of the rape kit, which contained swabs taken from the victim's genitals immediately after the attack. In 1994, 1997 and 1998 he lost those motions because the evidence was not available.

"Currently there is no original voucher in the active file, therefore it must have been destroyed," Police Sgt. Patrick J. McGuire wrote in 1998. As for any record of the destruction of the evidence, Sergeant McGuire wrote: "Unfortunately there was a fire in our facility during the summer of 1995 which destroyed these files."

In 2005, Ms. Potkin asked the chief prosecutor of sex crimes in the Bronx, Elisa Koenderman, to help.

"Many district attorneys would have relied on the representations that officials in the past had already 'looked,' and the kit was lost or destroyed," Ms. Potkin said yesterday.

Ms. Koenderman wrote to Inspector John Trabitz, who is in charge of the police evidence facilities, sending along a copy of the original evidence voucher.

The rape kit was found in Barrel 22, and tests by two laboratories reached the same result: The evidence "conclusively excludes Mr. Newton as the source of the sperm recovered" from the victim, according to a motion filed jointly by the Innocence Project and the Bronx district attorney's office.

"I can't explain why the evidence wasn't found before," Ms. Koenderman said. "It's tragic. I don't know what else to say. This man did not commit this crime and has languished in jail this many years."

In the Brooklyn case, the charges against Mr. Wagstaffe and Mr. Connor were based largely on a single eyewitness: a troubled drug addict who admitted during testimony that she continued to use drugs.

A young woman, Jennifer Negron, vanished from a street in East New York late one night in 1992, and her body was found the following morning. The witness came forward some hours later and told the police that she saw Mr. Wagstaffe and Mr. Connor drag Ms. Negron into a car.

The case was investigated under the supervision of a detective in Brooklyn who was involved in three wrongful convictions and who said after he retired that the workload in his precinct was so high that he almost never had time to investigate serious crimes properly.

Both Mr. Wagstaffe and Mr. Connor denied being involved and took polygraph tests, which they passed but which are not admissible as evidence. They were convicted and sentenced to 12½ to 25 years.

From prison, Mr. Wagstaffe began to file motions seeking tests of the material recovered from Ms. Negron's body, but the evidence has not been found.

During the autopsy, the medical examiner's office had prepared swabs of her genitals, clipped her fingernails, which had blood beneath them, and recovered a single black hair from the palm of one of her hands.

A lawyer who represents Mr. Connor, Elizabeth Emmons of the Legal Aid Society, said she could not find the evidence in the medical examiner's office and has asked police property clerks to help in the search. None of it has been located.

Mr. Connor said that when he appeared before the parole board, he refused to budge on his assertion of innocence. On his release in 2004, he was forced to register as a sex offender. He discovered that meant he could not live in the new home he and his wife had bought because it was too close to a school, so he is renting an apartment separately nearby to comply with the terms of his parole.

Mr. Wagstaffe, 37, who says he will not attend a parole hearing, remains in prison and continues to hunt for the missing evidence. "I have refused to go to the parole board and will continue to refuse," Mr. Wagstaffe wrote in a recent letter. "Because I would rather die inside here fighting to prove my innocence than to live on the street like my co-defendant and carry the title of, and register as, a sadistic murderer and rapist."

St. Louis Post-Dispatch – July 19, 2006
Wrongly convicted man is set free

By William C. Lhotka

Johnny Briscoe is a free man today, after serving 23 years for crimes the state now says he didn't commit.

Briscoe walked out of a state prison in Charleston, Mo., on Wednesday after serving part of a 45-year sentence for convictions involving a 1982 sexual attack on a woman at a Maryland Heights apartment.

Thanks to DNA testing, authorities confirmed during an investigation that began July 6 that Briscoe was innocent and that the real rapist was already in another Missouri prison.

As investigators drove Briscoe back to his family in St. Louis from Missouri's Bootheel, St. Louis County Prosecuting Attorney Robert P. McCulloch called him on a cell phone and "apologized to him on behalf of the county, particularly for the past six years."

Because of snafus in the St. Louis County Crime Laboratory since 2000, Briscoe didn't get out six years sooner, and that, McCulloch said, "is terrible. It is unacceptable."

There was no DNA testing in 1983 when Briscoe was convicted. In 2000 and again in 2001, McCulloch said at a news conference Wednesday, he asked the crime lab to look for evidence in the Briscoe case and other cases where DNA could now be applied to existing evidence.

McCulloch said his office was told the evidence had been destroyed.

In late 2001 and again in early 2002, court records show, Briscoe's attorney applied for post-conviction DNA testing. The laboratory reported that the freezer where the evidence might have been kept was searched and that the evidence - cigarette butts - had presumably been destroyed.

In 2004, the crime lab "was inventorying and cataloging everything in the lab" and found the cigarette butts in the freezer, McCulloch said, but his office didn't learn about their existence until July 6.

McCulloch aimed his criticism at the crime lab.

"It is just inexcusable that this wasn't found in 2000 or again in 2001," the prosecutor said.

Testing of the three cigarette butts confirmed that the victim's DNA was found on all three but that the third contained DNA that matched a different man than Briscoe - one who is also in the Missouri prison system serving multiple sentences.

McCulloch's staff is reviewing the statute of limitations to see if charges can be brought against him.

Crime and punishment

In the early morning of Oct. 21, 1982, a man broke into an apartment in Maryland Heights, raped and sodomized the victim, she said, but then stayed in the apartment and smoked cigarettes with her.

The assailant asked her what her name was and then told her his name was "Johnny Briscoe," she told police. Subsequently, with police there, he called her apartment and talked to her again saying his name was "Johnny Briscoe."

Police traced the calls to a pay phone near Briscoe's home on Adelaide Avenue near Interstate 70.

The woman completed a composite with police that resembled Briscoe, McCulloch said. She also identified him at the trial in May 1983 as her assailant.

Briscoe, who had prior convictions for burglary, offered an alibi defense but

didn't testify.

Briscoe's 16-year-old nephew told the jury that Briscoe had been home the night of Oct. 20 and was there when he awakened the next morning. They had watched the seventh game of the World Series between the St. Louis Cardinals and the Milwaukee Brewers.

"Who won?" asked prosecutor Joe Larrew in cross-examination.

"The Milwaukee Brewers," the nephew replied.

The Cardinals had won the game and the series. The jury took less than two hours in convicting Briscoe of rape, sodomy, robbery, burglary, stealing and three counts of armed criminal action. Judge Bernhardt C. Drumm sentenced Briscoe to 45 years in prison.

Briscoe was then three months shy of his 30th birthday.

First day of freedom

Today he is two months shy of his 53rd birthday.

On the ride home Wednesday, Briscoe told investigators Dave Ventimiglia and Ed Magee that he wanted to spend at least the day with family members before he talks to the media, McCulloch said.

McCulloch said that the man who matches the DNA knew Briscoe from the same neighborhood but that Briscoe had no idea that the man had been involved in the assault.

Prosecutors have also talked to the victim, "who is very upset."

"She has been very traumatized by this," McCulloch said.

The Missouri Legislature recently passed a measure providing up to $36,000 a year for individuals falsely accused and imprisoned. Prior DNA exonerations in the city include the cases of Anthony Woods, who served 18 years in prison; Lonnie Erby, 17 years; and Larry Johnson, 18 years. Steve Toney served 14 years in a St. Louis County case.

In each case, the victim had identified the later-exonerated defendant.

McCulloch said he didn't know if there was enough money in the program yet to pay Briscoe.

Briscoe spent Wednesday night at the home of relatives in St. Louis. Friends

and relatives came and went or settled on the porch for a while. He declined to speak to reporters until a news conference today, preferring to spend his first free day in more than 20 years out of the limelight.

Toronto Sun -- August 13, 2006

Rapist's torment never goes away

By Michele Mandel

Twenty years is a long time to be haunted by the faceless man.

But he torments her still, the man who broke into her Annex bedroom that cold February day, his white, 160-pound body suddenly straddling hers as he covered her eyes and threatened to kill her if she screamed.

She was just 16.

For 30 long minutes, he raped her to the tick, tick of his watch -- a sound that remains torturous for her to this day -- while she prayed he would leave her mother and sisters alone in the other room. Finally done, he told her to count and was gone.

"She ran into my room and said 'I've just been raped,'" her mother recalls, tears sliding down her cheeks. "I started to hug her and she said, 'Don't touch me.'"

She doesn't remember that, she says. But then there is much that is blurry in the aftermath of being raped. "I generally became a mess," says the victim we will call Jane Green.

She dropped out of high school, stayed out to all hours, fought with her mom and two sisters. "It got really messy for awhile," her mom says. "Years."

Because their harrowing encounter with him was not done. A few months after Green was raped, an intruder attacked her 14-year-old sister before being scared away. They were certain it was the same man. Several months later, long after they had bars on every window, he tried to break in again.

"That was it," her mother recalls with a shudder. They moved half way across the city and never heard of him again.

Through years of therapy, Green slowly began to get her life back, graduating from university and opening her own business. Yet her frustration grew at the lack of progress on her case.

It wasn't until 11 years after the attacks that Toronto Police called in Green and her sister for their first photo line-up. She doesn't believe it was coincidence that their sudden interest came shortly after the Jane Doe lawsuit left the police reeling from criticism they mishandled sexual assault cases. Nothing came of the line-up.

Green was certain that he had struck again after hearing of another woman on her street who had been raped -- in exactly the same way. As years passed, and with DNA advances in the news, she began to wonder whether it could be used to bring her rapist to justice.

But when she contacted the sex crime unit's cold-case division, Green could not believe what she was told.

All this time she had assumed there was still hope of catching him. Yet in a December 2003 meeting, the police finally admitted that all her evidence had been destroyed. The Centre of Forensic Sciences had found semen on the vaginal swabs taken during the investigation of her rape kit in 1987 but a 1993 letter in her file said the CFS had destroyed them. "There are no results of the original tests available."

As for her underwear and bedding taken at the time, the CFS said it had never received them, but if located, they could be examined for DNA testing. It turns out they, too, had been thrown away.

She was also shocked to learn that the police had never thought to link the three crimes at her home. Their message was, 'Move on with your life and forget about justice.' "The likelihood of identifying a suspect short of a confession is very minimal," the police told her.

Green was shattered. "I left the building feeling very, very alone," she says softly. "Being let down by the police has been equally as traumatizing as the event itself."

Det. Brian Borg, former head of the sex crimes unit's unsolved case section, doesn't know who ordered the evidence destroyed or why, considering the "vast majority" of cold cases hold on to evidence for years. "It is unfortunate and I say that with the greatest of respect," says Borg, now with homicide. "Her evidence was destroyed prior to any significant developments in DNA."

Yet DNA testing was certainly going on in 1987. Had someone not made that fateful decision, the DNA on those swabs or sheets may have provided the answer she has sought all these years.

Yet she refuses to give up. Two decades later, she is determined to do what she believes the police failed to do.

"My goal is that women will come forward about any attacks in the Annex during the 1980s in the hopes of finding fresh information," she says, hoping victims will contact her at green127@gmail.com.

"Think about it," Green adds, her voice bristling with anger and determination. "A faceless man comes into your house, rapes you, has been inside you, and you have no idea who he is. For years, I'd look at men and think, 'Was it him? Was it him?' Not knowing has been very traumatizing."

It's human nature to want an ending. "I've been robbed of that," she says. "I have this strong sense of needing justice. I just can't walk away from it."

Not until she can finally put a face to the faceless man.

The Guardian (UK) – August 24, 2006

Justice Submerged
When Katrina struck, New Orleans was storing in a basement legal evidence that could have freed some prisoners.
By Clive Stafford Smith

BBC2 recently marked the first anniversary of the hurricane that devastated New Orleans with its documentary Prisoners of Katrina. Central to the film was the fate of the 6,500 people who were being held in Orleans parish prison (OPP) at the time.

Having lived in New Orleans for 11 years and worked on many cases in the criminal justice system there, the setting was intensely familiar to me.

Despite the mandatory evacuation order for everyone in the city, the sheriff decided to hold the prisoners there during the storm. They were locked for days in crowded cells of rising water, and were eventually rescued by guards armed with mace and beanbag bullets. A number of prisoners stated that they saw bodies floating as they left the facility, though the official line is that nobody drowned.

Some of the officials interviewed took the position that if you are in jail, you get what's coming to you - including a category-five hurricane. Marlin Gusman, the Orleans parish criminal sheriff responsible, called these people "crackheads, cowards and criminals", and dismissed their claims of abandonment and abuse.

However, a recent American Civil Liberties Union (ACLU) report identified 394 children in the prison system when the storm hit, some as young as 10, and found that 60% of OPP's population (3,900 people) were being held on municipal charges such as traffic or parking violations, public drunkenness or the failure to pay a fine. The maximum sentence, had they been convicted, would have been a fine or a few days, but instead they did up to six months of "Katrina time" while the system figured out who they were.

Katrina was a year ago, yet there are thousands of pre-trial detainees who remain locked up today simply because there are no lawyers to represent them.

Aerial photos of these orange jumpsuited New Orleans prisoners sitting on a flooded interstate ramp made the front pages around the world a year ago, and appeared again in the documentary. But the image that struck me as the most troubling in Prisoners of Katrina was the footage of the evidence room at Orleans parish criminal district court. New Orleans is a city below sea level, which has flooded in the past, yet the clerk of court still found it appropriate to store most of the evidence in the building's basement. This includes evidence in cases of those already convicted and sentenced. According to the Louisiana department of corrections, among these were eight people on death row and 1,107 serving life without parole.

Some ask: so what's the problem? They have been found guilty already, so no harm, no foul. But it would be difficult to suggest that there are no fouls in the Orleans parish criminal justice system. This impoverished city has tried to deliver justice on the cheap for decades, resulting on one of the highest wrongful conviction rates in the country.

The state paid lip service to the right to counsel through a "part-time" public defender's office, where caseloads made effective representation impossible. The Louisiana supreme court recognised the problem, and in the early 1990s identified a presumption that a prisoner had received ineffective counsel if he was tried in a certain section of Orleans parish court. One public defender in the film complained he had been assigned to 43 capital cases and 600 non-capital cases. It would take Superman just to meet all those clients, let alone represent them.

Despite this chaos on the defence side, unfortunately the prosecution still felt it needed to cheat to win. Under the regime of the former district attorney Harry Connick, police and prosecutors in Orleans resorted to "testi-lying" and suppressing evidence favourable to the accused. Even the supreme court of the United States noticed this from its ivory tower in Washington. In the case of one exonerated New Orleans man, Justice Stevens it described "the prosecution's blatant and repeated violations of a well settled constitutional obligation", depriving Curtis Kyles of a fair trial.

Since 1973, 37 prisoners from New Orleans have been sentenced to death and five have been released from prison thanks to new evidence pointing to their innocence. To portray this as an error rate of 13%, however, would be vastly to underestimate the problem: exonerations have outpaced just four executions, and 20 of the remaining 28 prisoners have been released from death row because of other errors in their cases.

Capital cases are the ones that get the best representation and the most attention, including extra lawyers and experts, so one would expect fewer mistakes. But what about the non-capital cases. What about the more than 1,000 people from Orleans alone serving life without parole? These prisoners had fewer resources for their trials, and have no right to counsel at all for their post-conviction appeals. Yet life without parole is just another

form of death sentence: it means that you will die in the Louisiana state penitentiary; you just don't know when.

If the error rate in capital cases holds, and "only" 13% of the 1,107 prisoners serving life were wrongly convicted, that would be 144 people languishing innocent, waiting to die in the prison hospice. These people are new Prisoners of Katrina.

Even before the storm, many prisoners had applied to the newly formed Innocence Project New Orleans (IPPO), to have DNA testing conducted on the evidence to prove their innocence. Even before Katrina, the IPNO found the courthouse system for preserving evidence after conviction was a shambles, a product of limited funds and official indifference to the fate of people already written off as criminals. Law enforcement, too, should view this combination as a catastrophe, as for every innocent prisoner there is a guilty person free, and old biological evidence can often be the key to unsolved crimes.

Once Katrina hit, things got much worse. The basement of the courthouse flooded, and much of the evidence was underwater for several days. This alone does not make it untestable, but many of the labels on the evidence, often handwritten in ink, are now illegible, so it is impossible in many instances to link the evidence to a case. There are also fears that some evidence was thrown out willy-nilly in a botched clean-up effort that left the clerk of court hiding from an arrest warrant issued by local judges.

Imagine you have been wrongfully convicted of rape. The police asked you to stand in as a filler in a line-up, but somehow the victim picked you out. Before you know it, you have been tried and sentenced to life without parole. You can barely read or write, you have no lawyer and your family has no money. You are supposed to write your own post-conviction appeal but you don't even know how to begin.

The years pass. Other prisoners start telling you about something called DNA. They say it can help you. Someone fills in an application for you and sends it to the new innocence project everyone is talking about. You don't really understand DNA, but what you do know is that the underwear, the clothing and the rape kit that they paraded about the courtroom at your trial is the key to your freedom.

Then Katrina hits. You see images on the prison TV of the courthouse flooding. You start frantically trying to find out what has happened, whether your evidence was in that basement. You know the chances are that it was. You are about to do life in prison because the state failed to safeguard the evidence that could free you, and tossed your hopes into a skip.

What can be done for these prisoners? Without a simple DNA test, proving a prisoner's innocence may not be impossible, but it will take years of work. Before, IPNO had to track down the rape kit and get it sent to the lab; post-Katrina, at a minimum they will have to track down all the witnesses, scattered to the 50 states now that half of New

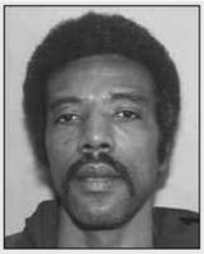
Orleans has left town, and even then the evidence may not be enough to overturn a conviction.

The documentary Prisoners of Katrina did not resolve the question of whether prisoners lost their lives in the aftermath of the storm. But when I saw the remains of that evidence room, one thing became clear: Katrina means scores of innocent prisoners will lose their lives to the Louisiana state penitentiary.

Clarion Ledger- November 5, 2006

Missing evidence not found; Judge ordered officials to find records on 24-year-old rape case

By Jimmie E. Gates



Chapman

FAST FACTS

Richard Chapman's last parole hearing was in July. He was denied parole. His next parole hearing is November 2007.

Evidence that could help a convicted rapist trying to get his 24-year-old Hinds County conviction overturned has yet to be found a year after a judge ordered authorities to search for it.

The Innocence Project often uses DNA to exonerate individuals wrongly convicted. At the group's request, Hinds County Circuit Judge Swan Yerger last year ordered city, county and state officials to search for evidence in Richard Chapman's case, but no evidence has surfaced.

Chapman was 16 in 1981 when he was charged with raping and robbing a woman. He was convicted and sentenced to life in prison in 1982 on the rape charge. In a plea agreement, he was sentenced to 10 years in prison on the robbery charge, with six years suspended.

Local attorney Chris Klotz, who is working with the Innocence Project on Chapman's case, said it's still too early to say no evidence exists.

Klotz wouldn't go into details.

But Assistant District Attorney Rebecca Mansell, said she knows of no evidence uncovered in the case that could lead to it being reopened.

Biological samples and other evidence were destroyed by an April 19, 1985, court order.

Also, two witnesses that could aid Chapman's quest to clear his name are dead, his attorney was disbarred and there apparently is no trial transcript.

The New Orleans chapter of a national, nonprofit legal aid organization had not made a decision on whether to take on Chapman's case, but was just reviewing the case to see if there was any evidence that could prove Chapman was innocence or guilty of the crime.

The Innocence Project has exonerated five wrongly convicted Louisiana inmates and one in Mississippi. The project also removed another Mississippi inmate from death row.

Emily Maw, director of the New Orleans Innocence Project, has said that without evidence and public documents it will be difficult to help Chapman.

Chapman said he was with his mother at the Mart 51 Shopping Center on Terry Road when the alleged rape occurred.

Maw said Chapman's mother and another individual who could have given him an alibi are deceased.

Chapman was eligible for parole after serving 10 years of his life sentence.

Colorado Springs Independent – September 15, 2006

DNA Causes DA To Dismiss Colorado Murder Case
By Michael de Yoanna

Gabriel Gonzales was accused of murder until the Colorado Springs DA admitted this week that there was no physical evidence against him. The DA stated that DNA tests on blood found on the victim's sweatshirt and gun shell casings from the crime scene did not belong to the 19-year-old Gonzales.

The judge granted the DA's motion to dismiss, leaving Gonzales and his family to reflect afterward. "They never had a case against him," said Gonzales' uncle, a University of California-Irvine sociology professor, who flew to Colorado Springs to support his nephew. "It's a shame. There are two victims: Thomas Kinslow and Gabriel Gonzales, who spent months in jail."

Gonzales had vigorously proclaimed his innocence since being arrested on Jan. 13 for the shooting death of 20-year-old Thomas Kinslow in the early morning hours of Nov. 22, 2005. He was released on bail in June after spending nearly six "scary" months in jail.

Kinslow's mother pleaded for her son's killer to be found in a statement released after Gonzales' case was dismissed: "We want the person who killed our son to be held accountable. We also don't want a possibly innocent man to go to prison."

Colorado Springs police and prosecutors centered their attention on Gonzales following a tip to Pikes Peak Area Crime Stoppers. The tipster or tipsters appeared to be among the 10 witnesses prosecutors claimed would testify against Gonzales in a February preliminary hearing. At the hearing, a detective characterized Gonzales as "cocky," a "braggart" who carried and fired a gun in a field not far from where Kinslow was shot.

Gonzales had a 9 mm Smith & Wesson semi-automatic gun that police seized with a warrant. But ballistics tests revealed that it wasn't the gun that killed Kinslow. During the same hearing, an eyewitness claimed Gonzales did not appear to be the murderer. Defense counsel this week said phone records would also have proved it highly improbable that Gonzales could have killed Kinslow.

Three other possible male suspects were questioned by police, but were cleared early in the investigation. However, defense counsel, a former assistant DA, said police should have scrutinized those possible suspects better.

A PD official declined to comment on the murder, stating that the investigation still is considered to be moving forward. "We're going to take a look at everyone," he said, adding that Gonzales is no longer a suspect, but rather a "person of interest."

Crime -- November 30, 2006

Evidence Gone; Case Dropped

By John Larson for Mountain Mail

SOCORRO, New Mexico (STPNS) --
Charges against three New Mexico Tech students for allegedly raping a Socorro woman were dismissed in Magistrate Court on Tuesday because of an evidence snafu.

District Attorney Clint Wellborn filed a "nolle prosequi" (no prosecution), contending that the case is pending further investigation. The charges are dismissed without prejudice, meaning the case could be re-filed.

At issue was the lack of evidence, specifically a blood sample taken from the alleged victim the morning following the incident, Monday, Nov. 20. Hospital personnel destroyed the blood sample after seven days, claiming that law enforcement officials did not ask them to retain the sample. District attorney Clint Wellborn said that is false. He said the request was made.

In the three criminal complaints, the woman said she was at a drinking party Sunday, Nov.

19. She said she became disoriented, falling in and out of consciousness while three men performed sex acts on her against her will. She told police she felt as if she had little control over her actions. The police report provides graphic details of the events.

Under questioning, the three men claimed the sex was consensual. The three men also gave police recordings made with their cell phones. The men said they made the recordings to protect themselves if the victim claimed rape.

The report also stated that a blood test taken the next morning at Socorro General Hospital indicated the presence of a "date rape" drug in her system. However, hospital personnel destroyed the blood samples, per hospital policy, according to administrator Bo Beames.

According to the criminal complaint, police were told that a copy of the blood test results would be sent to investigators. The District Attorney's office said they never received that evidence, and the case was dropped.

Beames said in a statement faxed to the Mountain Mail that a prescribed protocol is followed concerning collection of evidence.

"This evidence is forwarded to the State Lab according to a strict chain of custody to assure the security and integrity of the sample," the statement said. "It is customary in this protocol for our hospital to release the sample into the custody of the investigating agency at the time it is collected."

Regarding the blood samples taken from the woman, "some samples were released to the State Crime Lab and additional samples remained at our hospital.

"We retained the additional samples for seven days in accordance with our standard procedure. This is because urine and blood samples are substantially degraded after seven days and would not produce reliable results," the statement said. "The samples were not retrieved from our hospital during the seven days in which reliable testing would have occurred."

Neither Beames nor Wellborn said whether the samples released to the State Crime Lab could be used as evidence. No one could confirm if any blood samples were received at the State Crime Lab.

According to the bureau chief of toxicology at the State Crime Lab, Dr. Rong-Jen Hwang, blood samples can be stored for years and still be viably tested.

"Depending on needs and requests, the normal is about a year, but exceptions are made," Hwang said. "Spoilage does occur eventually, but the minimum for storage is six months."

Wellborn said the investigating officer, Tech assistant police chief Billy Romero,

specifically requested the sample Tuesday, Nov. 21.

"A phone call was made next day," he said. "[Deputy District Attorney] Stacey Ward was present when he made the call."

Wellborn said he was extremely disturbed by the situation, and that discussions were held in his office Wednesday morning to prevent the same outcome.

"There's nothing we can do about what's happened. It's happened. We have to make sure this sort of thing doesn't happen again," he said.

The three men were arrested and arraigned on the charge of rape Monday, Nov. 20. They were released on $8,000 bond from the Socorro County Detention Center on Monday, Nov. 27. Charges were dropped Tuesday, Nov. 28.

Houston Chronicle -- December 16, 2006

Defendant's Conviction Set Aside After Serving 8 Years In Texas Prisons

By Brian Rogers

Gilbert Amezquita was released from a Texas prison on Friday after serving eight years for a crime that he insists he didn't commit. "It's been a living hell," he said. His release resulted from an order by the Texas Court of Criminal Appeals that he be set free or given a new trial. The trial judge granted a request by the Harris County DA for six more weeks to decide whether to retry him.

The judge explained the one condition of his $5,000 bail: that he is to have no contact with the woman he was convicted of attacking. After hearing of Amezquita's release, the complainant said she still has no doubt that he was her attacker. She added that she was going to arm herself.

As he left the courthouse Friday morning, Amezquita said, "I'm finally getting the chance to prove I'm actually innocent." He was sentenced to 15 years in prison for a beating that put the complainat in a coma for 10 days. He was convicted primarily on her eyewitness testimony.

Shortly after regaining consciousness, the complainant whispered to police that it was "Gilbert" who had assaulted her at her father's plumbing company in February 1998. Amezquita, an Army reservist with no prior criminal record, was arrested.

He contended that the attacker was another employee of the plumbing company who went by the name Gilbert — Alonzo Gilbert Guerrero, who now is serving a seven-year prison sentence for burglary.

The case went to trial in July 1998 after the trial judge denied requests from the defense and prosecution for additional time to allow for DNA testing of crime-scene evidence. The DNA evidence was destroyed in February 1999 by the Houston PD.

Amezquita's appellate attorney asserted that the DA had failed to consider Guerrero as a suspect. He said he discovered that the complainant and Guerrero had argued a few days before the attack and that Guerrero was found to have the complainant's cell phone after the beating.

The trial judge recommended in 2003 that the Court of Criminal Appeals grant Amezquita a new trial. On Feb. 2, 2005 the appeals court denied the request. But two weeks later, in a rare move, the court reversed itself. In its ruling last month, the appeals court cited ineffective assistance of counsel, pointing to evidence that defense attorney never presented in the trial.

Worcester Telegram & Gazette -- August 1, 2007

Evidence Missing In 1987 Massachusetts Murder
Defense Counsel Seeks Dismissal Of Charge

By Gary V. Murray Telegram & Gazette Staff

Worcester -- The lawyer for a defendant accused of raping and murdering a 64-year-old woman 20 years ago in her West Side home is asking that the charges be dismissed because of missing evidence, including a hammer recovered at the crime scene.

Steven M. Siemietkowski, 47, is awaiting trial in Worcester Superior Court on charges of murder and rape in the June 4, 1987, slaying of a woman in her home. An autopsy determined that the victim died of "asphyxia from smothering associated with blunt impact injuries." In February 1987, defendant worked in the victim's home, cleaning up after a furnace malfunction filled the house with soot.

He became a suspect in the murder investigation but was not charged until 2004, after forensic scientists found a match between his DNA profile and a genetic profile developed from biological evidence recovered from the victim.

Defense counsel filed a motion last month seeking dismissal of the charges against his client, who remains in custody on a parole violation and denied any involvement in the killing when questioned by police.

In an affidavit supporting the motion, counsel said he discovered -- when he went with the DA to examine the physical evidence in the case at Worcester police headquarters -- that "at least one box" of evidence could not be located. Among the missing items was a hammer recovered from the crime scene.

"Subsequent efforts by the police to locate these items have been unavailing," counsel wrote. The defense lawyer also noted in his motion that there were no "evidence tags" establishing the movement and chain of custody of various pieces of evidence in the case.

Citing case law, counsel said dismissal of the charges would be warranted if the court determined that evidence favorable to the defendant had been lost as a result of the government's "culpable mishandling."

As an alternative to dismissal, counsel asked that the court exclude the use of DNA evidence obtained from items "whose provenance cannot be adequately established," and that the DA be required to detail, before trial, the chain of custody of each piece of evidence it planned to introduce. The DA said yesterday that the missing evidence had not been found. "We're preparing a response to the motion," he said, declining to comment further.

Defense counsel has also filed a motion asking the judge to reconsider her denial, last year, of a motion to suppress DNA evidence in the case. Counsel argued in that motion that state correction officials unlawfully collected defendant's DNA sample in 2003, while he was serving time for a parole violation from a 1988 breaking and entering conviction.

Defendant's criminal history at the time did not include convictions that would have placed him on the list of felons whose DNA could be collected under state law. Charged in 1980 with armed robbery, defendant later pleaded guilty to a reduced charge of larceny from a person.

An incorrect data entry made on defendant's Board of Probation record, however, reflected a conviction for the original charge of robbery and his DNA sample was taken on the basis of that error, according to an agreed statement of facts submitted by defense counsel and the DA in connection with the suppression motion.

The law has since been changed to allow the collection of DNA samples from all convicted felons. In denying the motion to suppress, the judge said responsibility for the error in defendant's criminal record that resulted in the collection of his DNA sample rested with probation officials or the Criminal Offender Registry Information board and not with police or correction officials.

In his motion to reconsider, counsel cited publicity surrounding problems recently uncovered at the Massachusetts State Police Crime Lab, including DNA profiles of a dozen sex crime suspects that were wrongly placed in the Database. The 12 suspects were convicted of misdemeanors, but state law limits the Database to convicted felons, officials said.

Defense counsel said in an affidavit that he was requesting reconsideration in light of "revelations of malfeasance by the DNA lab, including an apparent pattern of seizing and

testing DNA from individuals who did not fall under the statute authorizing such seizure and testing." Defendant's case has been continued to Aug. 28.

The Coloradoan -- August 2, 2007

Missing Evidence Delays Request For New Colorado Murder Trial
By Sara Reed

Missing evidence is holding up the progress of a 20-year murder case for which some say the wrong man was convicted. The Colorado Court of Appeals and Supreme Court have upheld the 1999 conviction of Timothy Masters for the murder of a woman in 1987. Masters is now seeking a new trial. However, before that can happen, defense counsel says he needs to finish his investigation of the original trial so he can determine where the system broke down.

But that investigation hit a snag. "It became apparent that evidence is missing," he said. Did Masters' original defense attorneys ever look at key evidence? Was there adequate investigation? Those are some of the questions counsel is now trying to answer.

The two pieces of evidence he is still seeking are two unidentified hairs collected from the victim's body and the original photographs of 13 unknown fingerprints lifted from her purse. The last known location of the pictures and negatives of the fingerprints is the Federal Bureau of Investigation fingerprint unit in Quantico, Va., Wymore said.

According to an affidavit from Michael J. Smith, an FBI supervisory fingerprint specialist with the Latent Print Operations Unit, the unit received a request from Fort Collins police in September for photos of the prints.

From that request, it was determined the photographs and negatives had been retrieved following a request in November 2005, according to the affidavit. However, when the unit received a court order for the original photos and negatives in January, they could not be found.

In the affidavit, Smith said he spoke with the former unit chief and print examiners previously involved in the case to see if they knew where the images were, but none of them knew. Smith said the search for the photos and negatives will continue but that to the best of his recollection, he never released the items.

There was no indication in the affidavit as to what may have happened to the materials or where they may be. The hairs, which were collected from the victim's boot and sock, were last held by Fort Collins police, defense counsel said.

Lt. Jim Broderick said police have turned over to the defense all of the slides of evidence created by the Colorado Bureau of Investigation. CBI did place the hairs on slides, Broderick said. However, no inventory of what was turned over to the defense was created by the police. Broderick said he could not say if the hairs were missing without

looking through all the evidence handed over to the defense. “We never threw anything away,” he said.

A DNA sample from the victim's clothing is also at issue. A judge had ruled the defense team could take the victim's clothing for DNA testing in the Netherlands. However, the DA ordered CBI to collect half of each sample. The DA has said that was to preserve the sample. Defense counsel argued that no one in the DA's office had the authority to do so. The case has since been taken over by prosecutors from another county.

Those tests yielded a previously undiscovered, unknown DNA sample. Both sides will be in court later this month for a hearing regarding the DNA and, defense counsel hopes, an update on the other evidence.

Lexington Herald-Leader -- August 21, 2007

Evidence Ordered For DNA Testing In Old Murder Is Suddenly Missing
Problems Finding Evidence From Old Cases For DNA Testing Not Uncommon
Discarded, Lost, Misplaced DNA Evidence A Troubling Universal Phenomenon
By Brett Barrouquere

Louisville, Ky. --Two pieces of crucial evidence wanted for DNA testing by a Kentucky Death Row inmate are missing. A pair of black pants and black corrective shoes that prosecutors say place Brian Keith Moore at the scene of a 1979 murder in Louisville cannot be located.

In response, Moore's attorney has asked the judge to set aside the conviction and death sentence if prosecutors don't find the items. "In light of this, the risk that Moore is innocent currently exists and will continue to remain," public defender David Barron said. A hearing on the matter was scheduled for Thursday morning.

Four pieces of clothing - a shirt, a black jacket, the pants and the shoes - were supposed to be taken to the Crime Lab for testing in May, but employees could only find the shirt and jacket. DNA evidence from the shirt and jacket could cast doubt on Moore's conviction, but the loss of the shoes and pants could prevent him from proving his innocence, Barron said.

The Attorney General's office listed the shoes and pants as available for testing in an inventory submitted to a judge in May 2006. A spokesman for the Kentucky Attorney General, which is handling the case, declined to comment.

Prosecutors across the country frequently report problems finding evidence from old cases for DNA testing, said Vanessa Potkin, a staff attorney with The Innocence Project in New York, a group that aids inmates in getting DNA testing.

Old evidence was found after multiple searches in recent cases in Virginia, New Jersey and New York, Potkin said. In the New York case, Alan Newton waited 11 years for a rape kit to be located and was released in 2006 after serving 21 years of a 40-year sentence.

Maryland's highest court last week ordered prosecutors to keep searching for evidence that could be tested in a 33-year-old murder. "Evidence just doesn't disappear," Potkin said. "You really need to be diligent. In this case, the significance could be life or death."

Moore, 49, was condemned to death for kidnapping and killing a Louisville man who was on his way to his 77th birthday party. Moore is the first Kentucky Death Row inmate to win DNA testing on evidence stemming from a crime predating such tests. At least three other Death Row inmates have petitioned for testing.

Kentucky's law is similar to statutes in 39 other states. It allows Death Row inmates to request DNA testing on evidence as long as there haven't been previous tests and they can convince a judge that the evidence would have affected the outcome of their trial. Similar tests have resulted in more than a dozen people around the country being freed from death row.

Moore has claimed he was set up by another suspect in the killing, who turned in Moore to reduce a pending sentence in another case. That person has since died.

The judge found that the evidence in the case - the clothes, Moore's fingerprints on several items belonging to the victim and Moore driving Harris' car - could be consistent with Moore's claim. Shake ruled that Moore made a compelling enough case to warrant DNA testing.

If the DNA on the clothes doesn't match Moore, the rest of the evidence against him is weak and suspect, Barron said. The pants in question don't - and have never - fit Moore, who weighs about 350 pounds, and nearly all the evidence can also be tied to the other suspect, Barron said. Kentucky has executed two inmates since the reinstatement of the death penalty in 1976.

Ledger-Enquirer (Ohio) August 26, 2007

No Biological Evidence From Seven Ohio Rape-Murders 30 Years Ago
Ohio Police Claimed It Was A Biohazard And Discarded It
DNA Has Just Linked Defendant To 1975 New York Rape-Murder
Attorney Finds Timing Curious; 3 Weeks Before Arguments In 11th Circuit
By Tim Chitwood

No saliva, blood or semen samples remain from the "Stocking Stranglings" in which seven elderly Columbus women were raped and strangled in 1977 and 1978. Authorities discarded such evidence before the advent of DNA testing. "They claimed it was a

'biohazard,' of all things," said the attorney now representing convicted "Stocking Strangler" Carlton Gary.

Investigators never used DNA to tie Gary to any of the murders in Ohio. But the news that police in Syracuse, N.Y., have matched Gary's DNA to evidence found at the scene of a 1975 rape and strangulation has reinforced what many here already believed: That Columbus police arrested the right man in 1984 and a jury convicted the right man in 1986.

"I always thought we had the right man. In fact I was sure that we had the right man, so it really didn't surprise me," said the Columbus Mayor who was a police patrol commander during the stranglings and police chief when Gary was arrested and convicted in the mid-'80s.

Today Gary remains on death row, his case on appeal in the federal courts. Having been denied a new trial this past May by a U.S. District Court Judge, Gary now is appealing to the 11th Circuit Court of Appeals in Atlanta. It's to hear arguments Sept. 19, his attorney said.

Hearing Gary's DNA has been linked to the 1975 rape and strangulation of a woman in Syracuse, his attorney finds the timing curious. "I thought they had tried to talk to him about this years ago," the lawyer said Thursday. "I mean, DNA is DNA, and especially with old DNA there are all sorts of problems, but I just find it odd that all of this is coming out like two weeks before we have our arguments in the 11th Circuit."

Though no fluid samples remain from the stranglings, the lawyer said hairs that apparently came from the killer were collected and should be DNA-tested to see if they match Gary. But the defense has never been able to get a court to allow that, he said.

Gary's DNA profile is in the CODIS databank, where it can be compared to evidence in other cases. It has been on file for years, the lawyer said, so he wonders why a match in Syracuse wasn't made earlier, and why authorities wouldn't try to match Gary's DNA to any evidence still left from the stranglings.

"We've been asking for DNA testing for years, and they wouldn't let us do DNA testing or they said they'd lost all the samples... and then a couple of weeks before the oral arguments, somebody comes up with some old case and claims they've got a match, even though they've had his DNA profile for years," the lawyer said. "I'm not a conspiracy-type person, but it seems rather odd to me."

Worcester Telegram & Gazette -- October 24, 2007

Evidence In 1987 Massachusetts Murder Case Lost
Prosecution Argues Missing Box Won't Hurt Defense Effort
Says Defense Counsel Has Not Shown Reasonable Possibility That Lost Evidence Would Have Tended To Exculpate Defendant
By Gary V. Murray Telegram & Gazette Staff
http://www.telegram.com/article/20071024/NEWS/710240612/1008/NEWS02

Worcester -- The loss of evidence, including a hammer recovered from the crime scene, does not warrant the dismissal of charges against a prison inmate accused of raping and murdering a woman 20 years ago in her West Side home, prosecutors are contending.

Steven M. Siemietkowski, 47, is awaiting trial in Worcester Superior Court on first-degree murder and aggravated rape charges in the June 4, 1987, slaying of a 64-year-old woman. Her body was discovered in her bed with a pillow covering her face. An autopsy determined she died as a result of asphyxia associated with blunt head trauma.

Defendant, who worked at Servpro Cleaning Co. and had spent a week in the victim's home in February 1987 cleaning up after a furnace malfunction, became a suspect in the killing. He was not charged until 2004, when a computer comparison revealed what prosecutors said was a match between his DNA profile and a genetic profile developed from biological evidence recovered from the victim.

Defendant's appointed lawyer filed a motion in July seeking dismissal of the charges against his client, who remains in custody on a parole violation and has denied any involvement in the slaying when questioned by investigators.

In an affidavit accompanying the motion, counsel said he learned when he went to police headquarters to examine the physical evidence in the case that "at least one box" of evidence could not be found. Among the missing items was a hammer recovered from the crime scene.

Citing case law, defense counsel said dismissal of the charges would be warranted if the court found that evidence favorable to defendant had been lost as a result of the government's "culpable mishandling."

In her written opposition to the motion to dismiss, the Assistant DA said dismissal of the charges was not called for under the circumstances of the case.

She said defense counsel had not shown "a reasonable possibility" that the lost evidence would have tended to exculpate defendant. The DA asked the court to find, after balancing the materiality of the missing evidence, the commonwealth's culpability for its loss and the potential prejudice to the defendant, that dismissal was not warranted.

The DA said the hammer, which prosecutors are not alleging was the murder weapon, was tested at the State Police Crime Lab. A screening for blood on the hammer was negative and no sperm cells or seminal fluid residue were detected on it. She said the crime lab saved swabs taken from the hammer, which may still be tested. She cited what she said was defendant's failure to show how access to or testing of the hammer would yield any evidence helpful to his case.

While police may have been negligent, "at worst," in misplacing the box of evidence, there was no suggestion of "intentional or bad faith destruction of evidence which may have been favorable to the accused," the assistant DA wrote.

A hearing was to have been held yesterday on the motion to dismiss, but was postponed by the judge at the request of Assistant District Attorney Thomas E. Landry, who said he was not yet prepared to argue the prosecution's position. Landry also told the judge that DNA testing being done at defense counsel's behest had not been completed and that he and counsel had begun to "explore" a possible resolution of the case. The judge continued the case to Dec. 3.

News-Argus (Goldsboro, NC) -- November 7, 2007

Innocent Man In Prison 18 Years For Rape Of Girl; Exonerated By DNA Testing; Crime Scene Evidence Long Thought To Have Been Destroyed But It Was Discovered In August In PD Evidence Locker; Defense Counsel Announces Today That DNA Identified Real Rapist Two Months Ago
DA Says: "Some Folks Don't Think We're Moving Quickly Enough"
Annoyed Detective Says: "(Counsel) Appears To Know More About This Case Than The People Who Are Involved In The Investigation"
Innocent Man Doesn't Mind That It's Taking So Long To File Charges
Hopes That Convicting Right Man This Time Can Bring Closure To Victim And Her Family

No one has been charged yet and certainly no arrests have been made, but thanks to the DNA evidence that exonerated Dwayne Dail after 18 years in prison, there now may be a new suspect in the 1987 rape of a 12-year-old girl.

Dail's attorney, Christine Mumma, director of the N.C. Center for Actual Innocence, explained that the match was actually made about two months ago, but that the news wasn't announced.

"When Dwayne Dail was released, they had a match," she said. "Then they did a verification swab within a couple of weeks of Dwayne's exoneration. We didn't talk about this for quite a while, but it's been over two months and I feel there should be little bit more movement. I'm sure they're trying to gather other evidence, but an exact DNA match has been plenty of proof (in the past) for charges."

She would not, however, identify the suspect, saying only that he is currently serving time in a state prison and that "he was living in Goldsboro at the time of the rape." She is hopeful, though, that charges will soon be on their way.

The Wayne County District Attorney would not confirm that there is a suspect. "I don't know why it's bubbled up to the top here, yesterday or today," he said. "We're still investigating it, and it's still going forward. Some folks don't think we're moving quickly enough. We just want to do a thorough investigation and be ready with it. We want to re-interview everybody that was involved in the original investigation and follow some more leads that we have in the case."

The leaking of such information, though, is making those efforts more difficult, said Goldsboro PD Sgt. Chad Calloway. "(Ms. Mumma) appears to know more about this case than the people who are involved in the investigation," he said. "We don't have any information to give, outside of we're still working on it."

He explained that their goal is to identify and convict the right man, but he added that "it's kind of hard to reach that goal when someone that's outside the investigation seems to know more about it than we do. As soon as we get to that point we would be the next happiest entity outside of Mr. Dail himself."

The investigation is trying to find the man who actually raped a 12-year-old girl in 1987 in Goldsboro. It was a crime that Dail was wrongly convicted of and sentenced to life in prison for in March 1989.

In August, however, evidence that was thought to have been destroyed was discovered in an evidence locker at the Goldsboro Police Department. A DNA test of a spot of semen on a nightgown revealed that Dail was, in fact, not the guilty party and he was released on Aug. 28.

He was then pardoned by Gov. Mike Easley on Oct. 10. Finding out who actually committed the crime, Mumma said, would be a final piece of the puzzle. "It's closure for him. Even though he's been pardoned, this is a final stage that he needs for closure," she said. "He's stated all along that the one person he's angry with is the man who committed this crime and knew he was sitting in jail for a crime he didn't commit."

Dail acknowledged knowing who the guilty party is, would be a burden lifted. "It will be, I'm sure, a bit of closure for me," he said. "Obviously I can't say, but I have an idea about who this person is, and I'd like to be there at the trial. "I want the opportunity to look that person in the face. I'd like to see him tried by a jury, convicted, and sentenced to at least what I got."

He also said that he wishes there was a way this man could be punished, not only for what he did to the girl and her family, but also for what he did to him and his family. But Dail did say that he doesn't necessarily mind the fact that it's taking so long to file charges.

"I most definitely want them to be sure they've crossed all their Ts and dotted all their Is on this one," he said. "A 100 percent DNA match is hard to refute, but I understand that they're taking their time. I'd rather them take their time and make sure it's right and get this person locked away for the rest of their life."

He also hopes that by finding and convicting the right man this time, that it can finally bring some closure to the victim and her family. Eventually, Mumma added, she would like for the two of them to meet. "There has been history in other cases that this is an important step in the healing process. Dwayne is definitely open to it," she said. They have not, however, spoken to the victim.

Russell trial told that evidence was thrown out – October 31, 2007

By Associated Press

KELSO, Wash. (AP) - A Washington State Patrol auditor testified Tuesday in Frederick Russell's vehicular homicide trial that more than 500 pieces of bodily fluid evidence stored by the patrol crime lab's Seattle bureau were thrown out "without any explanation" and that proper procedures for documenting and destroying samples were not followed.

Sgt. Patricia Lankford described her disappointment with mismanagement of the lab.

Defense lawyers are trying to discredit Russell's blood alcohol test results, which showed a level of .12 on the night of the June 4, 2001, collision that killed three college students. The legal intoxication threshold in Washington is .08.

Lana Weinmann, an assistant state attorney general who is helping prosecute the case, emphasized that although storage of blood evidence may have been mismanaged, the auditor found no evidence of wrongdoing when it came to testing blood samples before storage.

There also is no evidence that the blood samples were destroyed on purpose, Weinmann said.

Defense lawyers have argued that if the samples had been preserved until the end of the case, they could have conducted an independent test on the accuracy of toxicology and medical records.

Russell, 28, is on trial on both vehicular homicide and vehicular assault charges. He's accused of being drunk, speeding, and trying to pass in a no-passing zone when his vehicle was involved in the crash on State Route 270, the highway between the two college towns of Pullman, Wash., and Moscow, Idaho.

Three WSU students were killed and three were injured.

Russell fled to Ireland in 2001, right before his trial was scheduled to start. He was captured in 2005 and later extradited back to the United States.

Also on Tuesday, Whitman County Superior Court Judge David Frazier barred the jury from hearing the contents of a written death threat and a phone threat. Both were reported to police by Russell's father, Gregory Russell.

"Fred, you won't live to see trial," read one "thinking of you" note card left at the front door of the Pullman apartment the father and son shared.

Russell's lawyers contend it was such threats that caused the younger Russell to flee.

But without clear evidence that Russell actually learned of such threats from his father, Frazier said he wouldn't allow the jury to hear the message.

Defense lawyer Francisco Duarte told the judge that one defense witness has serious health problems while another is in the middle of another trial.

To give the defense time to regroup, Frazier gave the jury Wednesday off.

On Thursday, the defense hopes to call Fred Russell's mother, Linda. She and Russell's aunt have spent the past 2½ weeks sitting in the courtroom just behind him.

The trial was moved to southwest Washington's Cowlitz County from Whitman County in southeast Washington because of extensive news coverage.

Lexington (KY) Herald-Leader -- November 14, 2007

Judge Ordered DNA Testing For Kentucky Death Row Inmate
But Evidence Ordered To Be Tested Suddenly Can't Be Found
Defense Counsel Asks That Death Sentence Be Set Aside
DA Argues DNA Irrelevant; Enough Other Evidence Supports Judgment

By Brett Barrouquere
Associated Press Writer

Louisville, Ky. --Evidence sought by a Kentucky death row inmate for DNA testing can't be found, leaving a judge to decide whether to let a death sentence stand. Police searched for 60 days trying to find the pair of pants and shoes in question. They dug through boxes and contacted people involved with the case over the last two decades, but could not locate the items, the AG said.

Now, it's up to a Jefferson Circuit judge to decide whether to let Brian Keith Moore's death sentence stand or set it aside because the evidence has been lost in the 28 years since the crime. The judge did not immediately rule Wednesday on Moore's status.

Moore, 49, is awaiting execution for the 1979 slaying of a Louisville man. The judge ordered testing on the shoes, pants and two other clothing items after Moore's lawyers petitioned the court for the tests. Moore claims he didn't wear the clothes, which were used at trial to put the killer at the scene of the victim's death.

Moore's lawyer had asked the judge to set aside the death sentence if the clothes couldn't be found. The AG said any DNA on the clothes is irrelevant because there are enough witnesses and other evidence to convict Moore and sentence him to death. "In light of these facts, it would be a gross miscarriage of justice to set aside petitioner's conviction and/or death sentence," the AG told the judge.

The AG also asked the judge to order Moore to give a DNA sample to compare against any evidence found on a shirt and jacket that are available for testing. Such a sample would be used to determine if Moore wore any of the clothes witnesses said the killer had on when the victim was murdered.

Moore became the first Kentucky Death Row inmate to win DNA testing when the judge ordered an examination of multiple pieces of clothing. He ordered the tests under a law allowing condemned inmates whose cases predate DNA technology to ask for the testing on old evidence.

Prosecutors initially said all the evidence had been found but backtracked when the shirt and shoes weren't sent to the crime lab. Dirt on the pants and shoes was used at Moore's trial to place him at the scene of the murder. Defense counsel said Moore was set up by another man and if Moore's DNA doesn't show up on the clothes that were used as evidence at his trial, it could exonerate him.

At least three other Death Row inmates have petitioned for testing. All are still waiting on results. Moore has claimed another suspect in the killing set him up and turned him in to reduce a sentence in another case. That person has since died.

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