

**JUSTICE FOR SEXUAL ASSAULT VICTIMS: USING
DNA EVIDENCE TO COMBAT CRIME**

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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JUSTICE FOR SEXUAL ASSAULT VICTIMS: USING DNA EVIDENCE TO COMBAT CRIME

TUESDAY, MAY 14, 2002

U.S. SENATE,
SUBCOMMITTEE ON CRIME AND DRUGS,
COMMITTEE ON THE JUDICIARY
Washington, D.C.

The Committee met, Pursuant to notice, at 10:40 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (Chairman of the Subcommittee) presiding.

Present: Senators Biden, Cantwell, Schumer, and Clinton (ex officio).

OPENING STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Chairman BIDEN. The hearing will come to order. I thank my colleague from Washington for being here this morning and for her leadership in this area and for keeping our eye on the ball. I guess I have been here so long, it is strange to say, but you are an incredibly welcome addition. I know you are an old-timer now. You have been here for more than a year, but it is great to have you here.

I want to point out that 99.9 percent—that number, I want everybody to sort of keep in mind as we go through this hearing today, 99.9 percent—99.9 percent, that is how accurate DNA evidence is. One in 30 billion are likely to be wrong—one in 30 billion. Those are the odds that someone else committed a crime and the suspect's DNA matches evidence at the crime scene. Twenty or 30 years, as long as 30 years, depending on how it is kept and stored, is how long DNA evidence from a crime scene can last and be accurate. The FBI tells us since 1998, the national DNA data base has helped put away violent criminals in 4,179 investigations in 32 States.

I might add, by the way, the focus of today's hearing and some of the witnesses were back in the old days with me with the Violence Against Women Act when we started raising these issues and funding these so-called rape kits and trying to get people to pay more attention to violence against women. One of the things that we should point out, today, we are going to focus, and I say this for the press here, on catching the bad guy. But I want to make it clear to you—and that is the total focus of today's hearing and how we do that and how we better equip law enforcement to do that accurately.

But just those of you who think this is something about civil liberties and we are somehow doing something that is going to raise

people's concerns, I want to point out to you that DNA is a two-way street. Senator Specter and I also have a bill relating to DNA that can free convicted people who are not guilty of crime. DNA evidence is a two-way street. DNA evidence can go out there and see to it that people wrongly convicted of a crime, which happens not infrequently in our system, wrongly convicted of crime go free. So this is not a one-way tool, it is a two-way tool. But today, I want to focus on it one way.

When we started this process back in 1986 when I wrote the Violence Against Women Act, in trying to figure out how could we use the tools available to us through science and forensic sciences in particular to see to it that we cut down on the violence against women and captured those who perpetrated that violence in the case where it is a stranger, which is about 30 percent of the time in rape.

We funded through the Violence Against Women Act an awful lot of programs, one of which was we found that when at a crime scene, particularly for rape, law enforcement officers were not as fastidious in paying attention to gathering evidence, when a woman who is a victim of rape or assault went to a hospital, there was not nearly as much attention paid by nurses and/or doctors to whether or not the woman was a victim of an assault, and when it was clear that a woman had alleged that she had been raped, there was not nearly enough attention paid to the collection of the important data and evidence that would be available and convincing in a trial when, in fact, and if, in fact, a defendant was arrested for that case.

As a matter of fact—I am going to be parochial for a minute—one of our witnesses I will introduce later in the second panel is a nurse from Delaware. We had spent some time after we passed that Act, my going back to my little State—it is small enough to be able to do this—and gathering up, literally, all the doctors—not all the doctors, but all the doctors who headed the emergency rooms in my entire State. We got them all together and said, hey, look, under this law now we have passed, this Violence Against Women Act, there is a lot of money available out there that we can get you, but we expect you to do some things.

And we got volunteers to come in and sit in front of and outside of emergency rooms so when a woman came in who said, “No, I ran into a door,” or was raped but did not want anybody to know she was raped, there was someone to walk in and hold her hand and say, “Look, do not worry. We can not only get you medical help here, but we can get you a police officer to show up here in 10 minutes. We can get a judge to get you a stay-away order. We can make sure,” and so on and so forth, very practical things, very practical, basic things.

And the irony is, we have come a long way and we have done a lot, but we have not connected the last dot. We now have, as one of the witnesses from Delaware will point out, a nurse who heads up an organization called SANE, which makes sure we fastidiously collect this data, we find out that an awful lot of the data is just sitting around. We are not connecting the dots. We are not connecting the data base we have of a criminal convicted population with the data base we have of women who have been the victims

of rape and other crimes, because it is not just rape. DNA deals with other crimes, as well. So how do we do that?

For instance, in Florida, Kelly Green was brutally attacked and raped in the laundry room of her apartment complex. Because of the lack of funds for a rape kit, it sat on the shelf for 3 years until a persistent detective had it analyzed. The evidence matched the profile of a man already incarcerated for beating and raping a woman 6 weeks before Kelly. He was charged and convicted in Kelly's assault. That is not important just because of Kelly, just getting the bad guy. This is a guy who, once he was released, could be out there doing the same thing again. This is a guy who would do the same thing again.

In light of the past successes and the future potential for DNA evidence, reports about the backlog of untested rape kits and other crime scenes waiting on shelves in police warehouses is simply unacceptable.

I have called this hearing today to hear firsthand how DNA evidence is shelved and how it could solve so-called cold cases. Today, I am introducing legislation, the DNA Sexual Assault Justice Act of 2002, to connect the final dot between the Violence Against Women Act and this, to strengthen the existing Federal DNA regime as an effective crime-fighting tool, and I hope to use today's hearings to get answers to five basic questions.

First, exactly how bad is the backlog of untested rape kits nationwide? In 1999, government reports found that over 180,000 rape kits were sitting untested on the storage shelves of police departments and laboratories all across the country, while recent press reports estimate that number today is approaching 500,000 untested rape kits. Now, do you get this, 500,000 untested rape kits. That is 500,000 women who have alleged they have been raped. Let us get the proportion of this crime, 500,000, not a year, but 500,000. I am told there is no current accurate number of what the backlog is. Behind every single one of those rape kits is a victim who deserves recognition and justice.

Accordingly, my legislation would require the Attorney General to survey every single law enforcement agency in the country to assess the backlog of rape kits waiting to undergo DNA testing. It sounds like a big job, and we did that in a number of areas in the Violence Against Women Act. It is not that hard to do.

Second, how can existing Federal laws be strengthened to make sure that State crime labs have the funds for the critical DNA analysis needed to solve sexual assault cases? To fight crime most effectively, we must both test rape kits and enter convicted offenders' DNA samples into DNA data bases.

My bill would, one, increase current funding levels to both test rape kits and to process and upload offender samples and allow local governments to apply directly to the Justice Department for these grants, just like they do on the Biden crime bill for cops.

Third, what assistance does the FBI need to keep up with the crushing number of DNA samples which need to be tested or stored in a national data base? I am told that the current national data base, known as the Combined DNA Index, CODIS, is nearing capacity of convicted offenders whose DNA samples are stored.

My bill would provide funds to the FBI, one, to upgrade the national DNA computer data base to handle the huge projections of samples, and two, to process and upload convicted offenders' DNA samples into the data base.

Fourthly, the bill would provide additional tools—I want to determine what additional tools are needed to treat victims of sexual assault. One group that understands the importance of gathering credible DNA evidence are forensic Sexual Assault Nurse Examiners who are sensitive to the trauma of this horrible crime and make sure that patients are not re-victimized in the aftermath. Likewise, we have to ensure that law enforcement officials are well trained in how to collect and preserve DNA from the crime scene.

Thus, my bill creates a new grant program, one, to carry out sexual assault examiner programs and training; two, to acquire or improve forensic equipment; three, to train law enforcement personnel in the handling of sexual assault cases and the collection and use of DNA samples for use as forensic evidence. This is not reinventing the wheel. We have done this in the Violence Against Women Act and the crime bill in other areas. This is all doable.

Fifth, what can be done to ensure that sexual assault offenders who cannot be identified by their victim are nevertheless brought to justice? Profound injustice is done to rape victims when delayed DNA testing leads to a cold hit after the statute of limitations has expired. Do you know what I mean by a cold hit? That means after the statute of limitations is expired for the rape, it finds out there is a connection. We hit that data base and there is a connection. The DNA from the rape kit acquired at the scene of the crime matches with a defendant who is in the data base, or a convicted felon, I should say—they are the only ones in the data base—and it is too late. The statute of limitations has run.

For example, Jeri Elster was brutally raped in her California home, and for years, the police were unable to solve the crime. Seven years later, DNA from the rape matched the man in jail for an unrelated crime. Yet, the rapist was never charged, convicted, or sentenced because the California statute of limitations had expired the previous year.

My bill would change the current law to authorize Federal John Doe DNA indictments. Let me explain what that means. This will permit Federal prosecutors to issue an indictment identifying an unknown defendant by his DNA profile within the 5-year statute of limitations, which is the Federal statute. Once outstanding, the DNA indictment would permit prosecution at any time once there was a DNA cold hit through the national DNA data base.

I want to make it clear now. We do not control State law. There are very few Federal rape cases. This is not going to solve the problem, but I want to set a standard, a national standard to which States may consider to repair, and that is by allowing for there to be the statute not tolling once the indictment is brought against the DNA identified base.

So let us take a look at all of these issues this morning, faster DNA testing, better treatment for rape victims, more creative uses of sexual assault indictments, and how to make sure that the State crime labs are participating in the national DNA data base. The technology exists to bring solace to countless victims and to make

our streets safer in the process. Our panel of experts will help explain the proper role, and I look forward to hearing their testimony.

Senator Cantwell is here, and although it is usually our practice to go to Republicans, they are probably voting right now. Why don't I yield to the Senator in the last few minutes if she would like to make an opening comment. Then we are going to recess for a minute, go vote, because all those buzzers you hear means there are about 3 minutes left in the vote, and we will come back, and if Senator Grassley is here, he will make a statement, and then we will go to the witnesses.

**STATEMENT OF HON. MARIA CANTWELL, A U.S. SENATOR
FROM THE STATE OF WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. I appreciate being recognized. You have certainly been a leader on the issue of violence against women and I applaud you for that leadership and also for having a hearing today and introducing legislation. I look forward to working with you on this issue.

I want to also thank you for inviting Debbie Smith to testify. She will be on the second panel. As you know, she has been active in testifying on this issue both in the House and making this issue known around our country. The Debbie Smith Act will pay for DNA testing of 20,000 rape kits that are currently gathering dust in police offices and labs all around the country and will help us get more rapists caught and convicted.

In my own State of Washington, DNA testing was used and matched against a data base against the convicted I-5 rapist, Jeffrey Paul McKechnie, and that was critical for us in our State. Washington State recently passed a law requiring that all felons provide DNA samples, but like many other States, we need to have the funding to make sure that those samples are then checked against a data base.

So, Mr. Chairman, Senator Clinton, who I believe is going to be here a little bit later, has also introduced legislation and is strongly committed to seeing that the current lack of funding of DNA testing is addressed. She is also a cosponsor of the Debbie Smith Act and I have agreed to work with her on combining these bills to best address this issue.

I want to thank her for being here and for her steadfast vigilance in making sure that this issue gets national attention, and I also want to thank her husband, who is a detective with the Williamsburg Police Department for his steadfastness in supporting his wife on this issue. Debbie Smith's experience is really testimony to the power of DNA evidence. It would have been impossible to solve a "no suspect" case like Debbie's without the use of DNA evidence. It took 6 years for the forensic evidence sample taken at the time of her rape case to be cross-checked against the Virginia data base of convicted felons, but when the comparison was made, her attacker was found and he was sentenced to two life terms plus 25 years.

Debbie Smith has put her own experience with DNA testing to good use and having the courage to share her story has helped us

realize that the next sexual assault victim could be our sister, our daughter, our wife, or our mother.

I believe this is legislation that we need to get passed this year. According to the Department of Justice, a woman is raped every 2 minutes. One in three women will be sexually assaulted in her lifetime. In my home State of Washington, the number of sexual assault cases is even higher. According to the Washington State Office of Crime Victim Advocates, 38 percent of women in my State have been sexually assaulted.

If women have the courage to come forward and report a sexual assault and submit to the physical examination and evidence gathering, we owe them the absolute guarantee that that information, at a minimum, will be analyzed and checked against a data base of known sexual offenders and violent offenders. That is what Debbie Smith and every woman who is sexually assaulted deserves to have done, and that is what I am determined to see accomplished this year.

In order to do this, we need to provide funding that allows States to build a data base of convicted felons and provides for DNA testing in "no suspect" rape cases.

Women who are raped also deserve to receive respectful treatment by people trained to collect and preserve this forensic information. That is what the Sexual Assault Nurse Examiner program, or SANE program, does. SANE nurses can make the difference to women. In 1995, a young woman in Olympia, Washington, was raped at gunpoint. She said that the SANE nurse who collected the DNA evidence after the assault made her feel at ease and more confident and comfortable. That was related to the case that I mentioned earlier. The data was entered into a data base and matched that of the convicted serial rapist, the I-5 rapist and this resulted in an additional conviction against him.

Today, we will be hearing from one of our witnesses about the SANE program and its 200 operations nationwide, and because the SANE program largely operates without Federal funding, its expansion has been limited. Mr. Chairman, as you were pointing out, this is something that needs to be addressed in the legislation.

So I look forward to working with you on this legislation and your commitment to see that the Debbie Smith legislation and people like Debbie Smith will have their day and making sure that more rape kits are tested and more rapists are put in jail. I thank you, Mr. Chairman, for allowing me an opening statement.

[The prepared statement of Senator Cantwell appears as a submission for the record.]

Chairman BIDEN. Thank you. I can say to you, Senator, both you and Senator Clinton and others who have similar legislation, I am confident we can have an amalgam of the legislation. I just want the broadest, most comprehensive bill. I do not want to keep coming back and keep doing this. I want to have something comprehensive enough that we answer all of the issues here that are able to be answered and we find the best single way to do this. I might make it clear, it is going to cost money, but it is money well spent.

The time is out on the vote so we have got to take off for a moment. We will recess for 10 minutes. Our first panel when we come back will be Dr. Dwight E. Adams, Assistant Director of the Lab-

oratory Division at the FBI in Washington, D.C., and the Honorable Sarah V. Hart, Director of the National Institute of Justice, Department of Justice here in Washington, D.C., and we will begin with them upon our return.

We will now recess for approximately 10 minutes.

[Recess.]

Chairman BIDEN. The hearing will come to order.

As you know, we have a tradition in the Senate where members of the committee are the ones that participate in the hearings, but we also have another tradition that has been long honored, that if there is a Senator who is not on the committee who has a keen interest in the subject matter, they are often by the chair invited to participate. The way it works is, we go through the regular committee order first and then move to that Senator who is not a member of the committee.

The Senator who has joined us has an overwhelming interest in this issue. When, I might add, she was in her former incarnation, she—it is presumptuous of me to say this—along with her husband were overwhelming supporters of the Violence Against Women Act and it made my job a lot easier here to get that passed. Also, I might add that she has a particular interest since at least one of her cities has 16,000 of these rape kits sitting on a shelf in Queens.

So I thank her for her leadership and I see her colleague from New York is also here, the Senator who is a member of the committee and has worked very hard on all of these issues, as well, relating to violence against women, in this case, the issue before us. I welcome them both.

This is the last bit of explanation I will give. The trade bill is on the floor. Senator Grassley is a member of the Finance Committee, as a matter of fact, the ranking member of that committee, and so he is required to be there, as are several others, but I am sure we will have people coming in and out. Please do not, for those of you who are new to this committee, it is not a sign of disrespect. It is a sign of the fact that we are all on two or more committees, but this is extremely important.

We will begin now with Dr. Adams. Excuse me. This is not usually the way we do it, but the Senator from New York has an opening statement he would like to make and he is welcome to do it.

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. I appreciate it, Senator, and I appreciate your hard work on this issue, my colleague, Senator Clinton's. I apologize to the witnesses. We have two or three hearings going on this morning, so I appreciate the opportunity to make an opening statement.

I want to salute the Chairman of the Crime Subcommittee for the great work he has done. We have worked together on these kinds of issues for a very, very long time, the Violence Against Women Act which he carried and really led the charge in the Senate and I carried in the House, and I want to thank him for being here.

I want to thank my colleague, Senator Clinton, for her strong interest in this issue, which long preceded her being in the Senate,

and now she is here in the Senate, able to help join in the fight to deal with this sorry issue.

I also want to thank you, particularly. Dr. Adams, thanks for your work, but I want to thank Ms. Smith for being here today and for your courage, as well.

There are many challenges facing us in bringing justice to sexual assault victims and many of them can seem very daunting. From my time in the Senate and in the House, we have seen progress. In the 106th Congress, I introduced legislation with some others to help reduce the backlog of casework files awaiting DNA analysis, and later in the session, and I know, Joe, you were helpful in this, too, Congress authorized \$50 million over 5 years to help States pay for DNA testing of rape kits which hold the biological evidence collected from rape victims after the attack. I was even happier when President Clinton signed our law that authorized \$125 million in new Federal funding over 4 years to test thousands of rape kits.

In New York, we, of course, have known the problem of having the rape kits sitting on the shelves. Well, imagine if the police apprehended a suspect, took fingerprints, and then threw the prints in a drawer, never to see the light of day. We would be appalled. And that is exactly what was happening and still is, so we need all the help we can get to continue the funding to make sure that these rape kits are used.

For years now, rape victims arrived at hospitals after being assaulted, then undergone the further trauma of physical exams. The exams almost always result in the collection of biological evidence subject to DNA testing, and then comparing it to local and national DNA data bases in order to identify the attackers. But despite the fact that women have endured invasive physical exams after going through the trauma of rape itself, and despite our ability to use the evidence to catch rapists, which is just a blessing, there has not been enough money to conduct the testing.

So thousands of rape kits, we know, languish in police storage facilities across America without being tested, and that is a scandal. Every one of those rape kits stands for a person whose life has been turned inside out by a horrendous and violent crime. Every one of those kits represents a rapist who still might be walking the streets, and we know with rape, recidivism is extremely high, as it is with all sexual predation.

The new Federal money that has enabled States to start clearing the rape kit backlog and begin giving these cases the attention they so desperately need has to continue. Victims may be able to rest a little easier at night. Rapists will not, knowing that we are finally using the best tools.

Now, I would just like to bring to the attention—I know you are aware of this, Senator Biden. I know you are putting together comprehensive legislation, so one other issue. Last fall, along with Senator DeWine, I introduced the SAFE Act, otherwise known as the Sexual Assault Forensic Examiners Act. Our bill aims to vastly improve the care of victims of sexual assault and help to see that their attackers end up behind bars.

Over 300,000 women are sexually assaulted each year, and unlike all other violent crimes, rape is not declining in frequency. So

we owe it to her to do everything in our power to put the assailants behind bars, and we also owe her prompt and caring treatment when she has the courage to report a crime. We all know the problem—we have worked on this long and hard—to get victims to come forward. Yet, all too often, we fail in these basic obligations.

Most rape victims who seek treatment go to hospital emergency rooms. They often wait for hours in public waiting rooms. Many leave the hospital altogether rather than endure extended delay, decreasing the likelihood that the offense will ever be reported or prosecuted. And once victims are finally attended to, most of them are treated by a series of naturally rushed emergency nurses, doctors, and lab technicians, given the shortages we face in health care, and they lack specialized training in the particular physical and psychological care rape victims need.

Emergency room nurses and doctors all too often have little training in collecting, correctly handling, and preserving forensic evidence from rape victims, and moreover, many hospitals lack the latest forensic tools, such as the dye that reveals microscopic scratches, and colposcopes, which detect and photograph otherwise invisible pelvic injuries. Finally, emergency room personnel are sometimes reluctant to cooperate with police and prosecutors in sexual assault cases, knowing that this involves time consuming and difficult interviews, witness preparation, et cetera.

Well, the SAFE program has solved all of this, and SAFE programs dramatically improve the situation. SAFE examiners are specially trained in the latest techniques of forensic evidence gathering and cooperate fully with police and prosecutors, and their specialized training and experience makes them better witnesses in court. So when defendants claim consent and physical evidence of force, which can be difficult to uncover, the SAFE program helps make sure that is preserved.

I know that you are concerned about this, because our staffs have talked, and I know you are considering a broad-based bill, and I would just hope that a SAFE program, such as the one that Senator DeWine and I have—I know you are eager to put this in, but I hope it goes into the bill, as well.

I want to thank you, Senator, for your hard work on this, again, my colleague for an issue that concerns us very much in New York, and the witnesses for their work in this area, and I apologize.

Chairman BIDEN. No, no, no, there is no need to apologize. The objective here is to have the most comprehensive and thorough piece of legislation we can.

Since we have done this, I yield to Senator Clinton if she wants to make an opening statement.

**STATEMENT OF HON. HILLARY RODHAM CLINTON, A U.S.
SENATOR FROM THE STATE OF NEW YORK**

Senator CLINTON. Mr. Chairman, I want to thank you for your leadership, which goes back so many years. We have made so many steps forward in fighting crime because of you and your commitment and your passion.

I also want to thank all of the witnesses who are here today, especially Debbie Smith. I thank you for coming forward and being part of this effort to, once and for all, make clear that sexual as-

sault is going to be given every possible resource we need in order to combat it.

I will also acknowledge my friend and a witness today, Linda Fairstein, who has really pioneered the work against sex crimes, as the former Chief of the Sex Crimes Prosecution Unit in New York County, Manhattan. Linda has really, I think, opened the door to the prosecution of these terrible crimes and I thank her for being here, as well.

Mr. Chairman, I would just reinforce the need for a comprehensive bill. I know that our colleague, Senator Cantwell, has been working very diligently on what we are calling the Debbie Smith Act, I think very well named, to train Sexual Assault Nurse Examiners, law enforcement personnel, and first responders in handling sexual assault cases and for setting minimum standards for forensic evidence collection. That is something that Senator Schumer pointed out in his opening comments and it is so important, because once we do have a woman who comes forward and is willing to speak out against her rapist, we need to make sure that the evidence that she brings to that event in a police station, an emergency room, wherever it might be, is collected appropriately so that it can be used.

And then, of course, we have got to clear this rape kit backlog, I mean, not only in order to bring to justice those rapists and sexual assault predators who can be captured, prosecuted, convicted, and imprisoned because of this evidence, but to prevent them from striking again. We can prevent crimes if we really get to work on this backlog. We have made some progress, but not nearly enough. It is, like Senator Schumer said, to have this kind of evidence available and not examine it and use it for prosecutions is like setting up a crime tip hotline and not have anybody answer the phone. It makes absolutely no sense. This is one area where we know what it takes to not only prosecute the guilty, but prevent them from ever striking again.

I look forward to working with you and I thank you so much for your long-time work and for this hearing, Mr. Chairman.

Chairman BIDEN. Well, thank you. You are not going to like what I am going to say, Senator Clinton, but the fact that you have taken on this issue has given it a vitality that, quite frankly, it would not otherwise have, because of your involvement. Because of your national and international stature on women's issues, it is a big deal, and for that, I thank you. I mean, you could have picked a lot of other things to focus on, and quite frankly, as they say, those who are baseball fans, you put some pace on the ball for us here and I thank you.

Senator CLINTON. Let us bring it home.

Chairman BIDEN. By the way, we talk about rape kits. Just so, when we are talking about it, the audience wonders what it is. There is an actual kit that looks like this. This is the kit. On the outside, it has all the data. It has the victim's name, it has the hospital, the clinic, it has the date it is received, the laboratory numbers, and all the rest. So when we talk about a rape kit, that is what we are talking about, in case anybody wonders. We have been doing this so long, we get kind of caught up in the jargon and people wonder, what are we talking about?

Our first two witnesses we have today are designed to give us some hard nuts and bolts information here. They share our view there is a need to do something, but let us find out from Dr. Adams and from Ms. Hart what we are talking about here and the value and the science behind some of this.

Let me begin with you, Dr. Adams, if I may, and then go to you, Ms. Hart. The floor is yours.

**STATEMENT OF DWIGHT E. ADAMS, ASSISTANT DIRECTOR,
LABORATORY DIVISION, FEDERAL BUREAU OF INVESTIGATION,
WASHINGTON, D.C.**

Mr. ADAMS. Thank you. Mr. Chairman and members of the Subcommittee, thank you for the opportunity to share our experiences with DNA and the FBI's Combined DNA Index System, otherwise known as CODIS.

To date, CODIS has assisted in identifying a suspect or linking serial crimes in nearly 5,000 investigations. Each of you have probably read stories of CODIS hits happening in your local jurisdictions. One recent hit at the national level solved seven rapes committed over a 5-year period in three States, ranging from the West Coast to the East Coast. A 1998 rape in California was initially linked to a 1995 rape committed in Phoenix, Arizona. The 1995 rape also was linked to three other rapes in Arizona. The California and the Arizona rapes were later linked to a rape in Florida by the National DNA Index System. Ultimately, it was linked to a convicted offender included in Florida's DNA data base.

The interesting point about many of these hits is the information they provide about the offending population. First, they confirm that criminals are mobile. But they also provide us with insights that allow us to link seemingly different crimes.

For example, in New York, one rape involved an elderly woman, the other, the rape of a 7-year-old, and yet DNA linked these two crimes together, linked two crimes that likely would not have been seen to have been committed by the same individual, according to investigators.

We are here today to discuss issues that some could characterize as arising from being a victim of our own success. First, let me make it clear that the success of CODIS is largely attributable to the cooperative efforts of the criminal justice community, law enforcement, victims, Sexual Assault Nurse Examiners, prosecutors, and, of course, the crime laboratory personnel, Federal, State, and local crime laboratories.

Second, I think that the success of CODIS is calling our attention to other areas that we need to address in order to make the most of DNA technology. One area highlighted by our early surveys of crime laboratories was the growing backlogs of convicted offender samples that had been collected by the States but were never analyzed. The Commission on the Future of DNA Evidence addressed the backlog issue immediately and recommended to the Attorney General that Federal funding be made available to assist the States in reducing their backlogs. The Attorney General requested funding for the analysis of these convicted offender samples and Congress responded favorably to these requests with the DNA Analysis Backlog Elimination Act of 2000.

While the convicted offender backlog may be easier to quantify, it is also a moving target given the heightened legislative activity. Over the past couple of years, there have been hundreds of proposals introduced in States to expand the offenses covered by State DNA data bases. They begin with an incremental approach by phasing in the coverage of certain felony offenses. They then go to covering all felony offenses, and finally, to include persons arrested or at least indicted for certain offenses.

While just a few years ago a handful of States covered all felony offenders, there are now 19 States with laws that authorize the collection of a DNA sample from all felons. Given this level of legislative activity, the reality—

Chairman BIDEN. Doctor, State law authorizes this?

Mr. ADAMS. Yes, that is right. Given this level of legislative activity, the reality is that new offender backlogs will continue to be created as States expand their existing data base laws.

Hand-in-hand with the convicted offender backlog is the need to analyze all cases having DNA evidence, whether or not a suspect has been identified. This relates specifically to rape kits that laboratories have received, and more commonly, kits that law enforcement agencies have collected and stored but have never identified a suspect and have not submitted them to crime laboratories.

We know that having data of convicted offenders alone in the national data base will not solve crimes, and we cannot ignore cases that have no suspects, typically sexual assault cases. We are particularly concerned about these types of cases, those without suspects, since these are precisely the cases that CODIS was originally designed to address and, hopefully, solve.

Unlike the convicted offender samples, which are inventoried by crime laboratories, you cannot obtain the true scope of the rape kit backlog by going to crime laboratories alone. That number would only represent a small fraction of the total, since most of those rape kits are stored in evidence rooms or freezers of local police departments around the country.

What we do know is that there are cases, ones for which law enforcement have no suspects and no leads, that can potentially be solved by CODIS. We also know that the forensic index in CODIS containing the crime scene evidence is complementary to the convicted offender index. We need to populate both of these indices in order to have a successful CODIS program.

Our annual surveys of CODIS laboratories around the country seek to track the number of samples being collected and analyzed to ensure sufficient capacity for our CODIS program. A few years ago, we began to realize that the success of these DNA data bases translated in the need for greater capacity within CODIS. With the approval and support of Director Mueller and the Attorney General, the FBI is undertaking the redesign of CODIS to enhance the system's storage and searching capacities and to improve more immediate access to national searches.

Efforts began several years ago to develop new matching algorithms, allowing these searches to be done in less than a second, allowing them to be done in real time, and that is paying off. We are now planning the integration of this new search engine into CODIS even now. The redesign will size CODIS to accommodate

the estimated 50 million DNA profiles and permit searching of the national index as soon as the data are uploaded.

Hardware and software maintenance costs in the 153 laboratories around the country will also be reduced because of the redesign of CODIS. As laboratories work to increase their capacities and eliminate their convicted offender and casework backlogs and the FBI redesigns CODIS for these larger capacities, we must publicize the benefits of this technology to eliminate as well as incriminate suspects. Efforts to train law enforcement personnel in the proper procedures for collection and storage of DNA evidence must continue.

As I mentioned in the beginning, the cooperative efforts of the criminal justice community are responsible for the success of CODIS. The issues that have arisen out of these successes, such as backlogs, lack of capacity, lack of personnel, these can all be resolved. To quote from a recent article by Anna Quinlan of Newsweek, she said the solution is more money and more people for DNA testing. She went on to say that DNA was more reliable than other forms of evidence. She said that the genetic fingerprint we humans leave everywhere in our wake is the best witness the criminal justice system has ever had.

Mr. Chairman, I have a friend and his name is Bill Showalter. Bill Showalter lost his two granddaughters a few years ago. They were simply on their way home from school, but they were a victim of an abductor, of a rapist, and a murderer. Every time I see Bill Showalter, I am reminded that we have not solved that crime yet, and I ask myself a question each time I see Mr. Showalter. Are we doing everything we can to answer the question of who committed this crime? Quite frankly, the 153 laboratories across this country that are doing DNA testing now are doing all they can with what they have, but we could do so much more, and these backlogs are an example of what more could be done with a larger capacity.

In closing, Mr. Chairman, I would like to commend you for addressing these important issues. Your spearheading this act is commendable and, we believe, will enable the criminal justice system to use this new forensic tool to its fullest extent. Thank you very much.

Chairman BIDEN. Thank you.

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

Chairman BIDEN. Ms. Hart?

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

Ms. HART. Thank you. Thank you, Mr. Chairman, and thank you, members of the Subcommittee. As Director of the National Institute of Justice, I am very pleased to come here today and testify about this very, very important issue and I must echo many of the remarks that were said by my colleague, Dr. Adams, here today.

With the strong support of Congress, the Department of Justice, through NIJ, has served as a leader in the national effort to maximize the benefits of DNA evidence. Over the past 5 years, we have seen a national explosion in forensic DNA collection. All 50 States

and the Federal Government now have laws requiring DNA collections from convicted offenders, and advances in DNA technology have led to more DNA tests in crime scene evidence.

More DNA collected, however, means more DNA analyses. Today, there are literally hundreds of thousands of samples from crime scenes and from offenders that are awaiting analysis. The longer this evidence goes unanalyzed, the longer crimes go unsolved. And for the victims of crime, especially victims of the most violent crimes, justice delayed is truly justice denied.

Use of DNA evidence holds great promise for the criminal justice system. It ensures prompt, reliable verdicts and often leads to guilty pleas. Those guilty pleas can spare fragile sexual assault victims and child victims the trauma of trial and save taxpayer dollars. Using DNA evidence promotes fairness, confidence, and certainty in the administration of our nation's laws.

For this reason, this administration is fully committed to continuing efforts to enhance the use of DNA evidence. Attorney General Ashcroft personally authorized the transfer of \$25 million in asset forfeiture funds to NIJ for DNA backlog reduction. At the Attorney General's direction, the National Institute of Justice has convened a working group of over 25 national DNA experts. These experts are making recommendations, both short-term and long-term, about how to get the greatest public safety benefit from this very, very promising technology.

This strong support complements Congress's funding in this area. In fiscal years 2000 and 2001, approximately \$37 million per year was made available to the States for DNA and other forensic support. In fiscal year 2002, approximately \$80 million was made available, in addition to the \$25 million in asset forfeiture funds.

NIJ has also sought to maximize the benefits of DNA evidence through a variety of programs. NIJ negotiated favorable testing rates for States through private vendors to increase the number of tests that could be performed with Federal dollars. NIJ also required States to analyze "no suspect" cases as part of a matching contribution requirement for Federal DNA funds.

As a result, over 400,000 convicted offender samples and 11,000 crime scene samples have been tested. So far, and although we are awaiting further information on this, we know of 900 hits based on this program.

NIJ is also leading research to make DNA technology faster, cheaper, and better. One project which is currently in the prototype stage, and I am going to hold something up here and try not to cut myself with this, this is a DNA chip. It is a prototype. You cannot really see it here, but there are very, very narrow little lines on this. This is part of our effort to miniaturize today's instruments, to speed the analysis of DNA and alleviate the overcrowding in the public crime labs. What it means, if we can make these smaller, faster, better, we can do more DNA analysis with the limited funds we have available.

NIJ also developed standard reference materials, which are kind of the gold standard of the DNA industry. These are used to test machines and make sure that we have integrity in the DNA analysis that is performed out in the field.

In addition, we have worked very hard to make sure that information has gotten out to the field. We have a number of publications here today, but let me just hold up one for you. This is, "What Every Law Enforcement Officer Should Know About DNA Evidence." This is the CD-ROM. We have a pamphlet. This is our most popular hit on our website. We also provide pamphlets to crime victims and people dealing with—and also for identification of victims of the World Trade Center so the victims' families understand how DNA technology can be used to identify those victims.

Despite these remarkable advances, there are, however, some impediments to our ability to maximize the use of DNA evidence. There is, as Dr. Adams noted, a very serious backlog consisting of both convicted offender samples and crime scene samples. The backlog of crime scene samples is effectively increasing as States go back and reexamine old cases to see whether they can use DNA evidence to solve these old crimes.

At the same time, we are having an increase in convicted offender samples. We have not only the large number of samples that have been collected but not yet tested, we have a lot of samples that are owed, samples that are required to be collected from convicted offenders by State laws where the samples have not yet been taken.

In addition, States are continuing to amend their DNA collection statutes. For example, in Florida, when Florida added only one additional non-violent offense to its collection statute, this resulted in 40,000 additional samples in just 1 year.

In order to maximize the use of DNA evidence, we, frankly, need a very balanced approach. We need to be expanding our DNA data base first. Second, we need to have competent collection of crime scene evidence. And third, we need to have timely testing of that evidence that is collected. If any of those elements are missing, crimes that could be solved will not be solved.

But there are also other issues that Congress may want to consider, and I know, Chairman Biden, that many of these are also contained in what you have just introduced and we look forward to working with you on these issues.

Congress could consider encouraging States to expand their DNA collection statutes, and there are two particular ways that that could be done. Many States have DNA collection statutes that only apply to offenders convicted after a certain date. The problem with this is, Federal dollars may be being used to test convicted offenders as they are coming in the door of the prison. They may be there for a long period of time. But we are not testing the convicted offenders who are going out the back door because they were convicted prior to the effective date. Those are the first people we want in that—

Chairman BIDEN. They are the ones we should be testing.

Ms. HART. Absolutely, Chairman. In addition, Congress may want to consider encouraging States to expand the offenses that are covered. The current trend is to move to an all-felons statute, and that is what a number of States are doing.

Congress may also want to consider whether to permit DNA profiles that are lawfully collected under State law to be placed in the Federal data bank. If States, for example, authorize the collection

of DNA samples from juveniles, adjudicated delinquents, of rape, or arrestees, Congress should consider whether to allow those profiles to be used to solve these very, very serious crimes.

And finally, Congress should also consider, as you have suggested, Chairman Biden, extending the statute of limitations to permit prosecutions of sex offenders identified through DNA testing.

This administration strongly supports increasing this nation's capacity to use DNA evidence. This technology holds such promise for solving and preventing some of our most serious crimes. Maximizing the use of DNA evidence, especially with crimes involving women, will continue to be a priority of this administration and we very much look forward to working with the committee on these very, very important issues. Thank you.

Chairman BIDEN. I thank you very much.

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

Chairman BIDEN. I worked for years with the Attorney General when he was here in the Senate. Although we had disagreements on some matters of philosophy, we worked very closely on this issue. I am confident that we will get strong support from the administration.

I might add, by the way, what we have done is a side-by-side comparison I would like the Justice Department to take a look at of the various major pieces of legislation relating to DNA, including the comprehensive bill that you referenced that I am introducing today. But Senator Cantwell has a very good act, Senator Clinton, Senator Torricelli, Senator Schumer. I think you will see that what we did is we basically incorporated all the elements that you have asked into it, but we would very much like to invite your constructive criticism, and I mean it sincerely. The Justice Department and particularly your outfit, Ms. Hart, have been an incredible resource to me for the past 20 years, so I mean it sincerely. Your constructive criticism would be very much appreciated.

I hope to have another hearing if we get down to the details here as to exactly what the final legislation should look like, because I have no pride of authorship. I just want to have the pride that whatever we pass is all encompassing.

Ms. HART. We very much look forward to working with you.

Chairman BIDEN. Now, what I did not do, and I want to take the time to do now, just to take a second, because I went to additional opening statements, I am going to give our audience a sense of who is before us.

Dr. Adams, who has already testified, was recently appointed to head the FBI's Laboratory Division, whose career at the FBI makes him particularly well suited to walk us through, as he did, the process of collecting and analyzing DNA evidence. From 1987 to 1993, he served as a chief in the FBI's DNA Assault Unit and was the first FBI agent to ever testify in court on DNA evidence. Previously, he served on the research team that developed and validated DNA testing procedures that would withstand judicial scrutiny. In 1997, he became the Section Chief of the Forensic Science Research and Training Center, and then the Chief of the Scientific Analysis Section.

Dr. Adams has served as a member of the national board for the Journal of Forensic Scientists, as editor of the Forensic Science Communications, and as a member of the DNA Advisory Board established by the DNA Identification Act of 1994, which was part of the larger legislation. He also served on Attorney General Reno's National Commission for the Future of DNA Evidence.

Also, I want to mention a little bit about Ms. Hart. She is the Director of the National Institute of Justice at the Office of Justice Programs in the Department of Justice. From 1995 to 2001, Ms. Hart served as chief counsel to the Pennsylvania Department of Corrections. Prior to that, she spent 16 years in the Philadelphia District Attorney's Office, where, I might add, there are more felonies prosecuted in 1 year in that office than the entire Federal system, do you hear me, in the entire Federal system in an entire year.

Ms. Hart is a graduate of Rutgers Law School, but much more importantly, she received her Bachelor of Science degree in criminal justice from the University of Delaware.

[Laughter.]

Chairman BIDEN. She also went to Concord High School, which is in my neighborhood.

[Laughter.]

Chairman BIDEN. But at any rate, it is a pleasure to have you both here, and I think it is just important that people understand that we are not just having a little political discussion here. We have two bona fide experts before us.

I would like to, if I may, start with you, and I will yield then to Senator Clinton. I suggest to Senator Clinton, since we are the only two here, do not hesitate to jump in—I mean it sincerely—if you want to expand on or move off of anything I add.

Dr. Adams, I want to ask you about the two data bases for comparing DNA because I think it is important. We have got to have the pieces to know how to put this puzzle together.

First of all, various States collect DNA evidence for varying crimes. There is not a standardized system out there where every State in the union for the same number of particular crimes attempt to collect DNA evidence, is that correct?

Mr. ADAMS. If you are talking about convicted offenders—

Chairman BIDEN. Convicted offenders.

Mr. ADAMS. Yes, sir, that is correct. Right now, there are 19 States which collect DNA samples from all felons, and there are approximately between ten and 15 States that are looking at legislation to increase it to all felons.

Chairman BIDEN. Let me be more specific. In terms of the data bases for comparing DNA, the first is the combined DNA identification system, which I will call CODIS. C-O-D-I-S is the acronym, that we call it CODIS, correct?

Mr. ADAMS. Yes, sir.

Chairman BIDEN. I understand that 153 crime labs in 49 States participate in this CODIS system.

Mr. ADAMS. That is correct.

Chairman BIDEN. A subset of those labs in those States then also participate in another system, the National DNA Identification System known as NDIS, correct?

Mr. ADAMS. Yes, sir.

Chairman BIDEN. Now, specifically, I am told that 127 laboratories in 41 States participate in NDIS.

Mr. ADAMS. That is right.

Chairman BIDEN. I know you know all this. This is more for me because I am sort of pedantic about this. You have in CODIS 153 labs in 49 States. Participating in NDIS, you have 127 laboratories in 41 States, right?

Mr. ADAMS. It is actually 40 States and one Federal laboratory, yes.

Chairman BIDEN. And one Federal laboratory, OK. Now, it is my understanding that these two data bases, the State system of CODIS and the national system, NDIS, are not always connected to each other. It is similar to how the stand-alone computer in my home, just to show you how we are here in the Senate—the stand-alone computer in my home is not connected to the computers in my office, all of which are hooked into the same network such that they can talk to each other, but not my home computer. But my Senate computer is connected to the system where they can all talk to one another, but my home computer is not connected to that system.

Under this analogy, a State crime lab which belongs to CODIS may or may not be able to talk to NDIS, the National DNA Data base, is that correct?

Mr. ADAMS. Yes, sir. I think the end goal is to have all laboratories in all States a part of the national system. That is the end goal. Right now, there are 40 States that are a part of that national system.

Chairman BIDEN. But again, to make sure we set this up to know what we are dealing with now so we know what we have to fix—we have got to know what is broken before we know what to fix. It is my understanding that the State laboratory is not part of NDIS. It can only use the CODIS software to compare DNA samples taken from a particular State.

For example, if State A belongs to CODIS but not to NDIS, State A may check only the DNA samples from a rape kit against convicted felons in State A, not against the national data base, correct?

Mr. ADAMS. That is correct.

Chairman BIDEN. All right. Now, although I am told there are some exigent circumstance type exceptions which would permit non-NDIS States to avail themselves of the national data base, we will leave that aside for a moment.

As mentioned above, the laboratories in 40 States contributed DNA profiles to the national, the NDIS system, correct?

Mr. ADAMS. Yes, sir.

Chairman BIDEN. Now, what is required for a State lab which is already a member of CODIS to become a member of NDIS, of the national DNA data base? And the reason that is important, I want to make it clear, the recently nailed, up in Philadelphia, the Rittenhouse rapist who raped a whole lot of people, murdered young woman, it turns out he was military. He got transferred, ended up out in San Diego, got arrested for similar activities out there. It

turns out the DNA matched. Now, he has not been convicted, but the DNA matched.

If the State were only part of CODIS, they would have never gotten themselves into this national data base, or maybe they found it out some other way, but they would not be able to. The Pennsylvania folks, if they were not part of NDIS, when they ran that DNA match through CODIS would not have picked up the California arrest, assuming California was in NDIS, correct?

Mr. ADAMS. Yes, sir.

Chairman BIDEN. Now, explain to me, if you would, how a State that is a member of CODIS becomes a member of NDIS.

Mr. ADAMS. Yes, sir. There are currently ten States that are not a part of the national system yet. Eight of those States are well along the way to becoming a part of the national system. In fact, Delaware is scheduled for incorporation into the national system on May 20.

The system is quite easy. First of all, the State sends the FBI a letter requesting to be a part of the national system. That State enters into a memorandum of understanding with the FBI and they agree to abide by the DNA Identification Act of 1994, which involves recordkeeping procedures as well as quality control procedures. They follow a national DNA index system procedures manual and they undergo proficiency testing as well as audits in their laboratory and then agree to the reporting and confirmation of hits as a part of the manual. Once all of that is completed, then they are a part of the national system.

Chairman BIDEN. So the bottom line is, if they want to get into the national system, they have to standardize the procedure consistent with what the Federal guidelines are relating to how and what and when all this data—how the data is collected, et cetera, so you are dealing from the same deck, everybody is dealing with the same national standard, is that correct?

Mr. ADAMS. That is correct, yes, sir.

Chairman BIDEN. And we do not mandate that to them. We say, you are just not in if you do not do it, right?

Mr. ADAMS. Right. Yes, sir.

Chairman BIDEN. Now, one of the things that—I am going to shift to you, Ms. Hart, if I may—you mentioned a number of things that we have to be aware of. One is the assessment, first of all, of the backlog, and we have all kinds of talk about how big the backlog is. As I said in my opening statement, some estimates are as much as 500,000. I have no idea whether that is correct or not, but do you think that in our legislation, the legislation I have introduced here, is it a doable goal to be able to assess each jurisdiction and get the number of backlogged cases? If we passed this law and it dropped onto your lap, what does it mean to you?

Ms. HART. I think at this point, it would be extremely difficult because the business of law enforcement in this country is very fragmented, and in order to get a true picture of this, you need to understand what crime scene samples are out there and what are awaiting testing. We have over 17,000 different police departments in this country, and you can have evidence sitting on a shelf that the State lab has no idea that is out there.

At this point, we know we have a major problem. We know we have a major backlog. The Attorney General has convened national experts to make recommendations about how best to address it. But to go out and count it would be an extraordinary expenditure that I, frankly, do not think would inform public policy the way it would need to.

Senator CLINTON. Could I ask, Mr. Chairman, Ms. Hart, then what would be the most effective means in your judgment to begin to tackle this backlog? We were making great progress in New York City, as you know. There was a concerted effort at the city level to put funds into clearing up the backlog, and then, of course, with September 11, that work had to stop. How would you best advise us to get at the backlog issue?

Ms. HART. I think there are a number of different approaches. I think that it requires a comprehensive approach that increases the capacity of the State and local governments to collect the evidence, to test it timely, and to match it, because, obviously, it requires both. If you just test the sample and you do not test the convicted offender, you do not match it. You have got to have testing on both ends of it.

I think there are some things that Congress could do to increase the flexibility of the funding. One of the things that could be done, for example, is to permit us to provide the funding for "no suspect" cases not just to the States, but also to local governments.

Senator CLINTON. I love hearing that.

Ms. HART. One of the more troubling statistics that I heard was that Los Angeles had 3,000 unsolved homicides with physical evidence collected but not yet tested. How can we possibly not try to address that kind of serious crime, and we do not have that flexibility now.

Senator CLINTON. That would be——

Chairman BIDEN. Our bill does do that. We provide you that flexibility.

But let me ask you this question, because we should both keep doing this. The question that Senator Clinton asked you related to how to deal with the backlog. Maybe I have been doing this too long, but one of the things in order—for example, to put this into perspective, and this will be the headline in my paper, but my bill costs almost \$1 billion. That is how much it costs. I will go through it in a minute, but that is the total cost for a 4-year period, almost \$1 billion. It goes far beyond just testing these existing kits.

But my point is this. In order for us to attach a number to what we are going to ask the appropriators to appropriate, we have to have a relatively sound judgment as to what the extent of the backlog is. For example, if the backlog is, nationwide, 1,000 cases, that is one thing, because we are talking \$500 to \$1,500—I want to get back to this in a minute—\$500 to \$1,500, and I want to talk about the discrepancy, to test one of these rape kits, for example, to get it in the data base. So that is a lot of money.

So if we are talking about only 1,000 of these sitting on the shelf, that is one thing. If we are talking about 500,000 of these sitting on a shelf, that is another thing, and I realize we are talking about a lot more than just a rape kit. We are talking about physical evidence that goes beyond what would be in this rape kit.

So what I want to try to get a handle on and need some advice on, or we need some advice on, is how do we get a relatively accurate assessment, or do we just make an educated guess as to how much backlogged evidence there is sitting out there for us to get tested and put into the computer?

Mr. ADAMS. Mr. Chairman, I would have to agree with Ms. Hart in her assessment that it is a difficult number to grab hold of, and the reason is it is a moving target. If we leave the sexual assault kits aside and look just at the convicted offender samples, we know right now that there are at least 600,000 samples that have not been analyzed yet. However, States are ever increasing their offenses that they want to include. And so you may have a State like Virginia, which has already enacted legislation for 2003 which will begin to take samples from arrestees. What will that do to those numbers, then, of the backlogs?

So when we are talking about the numbers of States that are increasing the offenses, we are talking about a moving target. We already know where it is right now, but we know it is going to be greater even next year.

Chairman BIDEN. And I think that is a really important point to make here. It seems to me that although we hope we are going to be able to spearhead a major effort on this, it seems to me there is some State responsibility. When States pass these laws to collect this evidence, I find it interesting. Some of my most conservative friends love to pass these laws, but then when it comes to paying for it, as to how it is going to do anything other than just sit there in a hole, never tested, I mean, there is not much value if we do not have it tested, if we do not have it in the data base.

Senator CLINTON. And, you know, the irony, Joe, is that the New York City medical examiner tells us that the costs for testing the rape kits come down the larger numbers that you test. It becomes, like many other things, an economy of scale, that you get some good cost-effective results because you have got an operation going that has qualified people who know how to keep quality control measures and the economics work out better. So it is kind of a chicken-and-an-egg issue. We need to get enough capacity out there to be able to do this job, and the more capacity we have, the cheaper it will become to actually process the evidence.

Mr. ADAMS. Mr. Chairman, I would like to point out one thing that I found very interesting. Last week, I attended an advisory board committee for the Royal Canadian Mounted Police. They are experiencing the very same difficulties with backlogs and they are looking at passing on those expenses to the provinces. But what the provinces are doing, they are taking those cases and only sending a few forward because of the expense. It is in their responsibility, not at the Federal level. So those very cases which CODIS would go to solve are being held back by the provinces because they do not want to pay for that expense.

Chairman BIDEN. I am going to submit the entire legislation to both of you, if I may, and ask for your critical analysis, if you would. There is no urgency in terms of days, but within the next several weeks, if you get a chance to look at it. I have great respect for both of you and I truly, truly would like your input. We are making it available to the Justice Department, to the Attorney

General, as well, but any input you have would be very, very much appreciated.

Ms. HART. I know that in my discussions with people at the Justice Department, there is a shared commitment to this.

Chairman BIDEN. I agree.

Ms. HART. This is something that people truly care deeply about and the Justice Department, I know, is looking forward to working with you on this.

Chairman BIDEN. If past is prologue, I drafted a crime bill back in 1985 and it took until 1994 to get it passed. The one thing that no one wanted to do, and I, as they say in the jargon, got beaten up constantly for it was—thank God, the cops helped me—was it cost a lot of money. It was \$30 billion. The Biden Crime Act, which became the Clinton legislation that was finally signed by the President cost \$30 billion over 5 years. No one wanted to hear those numbers.

But I think there is a little thing called truth in legislating, truth in legislating. For years and years, State legislature and the Federal Government decided to get tough on crime by upping the penalties but building no prisons. They decided they are going to get tough and add all these new crimes, but built no prisons, did not add any new cops. So I think we should just have a little bit of truth in advertising here. This is going to cost, to do anything effective over the next 4 years, a minimum, a minimum of a half-a-billion dollars, and probably close to \$1 billion.

So if we mean what we say, if we really care about this, then we will make the investment, just as we did in the Crime Control Act, which worked. With your help, we will make this even better legislation.

I thank you both very, very much for being here. As you know from experience, we will be asking you to come back again as we refine this. But in the meantime, thank you for being here and thank you for your expertise and your commitment. Do either of you want to make a closing comment?

Mr. ADAMS. No.

Ms. HART. No.

Chairman BIDEN. Again, thank you both.

We will now move to our second panel, and I would ask them to come forward as they are called. Our first witness will be Debbie Smith, a victim of sexual assault whose crime was solved through the use of DNA analysis. In 1989, Debbie was abducted from her home in Williamsburg, Virginia, and raped in the woods behind her house. For years afterwards, investigators were left without any clue as to the identity of her attacker, but after six-and-a-half years, a cold hit in the Richmond, Virginia DNA lab revealed his identity. After a lengthy trial, he was convicted and sentenced to life without parole. Since then, Debbie and her husband, Robert, a 23-year veteran of the Williamsburg Police Department, have worked tirelessly to educate the public on the use of DNA in sexual assaults.

Debbie, I have been doing this for 29 years and I realize how difficult, no matter how many times you do this, I realize how difficult it is, and remember our deal. If any of us wander into any area you do not even want to talk about, you just nod, and I promise

you, although I am reluctant to tell any Senator to be quiet, I will even do that to my two colleagues.

Ms. SMITH. Thank you.

Chairman BIDEN. So the rules are set by you here, all right?

Ms. SMITH. OK.

Chairman BIDEN. Our second witness will be an old friend who was deeply involved in the Violence Against Women Act and national legislation and we have been calling on Linda Fairstein. She spent 30 years in the Office of the New York County District Attorney, where she was the chief of the Sex Crimes Prosecution Unit. It is good to have you back, Linda. You have been a phenomenal resource for this committee over the years. In that position, she supervised the investigation and trial of every Manhattan case involving sexual assault, domestic violence, child abuse, and homicides arising from sex crimes.

I am pleased to say, as I said, this is not the first time she has been here and given us her expertise, and as the old joke goes, she has forgotten more about this subject than most of us are going to learn. She is, without a doubt, the expert in the area of DNA evidence in sexual assault crimes. When we were in the process of drafting the Violence Against Women Act, she testified before the committee in 1990—she remembers how long it took this to happen—about violent crimes against women. Welcome back.

Debra Holbrook is a registered nurse in the emergency room at the Nanticoke Hospital in Seaford, Delaware. She founded and now coordinates both the Sexual Assault Nurse Examiners program and the Domestic Violence and Forensic Nursing program, both of which serve as models for the State of Delaware. In addition to creating policies and procedures for medical forensic evaluation, she is directly responsible for staffing and training all sexual assault examiners. Ms. Holbrook travels around the country teaching other communities how to develop similar programs.

Ms. Holbrook trained as a radiologist technician at Johns Hopkins and is an alumni of the Union Memorial Hospital of Nursing in Baltimore, Maryland. She serves on the National Panel of Experts for the Office of Victims' Crime. She was honored in 1999 as Woman of the Year in Delaware for her service to victims in our State, and I want to thank her for her service to me and keeping me straight on a lot of this and helping me.

Our next witness is Susan D. Narveson. She is administrator of the Laboratory Services Bureau for the Phoenix Police Department. She also served as the President of the American Society for Crime Laboratory Directors and the vice chair of a consortium of forensic science organizations. She received her bachelor of science degree in chemistry in 1975 from Arizona State University and began her career in forensics with the Phoenix Police Department in 1979.

In 1981, Ms. Narveson accepted a position with the Arizona Department of Public Safety, where she has worked for 17 years. In 1998, she accepted her current position at the Phoenix Police Department. Ms. Narveson has worked on several DNA projects, including the FBI Scientific Working Group on DNA Analysis Methods, the College of American Pathologists Forensic Identity Committee, and the FBI DNA Advisory Board.

Last but not least is J. Tom Morgan. He is Vice President of the National District Attorneys Association and has been District Attorney for DeKalb County in Georgia since 1992. He joined that office in 1983 and a year later became the first prosecutor in Georgia to specialize in the prosecution of crimes against children. He has since become nationally renowned and a nationally renowned expert and has appeared on such programs as the "Oprah Show," the "Today" show, CBS TV's "48 Hours," CNN's "Talkback Live," and last week, the State of Georgia eliminated the statute of limitations in cases where DNA evidence is used to identify an attacker and Mr. Morgan will be particularly well suited to speak to that issue and others we have today.

With that, why do I not begin in the order that you have been called. Debbie, the floor is yours, and again, it is up to you.

STATEMENT OF DEBBIE SMITH, WILLIAMSBURG, VIRGINIA

Ms. SMITH. Zero-three-zero-three-eighty nine. Ninety-three-forty-two dash 00 through 9342-05. Numbers of identification, 8905010, C89-1989. Human identification, 180907, 89-85-00-0234. Written and spoken without a particular face impressed on the mind, 228-15-3839, VA654195. Cold, impersonal, necessary number of human identification revealing personal information about a faceless individual. There had never been so many ways to identify me, and yet I had never felt so lost. I resented being referred to as a number. The numbers made it seem as I did not exist as a person. They were mechanical and unreal. But little did I know that it would be numbers, matching numbers, that would breathe air into my lungs and would allow me to truly live again.

There is no way for you to understand how what is done in the DNA labs can mean the difference between life and death without taking you back to March 3, 1989. It is around 1 on a Friday afternoon. I am in my home in a nice neighborhood in the city of Williamsburg, Virginia, which, by the way, happens to be one of the safest cities in our country. My husband, a police lieutenant, is upstairs asleep after having been up for over 30 hours. How could I have possibly been any safer?

In the midst of cleaning house and doing laundry, I realized that my clothes dryer was not working properly, so I stepped outside to check the dryer vent. When I returned, I decided to leave the back door unlocked, a door that always remains locked. I left it unlocked just enough for me to go in, retrieve the trash, and come back out. But before I could return, within moments, a stranger entered that door and nearly destroyed and definitely changed my life forever.

This masked stranger forcibly took me out of my home in the middle of the afternoon to some woods behind my home, where he blindfolded, robbed, and repeatedly raped me. The sound of his voice still rings in my ears at times. "Remember, I know where you live and I will return and I will kill you if you tell anyone."

As soon as I was set free, I ran upstairs to my sleeping husband, waking him with the words, "He got me, Rob. He got me." I begged him not to call the police. I pleaded with him because I feared this man would keep his promise to return and kill me. But the police officer and my husband knew that we could not allow this crime to go unreported. He also convinced me of the importance of going

to the hospital because he knew that we may need the evidence that would be collected with the rape kit. All I wanted to do is to take a shower. I wanted to try to wash it all away.

For the first time in my life, I could not find a reason to want to live. The love of my family and friends were not enough anymore because they could not erase the memories and they could not take away the pain. Even my faith in God seemed to be failing me.

There is no escaping the pain. There was no escaping the fear. Fear will not be satisfied until it has taken over your mind and body, just as a cancerous tumor does. It cripples like arthritis, making every movement unbearable until finally it is just no longer worth the pain. You become paralyzed, feeling helpless and trapped. It was always there. It was there in my waking hours as well as in my dreams. On many occasions, my husband would be awakened in the middle of the night to the sound of the blood-curdling screams from my nightmares.

It was at this point that I began to realize that I could not and I absolutely would not live this way. Death seemed to be the only alternative, the only answer that I could come up with that would end the horrible nightmare that I was living. In death, there would be peace and there would be quiet. I would no longer have to hear his voice in my ears or feel his arm around my neck or see his face before my eyes. My mind could rest.

Over and over, I planned this suicide in my head. But there was one problem that had no solution, and that was my family, my husband and my two children. Who would find me? Would they live in guilt, feeling that they somehow had failed me? What would this do to them? I thank God still today that my love for them was stronger than my need to rid myself of this constant torment. I finally grabbed onto this one thread and it became my reason to live.

One of the most frequent comments that I heard after I was attacked was, "At least you are alive," but I can tell you still today that while I was alive physically, inside, I had died. I cursed my attacker for leaving me alive, to live with the pain. I did not know that relief from my pain sat on a shelf just waiting for the manpower and the funds to test my attacker's DNA sample and place it in the data bank.

Although this intruder never laid a physical hand on anyone else in my family, he left each one of us a victim when he left that day. He touched emotions in us that we had never known. We saw the rage in the eyes of my son and fear kept my daughter from going from our own porch to the driveway after dark, and each of us, especially my husband, felt the awful pain of guilt. Our home, which was always filled with love and laughter, had now just become a house full of bitterness, anger, fear, and guilt. But yet, our answers still sat on that shelf, waiting to be processed.

Every person that touched my life or my family's life felt the effect of this crime. They, too, felt invaded and vulnerable. I could see the pain in their eyes because I was a constant reminder that rape can truly happen to anyone, anywhere. They were angry for me, and yet they felt helpless because there was nothing they could do. Our minds and bodies ached for understanding, and yet there was none to be found.

I waited daily to hear the news that they had found this man who had changed our lives so drastically, hearing his words over and over again in my head, "I know where you live and I will come back and I will kill you." Our help remained on the shelf, still in a box, locked in a room with thousands of offender DNA samples. It sat, just waiting.

I craved peace of mind and I did everything I could think of to attain it. An alarm system was installed in our home, including panic buttons throughout the house, as well as one that I could wear around my neck. A privacy fence was put around our backyard and motion detectors were installed. At one point, I even took to carrying a gun. My peace of mind still sat on the shelf, not enough money, not enough time.

There just did not seem any way to attain this peace and rest that my mind and body craved for so long. I would suffer daily with the memory of a man who was in my life for such a short span of time and he may never have to pay for his crime, but I was going to have to pay for it forever. I can tell you that it is only by the grace of God that I am here today, because for six-and-a-half years, I simply existed, trying to go on and live a normal life.

VA122015Y, 01-14-91, more numbers, 91-17682, 07-24-95. But these numbers bring with them a life-giving force and a renewed hope, 4183, 07-26-95. As George Li sat at his computer in the Virginia Division of Forensic Science on July 24, 1995, on what probably seemed to him just another normal day at the lab, he had no way of knowing what effect his work that day would have on my life and the lives of those around me.

On this day, Mr. Li entered a prisoner's blood sample into the computer and it automatically began its cross check against previously entered samples. To his joy and surprise, he received a cold hit, something fairly rare at that time. This information was passed on to the Williamsburg Police Department. They, in turn, passed the information on to the shift lieutenant working that day, who happened to be my husband.

On that day, July 26, 1995, my husband walked into our living room and handed me the composite that he had carried with him ever since the incident and he told me we were not going to need it anymore, that we could throw it away. Not only had they identified my rapist, but he was already in prison for another crime and he was put there 6 months after he had attacked me. Finally, they had unpacked the box that contained my release from fear. My freedom had been delivered.

For the first time in six-and-a-half years, I could feel myself breathe. I felt validated. There was a real name and a real face to go with the nightmare that I was living. Everyone would know that I was telling the truth, that it was real. Finally, I could quit looking over my shoulder. No longer did I have to drive around in circles hoping that a neighbor would drive by so that I could get the courage to get out of my car to go into my own front door if no one else was home. Unfamiliar noises no longer left me panic-stricken. I no longer had to scan the faces in the crowd to see if he was following me, and suicide was no longer a consideration. Finally, my husband is grateful that I do not wake him up quite as often in the middle of the night with the ear-piercing screams. Within my-

self, the healing had begun and peace had come at last. Norman Jimmerson is off the streets for good. The jury gave Norman Jimmerson two life sentences plus 25 years with no chance of parole.

In the few minutes that I have been talking to you, at least five women have been raped. Could we have prevented it? I believe we could have. Millions of dollars are spent every day for research on problem solving. Our research is done. We have the answers before us. We have no idea where Osama bin Laden is hiding, but we have within our grasp the means to find the terrorists that live among us today.

There are literally thousands of inmate DNA samples waiting to be tested and entered into the data bank. Answers to the questions of a rape victim, her freedom and peace could be sitting on a shelf, and it breaks my heart when I go into labs and I see shelf after shelf filled with old, untested rape kits. Each kit represents a life in turmoil. We could have the answers to the questions that haunt her mind day and night, and yet they still sit and wait.

And even with all of the rape kits that are sitting on those shelves, there really should be many more. But because the evidence collection is so devastating and humiliating, victims will not report this horrific crime. But we have the answer. Sexual Assault Nurse Examiners are trained to give one-on-one care to rape victims, making her more willing to allow the evidence collection.

With this bill, you can provide the solution for rape victims past, present, and future. By eliminating the backlog of untested rape kits and offender samples, we could be saving the life of a victim who can no longer hold onto that thread of hope that keeps her alive. We can offer hope to the rape victim that walks into that ER today. The average rapist commits eight to 12 rapes before he is caught. Identifying him now and making him pay for his crimes can prevent many from becoming victims. This bill can protect your wives, your daughters, and your sisters. How can we do any less?

On behalf of myself and other rape victims past, present, and future, I thank you for caring enough to bring up a subject that not too many people want to talk about, and I thank you for allowing me to share my heart with you today.

Chairman BIDEN, Debbie, or Ms. Smith, thank you for your courage in being here. I particularly thank you for pointing out the side of this tragedy that most people do not want to listen to. That is the underlying tragedy that goes along, as providers know, with all the victims of sexual abuse, and that is every single psychiatrist and psychologist who has testified in the years and years and years I have been holding hearings on this indicates that the only serious help available to victims is closure, of being able to close that chapter in their life.

And the only way that occurs is with the identification, because you said something that you should never have had to say, but I hope everybody heard you say it. You said when your husband came in and said, we will not need this composite, to paraphrase you, you said that no one had to wonder anymore whether I had been telling the truth. That is an incredibly, incredibly, incredibly important thing for everybody to understand.

And, by the way, for every one of you who come forward, two people never come forward, and the reason they do not is they do not want the stigma and they are fearful that the person will never be caught and they will, they will, they will be the ones thought to have made this up, and they get re-victimized and re-victimized and re-victimized and re-victimized.

So your testimony today is more important than even you understand, I think, in how you revealed to this assembly and these cameras and to all our colleagues who will listen to this why this is so very, very, very important. I admire you. I admire your courage, and thank God you had a spouse who said, we are going to go be tested. We are going to have this degrading undertaking go a little further.

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

Chairman BIDEN. I know Senator Clinton has another commitment, and maybe Senator Cantwell, I do not know. I am here for the duration, but I would be happy to yield to either of you.

Senator CLINTON. Mr. Chairman, I do. I have got to go to a meeting with the families of our police and Port Authority police who were lost on 9/11 and I apologize that I have to leave, but I want to thank Ms. Smith and I want to thank her husband, as well, for being here. I think it is really some of the most significant testimony I have heard in my time here so far and it will make a huge difference in the lives of so many other women.

I thank you very much, Debbie, for being willing to come forward and share this and I apologize to the rest of the witnesses. I will look forward to reading your testimony.

Thank you, Mr. Chairman.

Chairman BIDEN. Thank you. While we are going to Linda, and she can confirm this better than anybody, you know, what happened to you, Debbie, is the rule, not the exception—during the day, in a nice neighborhood, in your home. Most people think it is somebody named “habeas corpus” crouching behind a garbage can in an alley of a big city ready to jump out and rape a woman. It is either somebody you know or it is in your own home, your own neighborhood, and is during the daytime. I am so glad you have been set free by this and I appreciate you being here.

But now, we will go down the line here for the rest of the testimony, and then with the permission of the witnesses, the Senator from Washington and I will ask you some questions.

Linda, welcome again.

STATEMENT OF LINDA A. FAIRSTEIN, FORMER CHIEF, SEX CRIMES PROSECUTION UNIT, NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE, NEW YORK, NEW YORK

Ms. FAIRSTEIN. Thank you. You hardly need me after what you just heard, which really says it all.

I thank you, Mr. Chairman. It is a pleasure to be back. You put this on the table, these issues on the table for the first time when you introduced violence against women legislation, and only by your efforts to keep it on the table have we made the progress we have. I looked at the young men and women behind you as Ms. Smith spoke this morning and not many people their age remem-

ber that for at least the first two decades of my involvement in this work, we could not get women with the courage to put their names and faces to this issue, your intelligent, beautiful face and your husband behind you, to come forward and let America know that it is our families and our friends who are the victims of these crimes, and that means the world to all of us who have worked on this.

When I came to the practice of law, many States, including my own in New York, still mandated that the testimony of a rape victim be deemed incompetent as a matter of law unless corroborated by three specific forms of independent evidence. We fought to change that archaic impediment that prevented thousands of victims, even like you, Ms. Smith, from stepping foot in a courtroom for centuries, no matter how credible they had been, to create rape shield legislation, to eliminate the absurd requirement of earnest resistance which existed, and to lobby for predicate felony treatment for serial rapists whose recidivist tendencies account for the staggering volume of victimization all across America.

For more than half my prosecutorial career, we devoted extraordinary human resources to encouraging survivors to trust the criminal justice system, which had excluded them for so long, and help them to triumph in courtrooms against great odds for the very first time.

During my first 15 years in that position, I never dreamed there would be a time when science could relieve victims of the burden of identifying their assailants. I never imagined that what are now my three favorite letters of the alphabet, DNA, would be sequenced in such stunning fashion and accepted finally as a reliable scientific technique in every courtroom in America.

DNA technology was first presented to me in 1986. It was deemed inadmissible in a high-profile homicide case I prosecuted and it has now completely revolutionized the criminal justice system. No prosecutor in America, indeed, no detective or police officer should investigate a sexual assault or homicide without using or considering the use of DNA evidence. The science, the methodology of DNA continues to evolve and to make more crime solutions possible.

When first introduced as a forensic technique in the mid-1980's, the RFLP process required evidentiary materials or stains that were at least the size of a quarter. The FBI was the only forensic lab in the country performing DNA tests. The turn-around time for a preliminary result was at least 6 months. The cost was \$5,000 per sample. That last fact meant that in gang rapes or cases with multiple victims and offenders, the cost was frequently greater than \$50,000 per case.

Now, with the use of the far more reliable and sturdy PCR technology, it is possible to achieve identifiable results in cases with samples too small to view with the naked eye. Some labs can test for nannograms of fluid. There are 1,500 nannograms, may I remind you, in a single drop of blood. They can test for two nannograms. The cost is much lower, and my colleagues in the Manhattan DA's office get restless if they do not have a preliminary result within 24 to 48 hours of the time we submit the evidence for analysis.

As Senator Biden said in his beginning statement, DNA's uses are twofold, to identify predators with certainty in cases in which identifications have been frequently impossible, but just as critically, if you worked for and learned from a prosecutor with the integrity of Bob Morgenthau, as I did, to exonerate suspects falsely accused.

Chairman BIDEN. And, by the way, he has more integrity in his little finger than most people have in their whole body.

Ms. FAIRSTEIN. No question about it.

Chairman BIDEN. He is absolutely an incredible guy.

Ms. FAIRSTEIN. He is. It is inconceivable to me that there are prosecutors or police anywhere in this country not properly trained to understand the potential of this science to solve crime. This bill and the Debbie Smith legislation mark superb efforts to use 21st century technology, DNA data banking, to solve 20th century crimes, to bring dusty, long-forgotten evidence out of the dark ages and into our growing data banks.

We need the Federal resources, the money to do this work, and let me give you a punch list of reasons why. Under VAWA, we began to get funds from the Federal Government to train police and prosecutors. We are grateful for that money, but we need far greater amounts. The subject of evidence collection is indeed the heart of this matter, a topic of huge concern and way too simplistic, as you have mentioned, to think we are only talking about rape kits, as I will explain.

Evidence collection begins with the training of law enforcement personnel to collect evidence at the actual crime scene. Most of us, and probably many of you in the room today, thought that meant looking for the obvious, blood, semen, saliva. I do not know how many of you realize that we can get DNA from the collar of every shirt or blouse we are wearing in this room, from the computer mouse that we hold in our offices, even from the doorknob that we turn to enter the room. Science has advanced so rapidly that even sloughed-off skin cells will yield genetic fingerprints, but cops need to know where and how to find that evidence.

The collection process continues in the hospital emergency room. The single word that comes to mind when I talk about the treatment of rape survivors in emergency rooms across this country is uneven. There are no two hospitals in any city in this country which respond to these patients in exactly the same way. Evidence collection continues at police and medical examiners' labs.

The training of serologists to do this work is expensive and time consuming. It changes with the methodology and with the machinery several times a year. There are not enough trained scientists to do the work that is waiting to be done and that will continue to be the case as techniques become even more refined and sophisticated. We have not even talked about mitochondrial DNA, a more sophisticated process, a much more difficult, time consuming one that is only now being accepted in courtrooms across this country.

I would like to talk about some of the good news. There are communities and offices and labs that have made these issues work. Bob Morgenthau's unit, founded with two lawyers in 1974, now strong with 40 lawyers devoted to giving survivors a day in court, has done exceptional work.

Three years ago, we started an experiment. We were tired of waiting for these cases to be taken off the police shelves. We assigned our two most senior lawyers to what we called and designated the Cold Case Unit. They literally went to the police department to look through files to find cases that were approaching the 5-year statute of limitations, when we would no longer be able to work with them, cases that had been unsolved but had the potential to be reexamined for the presence of genetic material.

Our point was that from among the many thousands of cases sitting on police evidence shelves, we needed to prioritize those which could be prosecuted if DNA was successful in solving them. Senator Biden mentioned earlier at least 70 percent of reported rapes occur between acquaintances. The 30 percent or less that occur between people not known to each other, stranger rape cases, not that they are more important than acquaintance rape or domestic violence, but in these cases, the sole issue of identification is what is critical and DNA only can solve these cases.

While New York City outsourced 1,600 untested rape cases in a stunning effort to eliminate the backlog that exists, as it does in so many cities and States across America, we did not want to wait for those results, so we picked the most difficult serial rapist and recidivist cases, some of the most life-threatening criminals.

One of the unsolved cases occurred in a lawyer's office on 42nd Street, right in midtown Manhattan. The assailant tied up the lawyer and raped the cleaning lady who happened upon the scene, inserting the butt of his gun into her vagina, as well. All of her efforts and an intensive police manhunt failed to find him.

Our cold case team pulled this case four-and-a-half years after it had been put on a police shelf and as the paperwork was thrown into a green trash bag to be discarded by the NYPD because of the statute of limitations. The DNA was developed, matched to a career criminal, rapist, and robber who was convicted again of this crime just 2 months ago. Imagine the reaction, if you can, when the detectives knocked on this woman's door and told her that her case had been solved and that science would confirm that fact whether or not she could ever recall her attacker's description.

The trial court in this case, *People v. Wendell Belle*, held recently that the statute of limitations had been tolled and that we would be able to prosecute cases like Belle that were cold hits and go beyond our 5 years, add an additional 5 years to our statute of limitations simply because of DNA data banking.

Another critical point that I have not seen mentioned before this bill is the fact that the evidence that will solve these rapes and murders is not sitting simply in the so-called evidence collection kits. Our task is not just taking these boxes off the shelves. We must look at everything from bed linens to victim and suspect clothing or abandoned property from a crime scene. We need to train investigators to identify and organize those items.

We had a rapist last year operating in New York City. His name is Fred Monroe, recently released from State prison as a predicate felon. He committed two sexual assaults in New York City in one evening, the first in Queens and the second an hour later in Manhattan, the second time following a business woman, an out-of-State woman into her hotel room. He did not ejaculate, but he did

put his mouth on her breast after subduing her at knifepoint. The hospital did not even bother to swab her breast, but at the laboratory, the serologist discovered a dried secretion on her bra, which was the saliva that had transferred there when she dressed after the assault. The rape evidence collection kit was negative, but the tiny amount of salivary secretion on her bra matched the DNA of convicted offender Fred Monrow.

In addition, a brilliant police lieutenant in New York, Jimmy West, had kept his eye on an unsolved series of robberies in Greenwich Village. All of the victims were young women, and in each case, the robber had tried to follow the women inside their apartments. None were raped, no evidence collection kits. But West made his men pick up beer bottles and cigarette butts outside the crime scenes. The result, more matches to Fred Monroe and convictions on all the cases, including that of a young schoolteacher who had been beaten so badly she now has a metal plate in her head. A great investigator and a solid chain of evidence. This work requires thinking outside the box, frequently, beyond the normal scope of a crime scene run, and it requires the money to support that work.

Another need for funding at the labs, many of the profiles developed two, three, 5 years ago were based on what was called a six-loci match, six points within the gene. That standard is now obsolete. The Brits have had two unrelated human beings matching at six loci, and so we have moved to more demanding matches, and Dr. Adams, I am sure, can speak to this, but we found that when we went to upload some of our old cases into CODIS, they were not accepted because they were done as six-loci matches, and so all of the testing had to be redone, and that is true of many cases, many of these cases sitting around the country, even ones that have been developed.

I feel it is essential to add, the brilliant work of the Office of the Chief Medical Examiner of New York City, its pathologists, and serologists, with all deserved respect to the NYPD, Fire Department, and EMS, the men and women of the New York City morgue have just done outstanding work surrounded by the millions of pieces of human remains of 9/11. They have worked around the clock to give answers and provide solace to the families of 9/11 victims. Throughout this time, they continued to handle the incoming load of rapes and homicides that we presented to them.

The role of sexual assault forensic examiners, which you will hear more about, is the linchpin of what happens to a victim in the process. Physicians who work in emergency rooms will tell you they do not want to treat rape victims. Sadly but true, emergency room physicians will tell you they are there to save lives and rape victims are triaged after heart attacks, strokes, car accidents, gunshot wounds, and stabbing victims. Their injuries often when they present are no longer life threatening. They have survived the attack. The medical, emotional, and legal needs of the rape victim are often not felt to be the concern of emergency room physicians and yet they are the concern of the victim if the rapist is to be caught and convicted, that frequent four- to 6-hour stay in the hospital emergency room, with the internal exam, the head-to-toe physical, evidence collection, including swabbing orifices, clipping nails,

combing pubic hair, STD prophylaxis, and AIDS information. The reality is, the collection is not done properly if it is not complete, if it is not done by a forensic examiner.

We have had cases in New York, for example, one of the cases I tried, the victim was examined by an oral surgeon who had never before seen a vaginal vault. He was the person on call and he was unable to testify as an expert at the trial. So no one suffers more in this regard than the victim.

Statutes of limitations, many States have eliminated them. We have them in New York. One solution has been John Doe DNA indictments. They work very well in certain circumstances. They have helped us to toll the statute on someone like the East Side rapist, who attacked more than 18 women and is still at large. We would have lost those cases if not indicted. It is not an answer in every case. There are problems with doing John Doe DNA indictments. It is a very good technique under the circumstances, but will not work every time.

Finally, these lead to the importance of the Federal resources and your commitment to these issues. These devastating crimes, as you know, Senator Biden, are a national problem and a tragedy for a variety of obvious reasons. Dr. Adams talked about the mobility. I want to give you three examples of data banking and its uses.

We had recently an unsolved rape of a teenage girl in East Harlem. Last fall, our crime scene evidence data bank in Manhattan matched that case to two unsolved cases in New Jersey. Both of those cases occurred inside the Newark, New Jersey library. It is still unsolved, but this lead gives both teams of investigators new life for both cases. They have opened the files to each other and they have entirely new leads that we assume will bring us to a suspect. So it is a tremendous use for these data banks even when the assailant is unknown.

The second example, the first phone call I received from the police on January 1 of 2001 was to tell me that a young British tourist had been raped and beaten in a Manhattan hotel room. She worked long and hard with detectives before returning home, but the case dead-ended. Later in the year, the DNA matched the unidentified offender in a rape/kidnapping which occurred in Las Vegas, Nevada. The story finally ended in the summer of last year when a man killed a security guard in a casino heist in Atlantic City, New Jersey. Federal agents followed the suspect to New York City, where he was killed in a shoot-out with the Feds in a crowded Manhattan hotel lobby. His DNA profile post-mortem solved the two rape cases and ended his cross-country crime spree. That security guard did not have to die.

The last example is dramatically current and you have just referred to it. Three weeks ago, all our major papers carried stories of a 29-year-old Air Force employee who was arrested in Fort Collins, Colorado. He was charged there because of DNA matches to more than seven burglaries and rapes of young women who had been attacked in their homes, most of whom were Colorado State University students. Within days, DNA data banks also matched him to a series of unsolved cases in Philadelphia, the rampages you described of the Center City rapist. That involved at least five women who had been raped, finally a Penn student who was raped

and murdered in her apartment. Police are now reopening the files of closed cases everywhere from New Hampshire to Texas to South Carolina to New Mexico, where the offender is known to have spent time.

Serial rapists are rarely dormant. They do not retire and they do not quit. The best we can do is identify them, put them out of the business of destroying innocent lives, and see that they never walk among us again if they are, in fact, guilty of these devastating crimes. DNA technology and data banking is our only hope of achieving these goals.

I thank you for letting me join you today and I hope you will call me back to work with you in the future.

Chairman BIDEN. Linda, I guarantee we will call you back. One of the things that surprises me as to why we have so much trouble getting focus on this. You and I both know that career criminals make about 6 percent of the criminal population but commit half of the crimes. Why the heck would the same not be the case for rapists? I mean, our ability to have a gigantic impact is amazing. Career criminals, violent criminals, separate and apart, in addition, including rapists, commit the majority of the crimes committed. So if you just could find those 6 percent and did nothing else, you would reduce crime dramatically. This is a real prospect.

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

Chairman BIDEN. Debra, welcome and thanks for all you do in Delaware.

**STATEMENT OF DEBRA S. HOLBROOK, NURSE AND CERTIFIED
SEXUAL ASSAULT NURSE EXAMINER, NANTICOKE MEMO-
RIAL HOSPITAL, SEAFORD, DELAWARE**

Ms. HOLBROOK. Thank you. Good morning, Senator Biden and members of the committee. Thank you for asking me to be here today.

Senator Biden, I want to start by thanking you for being first on the issues of violent crimes against women with VAWA from the start. Since 1994, you passed the law and you made it work. In Delaware and across this country, you authorized us to put in place these efforts that VAWA mandated, and because of your leadership, we are the model in the Nation now. DNA has become the final dot-to-dot, but we do so much more as forensic nurses, and please know that we owe you a debt of gratitude.

Chairman BIDEN. We owe it to you.

Ms. HOLBROOK. As a registered nurse and Sexual Assault Nurse Examiner, which I will call SANE from here on out, in the emergency department at Nanticoke Memorial Hospital in Seaford, Delaware, I coordinate a team of forensic nurses who are specially trained to care for sexual assault and violence victims of all ages. We are on call at all times, 24 hours a day, 365 days, to collect DNA, trace and photographic evidence, assure advocacy, and testify in court, to name just a few.

Forensic nurses are the only specialty that answered health care's call to care for victims of sexual assault in this country. We provide a vital link in the Sexual Assault Response Team, or SORT, between health care and law enforcement.

For years, nurses across the country have witnessed patients being re-victimized when they come to ERs, waiting for hours half-dressed in crowded public waiting areas, telling their stories countless times to people who did not need to know the statistics, and being traumatized by judgmental practitioners with no forensic training, such as most doctors in this country, that ruin vital DNA. Shockingly enough, this is still the level of care that eight out of ten victims—eight out of ten victims—will receive at any given time in the United States at this moment.

Senator Biden and Delaware House Representative Tina Fallon in our State have been instrumental in helping our program at Nanticoke become a model in Delaware and throughout the country, but we share the same problems as the rest of the nation. Kits sit on shelves for years where perpetrators rape again and again. Running these kits and entering them in CODIS data banks would undoubtedly link perpetrators to many unsolved sex crimes, and we cannot give that assurance to our patients at any time when they come in to us.

We are in need of gas chromatographic mass spectrometer machines to be made available in every State to analyze specimens for victims of drug-facilitated rape, and we also need colposcope equipment that stores images and communicates to other teams for second opinion if they are lucky enough to have the colposcopes in their programs now.

We need Federal mandates that victims of all ages be taken to trained International Association of Forensic Nursing trained and regulated SANE teams with a team approach and funding for salaries and education to keep these programs viable. Many of them get startup, but they do not stay open very long because they have no funding to sustain them. Forensics in this country is mandated for dead victims, but not required for those who we treat who are very, very much alive.

The International Association of Forensic Nursing gives us a clearinghouse and international resource for SANEs all over the world. IAFN sets standards of care in nursing practice, provides training and education, and through its Forensic Nurse Certification Board, tests and certifies practicing SANEs for competencies.

SANE teams across the country are in jeopardy of closing due to lack of both funding and cooperation from law enforcement. If they do not buy in, we do not get the patients many times. Many prosecutors do not understand how crucial we are in pulling together cases that yield convictions. Melanie Withers, who is the Deputy Attorney General in Georgetown, Delaware, said that “SANE programs are the best thing I have seen to benefit victims since I have been a prosecutor.” Delaware Attorney General Jane Brady stated, “The expertise they possess enables them to treat victims with sensitivity and properly collect and document evidence for a criminal case.”

I wish each of you could be on call with me as I come to the emergency room multiple times each week at 2 in the morning and hear the testimony such as Debbie gave today, and witness the bravery that is shown by my patients when they come to me for care, and hear the terror in their voices as they share the details

of their crimes, especially the children, and know that we are the only program right now in our State that even treats children of these crimes.

How do I tell a mother of a 3-year-old that because she initially took her child to an ER that did not have a SANE team or one that treated pediatric patients that it is too late to collect the forensic evidence that we need? Or a 20-year-old that was given Ecstasy without her knowledge that we cannot test for it in our State and there is no money left in the police budget to send it to a State who can? How do we tell countless rape victims that their kits are useless because untrained personnel allowed wet swabs to mold, or that the kits were not even bothered to be opened?

This legislation has the power to forever change the scenario for the victims in our State and throughout this country. By mandating that the Sexual Assault Response Team approach be utilized with IAFN-trained SANEs providing the forensic health care, victims will never have to fear playing hit-or-miss with their judicial outcomes. Increased numbers of perpetrators will be convicted. States will have standardization in equipment, funding, and accountability, and I emphasize accountability, across this country, and properly collected DNA evidence will be analyzed, logged, and shared via national data banks.

On behalf of the millions who are raped in this country annually, only of which a percentage report, I thank you for your consideration and hard work on this legislation.

Chairman BIDEN. Thank you, Debra.

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

Chairman BIDEN. Ms. Narveson, welcome.

Ms. NARVESON. Thank you, Chairman Biden.

Chairman BIDEN. Thanks for the long trip. I think you have come the longest distance.

STATEMENT OF SUSAN NARVESON, PRESIDENT, AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS, PHOENIX, ARIZONA

Ms. NARVESON. And happily so, sir. Good afternoon, Chairman and members of the committee. I appreciate the opportunity to sit before you today and testify on behalf of the forensics community.

My name is Susan Narveson. I am the Administrator of the Phoenix Police Department Laboratory Services Bureau and responsible for managing the operation of a full-service laboratory. In addition to my duties as Crime Laboratory Director, I am also the President of the American Society of Crime Laboratory Directors and I also serve as the Vice Chair of the Consortium of Forensic Science Organizations. I am honored to be present and to be asked to speak in regard to the Debbie Smith Act and its impact on crime laboratories nationwide.

Crime laboratories and forensic scientists play a critical role in the criminal justice system by ensuring the proper collection, preservation, and scientific analysis of crime scene evidence. The successful investigation and prosecution of crimes is contingent on providing the quality forensic service in a timely manner. DNA analysis, however, is not the only service we provide. Crime labora-

tories also provide scientific analysis service in areas such as controlled substances, crime scene investigation, firearms, latent prints, question documents, serology, toxicology, and trace evidence. Each of these are part of a powerful arsenal of forensic tools that include DNA technology and are complementary to DNA technology.

It is estimated that these additional service areas comprise more than 90 percent of the crime laboratories' annual caseload, and each of these cases carries with it a victim, just like these sexual assault case victims, who have expectations of having their cases worked and some kind of investigative leads developed and their cases solved.

The American Society of Crime Laboratory Directors is a spokesperson for crime laboratories and crime laboratory directors throughout the United States and abroad. ASCLD has taken an active role in ensuring the quality and integrity and credibility of forensic laboratories. By advocating for the needs and interests of forensic laboratories, developing guidelines for forensic science education and training, establishing an accreditation program for forensic science education programs, supporting the delivery of quality forensic service by mentoring laboratories seeking accreditation by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board, and by partnering with other forensic science organizations through the Consortium of Forensic Science Organizations in order to speak with one voice on legislative issues of mutual importance.

While ASCLD strongly supports any legislation aimed at providing resources to support the work of public crime laboratories and increase their capacity to process cases, it must be noted that we are severely hampered by a lack of funding and a significant backlog in areas of forensic science, not just DNA. As you know, DNA offers a powerful investigative and identification tool to solve many sexual assault cases and it needs to be applied to the maximum number of cases possible. However, this is also true of the other areas of forensic services provided by crime laboratories.

Unfortunately, crime laboratories are facing great difficulties in their attempts to find the resources to analyze DNA and other cases. With national estimates for unanalyzed sexual assault kits ranging as high as 500,000 cases, it has certainly become an issue of critical importance that deserves further consideration and attention.

ASCLD gratefully acknowledges the concern of this committee for the victims of sexual assault and appreciates the recognition that crime laboratories are facing overwhelming backlogs of sexual assault cases. It should be noted, however, that sexual assault cases comprise only five to 10 percent of the total backlog of cases confronting crime laboratory directors nationwide.

In addition to sexual assault cases, DNA is also essential to the investigation and prosecution of other violent crimes and property crimes. Data from States that have the resources to conduct DNA analysis on biological evidence associated with drug cases, burglaries, and home invasions are finding a very high hit rate against CODIS, the national DNA data base of convicted offenders. In many cases, the likelihood of developing an investigative lead in a

sexual assault case may be just as high by analyzing evidence from burglaries as by analyzing evidence from other sexual assault cases.

DNA has been used to identify investigative leads in a wide variety of cases in addition to sexual assault. DNA profiles have been obtained from the grip of a handgun used in a homicide, from the seal of an envelope containing a threatening note associated with a series of multi-million-dollar arson fires, and even from gum, biological material, or latent prints left at burglary scenes.

Although no data is currently available for the total number of backlogged cases for all forensic service areas, it is reasonable to expect that the numbers are staggering. ASCLD has partnered with the University of Illinois-Chicago on a grant proposal to conduct a 2002 Census of Public Crime Laboratories in order to determine the current status of forensic laboratories and their backlogs.

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

Having said this, I would like to specifically address some of the provisions of the Debbie Smith Act. ASCLD strongly supports the timely analysis of all forensic cases. However, the provisions of the Debbie Smith Act that call for the 10-day turnaround time for the DNA analysis of sexual assault kits sets an unrealistic time requirement for completion of these cases.

Taking into consideration the current DNA backlogs, the time requirements for collection and submission of the evidence to the laboratory, the DNA analysis requirements, and the quality assurance measures that must be conducted to ensure the integrity of the data, completion of DNA analysis of all sexual assault cases within 10 days of the incident is impossible. The capacity of laboratories to handle the increasing number of requests for service and backlogged cases must be dramatically increased before a noticeable decrease in the turnaround time will be realized. At that point, a more reasonable and realistic turnaround time would be 30 days.

ASCLD strongly supports efforts to ensure the quality and integrity of evidence collected for forensic analysis purposes. ASCLD also supports the establishment of quality assurance standards by the relevant scientific community, such as the FBI or the American Society of Crime Laboratory Directors/Laboratory Accreditation Board for the collection and processing of evidence.

ASCLD also strongly supports efforts to improve the quality of training provided to individuals charged with the collection of evidence for forensic analysis purposes. ASCLD supports the development of these training programs by individuals with the requisite forensic experience in order to ensure that all critical parameters of the collection and preservation of evidence from sexual assault cases are addressed.

ASCLD will continue to support Federal funding legislation that focuses on the necessity to increase the capacity of forensic laboratories to process all forensic cases, including sexual assaults, in a timely, accurate, and reliable manner. Forensic laboratories throughout the country need and appreciate your support of their efforts to apply the best science to the best evidence in every case.

Mr. Chairman, I would like to thank you personally for the opportunity to provide my testimony in regard to this issue and also to thank you for the impact that you have made in the state of Arizona and to inform you that the information that Dr. Adams presented to you in regard to the national CODIS hits, those particular identifications were made through a collaborative effort that our laboratory had that was funded by Violence Against Women Act grant moneys, and for that, I thank you. We actually obtained a team, a cold case investigator, a victims' advocate, and a criminalist for working those cases. They screened over 600 cases and submitted almost 200 cases for DNA analysis, and I thank you for that and the victims of those crimes also thank you.

I would ask that you continue to support this effort and to recognize that laboratories want to process these cases in a timely manner, that we really require additional staffing in order to be able to do that and would appreciate your support. Thank you so much for the opportunity to testify today.

Chairman BIDEN. Thank you very much for making the trip.

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

Chairman BIDEN. Last but not least, Mr. Morgan.

STATEMENT OF J. TOM MORGAN, DISTRICT ATTORNEY, STONE MOUNTAIN JUDICIAL CIRCUIT, DEKALB COUNTY, GEORGIA AND VICE PRESIDENT, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, DECATUR, GEORGIA

Mr. MORGAN. Thank you, Mr. Chairman. I guess it is my job here to bat cleanup, and since all the witnesses have hit such home runs, it is going to be difficult. But if I could, I would like to share with you the perspective from the nation's prosecutors.

My name is J. Tom Morgan. My first name is J. Tom. I grew up in the deep South where double names like Billy Bob and Mandy Sue are common and my parents named me J. Tom.

Chairman BIDEN. That is what I know you as, then.

Mr. MORGAN. Thank you, sir. I am Vice President of the National District Attorneys Association and I am the elected District Attorney for DeKalb County, Georgia. DeKalb County is one of the metropolitan Atlanta counties. I represent a jurisdiction of about 600,000 people. I have been a prosecutor—I am a career prosecutor—for 18 years. Prior to being elected District Attorney in 1992, I headed up our Crimes Against Children Unit, where I prosecuted sexual assaults against children and child homicides. I have an office of 41 assistant district attorneys. We only prosecute felony crimes. We prosecute about 7,000 felony crimes a year.

Mr. Chairman, let me tell you, I am very excited. Mr. MacBride gave me this morning a synopsis of your proposed legislation. I look forward to this—

Chairman BIDEN. You are saying that just because he was a Federal prosecutor. You prosecutors stick together, I know that.

Mr. MORGAN. As you know, we have a love/hate relationship with Federal prosecutors. We usually love to hate them because they have so many resources above what we do.

Chairman BIDEN. That is what my son said. My son is a Federal prosecutor and I told him, I said, I do not want to hear about your conviction rate. I want to know about when you were a public defender, which I was, we have a little different assets available to us. But you know these Federal guys, but go ahead.

[Laughter.]

Mr. MORGAN. Thank you, Senator. I do. This weekend, I am meeting with colleagues from around the country back here in D.C. and I am so looking forward to share your proposed legislation with them. Please know that you have an open invitation to come to the National District Attorneys Association any time. You have been a big supporter of us, a big supporter of legislation that is of such import to our nation's prosecutors, and on behalf of them, I want to thank you for that.

The best way I can illustrate the three points I would like to make this afternoon is to tell you about a real case. In 1992, a young woman was leaving the Atlanta/Fulton County Stadium after watching a Braves game. It was late at night. She was kidnapped and severely brutalized, sexually assaulted. She was unable to give us an identification of her attacker or even a good description. As I said, it was late at night and she was attacked from the back.

This year, we were able to get a hit because a defendant was arrested on a drug case. Under Georgia law, all convicted felons are required to give a DNA sample. Because of that, we got a hit from a case that was 10 years old and is now solved and the perpetrator of a very violent crime will be brought to justice.

I use this to illustrate three important points. The first is that DNA is the most powerful forensic tool in the last 100 years. A hundred years ago, we started using fingerprinting. DNA is just another form of fingerprinting. I would submit that a book that is very exciting is *The Blooding* written by Joseph Wambaugh, which was the first DNA case in the world which took place in Great Britain. I had the pleasure of meeting the solicitor, or the barrister who prosecuted that case, and Great Britain is light years ahead of us in this country in DNA testing and requirements in DNA samples.

The good news, Senator, is that in Georgia, we do not have a backlog. We are one of three States in this country, there is no backlog, and we test every offender who has been convicted of any type of felony. The reason is that 3 years ago, the elected district attorneys of Georgia got together with our crime lab and said the most important issue facing the criminal justice system today is testing in DNA cases, more so than additional prosecutors, more so than additional cops on the streets. We will make this our top priority, and our legislature funded the personnel necessary.

The reason is that we have seen these cases now come to light. We have gotten 114 hits in the last 2 years. Of those 114 hits, most of them have been sex offenses. But the important part is that in

these sex offenses, most of them were not being tested for a sex offense. We know that offenders who commit property crimes many times escalate to sex offenses or that perpetrators who commit sex offenses then go back and commit property crimes.

Chairman BIDEN. That is a really important point, and I see Ms. Narveson nodding her head.

Mr. MORGAN. And so our position is and the NDAA position is that not only all convicted felons should be tested, but every arrestee. You know, we already fingerprint everybody who is arrested and their fingerprints are sent up here to D.C. in AFIS. DNA is nothing more than a different type of fingerprinting. There is no constitutional prohibition. There is no legal prohibition against testing everyone. The only reason we do not is for lack of funds.

The second point I would like to make, Senator, is what you have already addressed in your legislation and that is we must do away with the statute of limitations. Governor Barnes, the Governor of Georgia, on Friday signed a bill that abolishes statute of limitations for all violent crimes in Georgia where there has been newly discovered forensic evidence that can identify the perpetrator. We already had an exception to our statute of limitations. The Governor was just concerned. He did not want any cases overturned on appeal.

Usually, the NDAA does not become involved in Federal issues, but you are absolutely right, the Feds need to do the exact same thing and abolish the statute of limitations, or John Doe warrants as Ms. Fairstein was saying. I think there are some legal problems there that Mr. MacBride and NDAA, we need to talk about some of the various ways. But the cleanest way to do it is to abolish the statute of limitations in these types of violent crimes.

The third thing, Senator, is we do need funding for training of prosecutors and law enforcement personnel. Many of us went to law school because we did not do a great job in Chemistry 101, so we could not go to medical school.

Chairman BIDEN. I can associate with that.

[Laughter.]

Mr. MORGAN. I have not had a chemistry class, and I did not do well in the first one. We would encourage that our nation's Congress put in funds that would train us. If we do not understand the technology that we are putting up in court, we are not going to convince juries of the worth of this technology. I believe Ms. Fairstein will agree on this. We encourage that Congress do fund the training necessary. Once all these kits are put into place and they have been tested, we have got to have competent law enforcement personnel. That has been testified to, that they need to be trained on how to gather the evidence and our nation's prosecutors must be trained on how to put this evidence before a jury.

I cannot thank you enough for this legislation. I think it will have the most powerful impact on our criminal justice system since the VAWA legislation.

Chairman BIDEN. Thank you very much.

[The prepared statement and attachment of Mr. Morgan appears as a submission for the record.]

Chairman BIDEN. Some of you know me. I could keep you here—as Senator Clinton said, my colleagues sometimes, they do not

make fun of me, but they remark on how passionate I am about this subject. Everybody always asks me, am I so passionate about it because my wife or my mother or anyone else was victimized, and the answer is, no, thank God, but—so I am going to try to keep the whole group only another 15 minutes, OK, so I do not trespass on your time too much.

Mr. MORGAN. Senator, I forgot to say, could I ask that the National District Attorneys Association policy on DNA be put in the record?

Chairman BIDEN. It will be, without objection.

I want to also suggest to you that I am going to submit a few questions to you in writing in order to keep the commitment of not keeping you beyond the time. I want to make a point here. The reason why the legislation that I have written is so broad, broad in the sense that it covers a lot of things beyond just dealing with the backlog, is that, as Linda knows, after long experience in trying to put together that Violence Against Women Act, Linda will tell you we thought we solved a lot of these problems in the Violence Against Women Act, and we did. For example, Debbie's program is funded by VAWA, your program was funded by VAWA, and so on. But it was not nearly enough.

So I want to remind everybody of the component parts. One is the assessment of the backlog, which I may have to reconsider in light of the testimony. Maybe it is not worth the effort to try to assess the extent of the backlog.

Two is funds for backlog elimination.

Three is funds for offender sample testing. Three are funds available directly to State crime labs.

Four is dealing with the national DNA data base, half-a-billion dollars.

Again, there is another part, support for a Sexual Assault Examiner programs—

Ms. HOLBROOK. Nurse Examiner programs.

Chairman BIDEN.—Nurse Examiner programs. Well, we may even train a few doctors before it is over.

Ms. HOLBROOK. Well, there is an addendum that Mr. Schumer has which is a SAFE Grant Act that states doctors. These tests take an average of three to 4 hours for an excellent forensic exam.

Chairman BIDEN. I understand, Debra. We just have to pretend doctors are important once in a while. That is a joke. That was a joke.

[Laughter.]

Chairman BIDEN. The other is training law enforcement on collection, training funds to direct local governments and universities, DNA standards, and statute of limitations.

Now, the reason it is that broad is my experience has been, in fact, too long, but my experience has been that in every stage of this effort to deal with violence against women generically, we have had to train people. In the Violence Against Women Act, I remember you telling me, Linda, we had to train judges, and I remember sitting here thinking to myself, what do you mean, train judges? Well, we fund programs to train judges.

We fund programs, as J. Tom knows, to train prosecutors to do simple little things. Stand between the victim and the accused

when you are questioning the victim so the accused cannot be staring at the victim with a threatening stare. It is a thousand little things, a thousand little things that make a difference in protecting women, a thousand little things, and that leads to my first question, Debbie. Excuse me for calling you Debbie. Ms. Smith.

Ms. SMITH. Debbie is fine.

Chairman BIDEN. If, in fact, you had known, if it were general knowledge when that God-awful rape took place and you walked back into your home, if you knew that there was an extensive system in the United States that was going to enable you, if you gave access to your body to determine what the DNA evidence was available, if you knew there was this extensive evidence that was connected to all 50 States and would lead the likelihood of catching the guy who did that to you, would you have been more or less reluctant to go along with what was obviously a difficult, invasive process?

Ms. SMITH. Much more, not just for my own protection but for other victims' protection, as well.

Chairman BIDEN. As the prosecutors here will tell you, one of the reasons why victims are afraid to go forward is they are afraid they will never prove it. They are afraid it will never happen and they will be the ones.

Remember, Linda, that young woman whose face got scarred, what was her—

Ms. FAIRSTEIN. Marla Hanson.

Chairman BIDEN. Yes, and I remember her testimony so chillingly. I said, "What was the reaction of people?" and she said, "Well, all the women that I told it to blamed me. They said, well, why did you go there or what did you do? What were you wearing?" I remember you educating me to that.

The point here I want to drive home and home and home and home again, we can take care of two lives here. We can take care of the life of the woman who's already been victimized by putting it back together a little bit for her, and we may very well prevent another woman from being a victim. We do not emphasize the first piece enough, in my view.

The second question I have, Linda, as you know, pharmacology has kept up with the bad side, the dark side of man, as well. One of the things you and I have talked about and I am sure J. Tom has dealt with a lot and Debra made reference to it, there are date rape drugs now that literally induce amnesia so that the woman knows these horrible things happened to her, but is not very useful on the stand because she cannot remember what color the room was, whether the person was wearing A, B, or C, and so on and so forth, and it has been crippling.

This seems to me to be, ironically, more need it now, that is, access to be able to have all this DNA integrated in a way, even more important now as we are faced with these new threats to women, not just women, but particularly women. Would you agree with that?

Ms. FAIRSTEIN. Oh, absolutely. This whole area, and I think Debra is the only one who brought it up, of drug-facilitated rapes is shocking in, again, its recidivist quality. We have had so many of these cases in New York and, of course, all across the country.

Most hospitals do not have the facility to test for these drugs. The problems, because the victims frequently do not get themselves to medical care in prompt fashion because they have been drugged and then are hung over after the effects of the drug. The testing costs are extraordinary.

We have had several convictions in the last couple of years, but they are extraordinarily hard to make and we rely on our friends at the FBI who have a great deal of expertise in this area and their lab to help us with the testing, but these victims are among the worst treated every step of the way because they come in not able to tell a story about what happened after they have involuntarily ingested whatever the substance is.

So identifying those substances through testing, and again, unless you have got a SANE or SAFE examiner and somebody who knows what the symptoms are, what they are looking for, these are substances that get out of the bloodstream with great alacrity, unfortunately, and after 24 hours, you frequently cannot find traces of them. It is an enormous aspect of the problem for which funding pools are needed.

Chairman BIDEN. Again, the human toll side. I will say this and then I will yield to my colleague so we can get you out of here at 1:30.

The human toll here, the woman who has been raped knows what has happened to her, has the side effects, physical and psychological, is scarred forever and ever, ever and ever, according to the psychologists and psychiatrists who have testified before me, if, in fact, she is unable to articulate what happened to her with any degree of clarity because no one will believe her.

I ask all the men in the audience, just think of how you felt as a kid or as a man when something happened to you and you told people. You told about the guy who took your wallet or the bully who got you in the schoolyard and nobody believed you. Nobody believed you. This is incredibly debilitating.

Let me yield to my colleague from Washington.

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Morgan, as the law enforcement personnel here on the panel, I am interested in your analysis of the resources allocated for checking of crime scene DNA evidence and convicted felon samples in these various bills as far as a return on investment. It seems to me that it would be hard to think of a better investment of dollars to actually solve a crime. You could come up with a list of hiring more prosecutors or hiring more police officers or a variety of other things, but that probably wouldn't be as effective a use of resources. So what is your assessment of the return on investment of these dollars?

Mr. MORGAN. Madam Senator, you are exactly right. When our State prosecutors got together 3 years ago and said the most important expenditure of funds is not more prosecutors, not more cops on the streets, but to fund our lab so that we can get these crimes solved, if it protects another child from being sexually abused, another woman from being raped or another homicide, that is an investment, a wise investment of American dollars.

Senator CANTWELL. But it seems from the analysis that it is almost about closing the case in some instances because all the work has been done and all the information is there, correct?

Mr. MORGAN. That is exactly right, but we have got to have the resources to be able to close that case, and many times, Senator Cantwell, what we find in Georgia is that the person is arrested and convicted of a minor felony but has perpetrated these horrendous violent crimes before, and if we can get him on the minor felony, get him tested, we know if he gets out he will do it again. So if we can get him tested, get him convicted on these prior ones, we have saved lives and saved the devastation that Ms. Smith has testified to earlier.

Senator CANTWELL. In your testimony, you talk about that investment of resources specifically for training on DNA testing and the expertise that has to be behind the prosecutors on that. Could you elaborate on where that gap is?

Mr. MORGAN. Yes, ma'am, and Ms. Fairstein elaborated on that, as well. We see too often our law enforcement personnel on the local, State, and Federal level have not been trained on the adequate collection of these samples. And then, as I said, those of us who went to law school in the 1970's and 1980's, we are not prepared to put up this kind of technology before a jury unless we have expert training in this area. It is not something that I can bone up on the night before and then put up a DNA expert.

Senator CANTWELL. So do you think that we are losing cases because of that now?

Mr. MORGAN. Yes, ma'am, and I will admit that we have lost cases in my own office because we have not been able to convince the jury. Once we are educated, I think we can do a better job of educating jurors. There is still a reluctance of jurors to believe this evidence in our country and we have to be better prosecutors to educate the jurors here.

Chairman BIDEN. Senator, Linda has prosecuted thousands of these cases and wanted to chime in here.

Ms. FAIRSTEIN. I just wanted to add, another reason, as Mr. Morgan has mentioned, the science, we have to keep in mind that this science continues to evolve and change. It is changing. We bring experts from the FBI and from our serology lab more than four times a year in to our prosecutors to teach and train them. You cannot pick up, as we hand out at all these conferences, direct examination of a serologist and use the one from 6 months ago because we are talking about a different kind of DNA technology. We are talking about a different population genetics study and results. We are talking about statistics that are entirely different than they were a year ago.

So the training is not only ongoing, it is sort of what Dr. Adams said about continuing with the old things but the new are coming in at a great rate. It will continue to evolve, and that is part of what is so exciting and revolutionary about it. Mitochondrial DNA, there are only a handful of States in which that has been accepted in evidence, and this now means hair, bone, things that have not had a cell nucleus before that we can deal with.

So it is trying to keep current, and it is enormously expensive to do that. We have got 600 prosecutors in a DA's office like Manhat-

tan, again as many in Brooklyn and other counties, and we have got to teach all of those people and an entire police force how to find this evidence with cutting-edge technology and then how to teach it to juries.

I urge you to come to New York. Ours watch much more television than yours. They really believe in DNA.

Senator CANTWELL. Well, I think your point about exoneration, as well, that it can work both ways, and the——

Ms. FAIRSTEIN. It must.

Senator CANTWELL [continuing]. The basis of the technology is that it is accurate and can prove either side of the equation, I think is probably something that we have to work on.

I know, Mr. Chairman, you are trying to adjourn, but I have one last question for I do not care who on the panel——

Chairman BIDEN. No, please, go ahead.

Senator CANTWELL [continuing]. Can address it, but it seems to me, just given the anecdotal information that we have about the results of matches in Debbie Smith's case and some of the others, I know in our situation with the I-5 rapist in Washington State, that it seems to me that we are going to find a very interesting statistical match once we test these 20,000 DNA evidence kits, so any estimates or guesstimates about what we might find as far as convictions or number of people out of those 20,000 kits?

Mr. MORGAN. As Senator Biden said earlier, there is a small population of criminals that commit most of the crimes and I think we will see over and over again, once we test these kits, that there are people in custody that have had prior convictions or at least prior arrests.

Ms. FAIRSTEIN. We are getting back in New York City, among the almost 16,000 kits that were outsourced by the city a year and a half ago, they are coming back at the rate of about 500 to 800 a month now and we get city-wide, in the five counties, more than 40 hits each time a load comes back. So I think the numbers are just going to be staggering. This is the population we want to get, small crimes and, of course, these most devastating sexual assaults and homicides, and the numbers—we are going to put a lot of people out of business if you give us the money to do it.

Senator CANTWELL. I think that is the point. I do not think that we are talking about—it does not sound like, from the anecdotal information, that we are going to end up seeing a one or 2 percent statistic here, and the fact that it is not people who are convicted and behind bars, it is people who have been convicted of crimes, are back out on the street because it was a minor offense, but obviously, their involvement in criminal activity is much greater than the small crime that they have committed, and that is why this is so critically important for which to get the resources.

Mr. MORGAN. That is a very key point, Senator.

Ms. NARVESON. I think there are some statistics out there that you can look to. Based on the experiences of laboratories that are involved in this, the hit rate can run anywhere from 10 percent, which is a good number, all the way up to 48 percent, and a lot of it is contingent on a data base of convicted felons reaching what I call critical mass, and also of being able to process the non-sus-

pect cases and the other cases, such as burglaries, home invasions, and drug offenses.

I think right now, the State of Virginia has a 48 percent hit rate because they have an all-felons statute and they are aggressively analyzing all of the evidence and have the resources and the personnel to do it.

Senator CANTWELL. We in Washington have passed that, and so we would encourage other States—

Ms. NARVESON. That is good.

Senator CANTWELL [continuing]. To do that, as well, and that is why we were successful.

Again, I just want to thank everybody for being here, and Debbie, again, thank you for your testimony and your involvement. I think that you have all made clear to us that the nationalization of this issue really will lead to more women coming forward, and hopefully, passage of funding will lead to more convictions, so thank you very much.

Chairman BIDEN. This will also, if we fund it and are not cheap about it, if we actually step up to the ball here, this will convict a lot of people and free a lot of people. I do not want to, not just because she is a Delawarean, but I do not want to undercut what Ms. Holbrook is talking about. We need trained personnel to know what to collect, how to collect it, and who to send it off to, and that is all part of this.

I cannot thank you all enough. I warn you, as Linda knows from experience and Debbie knows, I may be back to you, ask you to come again, because this is just sort of the opening salvo here.

Debbie, thank you so much for your testimony. It was riveting, compelling, and it is going to help change some attitudes.

J. Tom, I would like very much to come and speak to your group, I have many times, because you have been a great ally in this effort.

Ms. Narveson, we are going to try very hard to see to it we can get some leverage, some moneys for the labs. The reason I say that is I have found when the Federal Government steps in and begins to do this, it puts significant pressure on States to respond.

Again, thank you all very, very much. This is an important hearing.

I would like to include the statement of Senator Grassley, who was required to be on the floor of the Senate with the trade bill, in the record.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Chairman BIDEN. The hearing is adjourned.

[Submissions for the record follow.]

[Additional information is being retained in the Committee files.]

SUBMISSIONS FOR THE RECORD

May 14, 2002

Statement for the Record of
Dwight E. Adams, Assistant Director
Laboratory Division
Federal Bureau of Investigation

on
The FBI's CODIS Program

Before the Senate Judiciary Committee
Subcommittee on Crime and Drugs
Washington, D.C.

Mr. Chairman, Ranking Member Grassley and Members of the Subcommittee, thank you for inviting the Federal Bureau of Investigation (FBI) to provide an update on our efforts relating to DNA, specifically with respect to the Combined DNA Index System (CODIS) and the National DNA database.

In looking back at the first use of DNA technology on casework in England in 1985, enormous advances have been achieved in institutionalizing this technology within the criminal justice system in the United States. While there are now hundreds of stories illustrating the impact of DNA, the following demonstrates how it has been assimilated into law enforcement investigations.

A college professor was raped and murdered in Flint, Michigan in 1986. A search of the Michigan state fingerprint files was negative and no suspects were developed in the case. Five years later, a flight attendant was raped and murdered in a motel in Romulus, Michigan. Again, there were no suspects. In 2001, DNA from the 1986 offense was submitted to the Combined DNA Index System (CODIS) at the state level which matched it to the 1991 murder. The Flint Police Department's Cold Case Squad submitted latent fingerprints from the 1986 homicide to the FBI's Latent Fingerprint Unit. Three latent prints were searched using the FBI's Integrated Automated Fingerprint Identification System (IAFIS) and one of the latent prints was identified. Rather than immediately arrest the suspect, the police followed him and retrieved a napkin the suspect had used in a restaurant. DNA found on the napkin matched the DNA from both homicides and the suspect was arrested, charged with both murders and is awaiting trial.

How do these state and national databases work? The answer is DNA. DNA is a unique identifier; only identical twins have the same DNA. DNA is found in almost every cell in the human body and is exactly the same in every cell. Because it is unique to each individual, the DNA collected from a crime scene can be used to eliminate a suspect in a case or link a suspect to the evidence. Moreover, as illustrated in the case above, DNA maintains its integrity so that

evidence from crimes committed many years ago may still yield sufficient DNA to conduct an analysis.

The analysis or testing of DNA obtained from a crime scene or a convicted offender's DNA sample will produce a DNA profile - a series of numbers, each of which represents the result from the analysis of a specific location on the chromosome called a locus. Generally, DNA profiles submitted for searching at the national level must contain information on 13 Short Tandem Repeat (STR) loci. The STR loci approved for use in CODIS were specifically selected as law enforcement identification markers because they were not directly linked to any genetic code or medical condition.

The Combined DNA Index System (CODIS)

The acronym "CODIS" is used to describe not only the software used to maintain and run these DNA databases but also the entire program of software support for Federal, state and local forensic laboratories as well as the various indices (Forensic, Offender and Missing Person) at all three levels - national, state and local. The acronym "NDIS" stands for the National DNA Index System, one component, albeit an integral one, of the CODIS program.

One of the underlying concepts behind the development of CODIS was to create a database of a state's convicted offender profiles and use it to solve crimes for which there are no suspects. Historically, forensic examinations were performed by laboratories if evidence was available and there was a suspect in the case. By creating a database of the DNA profiles of convicted sex offenders and other violent criminals, forensic laboratories would be able to analyze those cases without suspects and search those DNA profiles against the database of convicted offenders and other crime scenes and determine if a serial or recidivist rapist or murderer was involved. It was expected that this new tool would enable forensic laboratories to generate investigative leads or identify suspects in cases, such as stranger sexual assaults where there may not be any suspects.

The CODIS program has exceeded these expectations. CODIS began in 1990 as a pilot project with 12 state and local forensic laboratories and today has 153 participating laboratories representing 49 states and the District of Columbia. The FBI's primary method of measuring the effectiveness of the CODIS program is the number of investigations it assists by either identifying a suspected perpetrator or by linking serial crimes. As of March, 2002, CODIS has assisted in over 4,719 investigations in 32 states and two federal laboratories.

The CODIS software is used to maintain these DNA databases and search the DNA profile against the DNA profiles of convicted offenders and other crime scenes. For example, a DNA profile of a suspected perpetrator is developed from the sexual assault evidence kit. If there is no suspect in the case or if the suspect's DNA profile does not match that of the

evidence, the laboratory will search the DNA profile against the Convicted Offender Index. If there is a match in the Convicted Offender Index, the laboratory will obtain the identity of the suspected perpetrator. If there is no match in the Convicted Offender Index, the DNA profile is searched against the crime scene DNA profiles contained in the Forensic Index. If there is a match in the Forensic Index, the laboratory has linked two or more crimes together and the law enforcement agencies involved in the cases are able to pool the information obtained on each of the cases. Matches made by CODIS and confirmed by the participating laboratories are often referred to as CODIS "hits."

Standards for Assuring Quality at the National DNA Index

The introduction of this new technology also brought recognition of the need for standardized quality assurance protocols. In the 1980's, the FBI Laboratory convened a group of Federal, state and local forensic scientists, known as the Technical Working Group on DNA Analysis Methods or TWGDAM (now known as the Scientific Working Group on DNA Analysis Methods or SWGDAM). TWGDAM developed the guidelines for a quality assurance program that were adopted by virtually every laboratory performing forensic DNA analysis, becoming *de facto* national guidelines.

The importance of quality standards was more formally addressed by the DNA Identification Act of 1994 (42 U.S.C. §14131 - enacted as part of the Violent Crime Control and Law Enforcement Act of 1994 §210304(b)) which required the FBI Director to empanel a representative body to recommend quality assurance standards for forensic DNA testing laboratories. The DNA Identification Act specifically provided that in the interim, until such standards were developed and issued by the FBI Director, the TWGDAM Guidelines were to be considered the national quality standards. This body, known as the DNA Advisory Board, recommended two sets of quality assurance standards to the FBI Director, *Quality Assurance Standards for Forensic DNA Testing Laboratories* and *Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories*. Both standards were approved by the FBI Director and were effective October 1, 1998 and April 1, 1999, respectively (*see* Attachment A).

The FBI's efforts to ensure accountability to the DNA Identification Act have been met with cooperation and compliance by the state and local forensic laboratories seeking to participate in the National DNA Index. Once a forensic laboratory agrees to abide by these quality standards and enters into an agreement with the FBI governing these federal requirements as well as NDIS operating procedures, the laboratory will be authorized to upload their DNA convicted offender, casework and missing person data to the National DNA Index. Compliance with the Quality Assurance Standards and NDIS Procedures is monitored by audits of the participating laboratories

The DNA Identification Act also authorized the FBI Director to establish and maintain a national DNA identification index (42 U.S.C. §14132). The National DNA Index System was implemented in October, 1998. Today, there are a total of 127 laboratories representing 41 States and three federal laboratories participating in the National DNA Index. There are currently over 900,000 convicted offender DNA profiles in NDIS and 33,000 forensic profiles contributed by participating federal, state and local laboratories. The DNA Identification Act limits the type of DNA data that may be maintained in the national database as well as who may access this data and for what purpose. All DNA records in NDIS are protected from unauthorized access through administrative, physical and technical safeguards.

Adherence to the Quality Assurance Standards was required for the Federal DNA grant programs authorized by the DNA Identification Act of 1994 (42 U.S.C. §3796kk-2(1)) and more recently, the grant programs authorized by the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. §14135(d)(2)). It is important to note that private laboratories under contract to the public forensic laboratories for analyses of DNA samples must also satisfy the national Quality Assurance Standards. Continuation of these and similar requirements to comply with national Quality Assurance Standards to receive Federal grant funding and to participate in the National DNA Index promotes the commitment to quality DNA data.

Success of CODIS Creates New Demands

An identification tool that was initially thought to benefit the investigation of sexual assault cases has proven to have much wider application in the investigation and prosecution of crimes. States have observed this first hand with their CODIS hits and sought to expand coverage of their databases beyond sexual offenses - first to more serious violent felonies and then all felony offenses. The states are learning quickly that, the larger the size of the database, the more crimes that are solved. Virginia, for example, has long authorized the collection of DNA samples from all felons, and has achieved remarkable results in solving rapes, murders, and other crimes with CODIS. A study of the Virginia system has shown that a large proportion of its matches in sex offense cases would not have been obtained if the state had only collected DNA samples from violent offenders. Rather, the DNA sample which results in the solution of a rape is often collected on the basis of the offender's conviction for a nonviolent offense, such as a burglary, a drug offense, or a theft.

Consistent with the DNA Identification Act of 1994 (42 U.S.C. §14132; authorizing the inclusion of DNA records for persons convicted of a crime), the FBI supports the inclusion of all felony offenders in the National DNA Index. Similar benefits could be expected from expanding DNA sample collection from federal offenders to include all felons. This approach has previously received substantial support in Congress. For example, the DNA legislation sponsored by Senators Kohl and DeWine that the Senate passed in 1999 - title XV of S. 254 -

would have allowed the collection of DNA samples from all federal offenders convicted of felonies.

Legislative activity on DNA database laws has not shown signs of slowing down since passage of the last state DNA database law in 1998. Well over half of the states have expanded the offenses included in their DNA databases. Over the last few years, hundreds of bills have been introduced in state legislatures across the country to expand coverage of state DNA databases. Many of these proposals have been successful and there are now 19 states with laws authorizing the collection of DNA samples from all felony offenders (*see* Attachment B). These legislative efforts to include all felons are commendable. But we know from our annual survey of CODIS laboratories that the majority of states are unable to keep pace with the collection of these convicted offender samples. Federal funding provided under the DNA Analysis Backlog Elimination Act of 2000 has had significant positive impact on these backlogs, but the reality is that new backlogs will continue to be created as states expand their database laws.

The DNA legislation goes beyond expanding the qualifying offenses to other areas intended to ensure the prosecution of crimes solved using DNA analysis and CODIS. For example, dozens of proposals have been introduced to extend or eliminate the Statute of Limitation for sexual assaults or permitting the issuance of a warrant or indictment listing the DNA profile of an unknown person.

Hand in hand with the need for comprehensive coverage of all felony offenders in these DNA databases is the importance of analyzing the biological evidence collected from crime scenes, regardless of whether a suspect has been identified in that case. A large national database containing the DNA profiles of all felons by itself cannot solve crimes. We know that. We also know that state and local laboratories do not currently have the capacity to analyze all the cases with biological evidence that are submitted to them. Because of limited capacities, laboratories are forced to prioritize their cases based upon court dates and whether or not a suspect has been identified. Unfortunately, those cases for which there are no suspects - and the cases for which CODIS was specifically designed to help solve - remain unanalyzed in laboratory storage or police department evidence rooms. Nowhere is this more evident than the examples we hear of sexual assault or rape kits by the hundreds, or even thousands, gathering dust in storage - awaiting analysis. The difficulties inherent in determining the precise number of these unanalyzed rape kits nationwide should not deter us from addressing this issue. Until the laboratories have the capacity to analyze every case with biological evidence, CODIS will continue to be underutilized.

To better serve the criminal justice system, once the backlog of rape kits and other crime scene evidence is analyzed, laboratories will want to reduce the turn-around time for analyzing their casework. An obvious goal of this policy would be to assure that suspects in custody would not be detained indefinitely awaiting DNA testing results. By making DNA testing available for all cases involving biological evidence and providing reasonable turn-around times, quicker

results eliminating suspects would allow law enforcement to quickly refocus their efforts earlier in the investigation.

Because of the success of these DNA databases and their remarkable expansion, they are quickly approaching the capacity originally designed for CODIS. The expansion of state DNA database laws to all felony offenders and analysis of increasing numbers of casework samples translates into an increased number of profiles entered into and searched in CODIS. Moreover, as the number of CODIS laboratories has steadily increased over the years, the tiered architecture has not changed, necessitating maintenance of and user support for multiple versions of software. The FBI has been monitoring the legislative activity and planning for this eventuality. With the approval and support of the Attorney General, the FBI is undertaking the redesign of the CODIS system to enhance the system's storage and searching capacities and provide more immediate access to national searches.

Efforts undertaken several years ago to design a new matching algorithm capable of searching millions of profiles in seconds, or even microseconds, are coming to fruition and we will now turn our attention to integration of this new search engine into CODIS. Completion of these upgrades is dependent upon funding requested in the Fiscal Year 2003 budget. The CODIS redesign includes an increased capacity to accommodate 50 million DNA profiles. Other plans include increasing the frequency with which searches of the National DNA Index are performed so that as soon as new DNA data is uploaded, it would be searched and available for appropriate follow-up by the laboratory and law enforcement agency. Central management of the software applications and databases will be included in order to reduce the hardware and software maintenance costs for the participating laboratories and the FBI. And lastly, as all public DNA laboratories seek participation in the national system, the telecommunication circuits and routers must be upgraded and network maintenance provided to the participating state and local laboratories.

Finally, as forensic laboratories increase their capacities and begin to eliminate their convicted offender and casework backlogs, we must publicize the benefits of this technology for eliminating and incriminating suspects. Building upon educational efforts begun with the our publication on "Guidelines for the Collection and Preservation of DNA Evidence," and the more recent brochure and training CD entitled "What Every Law Enforcement Officer Should Know About DNA," developed by the Commission on the Future of DNA Evidence, the importance of DNA evidence should be common knowledge among law enforcement and criminal justice personnel. Training curricula for every law enforcement recruit should include, as a matter of routine, procedures for the proper collection and storage of DNA evidence. Cold case squads, similar to the one described in the Michigan case, exist in many jurisdictions to review old unsolved cases for any biological evidence and if available, submission to the forensic laboratory for analysis and entry into CODIS. Solving these old cases brings a measure of closure for victims and their families, such as the Scovilles. David and Ann Scoville, whose daughter Patricia was raped and murdered in Vermont, have championed the cause of DNA databases and are recipients of the Attorney General's Crime Victim Service Award for 2002. The DNA

evidence in Patricia's case is searched in the National DNA Index, but the case remains unsolved.

The foundation for the use of CODIS as an investigative tool has been established. The FBI Laboratory is committed to the support of the CODIS program. Considering how much has been accomplished in such a relatively short period with the cooperation and collaboration of legislative bodies and all components of the criminal justice community - law enforcement, crime laboratories, victims, prosecutors and the judiciary - the future of DNA and CODIS holds even greater promise, and hopefully closure for the Scovilles.

We appreciate the opportunity to appear before this Subcommittee and provide this update on CODIS and DNA databases. Thank you.



**U.S. SENATOR MARIA CANTWELL
WASHINGTON**

202-224-3441 (p)

202-228-0154 (f)

<http://cantwell.senate.gov>

FOR IMMEDIATE RELEASE
May 14, 2002

Contact: Jennifer Crider
202-224-8277

Senator Cantwell's Statement (as prepared) on the Debbie Smith Act

Thank you Mr. Chairman.

And thank you for holding this hearing and for inviting Debbie Smith to testify. As you know I have introduced legislation named in honor of Debbie, and I believe that after you hear her testimony today you will understand why.

As you know, the Debbie Smith Act will pay for DNA testing of the 20,000 rape kits that are currently gathering dust in police offices and labs all around the country, and that will help get more rapists caught and convicted.

Mr. Chairman, Senator Clinton, who I believe will be here a bit later, has also introduced a bill on this issue, and is also strongly committed to seeing the current lack of funding for DNA testing addressed. She is a cosponsor of the Debbie Smith Act, and she and I have agreed to combine the complementary aspects of our two bills as we move forward in considering how best to address this issue.

Debbie Smith's experience is testimony to the power of DNA evidence. It would have been impossible to solve a "no suspect" case like Debbie's without the use of DNA evidence. It took six years for the forensic evidence sample taken at the time of her rape to be cross checked against the Virginia database of convicted felons. But, when the comparison was made, her attacker was found and he was sentenced to two life terms plus 25 years.

Debbie Smith has put her own experience with DNA testing to good use. By talking openly about her own rape, I believe that she is partially responsible for the increase that we are seeing in the reporting of rape. Having the courage to share her story has helped us realize that the next sexual assault victim could be our sister, our daughter, our wife, or our mother.

Debbie, I promise to work hard to ensure that Congress addresses this issue and gets needed funding to law enforcement.

According to the Department of Justice, a woman is raped every two minutes. One in three women will be sexually assaulted in her lifetime. In my home state of Washington the number of sexual assaults is even higher. According to the Washington state Office of Crime Victims Advocacy 38 percent of women in my state have been sexually assaulted.

- continued -

Senator Cantwell' Statement
May 14, 2002
Page 2 of 2

If women have the courage to come forward and report a sexual assault, and to submit to a physical examination and evidence gathering, we owe them an absolute guarantee that *at a minimum* that sample will be analyzed and checked against databases of known sexual offenders and violent felons. That is what Debbie Smith and every woman who is sexually assaulted each year deserves, and that is what I am determined to accomplish.

In order to do this we need to provide funding that both allows states to build databases of convicted felons and provides for DNA testing in "no suspect" rape cases. My own state of Washington recently passed a law requiring that all felons provide DNA samples, but they like many states will need help in finding the necessary funding to get these samples into a database.

Women who are raped also deserve to receive respectful treatment, by people trained to collect and preserve forensic evidence. That is what the Sexual Assault Nurse Examiner program or SANE does.

SANE nurses can make the difference to women. In 1995, a young woman at home in Olympia, Washington state was raped at gunpoint. She said the SANE nurses who collected DNA evidence after the assault "made [her] feel at ease, more confident, and more comfortable." The DNA entered into the database matched that of a convicted serial rapist Jeffrey Paul McKechnie, the "I-5 Rapist," resulting in his conviction for the crime.

Today we will be hearing from one of our witnesses about the SANE program and its 200 operations nationwide. Because the SANE program operates largely without federal funding, it expansion has been limited.

The Debbie Smith Act will provide funding to allow SANE to be expanded into clinics and hospitals across the country. By providing funding we will see this program in more communities, and ensure that increasing numbers of rape survivors are treated with professional care.

Mr. Chairman, you are a recognized leader on the issue of violence against women, and both Senator Clinton and I look forward to working with you to pass legislation that recognizes the commitment we owe to Debbie Smith and women like her to get the rape kits tested and put more rapists in jail.

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STATEMENT OF LINDA A. FAIRSTEIN

GOOD MORNING, LADIES AND GENTLEMEN. THANK YOUR FOR THE INVITATION TO PARTICIPATE IN THIS HEARING.

THREE MONTHS AGO, I STEPPED DOWN FROM MY POSITION AS CHIEF OF THE NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE SEX CRIMES PROSECUTION UNIT - THE FIRST OF ITS KIND IN THE COUNTRY - IN MY 30TH YEAR OF SERVICE.

FOR 29 OF THOSE YEARS, I SPECIALIZED IN THE INVESTIGATION AND PROSECUTION OF CRIMES OF VIOLENCE AGAINST WOMEN AND CHILDREN - SEXUAL ASSAULT AND DOMESTIC VIOLENCE.

WHEN I CAME TO THE PRACTICE OF LAW, MANY STATES INCLUDING NEW YORK STILL MANDATED THAT THE TESTIMONY OF A RAPE VICTIM BE DEEMED INCOMPETENT - as a matter of law - UNLESS CORROBORATED BY THREE SPECIFIC FORMS OF INDEPENDENT EVIDENCE.

WE FOUGHT TO CHANGE THAT ARCHAIC IMPEDIMENT THAT PREVENTED THOUSANDS OF VICTIMS FROM STEPPING FOOT IN A COURTROOM FOR CENTURIES; TO CREATE RAPE SHIELD LEGISLATION; TO ELIMINATE THE ABSURD REQUIREMENT OF EARNEST RESISTANCE FOUND ONLY IN SEXUAL ASSAULT STATUTES; AND TO LOBBY FOR PREDICATE FELONY TREATMENT FOR SERIAL RAPISTS, WHOSE RECIDIVIST TENDENCIES ACCOUNT FOR THE STAGGERING VOLUME OF VICTIMIZATION ALL ACROSS AMERICA.

FOR MORE THAN HALF MY PROSECUTORIAL CAREER, MY COLLEAGUES

AND I DEVOTED EXTRAORDINARY HUMAN RESOURCES TO ENCOURAGING SURVIVORS TO TRUST THE CRIMINAL JUSTICE SYSTEM WHICH HAD EXCLUDED THEM FOR SO LONG, AND HELPING THEM TO TRIUMPH IN OUR COURTROOMS FOR THE FIRST TIME, AGAINST GREAT ODDS.

DURING MY FIRST FIFTEEN YEARS IN THAT POSITION, I NEVER DREAMED THERE WOULD BE A TIME WHEN SCIENCE COULD RELIEVE VICTIMS OF THE BURDEN OF IDENTIFYING THEIR ASSAILANTS. I NEVER IMAGINED THAT WHAT ARE NOW MY THREE FAVORITE LETTERS OF THE ALPHABET - DNA - WOULD BE SEQUENCED IN SUCH STUNNING FASHION, AND ACCEPTED AS A RELIABLE SCIENTIFIC TECHNIQUE IN EVERY COURTROOM IN AMERICA.

DNA TECHNOLOGY - WHICH I FIRST USED IN 1986, WHEN IT WAS DEEMED INADMISSIBLE IN A HIGH-PROFILE HOMICIDE CASE I PROSECUTED - HAS NOW COMPLETELY REVOLUTIONIZED THE CRIMINAL JUSTICE SYSTEM .

NO PROSECUTOR IN AMERICA - INDEED, NO DETECTIVE OR POLICE OFFICER - SHOULD INVESTIGATE A SEXUAL ASSAULT OR HOMICIDE CASE WITHOUT USING OR CONSIDERING THE USE OF DNA EVIDENCE.

THE SCIENCE, THE METHODOLOGY OF DNA CONTINUES TO EVOLVE AND TO MAKE MORE CRIME SOLUTIONS POSSIBLE. WHEN FIRST INTRODUCED AS A FORENSIC TECHNIQUE IN THE MID-80'S - THE "rfip" PROCESS REQUIRED EVIDENTIARY MATERIALS OR STAINS THAT WERE AT LEAST THE SIZE OF A QUARTER; THE FBI WAS THE ONLY FORENSIC LAB IN THE COUNTRY PERFORMING DNA TESTS; THE TURN-AROUND TIME FOR A PRELIMINARY

RESULT WAS AT LEAST SIX MONTHS; AND THE COST WAS \$5,000 PER SAMPLE. THAT LAST FACT MEANT THAT IN GANG RAPES OR CASES WITH MULTIPLE VICTIMS AND OFFENDERS, THE COST WAS FREQUENTLY GREATER THAN \$50,000 PER CASE.

NOW, WITH THE USE OF THE FAR MORE RELIABLE AND STURDY "pcr" TECHNOLOGY, IT IS POSSIBLE TO ACHIEVE IDENTIFIABLE RESULTS IN CASES WITH SAMPLES TOO SMALL TO VIEW WITH THE NAKED EYE. SOME LABS CAN TEST FOR 2 NANNOGRAMS OF FLUID - AND THERE ARE 1500 NANNOGRAMS IN A SINGLE DROP OF BLOOD. THE COST IS NOW SIGNIFICANTLY LOWER. AND MY COLLEAGUES GET RESTLESS IF WE DON'T HAVE A PRELIMINARY RESULT WITHIN 24-48 HOURS OF THE TIME WE SUBMIT THE EVIDENCE.

DNA'S USES ARE TWOFOLD. TO IDENTIFY PREDATORS, WITH CERTAINTY, IN CASES IN WHICH IDENTIFICATIONS WERE FREQUENTLY IMPOSSIBLE. JUST AS CRITICALLY - IF YOU WORKED FOR AND LEARNED FROM A PROSECUTOR WITH THE INTEGRITY OF BOB MORGENTHAU, AS I DID - TO EXONERATE SUSPECTS FALSELY ACCUSED.

IT IS INCONCEIVABLE TO ME THAT THERE ARE PROSECUTORS OR POLICE ANYWHERE IN THIS COUNTY NOT PROPERLY TRAINED TO UNDERSTAND THE POTENTIAL OF THIS SCIENCE TO SOLVE CRIMES, AND WHO DO NOT USE IT EVERY DAY IN THEIR WORK.

SENATOR BIDEN'S BILL - AND THE DEBBIE SMITH ACT - MARK A SUPERB EFFORT TO USE 21ST CENTURY TECHNOLOGY - dna databanking - TO SOLVE

20TH CENTURY CRIMES, AND TO BRING INVESTIGATIVE TECHNIQUES AND DUSTY, LONG-FORGOTTEN EVIDENCE OUT OF THE DARK AGES AND INTO OUR GROWING DATABANKS.

WE NEED THE FEDERAL RESOURCES, THE MONEY TO DO THIS WORK, AND LET ME GIVE YOU A PUNCHLIST OF REASONS WHY.

UNDER VAWA, WE BEGAN TO GET FUNDS FROM THE FEDERAL GOVERNMENT TO TRAIN POLICE AND PROSECUTORS. WE ARE GRATEFUL FOR THAT MONEY, BUT WE NEED FAR GREATER AMOUNTS.

THE SUBJECT OF EVIDENCE COLLECTION IS THE HEART OF THIS MATTER. IT IS A HUGE TOPIC OF CONCERN, AND IT IS WAY TOO SIMPLISTIC TO THINK WE ARE ONLY TALKING ABOUT BACKLOGGED "RAPE KITS", AS I WILL EXPLAIN.

EVIDENCE COLLECTION BEGINS WITH THE TRAINING OF LAW ENFORCEMENT PERSONNEL, TO COLLECT EVIDENCE AT THE ACTUAL CRIME SCENE. MOST OF US - AND PROBABLY MOST OF YOU - THOUGHT THAT MEANT LOOKING FOR THE OBVIOUS - BLOOD, SEMEN, SALIVA. HOW MANY OF YOU REALIZE THAT I COULD GET YOUR DNA FROM THE COLLAR OF EVERY SHIRT OR BLOUSE YOU ARE WEARING? FROM THE COMPUTER MOUSE YOU'RE HOLDING? FROM THE DOORKNOB YOU TURNED TO ENTER THIS ROOM? THE SCIENCE HAS ADVANCED SO RAPIDLY THAT EVEN SLOUGHED-OFF SKIN CELLS WILL YIELD GENETIC FINGERPRINTS. BUT COPS NEED TO KNOW WHERE AND HOW TO FIND THAT EVIDENCE.

THE COLLECTION PROCESS CONTINUES, FOR A RAPE VICTIM, IN THE HOSPITAL EMERGENCY ROOM. THE SINGLE WORD THAT COMES TO MIND WHEN I TALK ABOUT THE TREATMENT OF RAPE SURVIVORS IN ER'S IS "UNEVEN." THERE ARE NO TWO HOSPITALS IN ANY CITY OF THIS COUNTRY WHO RESPOND TO THESE PATIENTS IN EXACTLY THE SAME WAY, AS I WILL DISCUSS IN A FEW MINUTES.

EVIDENCE COLLECTION CONTINUES AT POLICE AND MEDICAL EXAMINERS' LABS. THE TRAINING OF SEROLOGISTS TO DO THIS WORK IS EXPENSIVE AND TIME-CONSUMING. IT CHANGES, WITH THE METHODOLOGY AND MACHINERY, SEVERAL TIMES A YEAR. THERE AREN'T ENOUGH TRAINED SCIENTISTS TO DO THE WORK THAT IS WAITING TO BE DONE, AND THAT WILL CONTINUE TO BE THE CASE AS THE TECHNIQUES BECOME EVEN MORE REFINED AND SOPHISTICATED.

LET ME TELL YOU SOME OF THE GOOD NEWS. THERE ARE COMMUNITIES AND OFFICES AND LABS THAT HAVE MADE THESE ISSUES WORK.

BOB MORGENTHAU'S UNIT - FOUNDED WITH 2 LAWYERS IN 1974, AND NOW STRONG WITH 40 LAWYERS DEVOTED TO GIVING THESE SURVIVORS A DAY IN COURT - OUR UNIT IS EXCEPTIONAL.

THREE YEARS AGO, WE STARTED AN EXPERIMENT. WE ASSIGNED OUR TWO MOST SENIOR LAWYERS TO WHAT WE CALLED A COLD CASE UNIT. THEY LITERALLY WENT TO THE POLICE DEPARTMENT TO LOOK THROUGH FILES TO FIND CASES THAT WERE APPROACHING THE 5 YEAR STATUTE OF

LIMITATIONS, HAD BEEN UNSOLVED, AND HAD THE POTENTIAL TO BE RE-EXAMINED FOR THE PRESENCE OF GENETIC MATERIAL.

OUR POINT WAS THAT FROM AMONG THE MANY THOUSANDS OF CASES SITTING ON POLICE EVIDENCE SHELVES, WE NEEDED TO PRIORITIZE THOSE WHICH COULD BE PROSECUTED IF DNA WAS SUCCESSFUL IN SOLVING THEM.

KEEP IN MIND THAT ALL ACROSS AMERICA, AT LEAST 80% OF REPORTED RAPES OCCUR BETWEEN ACQUAINTANCES. 20% OF REPORTED RAPES ARE SO-CALLED "STRANGER" CASES. NOT THAT THE LATTER ARE MORE IMPORTANT TO US, BUT THE ACQUAINTANCE CASES DO NOT INVOLVE THE IDENTIFICATION OF THE OFFENDER AS THE ISSUE. STRANGER CASES DO, AND SO THE DNA IS CRITICAL TO THEIR SOLUTION.

WHILE NYC OUTSOURCED 1600 UNTESTED RAPE KITS IN A STUNNING EFFORT TO ELIMINATE THE BACKLOG THAT EXISTS IN SO MANY CITIES AND STATES ACROSS AMERICA, OUR TEAM DID NOT WANT TO WAIT FOR THOSE RESULTS, WHICH ARE STILL COMING IN. WE WANTED TO PICK OUT THE STRANGER CASES - THESE ARE YOUR SERIAL RAPISTS, THE MOST RECIDIVIST AND MOST LIFE-THREATENING CRIMINALS - AND TRY TO SOLVE THOSE FIRST.

ONE OF THE UNSOLVED CASES OCCURRED IN A LAWYER'S OFFICE ON 42ND STREET. THE ASSAILANT TIED UP THE LAWYER, AND RAPED THE CLEANING LADY WHO HAPPENED UPON THE SCENE, INSERTING THE BUTT OF HIS GUN INTO HER VAGINA AS WELL. ALL HER EFFORTS AND AN INTENSIVE

POLICE INVESTIGATION FAILED TO FIND HIM.

OUR COLD CASE TEAM PULLED THIS 4 AND A HALF YEAR OLD CASE FROM A GREEN TRASH BAG, WHICH THE POLICE WERE ABOUT TO THROW OUT BECAUSE OF THE FAST-APPROACHING STATUTE OF LIMITATIONS.

THE DNA WAS DEVELOPED, AND MATCHED A CAREER CRIMINAL - RAPIST AND ROBBER - WHO WAS CONVICTED AGAIN OF THIS CRIME JUST TWO MONTHS AGO. IMAGINE THE REACTION, IF YOU CAN, WHEN THE DETECTIVES KNOCKED ON THIS WOMAN'S DOOR AND TOLD HER THAT HER CASE HAD BEEN SOLVED, AND THAT SCIENCE WOULD CONFIRM THAT FACT, WHETHER OR NOT SHE COULD EVER RECALL HER ATTACKER'S DESCRIPTION?

THE TRIAL COURT IN THIS CASE - PEOPLE AGAINST WENDELL BELLE - THAT THE STATUTE OF LIMITATIONS HAD BEEN TOLLED, AND THAT WE WERE ABLE TO PROSECUTE BELLE BECAUSE NOTHING LESS THAN DNA DATABANKING COULD HAVE SOLVED THIS CASE.

ANOTHER CRITICAL POINT THAT I HAVE NOT SEEN MENTIONED ANYWHERE ELSE, IS THE FACT THAT THE EVIDENCE THAT WILL SOLVE COUNTLESS RAPES AND MURDERS IS NOT SIMPLY SITTING IN THE SO-CALLED KITS.

THAT IS, OUR TASK IS NOT SIMPLY TAKING CARDBOARD BOXES OFF SHELVES, ALTHOUGH THAT'S A GOOD STARTING POINT. MUCH OF THE EVIDENCE WE NEED TO EXAMINE IS IN POLICE PROPERTY LOCKERS OR LABS ,BUT NOT IN KITS - EVERYTHING FROM BED LINENS, TO VICTIM OR SUSPECT CLOTHING, OR ABANDONED PROPERTY FROM A CRIME SCENE. YOU NEED

TRAINED INVESTIGATORS TO IDENTIFY AND ORGANIZE THOSE ITEMS.

WE HAD A RAPIST LAST YEAR IN NYC - HIS NAME IS FRED MONROE. A RECENTLY RELEASED FROM STATE PRISON PREDICATE FELON, MONROE COMMITTED TWO SEX ASSAULTS IN NYC IN ONE EVENING - THE FIRST IN QUEENS, AND THE SECOND IN MANHATTAN. THE 2ND TIME, FOLLOWING A WOMAN FROM ANOTHER STATE INTO HER HOTEL ROOM, HE DID NOT EJACULATE. BUT HE DID PUT HIS MOUTH ON HER BREAST, AFTER SUBDUING HER AT KNIFEPOINT.

THE HOSPITAL DID NOT EVEN BOTHER TO SWAB HER BREAST. BUT AT THE LAB, THE SEROLOGIST DISCOVERED A DRIED SECRETION ON HER BRA, WHICH WAS THE SALIVA THAT HAD TRANSFERRED THERE WHEN SHE DRESSED AFTER THE ASSAULT. THE KIT WAS NEGATIVE, BUT THE TINY AMOUNT OF SALIVARY SECRETION ON HER BRA MATCHED THE DNA OF CONVICTED OFFENDER FRED MONROE.

IN ADDITION, A BRILLIANT POLICE LIEUTENANT - JIMMY WEST - HAD KEPT HIS EYE ON AN UNSOLVED SERIES OF ROBBERIES IN GREENWICH VILLAGE. ALL THE VICTIMS WERE YOUNG WOMEN, AND IN EACH CASE, THE ROBBER HAD TRIED TO FOLLOW THE WOMEN INSIDE THEIR APARTMENTS. NONE WERE RAPED, THEREFORE NO EVIDENCE COLLECTION KITS. BUT WEST MADE HIS MEN PICK UP BEER BOTTLES AND CIGARETTE BUTTS OUTSIDE THE CRIME SCENES. THE RESULT? MORE MATCHES TO FRED MONROE, AND CONVICTIONS ON ALL THE CASES. A GREAT INVESTIGATOR, AND A SOLID

CHAIN OF CUSTODY. THIS WORK REQUIRES THINKING OUTSIDE THE BOX, BEYOND THE NORMAL SCOPE OF A CRIME SCENE RUN. AND IT REQUIRES THE MONEY TO SUPPORT THAT WORK, AND THE SUBSEQUENT ANALYSIS.

ANOTHER NEED FOR FUNDING, AT THE LABS. MANY OF THE PROFILES DEVELOPED TWO, THREE, FIVE YEARS AGO WERE BASED ON A SIX-LOCI MATCH - THAT IS, SIX POINTS WITHIN THE GENE THAT WERE IDENTICAL. THAT STANDARD IS OBSOLETE. THE BRITS HAVE HAD TWO UNRELATED HUMAN BEINGS MATCHING AT SIX LOCI, AND SO WE HAVE MOVED TO MORE DEMANDING MATCHES - 13 AND 15 LOCI. ALL THE OLD SAMPLES MUST BE RE-TESTED AND RE-PROFILED BEFORE BEING UPLOADED.

BEFORE I LEAVE THE LABORATORIES, I FEEL IT ESSENTIAL TO MENTION THE BRILLIANT WORK OF THE OFFICE OF THE CHIEF MEDICAL EXAMINER OF NYC, ITS PATHOLOGISTS AND ITS SEROLOGISTS. WITH ALL DESERVED RESPECT TO THE NYPD, FIRE DEPT, AND EMS, MY UNSUNG HEROES OF 9/11 ARE THE MEN AND WOMEN OF THE NYC MORGUE. I HAVE NEVER SEEN SUCH SELFLESS WORK - SURROUNDED BY MILLIONS OF PIECES OF HUMAN FLESH, THEY HAVE WORKED AROUND THE CLOCK TO GIVE ANSWERS AND PROVIDE SOLACE TO FAMILIES OF 9/11 VICTIMS. AND ALL THROUGHOUT THIS TIME, THEY CONTINUED TO HANDLE THE RAPES AND HOMICIDES THAT WE PRESENTED TO THEM. EVERY AMERICAN OWES THEM OUR SINCEREST GRATITUDE.

I'D LIKE TO DISCUSS THE ROLE OF THE SEXUAL ASSAULT FORENSIC

EXAMINERS. AGAIN, WE START WITH THE FACT THAT THIS FIELD IS DREADFULLY UNEVEN.

PHYSICIANS WHO WORK IN EMERGENCY ROOMS WILL TELL YOU THAT THEY DO NOT WANT TO TREAT RAPE VICTIMS. E.R. PHYSICIANS ARE IN PLACE TO SAVE LIVES. RAPE VICTIMS HAVE SURVIVED THE ATTACK. THEY ARE TRIAGED AFTER HEART ATTACKS, STROKES, CAR ACCIDENTS, GUNSHOT WOUNDS, AND STABBING VICTIMS....AS THEY SHOULD BE IF THEIR INJURIES ARE NOT LIFE-THREATENING. THE RAPE VICTIM HAS SURVIVED THE PHYSICAL TRAUMA OF THE CRIME.

BUT SHE STILL HAS THREE CATEGORIES OF NEEDS - MEDICAL, EMOTIONAL, AND LEGAL.... IF THE RAPIST IS TO BE CAUGHT AND CONVICTED. MOST WILL TELL YOU THAT A RAPE SURVIVOR WILL BE IN THE E.R. ANYWHERE FROM 4-6 HOURS - FROM TRIAGE TO COUNSELING - INCLUDING THE INTERNAL EXAM, A HEAD-TO-TOE PHYSICAL, EVIDENCE COLLECTION - INCLUDING SWABBING THE ORIFICES, CLIPPING THE NAILS, AND COMBING THE PUBIC HAIR. THEN THERE IS THE ISSUE OF STD PROPHYLAXIS AND AIDS INFORMATION.

THE REALITY? THE COLLECTION IS NOT DONE PROPERLY, OR NOT COMPLETED, WHEN IT IS NOT DONE BY S.A.F.E. OTHER HEALTH CARE PROFESSIONALS REFUSE TO FOLLOW DETAILED PROTOCOLS, DON'T KNOW WHAT TO LOOK FOR, AREN'T AWARE OF THE LATEST TECHNOLOGY - LIKE COLPOSCOPES -; AND OFTEN CANNOT BE QUALIFIED AS EXPERT WITNESSES

- LIKE THE ORAL SURGEON WHO EXAMINED ONE OF MY VICTIMS, AND HAD NEVER PREVIOUSLY SEEN A VAGINAL VAULT.

WE CANNOT MAKE AN ADEQUATE CASE WITHOUT THE PROPER EVIDENCE COLLECTION, AND NO ONE SUFFERS BUT THE VICTIM OF THE CRIME.

IN REGARD TO STATUTES OF LIMITATION, MANY STATES STILL HAVE THEM - NEW YORK AMONG THEM. OURS IS 5 YEARS. I DO NOT BELIEVE THAT IT IS REALISTIC TO ABOLISH THEM IN EVERY CATEGORY OF CASE, BUT WHEN THE EVIDENCE IS IN THE FORM OF DNA ANALYSIS, IT MAKES MOST OF THE TRADITIONAL OBJECTIONS OBSOLETE.

ONE SOLUTION, AS YOU KNOW, WAS PIONEERED BY A WISCONSIN PROSECUTOR NAMED NORM GAHN....AND IMITATED THEREAFTER BY MANY OF US. GAHN, FACING A STATUTE OF LIMITATIONS IN A CASE OF A SERIAL RAPIST WHO ATTACKED ADOLESCENTS IN MILWAUKEE, INDICTED THE UNKNOWN RAPIST BY CHARGING HIM AS JOHN DOE, WHOSE DNA PROFILE WAS SPECIFIED. I FOLLOWED GAHN'S LEAD, INDICTING MANHATTAN'S EAST SIDE RAPIST, WHO STILL REMAINS AT LARGE. MORE THAN A DOZEN STATES HAVE DONE THE SAME, AND COURTS HAVE UPHELD THE TECHNIQUE IN TEXAS AND CALIFORNIA, TOLLING THE STATUTE OF LIMITATIONS.

ALL OF THESE INITIATIVES LEAD TO THE IMPORTANCE OF FEDERAL RESOURCES AND COMMITMENT TO THESE ISSUES.

THESE DEVASTATING CRIMES ARE A NATIONAL PROBLEM, AND TRAGEDY, FOR A VARIETY OF OBVIOUS REASONS. THEY OCCUR EVERYWHERE IN THIS

COUNTRY, AND AT A RATE THAT IS DANGEROUSLY UNACCEPTABLE. STRANGER, SERIAL RAPISTS ATTACK ACROSS STATE LINES, AND CAN MOST EFFECTIVELY BE STOPPED BY INTERSTATE AND FEDERAL DATABANKING. IT IS A PROVEN WAY TO SAVE LIVES, AND PREVENT UNNECESSARY VICTIMIZATION.

LET ME END WITH 3 EXAMPLES:

1) WE HAVE AN UNSOLVED RAPE OF A TEENAGED GIRL IN EAST HARLEM. LAST FALL, OUR CRIME SCENE EVIDENCE DATABANK MATCHED THE CASE TO TWO UNSOLVED CASES WHICH OCCURRED INSIDE THE NEWARK, NEW JERSEY LIBRARY. STILL UNSOLVED, THIS LEAD GIVES BOTH TEAMS OF INVESTIGATORS NEW LIFE FOR THEIR CASES, AND INCREASES THE LIKELIHOOD OF AN APPREHENSION.

2) THE FIRST PHONE CALL I GOT FROM THE POLICE WAS ON JANUARY 1 OF 2001, TELLING ME THAT A YOUNG BRITISH TOURIST WAS RAPED AND BEATEN IN A MANHATTAN HOTEL ROOM. SHE WORKED LONG AND HARD WITH DETECTIVES BEFORE RETURNING HOME, BUT THE CASE DEAD-ENDED.

LATER IN THE YEAR, THE DNA MATCHED THE UNIDENTIFIED OFFENDER IN A RAPE-KIDNAPPING WHICH OCCURRED IN LAS VEGAS, NEVADA. THE STORY FINALLY ENDED IN THE SUMMER OF THAT YEAR, WHEN A MAN KILLED A SECURITY GUARD IN A CASINO HEIST IN ATLANTIC CITY, NEW JERSEY. FEDERAL AGENTS FOLLOWED THE SUSPECT TO NEW YORK CITY, WHERE HE WAS KILLED IN A SHOOT-OUT WITH THE FEDS, IN A CROWDED MANHATTAN

HOTEL LOBBY. HIS DNA PROFILE, POST-MORTEM, SOLVED THE TWO RAPE CASES AND ENDED HIS CROSS-COUNTRY CRIME SPREE. THAT SECURITY GUARD DID NOT HAVE TO DIE.

3) THE LAST EXAMPLE IS DRAMATICALLY CURRENT. THREE WEEKS AGO, ALL OUR MAJOR PAPERS CARRIED STORIES OF A 29-YEAR OLD AIR FORCE EMPLOYEE WHO WAS ARRESTED IN FORT COLLINS, COLORADO. HE WAS CHARGED, THERE, BECAUSE OF A DNA MATCH TO MORE THAN 7 RAPE/BURGLARIES OF APARTMENTS OF YOUNG WOMEN, MOST OF WHOM WERE COLORADO STATE UNIVERSITY STUDENTS.

WITHIN DAYS, DNA DATABANKS ALSO MATCHED MR. GRAVES TO A SERIES OF UNSOLVED CASES IN PHILADELPHIA. THAT RAMPAGE - OF THE CENTER CITY RAPIST - INVOLVED AT LEAST 5 WOMEN WHO WERE RAPED, AND FINALLY A PENN STUDENT WHO WAS RAPED AND MURDERED IN HER APARTMENT IN 1998. NOW, POLICE ARE RE-OPENING FILES OF CLOSED CASES EVERYWHERE FROM NEW HAMPSHIRE TO TEXAS TO SOUTH CAROLINA TO NEW MEXICO, WHERE THE OFFENDER IS KNOWN TO HAVE SPENT TIME.

SERIAL RAPISTS ARE RARELY DORMANT. THEY DON'T RETIRE AND THEY DON'T QUIT. THE BEST WE CAN DO IS IDENTIFY THEM, PUT THEM OUT OF THE BUSINESS OF DESTROYING INNOCENT LIVES, AND SEE THAT THEY NEVER WALK AMONG US AGAIN, IF THEY ARE IN FACT GUILTY OF THESE DEVASTATING CRIMES.

DNA TECHNOLOGY IS OUR BEST HOPE OF ACHIEVING THESE GOALS.
THANK YOU FOR LETTING ME JOIN YOU TODAY, AND I HOPE YOU WILL
ALLOW ME TO WORK WITH YOU ON THESE ISSUES FROM THIS DAY ON.

SENATOR CHUCK GRASSLEY'S STATEMENT
SUBCOMMITTEE ON CRIME AND DRUGS HEARING
JUSTICE FOR SEXUAL ASSAULT VICTIMS: USING DNA EVIDENCE TO COMBAT CRIME
May 14, 2002

Mr. Chairman, thank you for holding this hearing on the issue of the use of DNA evidence in sexual assault cases. In many if not most of these cases, DNA evidence has been crucial to finding justice. It's a very trustworthy forensic tool available to criminal investigators. In fact, the National Academy of Sciences' National Research Council has on two separate occasions determined that forensic DNA testing is reliable and has endorsed its use in criminal investigations and prosecutions. Since DNA evidence is such a powerful tool for discovering the identity of the criminal offender, we should be doing all we can to assist state and locals in the use of this forensic technology.

One of the frustrating issues regarding DNA evidence in cases of sexual assault is the significant

backlog of rape kits remaining to be tested and entered into the FBI's Combined DNA Index System (CODIS). Reducing this backlog is important because in cases where there is no suspect, CODIS allows agencies to match DNA profiles with other profiles entered into local, state, and national databases to identify a suspect or link serial crimes. Currently there is an untold number of rape kits sitting in police evidence lockers gathering dust. We need to assist state and locals in their efforts to dust off those kits, run the tests, and let the truth convict.

It's equally important that we reduce the backlog of convicted felons waiting to have their DNA tested and entered into the system. As with most types of crime, sex offenders don't restrict their criminality to just one crime. More often than not, sex offenders are also thieves and murderers, necessitating the need to test, at the very least, all convicted felons. The state of Virginia has begun

testing all arrestees and not just convicted felons. This may not be a trend followed in all states, but it will increase the number of DNA specimens that are available for comparison with DNA found at a crime scene.

Another significant issue is how DNA evidence affects the statute of limitations for sexual assault crimes. Statutes of limitations exist because witness memories become less reliable after the passage of time. The same isn't true with DNA evidence. Since DNA evidence doesn't become less reliable over the years, we should take a look at how statutes of limitations can be adjusted to allow for the use of DNA evidence in sexual assault cases even after the statute of limitations has run. Some have advocated the abolition of statutes of limitations in sexual assault cases. Others have pushed for exceptions to the statute where DNA evidence is available. Others, including Senator Biden, have suggested the use of "John

Doe” warrants in these cases. I’m not sure what the answer is, but I’m hopeful that today’s testimony will shed some light on the issue.

A third issue of importance regards the collection of DNA evidence. It’s important that the collection of DNA evidence be done by a nurse or medical examiner who will be sensitive to the victim’s physical and emotional needs, while also being careful to avoid contaminating the DNA sample. Because the collection of DNA evidence after a sexual assault is such a sensitive task, evidence collectors should undergo standardized training.

I understand that a number of bills have been introduced both in the House and Senate to deal with the issues we will be discussing today. In fact, Senator Biden introduced a bill ^{today} ~~just yesterday~~ on this subject. I’m looking forward to today’s testimony in the hopes that it

will show me the greatest needs state and local police have with regard to DNA forensic testing and what solutions will best meet those needs.

I'm glad that we could have Sue Narveson, the President of the American Society of Crime Laboratories here to testify. Ms. Narveson is in a unique position enabling her to present the views of the crime lab community with regard to the backlog of rape kits waiting to be tested. It's also good to have J. Tom Morgan, the District Attorney for Stone Mountain, Georgia, here to share with us the views of the National District Attorney Association (NDAA). The NDAA has recently issued a policy statement on DNA technology and the criminal justice system. As the voice for the majority of state and local prosecutors, it is important that we hear their position on the use of DNA evidence in sexual assault cases. It's good to have both of you with us today.

Mr. Chairman, thank you again for holding this important hearing.



Department of Justice

STATEMENT

OF

THE HONORABLE SARAH V. HART
DIRECTOR
NATIONAL INSTITUTE OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

REGARDING

DNA INITIATIVES

ON

MAY 14, 2002
WASHINGTON, DC

Chairman Biden, Senator Grassley, Members of the Subcommittee, as Director of the Justice Department's National Institute of Justice (NIJ), it is my pleasure to testify before you on behalf of the Department. NIJ is the research, development, and evaluation arm of the Justice Department. We appreciate today's opportunity to discuss the Justice Department's efforts to promote the use of DNA analysis to solve crimes.

With the strong support of Congress, the Department of Justice through NIJ has served as a leader in the national effort to maximize the benefits of DNA evidence. Over the past five years we have seen a national explosion in forensic DNA collection. All 50 states and the federal government now have laws on the books that require DNA to be collected from convicted offenders for the purpose of criminal DNA databasing. The strong trend is toward broader DNA sample collection, including collection from all felons in many states. The reason is simple: experience has taught law enforcement that the more offenders that are included in the database, the more crimes that will be solved.

More DNA collected, however, means more DNA that must be analyzed in order to be useful to law enforcement. Today there are literally hundreds of thousands of samples from crime scenes and from offenders that are awaiting analysis in evidence storage lockers and forensic laboratories across the country. The longer this evidence goes unanalyzed, the longer the crimes to which it relates go unsolved. And for the victims of crime, especially victims of the most violent crimes, justice delayed is truly justice denied.

The use of DNA evidence holds promise for all aspects of the criminal justice system. It ensures prompt and public verdicts and often leads to guilty pleas. These guilty pleas can spare fragile sexual assault and child victims the trauma of trial. Guilty pleas also save taxpayer dollars by reducing court staff time and reducing costs for prosecutors and public defenders. Maximizing the use of DNA evidence promotes fairness, confidence, and certainty in the administration of these laws.

For this reason, the Administration is fully committed to continuing efforts to enhance the use of DNA evidence. This year, more funds will be devoted to this program than ever before. Attorney General Ashcroft demonstrated his personal commitment to this effort last year by authorizing the transfer of \$25 million from the Department's asset forfeiture fund to NIJ for DNA backlog reduction. He has also directed the Office of Justice Programs, of which NIJ is a part, to take all appropriate steps to ensure the DNA-related assistance grants are used in a manner that maximizes the effectiveness of DNA technology as a tool to solve crimes and promote public safety. In response to his directive, NIJ has convened a working group of over 25 experts on the use of DNA evidence, drawn from across the political spectrum, to help focus the government's effort in this regard. I am confident that support for the use of DNA evidence to solve all types of crimes, but especially crimes involving violence to women, will continue to be a priority of this Administration.

The DNA Sample Backlog Problem

The DNA sample “backlog” is a complex problem. The backlog actually consists of many parts, including current “casework samples,” which are samples taken from crime scenes and from victims themselves in on-going cases, as well as “offender samples,” which are taken from convicted offenders who are incarcerated, on probation, or on parole. The backlog of crime scene samples is effectively increasing as states have begun to reexamine casework evidence from old and cold cases in the hope that advances in DNA can help to solve them. The backlog of offender samples is exacerbated by the fact that there are not only samples which have been collected and await analysis but also samples which are “owed” but not yet collected from offenders.

Adding to this problem is the fact that the number of offender samples requiring analysis continues to increase -- especially as many States amend their statutes to collect samples from *all* convicted felons. For example, when Florida added only *one* additional non-violent offense to its statute that requires convicted offenders to provide DNA samples, the State’s sample intake increased by approximately 40,000 in one year.

The casework backlog delays both the solving of criminal cases and the prosecution of the offenders who commit the crimes. Delays in processing offender samples not only reduce the number of cases solved, but can lead to situations where offenders are released from custody

before the evidence linking them to other crimes has been analyzed, and they are free to re-offend.

Casework Backlog. OJP's Bureau of Justice Statistics (BJS) reports that at least 81% of public DNA laboratories have current casework backlogs and that 70% of prosecutors' offices throughout the U.S. identify excessive delays in getting laboratory results as their most common problem with the use of DNA evidence.¹ Between 1997 and 2000, BJS reports a 73% increase in casework analyzed and a 135% increase in their casework backlogs over the same time period. Additionally, it is important to note that most crime labs (95%) assess their workload by number of cases. However, it is possible that one case alone can have as few as three to upwards of 100 pieces of biological evidence to analyze for DNA, including suspect(s), victim(s), standard reference, elimination, and evidentiary samples. And as the use of DNA increases in cases where DNA was not traditionally seen as an investigative method, these backlogs will only increase if not addressed.

Convicted Offender Backlog. State laws determine which offenses require a DNA sample to be taken from convicted offenders. Those laws differ as to which offenses require offenders to provide a sample and as to whether the requirement to provide a sample applies equally to persons already convicted of an offense or only to newly-convicted offenders. Currently, 19 states require all convicted felons to provide DNA samples (7 enacted this

¹*Survey of DNA Crime Laboratories, 2001* (Published January 2002), U.S. Department of Justice, Bureau of Justice Statistics

legislation in 2001 alone). Congress did not require Federal offenders and persons convicted of military crimes to give DNA samples until late 2000, and now requires all persons convicted of terrorism crimes or a crime of violence to provide a sample. Two states have begun to collect DNA samples from persons arrested, but not yet convicted, of crimes.

As a result of these factors, the number of samples that require analysis has been, and is likely to continue to be, in a state of flux as more states move to collect samples from all convicted felons. Therefore, there is no reliable estimate of the number of offenders samples that are required by state or Federal statute, but which are yet to be collected, but several hundred thousand owed samples are likely.

As of January 1, 2002 there were 829,775 offender profiles and 33,131 forensic (i.e., casework) profiles in the national DNA database. Nearly, 400,000 convicted offender samples have been analyzed with federal funding.

One troubling aspect of this problem is that many state statutes do not require offenders convicted before the date of enactment of the DNA sample collection statute to provide such a sample. As a result, in many states, dangerous offenders are released without any way to ascertain if they have committed other crimes in the past or to match them with crime scenes evidence collected in the future. While taking samples from these prisoners would add to the burden, it is vitally important that States be encouraged to collect samples from all appropriate

offenders. Likewise, the Federal government must be working to address backlog issues so that when States begin to do so, no adverse impacts on the systems will occur.

In addition, to ensure that DNA samples are collected from all appropriate offenders, and that the information so obtained can be used to solve crimes, I would direct the Subcommittee's attention to three further issues which merit consideration both by Congress and by state legislatures:

First, as I have already noted, the strong trend at the state level is towards expansion of DNA sample collection to include all felons. The Department of Justice believes that all states should move to include all felons in the DNA sample collection, and the same reform needs to be made in the laws governing the collection of DNA samples from federal offenders. Even if one focuses only on the solution of the most serious violent crimes, such as rape and murder, achieving this result effectively requires casting a broader net. Experience at the state level shows that the DNA sample which results in the solution of a rape, for example, is often collected on the basis of the offender's conviction for a nonviolent offense such as a burglary, a drug offense, or a theft. I would note in this connection that the Senate has already passed legislation – title XV of S. 254 in 1999 – which would have allowed the collection of DNA samples from all federal felons.

Second, a majority of the states collect DNA samples from certain categories of juvenile delinquents, and some states have begun to authorize the collection of DNA samples from certain

arrestees. While the states are currently free to include the resulting information in their own DNA databases, they cannot enter it into the national index administered by the FBI, because the language of the statute for the national index (42 U.S.C. 14132(a)(1)) only refers to convicted offenders. This undermines the national index's purpose of making the information in the state DNA databases available to law enforcement on a nationwide basis to solve crimes. The Department of Justice recommends that the federal statute be amended to allow the inclusion in the national index of DNA profiles from adjudicated delinquents and arrestees. By way of comparison, the states regularly include information on arrestees in the national (fingerprint-based) criminal history records system, and are free to include information on adjudicated delinquents as well as adult convicts. Here as well, the legislation that the Senate passed in 1999 would have allowed the states to include DNA information on adjudicated juvenile delinquents in the national index. See § 1503(b)(1) of S. 254, 106th Cong., 1st Sess.

Third, fully realizing the value of the DNA technology requires complementary changes in the limitation rules for prosecution. Collecting DNA samples from convicted offenders and matching them to crime scene evidence proves to be futile where, for example, the convicted offender sample matches a rape committed some years previously, but prosecution is impossible because it is time-barred. For example, the limitation rule for most offenses in federal law is five years, see 18 U.S.C. 3282, so a rapist who is not identified within five years has quite likely beaten the rap forever. Many states are less restrictive. Several have no limitation period for the prosecution of felonies generally. Other states, spurred by the development of the DNA technology, have extended or eliminated the limitation periods for prosecution of sexual assault

cases or cases potentially amenable to solution through DNA matching. Reforms of this type merit adoption by the legislatures in the remaining states, and by Congress for the federal jurisdiction.

Federal Funding for DNA Analysis

The first Federal funding to support the use of DNA analysis to solve crimes was through the DNA Laboratory Improvement Program, enacted in 1994. This program was designed to improve the capabilities and capacities of our Nation's crime laboratories to implement and conduct forensic DNA analysis. When the program first began, however, fewer than a dozen States had the capability to perform forensic DNA testing. At the close of the program, in 2000, more than 130 separate laboratory facilities in all 50 states had DNA capabilities. While Federal funding has made some contribution to this increased capacity, it is mostly attributable to the increased resources provided by state and local governments.

In FY 2000, NIJ began a program specifically directed at reducing the growing backlog of DNA samples awaiting analysis in State and local laboratories. Funding for this program came from the Crime Laboratory Improvement Program (CLIP), a funding stream Congress created as part of the appropriations process in FY 2000. The goal of the CLIP program has been to establish or improve the capabilities and capacities of State and local crime laboratories to conduct forensic analyses. In FY 2000 and 2001, Congress designated a portion of appropriated CLIP funds for distribution to the States to reduce the backlog of DNA samples taken from

convicted offenders. Samples analyzed with these funds were loaded into State and National DNA databases using the FBI's CODIS software. In FY 2000, NIJ awarded \$14.4 million in funds to States for convicted offender DNA sample analysis. In FY 2001, NIJ awarded \$9 million under this program.

Because public crime laboratories often are not equipped to rapidly process a large number of DNA samples, NIJ awarded these funds to States by authorizing States to out-source backlogged samples to privately-owned, "high throughput" vendor laboratories with which the Federal government had entered into a contract for DNA sample analysis. These 6 private laboratories were selected by NIJ based on technical merit and the ability to through-put a large volume of DNA samples for analysis in a timely manner. As a condition of receiving these funds, NIJ required all recipient States to agree to analyze no suspect casework in an amount equal to 1% of the convicted offender DNA samples they out-sourced to the private laboratories.

As a result of this program, approximately 400,000 convicted offender samples and almost 11,000 no suspect cases were analyzed. While data are still being generated, as of today, more than 900 CODIS "hits" have been made as a direct result of this program - 900 cases previously unsolved have been brought back to life - a stunning success with more likely to come.

In 2001, the Attorney General proposed that an allocation from Asset Forfeiture Super Surplus Funds be used to address the backlog of crime scene sample analysis. As a result of this

decision, an additional \$25 million in funding has been made available to NIJ for distribution to the States in FY 2002 for DNA analysis of both convicted offender and no suspect casework, and additional research work on DNA.

In late 2000, Congress enacted the DNA Backlog Elimination Act of 2000, a new statutory scheme designed to address the backlog of both convicted offender samples and, for the first time, samples taken from crimes where there is no known suspect. While no funds were appropriated under this act until late 2001, DOJ was appropriated \$35 million for this purpose for FY 2002. Of this amount, NIJ will award \$15 million for convicted offender DNA sample analysis and \$20 million for analysis of "no-suspect cases." When combined with the remaining asset forfeiture funds allocated to NIJ in 2001, the total funding for DNA backlog reduction for FY 2002 is approximately \$60 million.

For FY 2003, the Administration has requested that Congress fund NIJ's Backlog Reduction Program at the full authorization level for FY 2003 under the DNA Backlog Elimination Act -- \$15 million for convicted offender DNA analysis and \$25 million for no-suspect casework analysis. The Administration has also proposed to use \$5 million of additional funding to NIJ for research on DNA.

Federal Funding for General Forensic Laboratory Improvement

Of the \$95 million in funding appropriated under the CLIP program, \$23.4 million has been directed by Congress at the backlog of DNA samples awaiting analysis. The remaining program funds have been provided for general forensic laboratory improvement. These funds also are administered by NIJ.

Much of these funds have been earmarked. In FY 2000, one-third of the \$30 million in appropriated funds of this program were earmarked to other specific projects. In FY 2001, \$19.2 of the total funding of 29.9 million was earmarked to other projects. In FY 2002, \$29.4 of the total of \$35 million was earmarked to other projects. Of the \$95 million in total funding for CLIP in the last three fiscal years, approximately \$59 million has been earmarked to specific recipients. NIJ has worked with each of the earmark recipients to help ensure that they use these funds for the stated purposes of the program. As a result of NIJ oversight, these funds have been used for analyst training and continuing education, the purchase of upgraded laboratory and computer equipment and supplies, scientific validation and implementation of new forensic technologies, facility modifications, and contractor-provided services for assistance in implementing new capabilities.

CLIP funds have also funded the establishment of the Forensic Resource Network, a collaboration among award recipients in West Virginia and Florida that provides innovative solutions to challenges facing the forensic science community. Out of FY 2002 funds, in

addition to the 17 earmarks totaling \$29.4 listed in the conference report, NIJ will issue in the coming weeks a solicitation for approximately \$4 million in discretionary funds. We expect that approximately 16 awards to State or local crime labs at a maximum of \$250,000 per award will be made with these funds based on the merits of their proposal for the use of these funds.

In late 2000, Congress enacted the Paul Coverdell National Forensic Sciences Improvement Act (NFSIA). This act authorizes funding to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes. In general, the NFSIA program provides funding to crime laboratories and medical examiner's offices for expenses related to facilities, personnel, computerization, equipment, supplies, accreditation, certification, education, and training. NFSIA requires that States receiving a grant under the program use the award to carry out all or a substantial part of a program to improve the quality and timeliness of forensic science or medical examiner services in the State. Congress appropriated \$5 million for this program in FY 2002. NIJ will disburse three-quarters of these funds under the formula set forth in the statute, as required by the act. The remaining funds will be distributed based on a review of the merit of States applications for these funds. A public announcement of the program is expected to be released by June 1, 2002. As you are aware, the Administration did not request funding for the Coverdell Act in its FY 2003 budget request. The reason for this is that it is our belief that it duplicates the already enacted and funded Crime Laboratory Improvement Program (CLIP).

NIJ Research on DNA Technology

NIJ's own on-going funding of DNA-related research has been instrumental in providing enhancements to existing methods, techniques, and technologies, as well as creating new tools for the future of DNA evidence. Each year approximately \$5M of NIJ's discretionary budget is invested in this area of research and development.

The forensic DNA research and development program is focused on innovations to make DNA faster, more sensitive (in order to more uniquely identify the source of evidence from very small samples), and less costly. One project, currently in the prototype stage and ready to be evaluated by crime lab practitioners is a DNA chip being developed at MIT's Whitehead Institute. Using exactly the same analytical methods in use today, the Whitehead Chip permits significant miniaturization over today's instruments, allowing analyses to be speeded up from hours to minutes, and alleviates overcrowding in already severely constrained public laboratory space, and can lead to portability in the future. Early on, NIJ recognized the need for appropriate Standard Reference Materials for the Forensic DNA community. NIJ has supported the development and maintenance of a number of these valued SRMs, the so-called "gold standard" of the industry, through NIST's Office of Law Enforcement Standards, as well as an SRM for mitochondrial DNA which is nearing completion. NIJ funding also supported the development of smaller versions of the 13 STR genetic markers required for database searches, also through NIST's Office of Law Enforcement Standards. These smaller STRs can be used in cases where the evidence DNA has been severely damaged and cannot be read by the normal suite of 13 STRs.

This specialized tool is currently being investigated for use in identifying victims of the World Trade Center attacks.

The Administration, and the Justice Department, under the leadership of the Attorney General, are committed to continuing to fund enhancements in the capabilities and capacities of State and local laboratories to conduct DNA analysis. We view this technology as one of the most important forensic tools in the fight on crime. We appreciate the support Congress has given the Department in this area over the last several years and hope to continue this close partnership until all of the existing backlogs are eliminated.

Testimony by Debra S. Holbrook, RNC, S.A.N.E.
Senate Judicial Subcommittee Hearing
May 14, 2002

Good morning Chairman Biden and members of the Committee. Thank you for asking me to be here today. As a Registered Nurse and Sexual Assault Nurse Examiner (SANE) in the Emergency Department at Nanticoke Memorial Hospital in Seaford, DE, I coordinate a team of forensic nurses who are specially trained to care for sexual assault and violence victims of all ages. We are on call at all times to collect DNA, trace and photographic evidence, assure advocacy and testify in court. Forensic nurses are the only specialty that have answered healthcare's call to care for victims of sexual assault. We provide a vital link in the Sexual Assault Response Team (SART) between healthcare the law enforcement.

For years, nurses across the country have witnessed patients being re-victimized when they came to ERs, waiting for hours in crowded public waiting areas, telling their stories countless times, and being traumatized by judgmental practitioners without forensic training, ruining vital DNA. Shockingly enough, this is still the level of care that 8 out of 10 victims receive at any given time in the United States.

Senator Biden and DE House Representative Tina Fallon have been instrumental in helping our Program become the Model for Delaware and throughout the country, but we share many of the same problems as the rest of the nation. Kits may sit on shelves for years while perpetrators rape again and again. Running these kits and entering them in CODIS databanks would, undoubtedly, link perpetrators to many unsolved sex crimes. We are in need of Gas Chromatic Mass Spectrometer machines to be made available in every state to analyze specimens for victims of drug facilitated rape and equipment that stores images and communicates to other teams for second opinion. We need federal mandates that victims of all ages be taken to trained and regulated SANE teams with a team approach, and funding for salaries and education to keep these programs viable. Forensics in this country is mandated for dead victims, but not required for those we treat who are very much alive!

The International Association of Forensic Nursing serves as a clearinghouse and international resource for SANES. IAFN sets standards of care and nursing practice, provides training and education, and through its Forensic Nurse Certification Board, tests and certifies practicing SANES.

SANE teams across the country are in jeopardy of closing due to a lack of both funding and cooperation from law enforcement. Many prosecutors do not understand how crucial we are to pulling together cases that yield convictions. Melanie Withers, Deputy Attorney General in Georgetown, Delaware stated, "SANE programs are the best thing I've seen to benefit victims since I've been a prosecutor."

How do I tell the mother of a 3 year old that because she initially took her child to an ER that did not have a SANE team, it's too late to collect the evidence? Or a 20 year old given Ecstasy without her knowledge that we can't test for it in our state? How do we tell countless rape

victims that their kits are useless because untrained personnel allowed wet swabs to mold, or that the kits were not even opened?

This legislation has the power to forever change the scenario for these victims. By mandating that the SART Team approach be utilized with SANEs providing the forensic healthcare, victims will never have to fear playing "hit or miss" with their judicial outcome. Increased numbers of perpetrators will be convicted, states will have standardization in equipment, funding and accountability, and properly collected DNA evidence will be analyzed, logged in CODIS and shared via national databanks.

On behalf of the millions who are raped annually, I thank you for your consideration of this legislation.

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TESTIMONY

OF

**HONORABLE J. TOM MORGAN
DISTRICT ATTORNEY
STONE MOUNTAIN JUDICIAL DISTRICT
DEKALB COUNTY, GEORGIA**

AND

**VICE PRESIDENT
NATIONAL DISTRICT ATTORNEYS ASSOCIATION**

BEFORE A HEARING OF THE

**CRIME AND DRUGS SUBCOMMITTEE
OF THE COMMITTEE ON THE JUDICIARY**

ON

**DNA TESTING
&
"COLD CASES"**

MAY 14, 2002

My name is J. Tom Morgan and I am the elected prosecutor in DeKalb County, Georgia. I want to thank you, on behalf of the National District Attorneys Association, representing the local prosecutors of this Nation, for the opportunity to give you our position on the need to enhance DNA testing capability in regard to active criminal cases as well as any "cold" case in which DNA testing will identify a perpetrator. On behalf of our members, I want to commend this Committee for pursuing an area of vital importance to the citizens of our country and to our system of criminal justice.

The views that I express today represent the views of that Association and the beliefs of local prosecutors across this country. Let me assure you that local prosecutors need your help in tackling this evolving technology.

To place my remarks in context – on both a local level and on the national stage let me briefly tell you about my jurisdiction. DeKalb County is one of the metropolitan Atlanta counties. Part of the City of Atlanta is within our jurisdiction. It has a population of over 600,000 people living in a largely suburban community. I have been a prosecutor for 18 years and am honored to have served in my current position for 9 years, having been elected to office three times. As an assistant district attorney I was responsible for the prosecution of crimes against children. These cases included sexual assaults and child homicides. I still actively try cases as well as supervise a staff that includes 41 assistant district attorneys. Annually, my office handles more than 7,000 felony cases.

In 1992 a young woman was leaving what was then the Atlanta/Fulton County stadium after watching a Braves game. On her way to her car she was kidnapped and brutally sexually assaulted. It was a night game, and she could not provide investigators with a good description of her attacker.

This year, a defendant was convicted of a simple drug charge. Pursuant to a Georgia law that requires a DNA sample be taken from all convicted felons who are sentenced to prison, a positive DNA match was made and a decade old violent sexual assault is now solved and a perpetrator of a violent crime will be brought to justice.

The Georgia Crime Lab now has over 40,000 DNA samples from convicted felons. As a result of this costly and painstaking process, 114 unsolved violent crimes, including two murder cases, have now been solved.

To augment my remarks I would like to ask that a copy of the National District Attorneys Association's Policy on DNA Technology and the Criminal Justice System be placed in the record. It sets out in greater detail the points that I wish to make today.

DNA typing has had a dramatic impact on the criminal justice system. Convictions are obtained that previously would have been impossible. Old, unsolved criminal cases, so called "cold" cases as well as new cases, have been solved.

Every advance in DNA technology dramatically enhances our quality of justice. Its potential, however, will not be fully realized unless the Congress, and the various state legislatures, act boldly to fulfill the promise of this new technology.

Significant increases in resources are needed to enlarge forensic laboratory capacity and expand DNA databases; "artificial" barriers such as statutes of limitations on the prosecution of crimes must be changed; and all prosecutors and law enforcement officials must be trained to make maximum use of this technology. No other investment in our criminal justice system will do more to protect the innocent, convict the guilty and reduce human suffering.

DNA profiling has proven its trustworthiness as a forensic tool for identifying the donor of biological evidence left at a crime scene. With the use of DNA evidence, prosecutors are often able to conclusively establish the guilt of a defendant in cases where the identity of the perpetrator is at issue.

FORENSIC LABORATORY CAPACITY AND EXPAND DNA DATABASES

NDAA supports the further development of a comprehensive, national databank of DNA profiles for criminal justice purposes. We believe that all convicted felons should be tested and we support the testing of all arrestees and inclusion of their samples in the DNA databank. Great Britain is already several years ahead of the United States in establishing a comprehensive DNA database. Great Britain requires that samples be taken from defendants in all crimes, and it has proven useful since many defendants who commit violent crimes begin their criminal career in property crimes.

Congress should fully fund a national databank which would offer important investigative and public safety tools for prosecutors. There must be an up to date and seamless interface between the states and federal systems to allow comparisons to be made in real world time. Undue delay in making comparisons means another woman of child is victimized or a suspect disappears yet again.

There is no legal or constitutional prohibition against collecting DNA samples from all convicted felons, or persons arrested for a felony. We already obtain and have on file the fingerprints of convicted felons, and DNA samples, which now can be obtained with a mouth swab, are even less intrusive. DNA is nothing more than a different type of fingerprinting.

Testing DNA from “cold cases” is an issue, in part, because DNA testing resources are limited. Law enforcement officials must decide how to allocate those resources among current investigations, cases in which DNA testing is an appellate issue, and old cases in which there is no suspect. Presently, hundreds of thousands of DNA samples from convicted offenders remain untested. Similarly, testing of biological evidence from many thousands of sexual assaults and other cold cases has not been completed. For a national system to reach its full potential, the backlog in testing of biological samples from convicted offenders and crime scenes must be eliminated – and this includes the evidence from previously untested cases.

The national DNA database system will not achieve maximum effectiveness until

convicted offender samples and those of unidentified perpetrators are entered into the database in a timely fashion. Similarly, laboratories must have the capacity to test samples obtained at crime scenes as early as possible in the course of investigations.

Congress can take a lead in helping the states maximize their use of existing and developing technology by increasing financial assistance to train the necessary laboratory personnel and to build and equip the necessary laboratory facilities. The NDAA strongly supported the Paul Coverdell National Forensic Science Improvement Act in recognition that we needed to strengthen our ability to exploit DNA technology.

“ARTIFICIAL” BARRIERS TO PROSECUTION

The National District Attorneys Association supports the creation of exceptions to criminal statutes of limitations and other measures to allow for the prosecution of a perpetrator who is identified as a result of a DNA profile comparison using evidence collected from a crime scene. We know that there are thousands of rape kits waiting to be examined and thousands more DNA samples that have been collected but not specifically identified with an individual. We must use our scientific capability to re-examine the artificial barriers that we have constructed to limit prosecution of criminal cases based on older notions of evidentiary reliability.

Normally we would not comment on issues within the federal purview- such as extending the statute of limitations in the federal and military criminal justice system. In this case, however, we need to have an open and seamless exchange of information among all levels of the justice system. Due to the increase in joint federal/state investigations and prosecutions, I believe it appropriate for the Congress to address expansion of the statutes of limitations for offenses in which DNA can properly serve as a specific identifier. Governor Roy Barnes, the governor of Georgia, signed legislation last Friday that abolished the statute of limitations for violent crimes when there is newly discovered forensic evidence. Congress should do the same for federal crimes.

The NDAA also supports other legislative changes that permit the full development of DNA technology as a tool for justice, including legislation to allow or re-affirm the filing of “John Doe” DNA warrants in cases where a suspect

may be identified only by his DNA profile. In such cases, law enforcement agencies know a suspect's DNA profile from biological evidence deposited at the crime scene, but do not know the suspect's name. By filing a criminal complaint against this "John Doe," identified solely by his DNA code, prosecutors can prevent the statute of limitations from expiring while the search for the suspect continues.

TRAINING

Lastly, I would be remiss if I did not mention the need for increased training so that DNA technology is not abused within the criminal justice system.

NDAA encourages funding from local, state, federal and private sources for the training of the judiciary, law enforcement, prosecutors and the defense bar in the appropriate use of DNA testing. Such training is critical because of the potential complexity and nuance inherent in forensic DNA profiling.

As a prosecutor, and as a Vice President for NDAA, I want especially to emphasize the need to train prosecutors in this invaluable technology. Prosecutors who advise law enforcement agencies and forensic laboratories, as well as actively try cases involving DNA, need to be fully versed in the capabilities, and vulnerabilities of this technology. This is not something you learn in law school nor is it something that most of us can "bone up on" the night before trial. DNA technology is complex. Training in the use of DNA evidence in a criminal investigation or a trial is crucial.

Cold cases compound the complexity of trying DNA cases. Not only must the prosecutor present the DNA evidence that identified the perpetrator, but also he or she must overcome chain-of-custody issues and memories that have faded with time.

It is crucial that we have the ability to fully investigate and prosecute cases involving DNA technology - our citizens deserve nothing less. We cannot do this without a unified approach to the problem.

On behalf of America's prosecutors I, and the National District Attorneys Association look forward to working with you on maximizing our use of DNA technology.

Introduction:

Good morning Mr. Chairman and Members of the Committee. I appreciate the opportunity to sit before your committee today and testify on behalf of the forensics community. My name is Susan Narveson. I am the Administrator of the Phoenix Police Department Laboratory Services Bureau and responsible for managing the operation of a full service crime laboratory. In addition to my duties as a crime laboratory director, I am also the President of the American Society of Crime Laboratory Directors (ASCLD), and represent the interests of over 475 crime laboratory directors throughout the United States and overseas. I am honored to be present and to be asked to speak in regard to the Debbie Smith Act and its impact on crime laboratories nationwide.

Overview:

Crime laboratories and forensic scientists play a critical role in the criminal justice system by ensuring the proper collection, preservation, and scientific analysis of crime scene evidence. The successful investigation and prosecution of crimes is contingent on the providing of quality forensic service in a timely manner. DNA analysis, however, is not the only service we provide. Crime laboratories also provide scientific analysis services in areas such as Controlled Substances, Crime Scene Investigation, Firearms, Latent Prints, Questioned Documents, Serology, Toxicology, and Trace Evidence. It is estimated that these additional service areas comprise more than 90% of the crime laboratory's annual caseload.

The American Society of Crime Laboratory Directors is the spokes-agency for crime laboratories and crime laboratory directors throughout the U.S. and abroad. ASCLD has taken an active role in ensuring the quality, integrity and credibility of forensic laboratories by:

- Advocating for the needs and interests of forensic laboratories
- Developing guidelines for forensic science education and training
- Establishing an accreditation program for forensic science education programs
- Supporting the delivery of quality forensic service by mentoring laboratories seeking accreditation by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)
- Partnering with other forensic science organizations through the Consortium of Forensic Science Organizations (CFSO) in order to “speak with one voice” on legislative issues of mutual importance

Comments on Debbie Smith Act:

While ASCLD strongly supports any legislation aimed at providing resources to support the work of public crime laboratories and increase their capacity to process cases, it must be noted that we are severely hampered by a lag of funding and a significant backlog in all areas of forensic science, not just DNA. As you know, DNA offers a powerful investigative and identification tool to solve many sexual assault cases and it needs to be applied to the maximum number of cases possible. However, this is also true of the other

areas of forensic services provided by crime laboratories. Unfortunately, crime laboratories are facing great difficulties in their attempts to find the resources to analyze DNA and the other cases. With national estimates for unanalyzed sexual assault kits ranging as high as 500,000 cases, it has certainly become an issue of critical importance that deserves further attention.

ASCLD gratefully acknowledges the concern of this Committee for the victims of sexual assault and appreciates the recognition that crime laboratories are facing overwhelming backlogs of sexual assault cases. It should be noted however, that sexual assault cases comprise only 5-10% of the total backlog of cases confronting crime laboratory directors nationwide.

In addition to sexual assault cases, DNA is also essential to the investigation and prosecution of other violent crimes against persons and property crimes. Data from states that have the resources to conduct DNA analysis on biological evidence associated with drug cases, burglaries, and home invasions are finding a very high "hit rate" against CODIS, the national DNA database of convicted offenders. In many cases, the likelihood of developing an investigative lead in a sexual assault case may be just as high by analyzing evidence from burglaries as by analyzing evidence from other sexual assault cases.

DNA has been used to identify investigative leads in a wide array of cases in addition to sexual assaults. DNA profiles have been obtained from the grip of a handgun used in a

homicide, from the seal of an envelope containing a threatening note associated with a series of multi-million dollar arson fires, and even from gum, biological material or latent prints left at burglary scenes.

Although no data is currently available for the total number of backlogged cases for all forensic service areas, it is reasonable to expect that the numbers are staggering. ASCLD has partnered with the University of Illinois – Chicago on a grant proposal to conduct a 2002 Census of Public Crime Laboratories in order to determine the current status of forensic laboratories and their backlogs.

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

Having said this, I would like to specifically address the provisions of the Debbie Smith Act:

- ASCLD strongly supports the timely analysis of all forensic cases; however, the provision of the Debbie Smith Act that calls for a 10-day turn around time for the

DNA analysis of sexual assault kits sets an unrealistic time requirement for completion of these cases.

Taking into consideration the current DNA backlogs, the time requirements for collection and submission of evidence to the laboratory, the DNA analysis time requirements, and the quality assurance measures that must be conducted to ensure the integrity of the data, completion of DNA analysis of all sexual assault cases within 10 days of the incident is impossible. The capacity of laboratories to handle the increasing number of requests for service and backlogged cases must be dramatically increased before a noticeable decrease in the turn-around time will be realized. At that point, a more reasonable and realistic turn-around time would be 30 days.

A number of laboratories have utilized the outsourcing of DNA cases in order to maximize the benefits of finite personnel resources. However, their experience has shown that even though outsourcing is successful in producing a large number of profiles in a relatively short period of time, it does not come without cost to the laboratory. Personnel resources must be dedicated to identifying the cases, documenting evidence prior to shipment, tracking cases, analyzing and interpreting the data produced by the outsourcing laboratory, entering data into CODIS, and conducting quality assurance reviews of the outsourcing laboratory.

While very effective, outsourcing should not be seen as an end in itself, but rather as a means to an end. It should be the mechanism, the "stop gap measure", that enables

laboratories to build the infrastructure and capacity needed to handle all incoming cases and backlogged cases in a timely manner.

- ASCLD strongly supports efforts to ensure the quality and integrity of evidence collected for forensic analysis purposes. ASCLD also supports the establishment of quality assurance standards by the relevant scientific community for the collection and processing of evidence.

The FBI is an important member of the forensic community and ASCLD would support their involvement in the development of these standards if the FBI feels that this action is compatible with its core mission. Likewise, ASCLD would also support the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) as a means to monitor and ensure compliance with quality standards.

- ASCLD strongly support efforts to improve the quality of training provided to individuals charged with the collection of evidence for forensic analysis purposes.

ASCLD supports the development of these training programs by individuals with the requisite forensic experience in order to ensure that all critical parameters of the collection and preservation of evidence from sexual assault cases are addressed.

The Debbie Smith Act calls for grant funds to train Sexual Assault Nurse Examiners, law enforcement personnel, and first responders in the handling of sexual assault cases. It should be noted that the Sexual Assault Nurse Examiner (SANE) program can vary

significantly from state to state. SANE nurses may be affiliated with hospitals, Family Advocacy Centers, Child Help Centers, various other facilities, or be non-existent. Their acceptance by the forensic community has been largely dependent on how closely they work with forensic laboratories in the development and implementation of their sexual assault victim exams and evidence collection and preservation procedures.

ASCLD would support a thorough assessment of successful SANE programs nationwide in an effort to develop a model(s) that can be used by states to establish an effective evidence collection and training program. At this time, many states do not have a state-wide SANE program and would be precluded from applying for grant funds under the Debbie Smith Act.

ASCLD will continue to support federal funding legislation that focuses on the necessity to increase the capacity of forensic laboratories to process all forensic cases, including sexual assaults, in a timely, accurate, and reliable manner. Forensic laboratories throughout the country need and appreciate your support of their efforts to “apply the best science to the best evidence in every case”.

Mr. Chairman and Members of the Committee, I would like to thank you for the opportunity to provide testimony in regard to the impact of the Debbie Smith Act on Crime Laboratories throughout the United States.

Testimony of
Mr. Scott Berkowitz
President & Founder
Rape, Abuse and Incest National Network

Good morning, Mr. Chairman and members of the subcommittee, and thank you for allowing my testimony. My name is Scott Berkowitz and I am the founder and president of the Rape, Abuse and Incest National Network, or RAINN. RAINN is the nation's largest anti-sexual assault organization and operates the National Sexual Assault Hotline. The hotline is a partnership of more than 970 rape crisis centers in the U.S., and has helped more than 500,000 victims of sexual assault. RAINN was recently selected by *Worth Magazine* as one of "America's 100 Best Charities."

Our interest goes far beyond helping victims; to reduce the number of victims, it is crucial to see criminals identified, prosecuted and incarcerated. To this end, we all agree that DNA is an extraordinary tool. But to fully realize its potential, we need to make some refinements to the system. Some of these emendations Congress can bring about, while others will require the involvement of state and local leaders. Please allow me to suggest some goals for this effort.

The initial issue is whether or not victims report the crime, and the system must, at every stage, encourage them to do so. In some states and localities, a rape kit is taken only if the victim agrees at that very moment to pursue prosecution. This emotional moment, often just minutes after the rape, is not the time to force victims to make an irreversible decision. Rather, all localities should follow the example of states that automatically take a rape evidence kit, and then give victims some period of time—30 to 90 days—to decide whether to press her case. While this will add some small expense to police budgets, it preserves the option to prosecute. Even in cases where the victim declines to prosecute, this evidence may be useful to police in investigating other attacks by the same criminal.

A second issue is who will collect the rape kit evidence, and how. Unfortunately, in most cases, specially trained forensic nurses do not treat sexual assault victims. Thus, the evidence collected may not be useful to local police and prosecutors. Additionally, according to the FBI, even if the material meets local standards, it may not meet FBI standard to be entered into the national DNA database.

Inadmissible evidence serves little purpose. That is why it is crucial that we train and certify more sexual assault forensic nurses. We would never think of sending untrained cops, no

matter how well meaning, to collect fingerprint evidence. Nor should we ask untrained nurses to collect these "genetic fingerprints." Doing so guarantees some rapists cannot be prosecuted, despite the evidence they leave behind. Similarly, we must prepare our frontline law enforcement officers with the training they need to properly collect crime scene evidence.

A third issue is statutes of limitations. A growing number of prosecutors have used "John Doe" indictments to get around these time limits when the genetic identity, but not the name, of the criminal is known. This is a creative and, to date, effective workaround, but may still face serious court challenges. About 20 states have adopted a more permanent fix, by extending time limits or adding a "DNA exception" to their statute.

We believe that a DNA exception, allowing future prosecution as long as DNA evidence is collected before the statute of limitations has expired, if adopted by the remaining states and Congress, would allow prosecution of, perhaps, thousands of future rapists. While, of course, you cannot mandate that states make this change to state laws, Congressional encouragement would be valuable. Such DNA exceptions should be worded to apply also to biological or forensic data that becomes available with improvements in technology.

The final, and most pressing, issue is the backlog of unanalyzed rape evidence kits. First, we need a better idea of how many kits are sitting on shelves and in warehouses; the National Commission on the Future of DNA Evidence estimated 180,000, while some media have estimated up to 500,000. An accurate count is essential to our efforts to reduce the number.

An unknown number of these evidence kits are from rapes in which the statute of limitations has already expired. Despite that, these kits should be analyzed for DNA, not discarded as has already happened in many localities. Victims deserve to have their case solved, even if prosecution when precluded by statute. And police can use the evidence these kits contain to help them solve many future cases. In short, even though the system has failed victims and the public by letting an identifiable rapist go free, we should salvage what little good we can by analyzing these rape kits.

In most cases, it is not too late to prosecute; in these cases, speed is of the essence. Research shows us that rapists are recidivist criminals. Every week that DNA evidence goes unexamined is a week that the rapist is free to commit more crimes. We must take advantage of the available private-lab capacity to complement state crime labs' work and eliminate this backlog over the next 18 months. Then we must make sure evidence

of new crimes is analyzed within days, not years. This evidence belongs in the courtroom, not the warehouse.

Eliminating this backlog and ensuring prompt testing of new rape evidence kits will require resources above those authorized by the DNA Analysis Backlog Elimination Act of 2000. While funds are understandably tight, this is an issue of homeland security. There are thousands of dangerous criminals now perfecting their technique, selecting their victims, and preparing to rape again. We have the evidence to lock up many of them. We need your help to do so. A decision to not investigate a violent crime should be based on informed investigative principles, not fiscal constraints.

Currently, only one rape out of every 20 leads to even a single day in jail for the rapist. We have the technology and evidence to begin changing that statistic. Now we must do a better job of using it.

Thank you, Senators, for the opportunity to provide this testimony.

Testimony of
Ms. Jeri Elster

May 14, 2002

Good day Mr. Chairman and Members of the Committee. Thank you for allowing my written testimony to be read. My name is Jeri Elster. I am a rape survivor.

On August 27, 1992, while I was asleep, a stranger broke into my home. I awoke unable to move my arms or legs and pinned face down on my bed. He tied my hands behind my back and told me to shut up. When I looked over my right shoulder and got a glimpse of him, he threatened to kill me and wrapped my head in a blanket. He cut off my clothes with a scissors he had taken from my kitchen drawer. He physically assaulted and raped me, vandalized my home and robbed me of thousands of dollars worth of valuables. In 22 hours he forever changed my life.

I called 911. The police responded very quickly. I was taken to the hospital, examined and evidence was collected in a rape kit. I was interviewed by police and complied with all their requests. There were few leads in my case. Several years passed before I read in a local paper about a rape that sounded similar to mine. In the hopes that the rapist identified in the article was the same man who raped me, I sent the article to the detective then assigned to the case. I heard nothing back.

In April of 1999, the 7th anniversary of my rape was coming up and I contacted the police department again and spoke to the new sex crimes detective. I told him about the article and that I was concerned that time was running out on the statute of limitations. He retrieved the police file from the archives and informed me that my rape kit was never processed and any ongoing investigation had long been closed. He reopened the case. The crime lab told the detective there was enough material to test for DNA in my rape kit and told him to get a sample of my blood in order to complete the kit.

There was no match with the man identified in the news article, but on August 2, 1999, a match was found through a DNA database - what is called a "cold hit." Two weeks later, the Deputy District Attorney told the detective that the statute is 8 years and that he should proceed to confirm the DNA match. It was discovered that the man whose DNA matched had been incarcerated in California since October 1992, for an unrelated crime. The detective obtained a judge's permission to take the prisoner's

blood to confirm the match. The DNA results proved "positive." We had our rapist. I was called in to attend a meeting with the Deputy District Attorney, which I expected was to discuss going to trial. Instead, the Deputy District Attorney told me she was sorry and was mistaken about the statute - it is 6 years not 8, and the rapist could never be prosecuted for my sexual assault.

I know the name of the man who raped me. His name is Reginald Miller. He is due to be released from a California prison in 2007. He can never be tried for raping me. With the statistics on recidivism, chances are that he will rape again and I feel helpless. I did my part. I reported the rape. I submitted to a very unpleasant rape kit examination. I consented to the fingerprinting of the interior of my home. I answered any and all questions from the police and kept in touch with the detectives. I even searched for leads on my own case, going beyond what was expected of me, and was let down. If my rape kit had been tested early on, we would have prosecuted Reginald Miller and he would not be getting out of jail in 2007 a free man. The state let me down by imposing its arbitrary 6-year statute of limitations.

Approximately 260,000 women in the United States are sexually assaulted annually and yet nationwide only 1 out of 20 rapists will ever serve jail time. Consequently, immediate processing and entry of DNA test results of rape kits into both the local and national DNA databanks would positively alter these statistics. Also extremely pertinent is the case in which DNA evidence and testing exonerated and freed Herman Atkins from a California prison after he served 12 years for rape. In Mr. Atkins' case, he was lucky enough to have had Riverside County preserve the DNA evidence after the statute of limitations had run out. The rape victim remains unlucky -- not only does she live with the aftermath of the original trauma, she also lives with the pain of mistakenly identifying her perpetrator, causing an innocent man 12 long years of his life. To add insult to injury, consider this: if her real rapist is identified through DNA he will never be prosecuted for the crime because the statute of limitations has long run out.

DNA evidence should be used to exonerate the innocent, as well as help to identify and convict the guilty. Herman Atkins would have never gone to prison and Reginald Miller would be facing prosecution for my rape had the rape kits in each case been processed and entered into the databank immediately.

Abolishing or lengthening the statutes of limitations in cases of sexual assault and rape in every state will give the unlimited time it may take to couple the DNA evidence of identification of a suspect with all other types of evidence and

testimony to prove the guilt or innocence of a suspect. Because the process may take years to unfold, repealing or lengthening the statutes of limitations would also ensure that any DNA evidence collected would be required to be preserved and never be destroyed. Survivors could at least have hope for the conviction of known rapists no matter when they are caught.

There are no statute of limitations on my anguish and pain. Survivors like me possess severe and lifelong physical and emotional scars, affecting every facet of our lives. Since our trauma lasts a lifetime, laws should reflect the seriousness of the crimes - if laws are not passed, how will you answer the hundreds of "Jeri Elsters" that come after me? Many "cold hit" cases will follow in which DNA matches could have been made or are made after the statutes of limitations have run out if something is not done through legislation.

In closing, I want to emphasize that rape is second only to homicide in its offense to the human body, mind and spirit. Thank you for your consideration.

Debbie Smith's Testimony to the Senate Sub-committee on Crime

03-03-89; 9342-00 through 9342-05; Numbers of identification. 8905010; C89-1989; human identification. 180907; 89-85-00-0234 Written and spoken without a particular face impressed on the mind. 228-15-3839; VA654195; ... cold, impersonal ... necessary numbers of human identification revealing personal information about this faceless individual. There had never been so many ways to identify me and yet I had never felt so lost. I resented being referred to as a number. The numbers made it seem as if I didn't exist as a person, mechanical and unreal. Little did I know that it would be numbers ... matching numbers that would breathe air into my lungs and allow me to truly live again.

There is no way for you to understand how what is done in the DNA labs can mean the difference between life and death without taking you back to March 3, 1989. It is around 1:00 on a Friday afternoon. I am in my home in a nice neighborhood in the city of Williamsburg, VA, which happens to be one of the safest cities in this country. My husband, a police lieutenant is upstairs asleep, after having been up for over 30 hours. How could I have possibly been any safer?

In the midst of cleaning house and doing laundry I realized that my clothes dryer was not working properly, so I stepped outside to check the dryer vent. When I returned I decided to leave the back door unlocked just long enough for me to go in and grab the trash. But before I could return, within moments, a stranger entered that door and nearly destroyed and definitely changed my life forever. This masked stranger forcibly took me out of my home where he blind folded, robbed and repeatedly raped me. The sound of his voice rang through my ears as a deafening clamor, "remember, I know where you live and I will come back and kill you if you tell anyone." As soon as I was set free, I ran upstairs to my sleeping husband, waking him with the words, "he got me Rob, he got me." I begged him not to call the police, I pleaded with him because I feared this man would keep his

promise to return and kill me. But the police officer in my husband knew that we couldn't let this go unreported. He also convinced me of the importance of going to the hospital, for he knew we may need the evidence collected with the rape kit. All I wanted to do was to take a shower and wash it all away.

For the first time in my life I couldn't find any reason to live. The love of my family and friends wasn't enough. They couldn't erase the memories or take away the pain. Even my faith in God seemed to be failing me.

There was no escaping the pain, no escaping the fear. Fear will not be satisfied until it has taken over your mind and body as a cancerous tumor. It cripples like arthritis, making every movement unbearable, until finally it no longer seems worth the pain. You become paralyzed feeling trapped and helpless. It was always there. It was there in my waking hours as well as in my dreams. On many occasions, my husband would be awakened in the middle of the night to the sound of blood curdling screams from the nightmares. It was at this point that I began to realize that I could not and would not live this way. Death seemed to be the only alternative, the only answer that would end this horrible nightmare that had become my life. In death, there would be peace and quiet. I would no longer hear his voice in my ears, feel his arm around my neck or see his face before my eyes. My mind could rest. . Over and over I planned this suicide in my head. But there was one problem that had no solution ... my husband and two children. Who would find me? Would they live in guilt feeling they had failed me? What would this do to them? I thank God that my love for them was stronger than need to rid myself of this constant torment. I finally grabbed onto this thread and it became my reason to live. One of the most frequent comments I heard after being raped was, "At least you're alive." But I can tell you still today that while I was alive physically I had died inside. I cursed my attacker for leaving me alive to live with this pain. I didn't know relief from my pain sat on a shelf, just waiting for the manpower and funds to test my attacker's DNA sample and

place it in the data bank.

Although this intruder never laid a physical hand on anyone else in my family, he left each of us a victim. He touched emotions that we had never known. We saw rage in the eyes of my son and fear kept my daughter from going from the porch to the driveway after dark. And each of us, especially my husband, felt the awful pain of guilt. Our home which was always filled with love and laughter had become a house full of bitterness, anger, fear, and guilt. But yet, our answers still sat on that shelf ... waiting to be processed.

Every person that touched my life or my family's lives, felt the effect of this crime. They too felt invaded and vulnerable. I could see the pain in their eyes because I was a constant reminder that rape can truly happen to anyone, anywhere. They were angry for me and yet they felt helpless for there was nothing they could do. Our minds and bodies ached for understanding and yet there was none to be found. I waited daily to hear the news that they had found this man who had changed our lives so drastically. Hearing his words over and over in my head, "I know where you live and I will come back and I will kill you." Our help remained on the shelf, waiting.

I craved peace of mind and did everything I could to attain it. An alarm system was installed in our home including panic buttons throughout the house as well as one I could wear around my neck. The privacy fence was put around our backyard and motion detectors were installed. At one point, I even took to carrying a gun. My peace of mind still sat on that shelf ... not enough money ... not enough time.

There just didn't seem to be any way to attain this peace and rest that my mind and my body craved for so long. I would suffer daily with the memory of a man who was in my life for such a short span of time and he may never have to pay for his crime, but I was going to have to pay for it forever. I can tell you that it is only by the grace of God that I am here today. For six and a half years, I simply existed trying to go on and live life as normal.

VA122015Y, 01-14-91, More numbers. 91-17682, 07-24-95, But these numbers bring

with them a life giving force and a renewed hope. 4183, 07-26-95. As George Li sat at his computer in the Virginia Division of Forensic Science on July 24 1995, on what probably seemed to him to be just another day at the lab, he had no way of knowing what effect his work that day would have on my life and those around me. On this day Mr. Li entered a prisoner's blood sample into the computer and it automatically began its cross check against previously entered samples. To his joy and surprise he received a cold hit, something fairly rare at that time. This information was passed on to the Williamsburg Police Department. They in turn passed the information on to the shift Lieutenant working that day who just happened to be my husband. On that day, July 26, 1995, my husband walked into our living room and handed me a composite that he had carried with him ever since the incident, and told me I could throw it away because we weren't going to need it anymore. Not only had they identified my rapist but he was already in prison for another crime...and he was put there 6 months after I was attacked. Finally they ha unpacked the box that contained my release from fear ... my freedom had been delivered.

For the first time in six and a half years, I could feel myself breathe. I felt validated. There was a real name and a real face to go with the nightmare. Everyone would know that I was telling the truth, that it was real. Finally, I could quit looking over my shoulder. No longer did I have to drive around in circles hoping a neighbor would drive by so I could get the courage to get out of my car to go into my own front door if no one else was home. Unfamiliar noises no longer left me panic-stricken. I no longer scanned faces in a crowd to see if he was following me. Suicide was no longer a consideration. And finally, my husband is grateful that I don't wake him up anymore in the middle of the night with the ear-piercing screams. Within myself, the healing had begun and peace had come at last. Because of your efforts this man is off the streets for good. The jury gave Norman Jimmerson 2 life sentences plus 25 years with no chance of parole.

In the few minutes that I have been talking at least two women have been raped.

Could we have prevented it? I believe so. Millions of dollars are spent every day for research on problem solving, our research is done. We have the answers before us. There are literally thousands of inmate DNA samples waiting to be tested and entered into the data bank. Answers to the questions of a rape victim, her freedom and peace, could be sitting on a shelf. It breaks my heart to see shelf after shelf filled with old, untested rape kits, each kit representing a life in turmoil. We could have the answers to the questions that haunt her mind day and night and yet they still sit. With all of the rape kits that are sitting on those shelves, there should be many more. But because the evidence collection is so devastating and humiliating, victims do not report this horrific crime. We have the answer, Sexual Assault Nurse Examiners are trained to give one on one care to a rape victim, making her more willing to allow the evidence collection. With this bill you can provide the solution for the past, present and future. By eliminating the backlog of untested rape kits and offender samples, we could be saving the life of the victim who can no longer hold on to that one thread of hope that keeps her alive. We can offer hope to those victims that walk into the E.R. today. The average rapist commits eight to twelve rapes before he is caught, identifying him now and making him pay for his crimes we can prevent many from becoming victims. This bill can protect your wives, daughters and sisters. How can we do any less?

On behalf of myself and other rape victims past, present and future, I thank you for caring enough to allow me to share my heart with you today.