



Department of Justice

STATEMENT OF

**DAVID W. HAGY
DIRECTOR**

**NATIONAL INSTITUTE OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
DEPARTMENT OF JUSTICE**

BEFORE THE

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

CONCERNING

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

APRIL 10, 2008

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

