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Written Testimony for
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for the

U.S. Senate Committee on the Judiciary
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Hearing on

“Improving Forensic Science in the Criminal Justice System”

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Chairman Leahy, Ranking Member Grassley, members of the Committee, thank you for inviting me to testify in this important hearing on behalf of the National District Attorneys Association (NDAA), the oldest and largest professional organization representing over 39,000 district attorneys, state's attorneys, attorneys general and county and city prosecutors with responsibility for prosecuting up to 95% of all criminal cases in the United States.

Since 2009, this Committee – and, more specifically, Chairman Leahy and Ranking Member Grassley – has worked hard to gather all stakeholders groups involved with forensic sciences to weigh in to help create comprehensive forensic science reform legislation. Given the history between the dozens of organizations on different sides of this issue, their efforts to get us all in the same room was a major accomplishment in itself.

In early 2011 when Senator Leahy first introduced S. 132, The Criminal Justice and Forensic Science Reform Act, NDAA had significant concerns with the bill – along with many other stakeholder groups on all sides of the issue. However, when the bill was first introduced, Senate

Judiciary staff intimated that they saw S.132 as a “starting point” where stakeholders could weigh in on what they agreed with and disagreed with in the bill in order to find common ground – including the need for uniform accreditation and certification standards, increased funding for research in forensic sciences and for any proposed Office of Forensic Science to be housed within the U.S. Department of Justice. We felt their approach to this massive undertaking was sound and we appreciate their willingness to work with all stakeholder groups in the formulation (and subsequent reformulation) of this important legislation.

Over the past several years, since the National Academy of Sciences released its study titled *Strengthening Forensic Science in the United States*, it has been reported that the law enforcement community – and, more specifically, State and local prosecutors – have worked to curtail reform efforts on forensic sciences. This could not be further from the truth.

Prosecutors do not oppose providing greater support, financially and otherwise, to crime laboratories - especially in the case of public laboratories. Prosecutors also do not oppose research for purposes of validating existing or developing methods or techniques.

Prosecutors support such research efforts, as one might expect that we would, as any research that provides greater accuracy and reliability to the evidence we regularly present in courtrooms benefits our mission. It is, after all, the prosecutor who is charged, first and foremost, with the duty to seek justice. For that same reason, we also support research and development which increases laboratory capacity to generate accurate and reliable testing results and evidentiary analysis. The more evidence accurately and reliably analyzed the better armed prosecutors are to make accurate and reliable judgments in those cases submitted to us. In this way, we are better armed to attempt to bring justice to those victimized in our counties, cities, towns and neighborhoods, while protecting those who might otherwise be wrongly cast under suspicion.

State and local prosecutors also do not oppose research that will lead to increased laboratory capacity or that will improve accuracy, precision or reliability. Prosecutors want and need the best quality evidence and analysis possible to determine the innocence or guilt of the accused. The continued development and improvement of quality assurance and quality control protocols

assist in insuring accuracy, precision and reliability within the laboratory. So do programs providing for the accreditation of laboratories and the certification of practitioners.

The commitment of the forensic science community for reliable science is evidenced by its investment in the accreditation process. Three organizations currently accredit forensic laboratories within the U.S.¹ Virtually all public laboratories are accredited today. ASCLD-LAB has accredited an estimated 380 such laboratories, federal, state, local, private and international. Most of those laboratories were accredited before 2009. The National Academy report recommended accreditation to a recognized international standard for accreditation (ISO 17025). Accrediting bodies in this country were in the process of accrediting laboratories to that standard before the Academy report was published. An estimated 180 labs are already accredited to that standard by ASCLD-LAB with the remainder in the process of becoming so accredited. It is our hope that any comprehensive forensic science legislation out of this body would utilize existing forms of accreditation instead of trying to “reinvent the wheel” by mandating a different standard.

It is NDAA’s belief that non-DNA forensic science disciplines have been demonized in recent years because their reliability is not up to the “DNA Standard” seen on popular television shows like CSI. Unfortunately, real world examples of cases tried on television are few and far between. Some cases are fortunate enough to have something as reliable as DNA evidence, but most cases do not.

As stated on the Innocence Project’s webpage (www.innocenceproject.org), since 1989 there have been 289 post-conviction DNA exonerations in the United States. While NDAA agrees that even one wrongful conviction of an innocent person is too many, this number needs to be taken into proper context to gain an accurate portrayal of the state of forensic science in America’s criminal justice system.

¹ Forensic Quality Services, American Society of Crime Laboratory Directors-Laboratory Accreditation Board and A2LA.

In the United States there are, at minimum, 10 million cases per year (not including traffic offenses) where serious crimes have been committed; this means since 1989 there have been at least 220 million cases in America involving serious crimes. While 289 post-conviction exonerations are of real concern to NDAA, in reality those wrongful convictions constitute less than .0001 (one ten thousandth of one percent) of the convictions obtained in America's courtrooms. While no one from NDAA is naive enough to think that the Innocence Project has uncovered every single wrongful conviction in America, 99.9999% is a pretty good track record.

It is also important to note, misinformation and hyperbole aside, that the majority of wrongful convictions do not owe their existence to faulty forensic science but rather to bad lawyering on both sides of the courtroom, false confessions and misidentification. Recognizing that, NDAA has created a new committee, the Fair and Truthful Administration of Justice Committee, to educate all our members about our extraordinary ethical obligations, the phenomenon of false confessions and the frailties associated with eyewitness identification. In just a few days our summer conference will have lectures presented from nationally renowned experts in the fields of identification and ethics, and in the near future on the issue of false confessions. We will continue to educate our members on presenting the best forensic evidence available - evidence that both exonerates and convicts.

Many defense-oriented stakeholder groups and groups representing the wrongly convicted via the national media highlight these 289 post-conviction exonerations and come to the conclusion that America's criminal justice system and its use of forensic sciences in the courtroom is suspect and the system is irreparably broken. NDAA could not disagree more with this notion; it is important for us to remember that the vast majority of the time during criminal cases – again, more than 99.9999% of the time - the prosecutor properly serves justice and gets the case right. That said, NDAA fully supports this Committee's efforts on making improvements to forensic science and agrees that federal resources be used to improve the quality and reliability of forensics across all forensic science disciplines for the benefit of America's crime victims and the betterment of America's communities.

Chairman Leahy, Ranking Member Grassley, members of the Committee, thank you for asking me to testify today and thank you for all that you do for America's state and local prosecutors and victims of crime. I'm happy to answer any questions you may have.