

Testimony of
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STATEMENT OF
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BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

CONCERNING

"OVERSIGHT OF THE JUSTICE FOR ALL ACT: HAS THE JUSTICE DEPARTMENT EFFECTIVELY ADMINISTERED THE BLOODSWORTH AND COVERDELL DNA GRANT PROGRAMS?"

PRESENTED
JANUARY 23, 2008

Chairman Leahy, Ranking Member Specter, and distinguished Members of the Committee, 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). Our 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 becoming a routine investigative tool to identify links to violent criminals rapidly and exonerate the innocent before charges are filed. With the funding provided by Congress, NIJ funds State and local forensic laboratories to eliminate the current--and growing--backlog of untested evidence, to perform DNA testing in cases in which a person may have been wrongly convicted, and to identify missing persons. 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.

The highly successful President's DNA Initiative 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 and provide exculpatory evidence for the wrongly accused. Through the Initiative, state and local law enforcement agencies have been funded to test nearly 104,000 DNA cases from 2004 to 2007 and funded 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. This past week, in my hometown of Annapolis, Maryland, county police announced five more hits in local murder and rape cases that were funded using federal DNA appropriations. 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.

NIJ has also 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 is delivering 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 titled "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 forensic 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 FY 2007 to help crime laboratory practitioners evaluate and gain experience with cutting-edge technologies from NIJ's forensic research and development programs.

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, NIJ launched the National Missing and Unidentified Persons System (NamUS). The National Missing and Unidentified Persons System, NamUS, is the first national online repository designed to help medical examiners and coroners share information about missing persons and the unidentified dead.

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 under this funding. 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 practice of DNA forensics is well-regulated and courts and the public have to 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 provided over \$61.75 million since 2004 to State and local crime laboratories and medical examiners/coroners officers in all 50 states and territories. Funds have been used to decrease 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 federally-funded labs. The Department of Justice has taken many other steps, such as ensuring accreditation of laboratories, monitoring financial compliance, educating grantees about best practices, and mandating timely expenditure of federal funds for maximum impact.

We are aware that the Committee is concerned with the administration of the Paul Coverdell and Post-Conviction Testing grant programs. The issues with both programs concern interpretation of legislation contained in the Justice for All Act of 2004 (JFAA).

The issue with the Paul Coverdell grant program is with the requirement in section 311 of the JFAA. This section requires the applicant to certify that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct. Prior to 2007, NIJ required that the grantee simply certify that such an entity existed. Since 2007, NIJ has required that prior to receiving funds, the grantee must identify that entity in its certification. In this way, NIJ ensures that it has managed the program in a way that is consistent with the actual language of the statute passed by Congress. This approach is consistent with the Coverdell Program statutory and policy requirements.

With very limited staff, the Department of Justice has successfully administered the Coverdell Program for several years. As part of our program management, we collect four different certifications from the Coverdell grant applicants, including the one mandated by section 311 of the JFAA. We also subject applicants for competitive Coverdell awards to independent peer review. We monitor each award to help ensure compliance with various federal statutes, regulations, and policies designed to provide assurance that federal funds are used appropriately. We review Coverdell applicants' budgets to ensure they are in keeping with the work promised in the grant application and consistent with Coverdell Program statutory and policy requirements. We monitor grantees through the Grants Progress Assessments program to review laboratory practices and grant compliance. We collect performance data for each grant.

All of these items, including the section 311 JFAA certification, are critical for effectively managing the Coverdell Program. As stated in the recent report from Department of Justice's Office of Inspector General, NIJ has fully implemented the statutory requirements of JFAA Section 311. We will continue to work to improve the management of the Coverdell Program and ensure, to the extent feasible, that allegations of misconduct or serious negligence are appropriately investigated and acted upon.

The issue with the Post Conviction Testing grant program (Kirk Bloodsworth) is with Section 413 of the JFAA, which requires specific practices in the states regarding preservation of biological evidence and post-conviction testing procedures. Under the statute, a state grantee is required to demonstrate that all jurisdictions within the state comply in practice with the requirements of the Kirk Bloodsworth provisions. These restrictions were so difficult that only three states replied to NIJ's 2007 solicitation for Post Conviction Testing grants. On review of their applications, it was determined that none were compliant with the legal requirements of the statute.

The Consolidated Appropriations Act of 2008 will make the Kirk Bloodsworth tools more widely available, by providing the language NIJ needs to apply unobligated funds appropriated in fiscal years 2006 and 2007 for this purpose, as well as those appropriated in 2008. NIJ is expeditiously developing a grant solicitation that will make those funds available to states. We expect to release that solicitation very soon, and to make the awards this fiscal year. We will keep the committee informed concerning our progress, since the Department of Justice remains committed to ensuring the exoneration of any wrongly convicted individual.

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.

According to the Bureau of Justice Statistics' census of public crime laboratories, backlogs of DNA and other forensic evidence continue to expand because of increasing demand from law enforcement. 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 are not required to conform to national standards or work in accredited facilities.

Scientific research and development is critical to improvement of the forensic sciences. First, new technologies must be developed and transferred into practice in crime laboratories. The scientific and jurisprudence communities are increasingly concerned about the scientific basis for latent print examination and the other "qualitative" forensic sciences that depend on the judgment of experienced examiners to obtain accepted results. Under Congressional direction and with NIJ funding, the National Academy of Sciences (NAS) is studying the needs of the forensic science community, especially with respect to the gaps in the scientific underpinnings of the disciplines and national standards. The Department of Justice has already begun to examine ways to respond in a positive and proactive way to the anticipated recommendations of the NAS panel, whose report is expected in coming months.

We look forward to continuing to work with Congress to ensure that State and local criminal justice professionals have the tools and resources needed.

Thank you again for the opportunity to testify before the Committee on this important issue. I am happy to answer any questions you or other Members may have.