Testimony of

The Honorable Sarah V. Hart

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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. 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 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.