

Testimony of  
**Mr. J. Tom Morgan**

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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.