

Testimony of
The Honorable Frank Clark

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Remarks before Senate Judiciary Subcommittee
by
Hon. Frank J. Clark, District Attorney
Erie County, New York
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The Central Police Services (CPS) Laboratory (Erie County, New York) has a staff of 20 technicians with two positions currently unfilled. More than 60% of its 1.8 million yearly budget comes from state and federal grants. Significant cuts in those grants are anticipated. CPS processes work from approximately 50 agencies in Erie County and accepts limited requests from 6 other Western New York Counties.

CPS has in-house DNA testing capability by virtue of an \$800,000 grant allocated from seized assets in 1993. The below-stated shortcomings in our lab are probably representative of crime labs in major urban areas throughout New York and other northeastern states. In order to alleviate these deficiencies, revenue received would have to be in addition to funds already dedicated to DNA testing. Diverting funds from DNA testing to other areas would not resolve those problems and could cripple DNA processing capabilities, the single largest scientific advancement in crime detection in our lifetime.

Firearms

Proliferation of availability and use of firearms is perhaps our area=s biggest single problem. Shootings in Buffalo during the first six months of this year (1,023) are up almost 30% over the average of the past four years (769). Some of the principal requirements and/or shortcomings in the area are:

In any offense involving the possession or use of a firearm, operability must be established. Since an incarcerated accused is entitled to a preliminary hearing within 72 hours, tests and testimony must conform to that timeline. Over 1000 such requests are made every year.

Further testing, such as matching a bullet or casing to a particular gun can only be done on a priority basis. Many such tests are never performed.

Due to existing backlogs, critical investigative work such as connecting a seized weapon to other shootings is virtually impossible.

There is insufficient staffing to perform tests required to submit basic ballistics information on seized weapons to the National Integrated Ballistics Information Network (NIBIN) which is akin to a DNA database, but for guns.

Ancillary testing such as analyzing clothing for the presence of gunpowder residue to determine if a person fired a weapon or the distance between shooter and victim simply isn't being done. If a prosecutor desires such evidence, the testing has to be farmed out to private laboratories at considerable expense.

Drugs

Possession and sale of controlled substances constitutes almost 25% of the 2200 matters referred to the Erie County Grand Jury last year.

New York's penal statutes and laboratory regulations require that certain tests be performed and in a prescribed manner in order to conform to evidentiary and accreditation standards. Hence, shortcuts are not possible.

The sheer volume of requests precludes any testing on misdemeanor amounts of controlled substances.

New York law requires that suspected narcotics be tested for type of drug, weight and degree of purity, often within the 72 hours required for many preliminary hearings. Since this is often not possible, many cases are dismissed with a release of bail. These cases can be referred directly to a grand jury, but such defendants frequently abscond.

Much necessary equipment is dated or obsolete. For example, our laboratory does not have the capability to analyze date rape drugs such as ecstasy or GHB. We must seek state or federal assistance in these areas, resulting in additional problems due to the inevitable time delays.

All of the above represents only a sampling of the problems our forensic laboratories face. Presently, much of our firearms testing is about 7 months behind the ideal level of production and that gap is widening.

Excessive demands and reduced staffing levels preclude expanding the labs participation into areas such as crime scene analysis and evidence collection and preservation. Time and space prevent me even broaching areas such as soil and fiber analysis and other technological advances.

The expertise exists, the resources to exploit it do not.

Many state and federal grants do not even consider crime laboratories part of law enforcement and thus they are not even considered for subsidies. We put more police officers on the street but do not provide the prosecutorial, judicial and forensic support necessary to take full advantage of their efforts.

The forensic benefits from advances in DNA technology are inestimable. Unfortunately, these advances have created an expectation in the minds of the public, especially jurors, that all our scientific testing is equally sophisticated. The reality in many cases is that it is not, resulting not only in the exclusion of probative evidence, but the perception that we have done less than we could, or should, in investigating serious crime.