

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
September 14, 2004

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ADVANCING JUSTICE THROUGH DNA TECHNOLOGY ACT (S.1700)
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The Chairman knows that Members of the Committee, including a number of cosponsors of the Advancing Justice through DNA Technology Act of 2003, S.1700, have more scheduling conflicts than usual this morning. There is a confirmation hearing for the President's recent nomination to head the CIA before the Intelligence Committee. Secretary Powell is appearing before the Foreign Relations Committee, and Appropriations markups are finally taking place this week. Much of the work of the session has been left to drift to these last few weeks.

I have been urging Committee attention to this important justice matter all year and have sought to expedite the markup. As it is, it has been listed on the Committee's agenda only since June and then carried over and carried over again and again without much progress for the last several months. We were finally able to vote on one amendment last week.

I thank the Chairman for turning to the bill as the first item last week and hope we will stay on it and with it so that it can finally be favorably reported to the Senate.

I want to recognize the presence of our important guests and welcome them here today. Ms. Kellie Greene is here from Florida. She was the victim of a violent assault in her apartment complex in 1994. The biological evidence from the rape kit sat on a shelf for three years before it was tested and matched to a man who was then incarcerated for an attack on another woman. Ms. Greene, I want to thank you for all the work you have done to get rid of the backlog and ensure that justice is served.

Kirk Bloodsworth is here again. I am sorry that his wife, Brenda, was unable to come today, but I want to welcome Kirk's father, Curtis Bloodsworth, and thank him for his support of this important legislation. Kirk and members of his family have been at each of the past three markups, traveling in from the Eastern Shore of Maryland time and again because it is so important to them that this bill get marked up. As you all know, Kirk was the first person convicted and sentenced to death to be exonerated by DNA evidence. He served 10 years in prison -- three on death row -- for a crime he did not commit. His father, Curtis, never gave up, and he never stopped believing in his son's innocence. After fighting for years to have the crime scene evidence run through the State DNA database, Kirk finally persuaded the State to act. Well, they got a hit and identified the person who committed the heinous crime for which Kirk had

been convicted. That person confessed and is serving a life sentence now. Far from an "anecdote" this is tragically the reality, the reality for the Bloodsworths and too many others.

I am very sorry to say that Debbie Smith could not be here today. Like Kirk Bloodsworth, a part of this bill is named in honor of Debbie Smith. Debbie was here last week with her husband, visiting members of Congress to advocate for the swift passage of this bill, and she attended our last markup last Thursday. When the markup ended after three hours of debate, taking a vote on only one single amendment, Debbie's frustration was evident. I share her frustration with the Committee's slow progress. I know that she is disappointed we have not completed our work and also that her commitment to speak at a conference prevents her from being with us again today. Last week she said that senators were mincing words, while rape kits sit in warehouses untested. Debbie waited six years for the evidence to be tested in her case. She deserves better than to wait week after week, month after month, year after year, for this Committee to report this bill.

Turning to the bill, I want to address three arguments that were made last week, which I thought were quite unfair.

First, it was argued that our bill "authorizes less than the President's budget request." In fact, our bill authorizes every penny of the President's DNA Initiative, and a bit more: \$151 million per year for reducing the DNA backlog - same as in the President's budget -- plus additional funds for lab improvements and other DNA-related programs.

I should also note that the President's budget eliminates funding for Paul Coverdell grants - these are general forensic science grants, not limited to DNA, which I worked with the Senator from Alabama to authorize. Our crime labs need the funding desperately. Unfortunately, neither this Republican President nor this Republican Congress has had much use for the Paul Coverdell program, and it has been woefully underfunded year after year after year. I have supported full-funding.

Second, it was argued that there is no need for the post-conviction remedy that our bill would establish, because judges can already order DNA testing if they feel like it. Senator Kyl pointed to Kirk Bloodsworth's case as a case in point. It is true that Kirk was able to get DNA testing of the evidence in his case, but only because the prosecutor agreed to it, and Kirk's attorney agreed to pay for it out of his own pocket. Maryland, which wrongly convicted Kirk, now has a statute along the lines that our bill proposes.

Kirk is here today because he knows better than anyone in this room that we do need this bill. Without a statutory procedure in place, getting a post-conviction DNA test is still an uphill battle.

Finally, both critics argued that the bill was remiss for failing to set an arbitrary time limit for prisoners to seek tests. Our bill establishes a number of procedural requirements that a prisoner must satisfy before he can obtain testing. There is no arbitrary time limit for good reason.

In the first nine months of this year, another 10 prisoners have been exonerated by DNA testing, including one in Senator Cornyn's home State. These men served an average of 13 ½ years in prison before they were freed. Three were imprisoned for more than 20 years. Imagine saying to these men, "Sorry, time's up! You should have proved your innocence sooner. Even if you were

wrongfully convicted, you have to spend the rest of your life in prison because the time for testing has run."

I was a prosecutor for many years. I understand the need for finality in criminal cases. But there can be no time limit on innocence.

In closing I commend the Chairman for working with us on the important measures included in the Advancing Justice through DNA Technology Act. As he observed last week, we often cooperate and do things in concert across the aisle. This important bill is a good example. Another will be evident at the Antitrust Subcommittee hearing this afternoon. That hearing will mark a technological milestone for the Senate. For the first time, a hearing will be officially broadcast live on the Senate television system with closed captioning that uses the advanced technology of voice-recognition software.

Working with Secretary of the Senate Emily J. Reynolds and with the Committee on Rules, the Judiciary Committee has developed a pilot project that will allow us to study the captioning of committee hearings, offering real-time captioning as a demonstration for the use of Senators and their staff. We are proud of the Judiciary Committee's groundbreaking role in testing this new technology to make proceeding more accessible throughout the Senate.

After the completion of the pilot, we will evaluate the results to help the Senate determine the cost and feasibility of providing real-time captioning for all Senate committee hearings. Our hope is to bring closer the day when hearing-impaired Americans will have fuller real-time access to the legislative process. At a time when we see barriers being erected all around Washington in the interest of security, we are glad for this opportunity to bring down a barrier between the American people and their government.