Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
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Senate Judiciary Committee
Hearing on "Strengthening Forensic Science in the United States"
Wednesday, September 9, 2009

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Mr. Chairman, thank you for holding this important hearing. Advances in forensic science have made invaluable contributions to the criminal justice system for many years. Men and women in various fields of forensic science across the country have provided critical evidence that has helped identify the guilty and exonerate the innocent. Without the diligent efforts of forensic science professionals, a just result would not have been reached in countless cases.

However, forensic science - like any scientific discipline - is not infallible. Mistakes are made. And limited resources can hamper the most committed forensic professionals. As a result, forensic evidence does not always satisfy the rigorous standards of scientific scrutiny that is required in criminal prosecutions.

The report on forensic science issued by the National Academy of Sciences in February 2009, "Strengthening Forensic Science in the United States: A Path Forward," highlights some of these critical issues. I commend the authors of the report for their detailed assessment of the problems afflicting the forensic science community and the impact of these problems on the criminal justice system.

As Judge Harry Edwards, co-chair of the committee that put together that study, testified earlier this year, the key issues identified by the report included "a paucity of strong scientific research, a lack of adequate resources and national support, and the absence of unified and meaningful regulation of crime laboratories and practitioners." These overarching issues have led to problems ranging from scandals in crime labs to unsupported scientific conclusions being presented at trial by expert witnesses.

And of course, the worst effect of these problems is when they lead to wrongful convictions of innocent citizens, including in capital cases. It is no small irony that the use of DNA testing, one of the most reliable forms of forensic evidence, has exposed serious flaws in other areas of forensic science. As the Supreme Court recognized earlier this year, "[o]ne study of cases in which exonerating evidence resulted in the overturning of criminal convictions concluded that invalid forensic testimony contributed to the convictions in 60% of the cases." Melendez-Diaz v.

Massachusetts, 129 S.Ct. 2527, 2537 (2009). Further exacerbating the problem is the tendency of jurors to place undue weight on the value of forensic evidence, even when it is not reliable.

Just recently, there have been extremely disturbing reports that faulty forensic evidence may have led to a conviction in a Texas capital case - one in which the defendant has already been executed. Cameron Todd Willingham was executed in Texas in 2004 after he was convicted of arson murder in 1992. In the years since his execution, multiple reports have concluded that the forensic science used to convict Willingham was erroneous. Indeed, there are serious questions about whether the fire was caused by arson in the first place. In a recent report to the Texas Forensic Science Commission critiquing the Willingham investigation, arson expert Craig Beyler concluded that "a finding of arson could not be sustained" using current professional standards or the professional standards in place at the time of the investigation. Willingham proclaimed his innocence until the day he was executed.

Mr. Chairman, one wrongful conviction is tragic. Hundreds of wrongful convictions are unacceptable. If a wrongful conviction leads to an innocent person being executed, it is a disgrace to our system of justice.

One cannot understate the importance of this issue. I am pleased that the Committee will hear from witnesses with a variety of perspectives on how we can improve our nation's forensic science community.

Thank you.