

Statement of
The Honorable Al Franken

United States Senator
Minnesota
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STATEMENT OF SENATOR AL FRANKEN ON "STRENGTHENING FORENSIC SCIENCE
IN THE UNITED STATES"

Thank you, Mr. Chairman, for holding this incredibly important hearing. We incarcerate more people than any other industrialized nation. In fact, we incarcerate more people than any nation, period. We have 2.3 million prisoners behind bars--compare that to China, which has four times our population but only 1.6 million prisoners. We also have the world's highest incarceration rate, six times higher than the world's median rate. Even though we have 5% of the world's population we have 25% of its inmates.

These are worrying figures for any country, let alone the world's leading democracy. But they're especially troubling when we consider that the forensic techniques used to prosecute and convict many of these individuals have come under serious question.

Earlier this year, pursuant to a congressional mandate, the National Academy of Sciences released a report evaluating the scientific integrity of the forensic techniques used daily in thousands of crime labs around the country--including DNA analysis, fingerprinting, firearms identification, and hair fiber analysis.

The report, which was published after two years of research and review, had a damning conclusion, which I will restate here. It concluded that "[w]ith the exception of nuclear DNA analysis [...], no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source." "The fact is that many forensic tests [...] have never been exposed to stringent scientific scrutiny."

For example, the National Academy's report revealed that there is currently no objective, uniform method of fingerprint analysis or standard for fingerprint identification. In fact, in the United States, the standard for identification--how many points match between two prints--has been "deliberately kept subjective" to allow for maximum flexibility by the examiner. This means that one examiner can require just 6-points of comparison before declaring a match, while another can require 14 points.

Bad forensic techniques result in false convictions. That's obvious. In a review of 242 DNA exonerations, the Innocence Project found that a large number of the cases involved unvalidated or improper forensic science. The number of false convictions is surely higher, however, since 90% criminal cases actually do not involve biological evidence that can irrefutably exonerate someone through DNA testing.

What's less obvious is that bad forensics keep the real criminals on the streets. Of the 242 DNA post-conviction exonerations nation-wide, the real perpetrators were identified in 105 cases. In those 105 cases, while innocent people were in jail, the real perpetrators committed and were convicted of 90 serious, violent offenses, including 56 rapes and 19 murders. False convictions are a threat and tragedy, both for the innocent and for every law-abiding citizen in this nation.

In 2006, Supreme Court Justice Antonin Scalia declared that there has not been "a single case--not one--in which it is clear that a person was executed for a crime he did not commit. If such an event had occurred in recent years, we would not have to hunt for it; the innocent's name would be shouted from the rooftops." Sadly, after the execution of Cameron Todd Willingham, that day has come.

The Fifth and Fourteenth Amendments guarantee that all Americans will not be deprived of "life, liberty, or property, without due process of law." This due process right applies to states, and it applies to the federal government. And if it means anything, it means that the tools we use to determine innocence or guilt must be based on sound, rigorous science. Until we can be confident of that, I think we should ask ourselves whether it would be appropriate to impose a nationwide moratorium on the death penalty. Can we as a law-abiding nation execute anyone without being 100% certain that they are guilty? Can we risk another Cameron Todd Willingham?

I look forward to hearing from all of the witnesses today.

Thank you, Mr. Chairman.