



Department of Justice

STATEMENT OF

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BEFORE THE

**SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

ENTITLED

**“RAPE KIT BACKLOGS: FAILING THE TEST OF PROVIDING JUSTICE TO
SEXUAL ASSAULT SURVIVORS”**

PRESENTED

MAY 20, 2010

**Statement for the Record
Dr. Christian Hassell, Assistant Director
Laboratory Division
Federal Bureau of Investigation
Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives**

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Introduction

Chairman Scott, Ranking Member Gohmert, and Members of the Subcommittee, I would like to thank the members of the Subcommittee for inviting the FBI to provide an update on our activities relating to forensic DNA analysis today. Specifically, I will address our efforts to support state and local forensic laboratories as we all work toward eliminating the DNA backlog in forensic casework and the Combined DNA Index System, or CODIS, which supports our National DNA database. Using DNA technology in an efficient manner while protecting the integrity of the DNA data generated has been demonstrated to make significant contributions to the investigation of crimes. Our continued work to improve DNA analyses will allow for justice to be served to victims and their families in a timely fashion.

I would emphasize that my testimony today will necessarily be limited to the activities of the FBI relating to the operation of CODIS. That does not exhaust the activities of the Department of Justice relating to DNA backlog reduction, which have included the administration of hundreds of millions of dollars in grant funding to states, tribes, and local jurisdictions for expansion of DNA analysis capacity and direct assistance in clearing DNA backlogs. The grant programs are administered by the Department's Office of Justice Programs' National Institute of Justice rather than the FBI. The Department will be submitting a statement for the record which fully details the activities of other Justice Department components in this area.

The Combined DNA Index System (CODIS)

The acronym “CODIS” is used to describe not only the software used to maintain and run these DNA databases but also the entire program of software support for Federal, state and local forensic laboratories as well as the various indices (Forensic, Arrestee, Detainee, Offender and Missing Persons) at all three levels - national, state and local. The acronym “NDIS” stands for the National DNA Index System, one component, albeit an integral one, of the CODIS program.

One of the underlying concepts behind the development of CODIS was to create a database of a state's offender profiles and use it to solve crimes for which there are no suspects. Historically, forensic examinations were performed by laboratories if evidence was available and there was a suspect in the case. By creating a database of the DNA profiles of convicted sex

offenders and other violent criminals, forensic laboratories would be able to analyze those cases without suspects and search those DNA profiles against the database of offenders and other crime scenes and determine if a serial or recidivist rapist or murderer was involved. It was expected that this new tool would enable forensic laboratories to generate investigative leads or identify suspects in cases, such as stranger sexual assaults where there may not be any suspects.

The CODIS software is used to maintain these DNA databases and search the DNA profile against the DNA profiles of offenders and other crime scenes. For example, a DNA profile of a suspected perpetrator is developed from the sexual assault evidence kit. If there is no suspect in the case or if the suspect's DNA profile does not match that of the evidence, the laboratory will search the DNA profile against the Arrestee and Convicted Offender Indices. If there is a match in the Arrestee or Convicted Offender Index, the laboratory will obtain the identity of the suspected perpetrator. If there is no match in the Arrestee or Convicted Offender Index, the DNA profile is searched against the crime scene DNA profiles contained in the Forensic Index. If there is a match in the Forensic Index, the laboratory has linked two or more crimes together and the law enforcement agencies involved in the cases are able to pool the information obtained on each of the cases.

CODIS began as a pilot program in 1990 with a dozen participating state and local laboratories. Today, CODIS is in 189 laboratories across the nation representing 50 states, the U.S. Army Crime Laboratory, Puerto Rico, the District of Columbia, and federally recognized Indian tribes. In addition to the software, the most significant feature of the CODIS program is NDIS, the National DNA Database. NDIS has been in operation since October, 1998. There are currently over 8 million offender DNA profiles and 300,000 forensic samples in NDIS. Is CODIS successful? Our primary method of gauging the effectiveness of the CODIS program is the number of investigations it assists by either identifying a perpetrator or by linking serial crimes. Thus far, CODIS has assisted in over 112,000 investigations at the local, state, and national levels.

Legislation Leading to Backlog

As early as the late 1980s, states began to enact laws that required offenders convicted of sexual offenses and other violent crimes to provide DNA samples. These DNA samples were to be analyzed and entered into state DNA databases. As you know, all fifty states now have such DNA database laws. In addition, the following legislation has been passed:

- All fifty of the state databasing laws cover offenders convicted of sex offenses.
- Forty-eight states, the District of Columbia, the Federal government, and the Department of Defense are now authorized to collect from all felony offenders.
- Forty-nine states collect DNA samples from offenders on probation as well as those incarcerated in state and local correctional facilities.
- Thirty-five states collect DNA samples from offenders convicted of misdemeanor sex offenses.
- Thirty-two states include juveniles within their DNA sample collection and database program.

As developers of the CODIS system, the FBI has been in a unique position to observe the implementation of DNA databases across the nation. An identification tool that was initially thought to benefit the investigation of sexual assault cases has proven to have much wider application in the investigation and prosecution of crimes. Moreover, even if only cases involving rapes or other serious crimes are considered, experience shows that the DNA samples that lead to their solution have often been taken because of the perpetrator's arrest or conviction for some other offense that was not sexual or violent in nature. States have observed this first hand and sought to expand coverage of their databases beyond sexual offenses - first to more serious violent felonies and then all felony offenses. Most recently, twenty-three states have passed legislation authorizing the collection of DNA from individuals arrested for certain felony offenses.

Federal legislation has also expanded in parallel to the state laws which have been passed. The FBI entered a new era of DNA analysis with the passage of the DNA Analysis Backlog Elimination Act of 2000. The Federal DNA Databasing Program (formerly the Federal Convicted Offender Program) was initiated in 2001 as a result of this Federal statute. The Act authorized officials from the Bureau of Prisons and United States Probation Offices to collect DNA samples from individuals convicted of violent Federal offenses on a nation-wide scale, and to furnish these samples to the FBI Director. The Act also authorized the FBI Laboratory to generate DNA profiles for such samples, and to enter the resulting DNA information into NDIS. The following year, the USA Patriot Act of 2001 was enacted, broadening the scope of qualifying offenses to include any crimes of violence or terrorism (including threats of violence and conspiracy to commit terrorism). Between 2001 and 2004, the FBI Laboratory received an average of 7,000 offender samples annually. In October of 2004, the President signed into law the Justice for All Act of 2004, which amended the DNA Analysis Backlog Elimination Act of 2000 to include all Federal felony offenses as qualifying for submission to the FBI Laboratory. The Bureau of Prisons and United States Probation estimated this legislation would result in the initial collection of approximately 100,000 samples from each agency. It was further projected that an additional 75,000 samples from Federal offenders would be received thereafter on an annual basis.

In January 2006 and July 2006, the most recent federal legislation was enacted, titled The DNA Fingerprint Act of 2005 and The Adam Walsh Child Safety and Protection Act of 2006. These acts authorize the Attorney General to collect DNA samples from individuals who are arrested, facing charges or convicted and from non-United States persons who are detained under the authority of the United States. The principal investigative agencies of the Department of Justice -- the FBI, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Drug Enforcement Administration, and the U.S. Marshals Service -- have implemented this reform and are collecting DNA samples from their arrestees.

The analysis of the biological evidence collected from crime scenes, regardless of whether a suspect has been identified in that case, is equally as important as the analysis of the offender samples. We know that state and local laboratories do not currently have the capacity to analyze all the cases with biological evidence that are submitted to them. Because of limited capacities, laboratories are forced to prioritize their cases based upon court dates and whether or not a suspect has been identified. This oftentimes leaves those cases for which there are no

suspects, and the cases for which CODIS was specifically designed, unanalyzed in evidence or laboratory storage.

Enhancing NDIS Efficiency

Clearly, one of the reasons for the offender and forensic DNA backlogs that exist today is the fact that states may have implemented legislation such as that described above covering a larger number of offenders than could be accommodated by their laboratory. Federal grant programs administered by the Office of Justice Programs within the Department of Justice have helped by providing funding for states to analyze their samples in-house or to contract out the analysis of these samples, but there are still efficiencies that can be gained if we re-examine this issue from every angle.

In order to enhance the efficiency of the nation's DNA database, the FBI has established an ongoing dialogue with various groups to gain a broader perspective and better understand the needs of the entire law enforcement community. Those groups include the American Society of Crime Laboratory Directors (ASCLD), the Scientific Working Group on DNA Analysis Methods (SWGDM), the CODIS State Administrators, the Police Executive Research Forum (PERF), the International Association of Chiefs of Police (IACP), and various federal, state, local, and tribal agencies. The FBI is committed to seeking common ground in the interest of protecting the public, reducing backlogs, ensuring privacy, and maintaining the integrity of NDIS.

The FBI Laboratory is currently performing a review to determine what improvements can be made to facilitate more efficient and timely uploading of DNA data into NDIS. No changes have been made to any procedures or standards to date. The review includes a working group which is receiving input from state and local agencies to determine what changes need to be made to NDIS procedures and/or the Federal Quality Assurance Standards to improve operational efficiency. The FBI considers this review to be a regular, healthy activity resulting from improvements in technology and lessons learned from almost twelve years of experience in the operation of NDIS. As the administrator of this national database, the FBI has an obligation to perform this procedural review to ensure that law enforcement agencies are not hindered by procedural limitations, thus limiting the number of samples added to NDIS and decreasing the efficacy of NDIS in solving crime. At the same time, the FBI is obligated to ensure that the quality of the data in NDIS is not endangered by lack of oversight and procedural integrity, which would also serve to decrease the utility of NDIS in solving crime.

The FBI's assessment does not include re-evaluating access to NDIS. Access to NDIS is currently limited to Federal, state, and local criminal justice agencies (*see* 42 U.S.C. §14132). The maintenance and administration of databases that contain sensitive law enforcement information, to include biographical and biometric information on U.S. citizens, is an inherently governmental function, particularly given the privacy considerations relative to DNA records and criminal histories. Necessary improvements can be gained by enhancing the efficiency of NDIS procedures.

Private laboratories, which analyze DNA samples on behalf of Federal, state, and local crime laboratories, play an important role in the NDIS process. Approximately half of the DNA

offender DNA records in NDIS were analyzed by private laboratories operating under contract to government agencies. The FBI Laboratory is currently re-evaluating existing policies, standards, and protocols that guide the use and role of private laboratories in law enforcement DNA analysis as a means to increase capacity and throughput of our current system. Public law enforcement and private laboratories that contribute data to NDIS must be accredited. The FBI Laboratory is reviewing and evaluating the differences in oversight for these public and private laboratories and considering ways in which private laboratories could be monitored to ensure full compliance with the same standards and oversight as public DNA laboratories. Currently, NDIS participating public laboratories demonstrate compliance with the national Quality Assurance Standards by submitting all external audits and corrective actions to the FBI for review and are subject to audit by the Department of Justice's Office of the Inspector General. The FBI is considering mechanisms by which private laboratories could be subjected to a similar level of oversight and quality assurance review. In addition, the FBI Laboratory is investigating improvements with regard to the use of expert data analysis systems by private laboratories, the requirement of on-site visits of private labs prior to their beginning DNA analyses for government agencies, and the 100% technical review by a public laboratory of outsourced/contracted DNA records before upload into NDIS.

DNA analysis and, by extension, DNA databases, have proven to be invaluable to the law enforcement community, victims of crime and their families. Since more crimes are solved as more records are placed into the database, enhancing the operational procedures for optimal efficiency of NDIS is imperative. The forensic DNA community has established a precedent for always confirming its assumptions and validating the basis for its decisions. This re-evaluation of NDIS procedures is no different and has the potential to more expeditiously assist law enforcement agencies in solving crimes.

I appreciate the opportunity to appear before this Subcommittee and provide this information on CODIS and our DNA program. Thank you.