

**National Law Enforcement Summit on DNA Technology**  
**R O C E E D I N G S**

**July 27 - 28, 2000**  
**Ronald Reagan Building and**  
**International Trade Center**  
**Washington, D.C.**

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## Agenda

### July 27, 2000 - HORIZON BALLROOM

The above-entitled matter came on for hearing on Thursday, July 27, 2000, commencing at 8:30 a.m., at the Ronald Reagan Building and International Trade Center, Washington, D.C., before Executive Director of the National Commission on the Future of DNA Evidence, Christopher H. Asplen, AUSA, Moderator.

Reported By: Michele D. Lambie, CSR-RPR

#### DAY ONE INTRODUCTION

8:00 AM - 8:30 AM	Coffee Service
8:30 AM - 8:45 AM	Introduction Christopher H. Asplen, AUSA Executive Director National Commission on the Future of DNA Evidence
8:45 AM - 9:00 AM	Opening Remarks Julie Samuels Acting Director National Institute of Justice
9:00 AM - 9:30 AM	Defining the Issues for Law Enforcement Terrance Gainer Executive Assistant Chief of Police Metropolitan, DC Police Department
9:30 AM - 10:00 AM	DNA 101 Lisa Forman Acting Director, Investigative & Forensic Sciences Division National Institute of Justice
10:00 AM - 10:15 AM	<b>Break</b>

#### DNA DATABASES: A POWERFUL TOOL FOR LAW ENFORCEMENT IN THE 21<sup>ST</sup> CENTURY

10:15 AM - 11:45 AM	Paul Ferrara Director Virginia Division of Forensic Services
10:45 AM - 11:15 AM	Dwight Adams Deputy Assistant Director Laboratory Division Federal Bureau of Investigation
11:15 AM - 11:45 PM	David Coffman Crime Laboratory Analyst Supervisor Florida Department of Law Enforcement
11:45 PM - 12:30 PM	<b>Questions/Comments</b>

#### **WORKING LUNCH**

12:30 PM - 1:45 PM	Maureen Casey Deputy Commissioner Policy and Planning Division City of New York
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#### **EDUCATING LAW ENFORCEMENT**

1:45 PM - 2:00 PM	<i>Moderator:</i> Chief Darrell Sanders Frankfort, Illinois Police Department
2:00 PM - 2:30 PM	Lee Colwell Director, Criminal Justice Institute University of Arkansas System
2:30 PM - 3:00 PM	Keith Coonrod Director of Toxicology and Drug Chemistry Services New York State Police Laboratory System
3:00 PM - 3:45 PM	Discussion

## **POSTCONVICTION DNA TESTING: THE IMPLICATIONS FOR LAW ENFORCEMENT**

3:45 PM - 4:05 PM      Lisa Weinreb  
Deputy District Attorney  
County of San Diego

4:05 PM - 4:15 PM      Discussion

## **DEFENSE BAR PERSPECTIVE**

4:15 PM - 4:45 PM      Christopher J. Plourd  
Law Office of Christopher J. Plourd  
San Diego, CA

4:45 PM - 5:00 PM      Discussion

5:00 PM                  Adjourn

## ***Agenda***

### **July 28, 2000 - ATRIUM BALLROOM**

Meeting in the above-captioned matter was taken on Friday, July 28, 2000, at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C., commencing at 8:45 a.m. before Carol T. Lucic, Notary Public.

Reported By: Carol T. Lucic

## **DAY TWO INTRODUCTION**

8:00 AM - 8:45 AM      Coffee Service  
"What Every Law Enforcement Officer Should Know  
About DNA Evidence" Demonstration of cd-rom training  
program

8:45 AM - 9:00 AM      Mary Lou Leary  
Acting Assistant Attorney General  
U.S. Department of Justice

9:00 AM - 9:30 AM      Keynote Address  
Attorney General Janet Reno

United States Department of Justice

9:30 AM - 10:00 AM      A Discussion of Legal Issues  
James R. Wooley  
Baker & Hostetler, Attorneys at Law  
Cleveland, Ohio

10:00 AM - 10:45 AM      Discussion

10:45 AM - 11:00 AM.      **Break**

**POLICE AND PROSECUTORS: MAXIMIZING THE VALUE OF DNA**

11:00 AM - 11:15 AM      *Moderator:*  
Superintendent Terry Hillard  
Chicago Police Department

11:15 AM - 11:45 AM      Clay Strange  
Assistant District Attorney  
Austin, Texas

11:45 AM - 12:15 PM      Norman Gahn  
Assistant District Attorney  
Milwaukee County, Wisconsin

12:15 PM - 12:45 PM      Discussion

**WORKING LUNCH**

12:45 PM - 1:45 AM      Don Dovaston  
Forensic Science Service  
United Kingdom

**LEGISLATIVE CONSIDERATIONS FOR PROMOTING FORENSIC DNA**

1:45 PM - 2:00 PM      *Moderator:*  
David G. Boyd  
Director, Office of Science and Technology

National Institute of Justice

2:00 PM - 2:30 PM	Timothy Schellberg Smith Alling Lane, Governmental Affairs, Attorneys at Law Trends in State Legislation
2:30 PM - 2:50 PM	Charles Bronson, Jr. State Senator 18 <sup>th</sup> District of Florida
2:50 AM - 3:10 PM	Discussion
3:10 PM - 3:25 PM	<b>Break</b>

**LAW ENFORCEMENT AND THE CRIME LABORATORY: WORKING TOGETHER TO SOLVE CRIMES**

3:25 PM - 3:35 PM	<i>Moderator:</i> Chief Thomas Cronin Coreur d'Alene Police Department
3:35 PM - 3:55 PM	Lucy Davis DNA Section Supervisor Kentucky State Police Forensic Laboratory
3:55 PM - 4:15 PM	Alexandria Police Department A Case Report
4:15 PM - 4:45 PM	Discussion
4:45 PM - 5:00 PM	Closing Remarks

## DAY ONE INTRODUCTION

MR. ASPLEN: Good morning, ladies and gentlemen. How am I doing? Can the folks in the back hear? Does this sound all right?

On behalf of the United States Department of Justice and Attorney General Reno, NIJ and the National Commission on the Future DNA Evidence, I want to welcome you to Washington, D.C. for this event.

It's my job for the next couple of minutes to explain exactly what it is that you're doing here because we realize that it was only just about a month, month and a half ago that you received a letter from you saying, Hey, you are considered by nature of your position or by your colleague's recommendation to be an important voice in the law enforcement community, and as such, we would like to bring you together to talk about some DNA-technology issues.

In that regard, let me start by explaining what the National Commission on the Future of DNA Evidence is because it's because of that Commission that you are here.

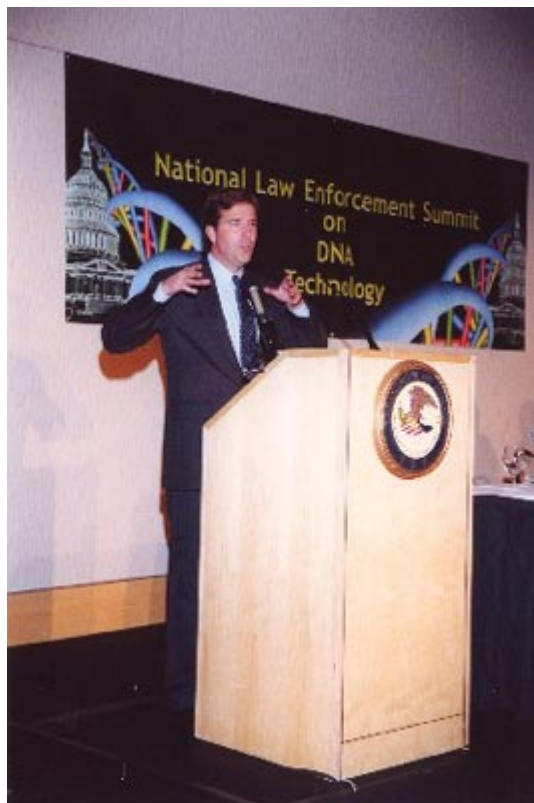
The National Commission on the Future of DNA Evidence was established at the request of the Attorney General and is administered through the National Institute of Justice.

It was established by the Attorney General in response to a number of cases in which she read about in which individuals were essentially being freed from prison who were shown to be wrongly convicted by nature of DNA testing. Ten, 15 years after their original conviction going back looking at the original evidence, DNA testing proved that they were, in fact, exonerated or actually innocent.

And upon looking at those particular cases, she began to ask the question, Is there more that we can do, or is there more that we should do to really maximize the value of DNA evidence in the criminal justice system?

She asked that the Commission be established, and what the Commission did was they recognized that there are certainly a number of applications, far beyond the post-conviction application, that are important to the use of DNA in the criminal justice system.

So the Commission was created about two years ago, and we established five different working groups, one of which was a post-conviction group working on post-conviction cases.





Another working group was a legal issues working group that dealt with what are the general considerations as we attempt to integrate this technology in the criminal justice system.

A third working group had to do with laboratory funding. Oftentimes it all comes down to money.

A fourth working group had to do with crime scene investigation, and a fifth working group had to do with research and development.

The crime scene investigation working group has done a number of things, but perhaps one of the most important things that they have done, and ultimately that the Commission has done, is recognize that the future of DNA technology in the criminal justice system in the United States is really about application. It's less about bells and whistles and databases and such than it is about empowering law enforcement to actually use what we can now technologically do.

It's about putting it in your hands, and as the chiefs of police, assistant chiefs of police, sheriffs in this country, you are the folks that need to be the advocates for that happening. The future of DNA lies in actually using it.

A good example of that, I think, is a comparison of the way the DNA developed in the United States as opposed to the way it developed in the United Kingdom, and we'll hear tomorrow by an expert in the United Kingdom, Don Dovaston, about what they're doing, the kinds of applications that they're performing in the United Kingdom, but in the United Kingdom DNA developed as an investigative tool. It developed as a way to help law enforcement identify perpetrators.

In the United States, DNA developed primarily first as a prosecutorial tool. It developed as a way to prove cases in the courtroom once you had identified the perpetrator through the traditional investigative techniques.

We put a tremendous amount of resource and attention in the laboratories. We put a tremendous amount of attention and work into the courtrooms to get it admissible. What we didn't do was spend a tremendous amount of attention and resource at the crime scene and with law enforcement.

This discussion is a way to really promote that application. It's a way to get the word out of what those issues are that really inhibit our full integration of DNA technology into our systems from an investigative standpoint.

Now, given the Commission's mission, if you will, and what we're doing here today, please understand that you are now part of that Commission process, and these proceedings will be included in the work of the Commission that will be included in the recommendations that ultimately go to the Attorney General. As such, there are a number of considerations that I'd like you to keep in mind.

First of all, it's that you'll notice in the agenda that while we have panel discussions on each of these various topics, at the end of most of those there are discussion sections of a half hour, 45

minutes. Those discussion sections are probably infinitely more important than the panel discussions.

Don't get me wrong, we quite literally have the best experts in the country and in other countries here to talk about these issues in the panel discussions, but what is most important is the discussion that is generated afterwards, the discussion that is ultimately generated by you folks as we try to address these issues, as we try to make recommendations, as we try to get that information out to people that's so necessary.

One thing is very clear, DNA works. DNA is perhaps our most powerful tool in law enforcement to come along since the fingerprint. What we need to do is we need to empower law enforcement to use it.

Now, there are a couple of administrative matters that I should attend to as we get started. First of all, the air-conditioning has been turned down, so it should start -- I can feel it's getting a little bit cooler as it is.

We're putting some more chairs in the back and hopefully give some folks a little more breathing space, but it's great to see the response in terms of the number of people that we have here. My guess is we'll probably have some more folks tomorrow.

We've going to be in a different room tomorrow. I think that room -- I've been told that room is a little bit bigger. We'll have instructions as to how to get there for those of you who may have had to struggle to find this room in what is perhaps the largest building next to the Pentagon in Washington, D.C.

Another extremely important piece of information is that the rest rooms are down the hall, through the double doors and to the right.

Also, as you can see up front, we do have sign language interpreters. If there's anyone who, in fact, needs that service, please let us know and we'll make that there's an individual interpreting some sign language through the entirety of the conference. However, if not, those folks will simply stay in the back in case the need arises throughout the conference.

These meetings will be transcribed and they will be put on the Internet, the transcripts as such will be.

As such, when you do participate, notice I say affirmatively, when you do participate during the discussion sections, please identify yourself, who you are so that we can attribute your comments to that unless you don't want your comments attributed to you, in which case don't, but please know that we will be transcribing these.

For any of you who -- to kind of start this discussion off and for those of you, I know we have a few prosecutors in the audience, and for those of you who are not prosecutors, you've been in law enforcement long enough to have sat next to prosecutors in trials enough to know that when

you're trying a case, you're always kind of looking for that hook. You're always looking for that one thing that's really going bring the point home to the jury.

I supposed I should have introduced myself first by giving you a little bit about my background. I was a Deputy District Attorney in Bucks County, Pennsylvania for about eight years, and I prosecuted sex crimes, particularly child, sexual crimes against children, and then I was the DNA director of the National District Attorney's Association for about two years. Now I am an Assistant U.S. Attorney detailed as the Executive Director.

So I'm often looking for that, that bit of information or that hook that will really make the point that I want to make.

Did anybody read the USA Today? Thank you. We've got some participation already with some hands. I appreciate it.

Inmates offered free DNA tests. The sum and substance of that article is extremely important. I think it's one of the most important things going in criminal justice these days.

The article references the fact that San Diego County is proactively looking at about 580 cases to see whether or not DNA evidence may well act in an exonerative capacity. They're not waiting for defendants to come to them, and we have the person who's actually quoted in the article here today, Lisa Weinreb, from San Diego to talk about that a little bit.

That is an extremely important, important piece of work not because I think in any way that we're going to find a tremendous amount of wrongful convictions. I don't think so at all. My guess would be that what we're going to do is confirm the reliability of the criminal justice system.

But I think here's the point: Imagine if what this headline read was Law Enforcement Allowed to do DNA Testing or Law Enforcement Empowered to do DNA Testing. That's a headline that would meet the savings of thousands and thousands of lives as we will learn over the next two days, and that's really the point of all of this, how do we empower law enforcement, how do we make law enforcement part of this discussion so that we can put the most important, most powerful technology to come along in years in your hands in a much more practical way.

With that, let me get the presentation started by introducing Julie Samuels. Julie is the Acting Director of NIJ, and as I mentioned, NIJ is that governmental entity that administers the Commission. It's through the Commission that it does its work.

Perhaps more importantly, it is through the NIJ that the Commission's products, such as some of the things that you'll see, are administered. NIJ is what pays for the pamphlets that we'll talk about, the CD ROM that you will see and has put this conference together. It's the entity that has supported the Commission's work.

Julie received her AB in political science from Brown University in Rhode Island and her MPP in public policy from the University of California at Berkeley.

She was designated by the President in April 2000 to serve as the acting Director of the National Institute of Justice. She began her career with the Department of Justice in 1979. She comes to the NIJ from the Criminal Division's Office of Policy and Legislation. It formally was the Office of Policy Management Analysis for the Department of Justice.

So Julie is well steeped in the policy considerations of things like technology integration, and these are policy considerations. They are considerations that need to be discussed in settings like this that help us make the decisions that get technology in to your hands.

From 1990 to '93, she served as a Secretary for the Chemical Action Task Force mandated in '90 by the '90 Economic Summit to ensure precursor and essential chemicals were not diverted to manufacture illicit drugs.

Again, she has a good grounding in the advantages and the power of technology to support not only the Commission's work, but to support the products and the discussion that will come out of this particular conference over the next couple of days.

So, again, I welcome you all and I invite Ms. Samuels to come to the podium.

(Applause.)

MS. SAMUELS: Good morning. Thank you, Chris. I'm very pleased to be able to join you this morning to kick off this National Law Enforcement Summit on DNA Technology. It's very exciting to see all of you, sort of a full house here today, participating.

As our nation's law enforcement leaders, you're in the unique position to harness the power of DNA technology and convert it into a valuable investigative tool for law enforcement officers on the street.



At NIJ, we are keenly aware of the traditional barriers that separate laboratory science from practical tools needed to fight crime on the streets. We attempt to break down those barriers by convening discussions such as these and by producing training manuals and interactive learning tools that attempt to bring science to life.

This morning I want to take a moment to reflect on the incredible pace of change in this field and to talk about how we at the National Institute of Justice think about our role in supporting your work.

Consider how far we have come since DNA evidence was first introduced in to criminal court proceedings in the United States in 1986.

At that time, there were few private laboratories and fewer public laboratories analyzing crime scene evidence for DNA markers. There were no guidelines, no standards and no accrediting bodies. Few police departments have the equipment, training or expertise to identify and collect DNA evidence from crime scenes.

Today every state in the nation allows the introduction of this kind of evidence. There are more than a dozen private labs, several federal labs and more than 130 state and local laboratories that can conduct DNA analysis on forensic evidence. There are accreditation and certification processes for labs and guidelines and standards to ensure quality and reliability.

Law enforcement agencies are collecting DNA from crime scene evidence and convicted felons, conclusively establishing guilt through unique identification and exonerating the innocent through the use of DNA evidence.

The criminal justice system is rapidly moving to a time when DNA will be a quick, readily available, inexpensive and certain forensic tool for use by law enforcement.

Today DNA is most commonly used to solve homicide and rape cases. Tomorrow we will have the power to use DNA evidence to solve other crimes where there's biological evidence for DNA analysis.

These advances are both exciting and daunting for us at NIJ as well, I can imagine, for you in the field.

DNA technology gets cheaper and easier to use. Officers get better at identifying and collecting DNA evidence from crime scenes and states expand the definition of offenses under which convicted offenders must contribute DNA samples. As a result, the backlog of 700,000 convicted offender samples continues to grow.

Equally daunting are the critical questions that surround the impact of this technology on crime and justice.

What is the appropriate population for which to collect an archive DNA evidence? Felons, arrestees, citizens generally? What impact does DNA have on the public trusting confidence of our criminal justice system? What is the appropriate balance between public safety and privacy? I'm not going to address those questions today, but I certainly leave them to you for your consideration.

I would like to talk to you for just a few minutes about what NIJ is doing regarding DNA and other forensic evidence.

We are, one, supporting research to create forensic tools. Two, funding laboratory and database improvements. Three, working with the DNA Commission that Chris has mentioned that advises

the Attorney General and, four, developing guidelines and training products to make technology real to law enforcement.

I would like to discuss each of these in turn. First, research. The power of DNA technology cannot be fully harnessed unless we can make it usable by police officers conducting their daily work.

To fulfill this goal, NIJ began funding DNA technology research and development as early as 1987. In recent years, we have initiated a focused DNA research program budgeted at approximately \$5 million a year with three ambitious goals for DNA testing.

One, affordability; as little as \$10 per test versus \$50. Two, timeliness; to reduce the analysis time to minutes or seconds rather than hours, and, three, miniaturization which would permit portability to the crime scene.

One of the most exciting advances produced as a result of this research investment is what we're calling the DNA lab on a chip.

The potential of this technology allows us to envision a day in the not so far future when a police officer investigating a crime scene would be able to put a piece of biological evidence into a microchip-testing device.

The device would identify the genetic markers, then relay the markers to a computer screen in the officer's car and to a database nationally maintained for possible identification of an offender whose DNA profile may be on record.

DNA testing done at crime scenes may not replace laboratory testing. Analysis done in the field would still be confirmed in the controlled environment of a laboratory to ensure absolute confidence in the results. We recognize the potential to solve crimes more quickly through the investigative leads that could be generated by on-scene DNA analysis.

Next, laboratories and database improvements. As police departments integrate DNA technology into the investigative process, there will be major implications for the country's forensic laboratories.

Currently, demand on the labs to process DNA samples has already outstripped their ability to respond.

In addition, there's a huge backlog of samples to be tested and entered the CODIS, or the Combined DNA Index System, managed by the FBI national database.

Further pressure on the labs results from states expanding the list of crimes requiring DNA samples from convicted offenders.



NIJ has initiated an annual meeting of DNA researchers and crime laboratory practitioners to ensure that our research and development program will continue to address the specific needs of public forensic laboratories.

To date, NIJ has invested more than \$35 million, still far too little, to upgrade and improve the capabilities and capacities of more than 130 separate state and local laboratory facilities.

These funds, which have supported equipment and supply purchases as well as staff training, have contributed to the growth and participation in state and national DNA databases.

NIJ plans to continue this funding program to improve our nation's crime labs while expanding it to support all forensic disciplines.

NIJ has also committed \$15 million to fund private DNA labs across the country to expedite the analysis of state's backlog convicted offender DNA samples for entry into the national database.

These backlog samples represent an untold number of crimes that could be solved with the availability of this information. We anticipate investing another \$15 million into this initiative next year.

These investments represent a staff, all be a small staff, towards reducing the backlog and creating a national system that takes full advantage of DNA's power to both incriminate and exonerate.

Third, I mentioned the DNA Commission. The future of DNA evidence was becoming an issue of critical national importance in 1998 when Attorney General Janet Reno asked NIJ to establish and staff the National Commission on the Future of DNA Evidence.

This prestigious group, which has been chaired by the Chief Justice of Wisconsin Supreme Court, Shirley Abrahamson, and directed by Chris Asplen, includes members with diverse perspectives, including four members representing law enforcement.

The Commission's job is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system from the crime scene to the courtroom.

The DNA Commission will hold its final meeting in November and is preparing its final report to the Attorney General.

NIJ anxiously awaits making the findings and recommendations of the Commission available to the field.

We've already published the minutes of the Commission, as Chris has mentioned, as well as several reports of the Commission on NIJ's web site. We can only imagine the next generation of investigative tools.

To support the development of these technologies and to deal with the issues that new technologies raise, NIJ established an Investigative and Forensic Science Division dedicated to developing and refining new tools for investigators and forensic scientists.

This broad program area today, still in its infancy and headed by Dr. Lisa Forman from whom you will hear a little bit later, is likely to contribute substantially to the field in the coming years.

Finally, I'd like to discuss the ways that NIJ gets information out to the field. In addition to meetings such as these, NIJ publishes guidebooks aimed at law enforcement and other practitioners.

To date, we have published guides for law enforcement and other responding personnel on death scene investigation, eyewitness evidence, crime scene investigation, fire and arson scene investigation and explosion bombing scene investigation.

NIJ is also developing training curriculum for law enforcement personnel in these areas.

We've also established two forensic technology centers in Florida that can provide scientific and training support to law enforcement investigations.

Today I'm pleased to announce our newest product, one you'll hear more about tomorrow. It's a CD ROM that virtually takes you through a crime scene and teaches you how to collect, excuse me, how to identify, collect and properly store DNA evidence. We're very excited about this product and we look forward to your feedback.

We've come a long way, but there is much work left to do. DNA evidence has the potential to establish guilt through unique identification, to exonerate the innocent and to improve the efficiency and efficacy of the criminal justice system.

Making DNA a valuable investigative tool for law enforcement officers on the street is the first step towards making this a reality. Thank you for participating in this all-important summit, and I wish you well. Thank you

(Applause.)

MR. ASPLEN: Thank you, Julie, and, again, we greatly appreciate your continued support of all of the work that the Commission does.

There are a number of reasons to thank and applaud our next speaker, Chief Terry Gainer, who is the Assistant chief of, Executive Assistant Chief of the Metropolitan Police Department.

The different reasons are as follows: Number one, he is an active participant in the Commission as one of its commissioners and an important voice representing law enforcement in that area; however, he also took up the responsibility of actually chairing the working group for crime scene investigation, and as such, has been the leader in the division for that particular working



group and particularly some of the products that you will see that we've created to help law enforcement with training and educational issues regarding DNA technology.

He has been, again, an important voice in both of those areas; however, the third reason that I personally thank him is because I happen to live in the District of Columbia, and the leadership that both Chief Gainer and Chief Ramsey have shown in the District of Columbia and the Metropolitan Police Department has just been tremendous.

There have been so many wonderful changes in the District over the past couple of years that it's nice to be a proud citizen of the District of Columbia.

To give you a little bit of an idea of Terry's background, Terry was for a long time a homicide detective in the Chicago Police force. He's also a decorated Vietnam veteran.

Ultimately, his talent and credibility got him to the position of being appointed by then Governor Edgar as the Director of the Illinois State Police, and it was as the Director of the Illinois State Police that Terry oversaw the development of one of the largest and most sophisticated crime laboratories in the country.

So Terry understands and speaks well of the value of forensic science and particularly understands, and has a wonderful vision for, our ultimate application of DNA evidence in the criminal justice system. So with that, Chief Gainer.

(Applause.)

MR. GAINER: Thank you. Good morning, and thank you for that nice introduction. I guess it stands to reason that the person closest to the meeting is the one that's latest. The downside is going to the office for a couple of hours before this to try to get work done and the last person coming in saying, Can I talk to you for five minutes? And I don't know about you, I don't know when the last time you had a substantive five-minute conversation, so I apologize for being late.



Chris is much too kind in the introduction. One of the other reasons is that we're such good friends is I live nearby him and my daughter occasionally baby-sits for his daughter and doesn't have too short of notice, and sometimes I have to drive her over there and pick her up. That's one of the other reasons.

Can I also take a second to introduce the members of that working group are here because a lot of people work very hard. So would you mind just standing up and turning around here by working group. Police chief and you guys as well. Thank you very much.

Those are the ones that have really put together some of the products that you'll see over the next few days, but on behalf of Chief Ramsey, welcome to the District of Columbia. We think it's a much safer place, and we've tried to build on the proud history of what's going on here.

I certainly appreciate DOJ and NIJ and Attorney General Reno for getting us together. This is one of the groups that you feel a little hesitant about speaking to because I really feel like we're almost lecturing a choir.

So many of you and I have worked together and you know a lot about this area, but I think it's appropriate that I try to frame a little bit some of the issues that we'll be dealing with over the next two days.

It struck me as we begin this in this technology area how wonderful and magical technology is in our profession. Global -- GPS, Global Positioning System, pinpoints where we are.

NDTs were replaced by MDCs before we got them in most of our cruisers and squad cars, and now our officers, I suspect like yours, those are the 21st century lamented they're too slow, they're broken down too much and they can't seem to get the information that they want or they lack access to the type of data that they really need in the field.

Lo Jack, of course, helps us find stolen cars and dark becomes light with the night-vision scopes that now everybody demands.

Nextel, Startecs, pagers, encryption, 800 megahertz, trunking, 911, 311, 711, \* 77, communication possibilities all seem pretty endless, and hasn't videotaping changed law enforcement just a little bit across the United States, yet most people over 30 still can't get the VCR to stop blinking 12:00 hours or nearly every power-point presentation I go to requires a platoon of staff to get it working and to keep it running.

Aren't we still confounded by our own inability in own our agencies just to effectively and meaningfully communicate and get our word out to the troops about policies and procedures and core values.

But undauntedly to continue, our officers are more intelligent, they're better equipped, more scrutinized, diverse and stronger for it. They have a wonderful sense of community policing and problem solving, and they have high expectations of us now that, excuse me, and they have a wonderful expectation of us, even if I can't say it, but also technology has helped our opponents.

Laser beams guide their high-capacity weapons, encryption shields their evil messages in white-collar crimes. They scan our radios, tape our tactics and now some even contaminate the crime scene. They see the value of DNA spreading someone else's seed or sweat or practicing the rapist version of safe sex, a hood and a condom.

There is, however, a constant through all of this technology I think over the years. It started from Robert Peeland and it goes today.

It's the fundamentals of criminal investigation, and they remain firmly, solidly and happily intact. We have good, proven, understandable, legally accepted methods for reconstructing the past, linking cases, identifying suspects, freeing the innocent, testifying in court, and most importantly, preventing crimes because that's I think what our main business is.

Now, don't be put off by the inability to pronounce or remember what DNA stands for. It isn't as Chief Ramsey reminds me what we meant when completing forms years ago, Does not apply.

Don't worry that lab directors and forensic scientists and examiners or lawyers speak about RFLP or STR or genetic markers, although each player and concept does have a part in our little drama.

Soon DNA technology, DNA data banks, post-conviction testing will be as meaningful to all of us and our officers as striations, ridge endings, loops and whirls, mug shots or gunshot residue tests.

We in law enforcement must then address some of the fundamental issues which became very obvious to us as the Commission proceeded through our business in the past two years.

First is the identification and preservation of evidence right for DNA technology.

Let me give a couple of examples. First, the toothpick which most of my group got tired of hearing me talk about, but I recall shortly after getting to D.C. looking at a crime scene photo of a very heinous crime where three people were murdered, and that crime scene photo, was a toothpick laying on the floor.

When we did some investigation in that case, it turned out the toothpick was not recovered.

Now, happily, it didn't ultimately play a role in that because through the two years of work we found the right person, he's pled guilty, but it demonstrated the missed opportunity to pick that toothpick up and use it and capture the DNA that might be on there. We would just have to just look at a crime scene a bit differently.

Another example, one that we nearly beat to death, if you'll pardon the segue, was the baseball bat. On our tour of some of the nation's fine police departments and labs, we met with someone who showed us a baseball bat, and picture that bat, if you will, not in the hands of Sammy Sosa or Mark Maguire, but of a felon, and he takes the bat in a fit of rage and plunges it into the head of the victim several times blood splattering over the room and catching on the bat and the bat falling to the ground and the officers coming and doing those fundamental things that we do in crime scene investigation.

Our first reaction, I believe, would be, as I was trained at least, would be to concentrate on that bat. Again, we're assuming a lot of things have happened to that, but we would be looking at the

blood on the end of the bat, and what this innovative police department did with the technology, detectives and the labs concentrated on the holding of the bat and the gripping of that in anger and the transfer of the offender's DNA to that bat. Again, it just demonstrates how we have to kind of look differently at evidence.

In one of the third examples, I think was one of our favorites, was the fired bullet. Now, this is a case, and the facts aren't particularly, need to be recited verbatim, but it turned out to be a robbery in which shots were exchanged between the offender and the victim and the victim of the robbery in that store got off a couple of shots and felt pretty confident that they had hit the offender.

Now, the offender made good his escape. There were no video cameras running in this particular convenience store. The offender was not very well described, not much evidence to go on, but the detectives doing what good detectives did, went out and started scouring some of the hospitals to, in fact, see if the offender might be located.

Lo and behold, someone walked into the hospital complaining of a through-and-through gunshot wound to the arm.

As you might suspect, the story that they gave that detective is the one you've heard a million times, they were walking down the street, heard a noise and suddenly were shot in the arm and knew not where it came from.

How many times have we heard a story like that? Now, here's the interesting, enterprising thing that those detectives did unlike what we may have done in our career.

Instead of pulling that bullet -- the crime scene was processed. There was a bullet in the wall, and instead of just traditionally taking that bullet out and sending it down to firearms for it to be tested in the hopes that either IBIS or drug firer or brass catcher could link that baby up, they first sent it to be checked for DNA because the thought was that perhaps the bullet passed through the offender, and that's exactly what had occurred. They linked the offender to that case from the recovered fired bullet in the wall.

Again, I don't think we routinely think of that when we're processing bullets. In any of these cases, it doesn't mean we're always going to be successful or the evidence will always be there, but it certainly is an indication of how we should treat the crime scenes differently.

We need not be traditional in our thinking. Now is the time to be thinking out of the box, way out of the box. DNA isn't just for murder and sex cases, and it isn't just blood and semen.

Let me give you an example of one other case, and this one I believe was down in Florida and you'll see the training value of this tape, tape on the CD that the Director was talking about.

This is a case which was a sexual assault. The detectives felt that they had narrowed down a suspect, but still couldn't tie the suspect to the case. They did not have enough probable cause to get a warrant to get any biological samples from the suspect.

What they creatively did was, in happenstance, following the offender one day saw this offender spit a nice hocker, a goober on the street. Now, I'll have to tell you, I looked it up. Neither of those words are in the dictionary, neither hocker nor goober, but I do believe it's a technical street term for what we all understand.

What those detectives, with the use of a bit of serendipity, did was get out a Kleenex, bend down and pick up that spit, took it in and processed it to the crime lab and lo and behold, the truth of the matter is the DNA from that sample matched up to the offender and they solved the case.

Now, all of these raises different issues, search-and-seizure expectation of privacy, litigation, fairness, all good issues all of which have to be debated, all of which the Commission spent some time and hopefully we'll get into a little bit here.

The second issue is very much related to the first, and that's laboratory overload. What we do take there? This is our issue. It is not to be viewed just as the lab or someone else.

There will clearly be more lab work. And do they have the capacity to handle it? And do you understand your obligation to tell your elected officials whom when we talked to them said, I haven't heard from my Chief of Police that this is a problem for them? But do you understand the funding that needs to go into lab expansion, the hiring of examiners and scientists, the providing of the latest equipment and the expansion?

Chris mentioned the work that was begun in the Illinois State Police. There are many state agencies that I'm personally aware of that have done tremendous work in here, and you'll hear from some of them, Virginia, Florida, California, Michigan.

I see Director Sam Nolan here who started and ran our lab system for such a long time and has now continued as the Director of the State Police running that lab system.

I have also sat and talked with another one of our members, the Director of the Virginia system who you'll hear from who tells the horrifying tale that he personalizes that because of the queuing that was going on in the lab, they didn't get to all the rape kits, and one of the rape kits sat in the cube, and lo and behold had that been processed, the director tells us, it would have matched with an offender in the database who was still on the street.

Prior to that lab getting that lab, that sample tested, that rapist raped and murdered again. Paul takes that serious. All of the lab directors do, and I think we have to share in our responsibility to ensure that the labs have the funding and the support they need, and we've got to squeeze our elected officials to make sure they do that.

A third issue, databases. It's been mentioned several times. Using computer info to link, hold old cases or suspects or suspects to cases yet some state databases aren't up and running. Almost half are not connected to the national database. Terrible, terrible missed opportunities.

We have nearly 1 million untested DNA samples of convicted offenders whose DNA profiles should be in those databases.

Don't you think we're missing an opportunity to link a case to a suspect or a case to a case, bring closures to victims and free the innocent and prevent a crime?

How many believe sex offenders are repeat offenders? How many have a pretty good understanding of that? Of course we do.

Do you know that we have over 180,000 rape kits that have never been processed, that are either sitting in our police departments, in our labs or, I dare say, might be in someone's trunk as we speak today; 180,000 kits.

Now, not all of those will provide the information we need, but some of them could, and I think it's a crime that somehow the system has not pushed that issue quite a bit more.

A fourth issue, first responder training. All of the fundamentals of criminal investigation, as I said, still apply and then some. Environmental considerations are extremely important. Contamination problems even more critical.

Remember, testing under one process needs a pinhead sample; under another process needs much more, the size of a quarter. Contamination is very important.

The question about paper or plastic is much more important here than it is in the line of the checkout counter at the grocery store.

The fifth issue -- Chris mentioned it -- old cases. Old homicide cases, as you know, the clear-up rate generally across the United States hovers somewhere around 60 percent. Forty percent or so every year go unsolved.

How many of those cases would yield information about connecting one to the other, connecting to offender if we processed the DNA cases?

Now, again, you'll see that almost every one of these issues raised again goes to lab capacity in the problem there.

Chris mentioned, and you'll be happy to see, that again with San Diego the very forward-thinking process they're using on how to handle the cold-case issues.

The sixth issue is I think from whom should we take DNA samples. Commissioner Safir of the New York Police Department has been one of the very verbal proponents of taking and testing all arrestees, not just convicted individuals of sex or murder cases, which seems to be typical in many jurisdictions, but all arrestees.

Think of the debate issues in this, in this particular issue, collecting it from everybody, volume, search and seizure, retention of samples, the use of samples for other than law enforcement, current backup, crime prevention. All -- there's yin and yang to this. All need to be discussed, very much tied to lab capacity.



The sixth issue, again, the Director mentioned this, where we use DNA outside of the typical murder/rape/sexual assault cases, burglary and auto theft.

There's some very good information both from the United Kingdom and right here in jurisdictions in the United States that very much link the progression of crimes from property crimes to personal crimes, from burglary to rapists and murderers. And who of us are even working those issues?

The seventh issue, the statute of limitation in rape cases, again, you're going to hear from San Diego or, no, Milwaukee, excuse me, who has an unbelievably brilliant, bright, forward-thinking idea that rather than let DNA or, excuse me, rape cases fall because of the statute of limitations, very progressive, tested their kits, linked case to case and then went out and got John Doe warrants on the offender when they're identified. That's about as forward thinking as you can get.

And the eighth issue, which I think we could probably spend days on, is the whole death penalty question; our moral and legal and ethical obligations concerning that; how we hold the evidence; the destruction of evidence; the finality.

It certainly is tied in with what we do, and there has been some accusations that we in law enforcement have not been very forthcoming in holding on to the evidence, producing it when it's needed or when there's a hint that there's some type of appeal to destroy that evidence. I think we have an obligation to discuss that and take an opinion.

Now, this confab, us getting together, I think you'll see with the workshops that are set up will directly address many of these issues, and I believe it is our obligation to take and form opinions on those, offer and send our cards and letters and notes to those who help set policy and allocate dollars, and I think you'll find, as I have, over the last couple of years really focusing on the DNA that there is tremendous, tremendous possibilities.

So I look forward to working with you over these two days, and this little DNA technology tag you have is the official Washington one get-out-of-jail free card for anybody attending the conference. So thank you very much.

(Applause.)

MR. ASPLEN: See what I mean? What I didn't tell you about Chief Gainer, because I didn't want you to have a bad opinion of him before we started, was he also happens to be an attorney, and I think you can see that -- I don't know if that was the reason, but perhaps that's part of it, but he certainly knows how to make a point, and I think, again, his vision and his advocacy of the issue I think is very clear. Again, we thank him for that.

The next speaker, Dr. Forman, is going to essentially give us kind of a primer on DNA technology, and we thought it might important that we take some time to kind of level the playing field.

There may be some of you out there who understand DNA technology very well. I know there are some of you out there who understand DNA technology very well, but there are probably just as many of you out there who may not know the first thing about DNA and DNA technology.

So we thought it important to ground us in some general information about what it is that we're dealing with, and perhaps there's probably nobody better to do that than Dr. Forman.

Dr. Forman is currently the Deputy Director of the National Commission on the Future of DNA Evidence and in that regard is an integral part and integrally responsible for the Commission's success for this reason:

As the Director of the Commission, I have to bring certain advantages to it. One of those advantages is not in any way, shape or form a scientific background. I'm an attorney by nature, but the great value to the way that the Commission was structured is that Dr. Forman is in her own right a practicing forensic scientist or was a practicing forensic scientist at Cellmark before she came to the National Institute of Justice.

She received her Doctor of Philosophy in anthropology from New York University and was an analyst at Cellmark for years. Dr. Forman has been through the DNA wars. She was one of the people out there in the front lines of the courtroom arguing the reliability of this science.

Dr. Forman is one of those people that is responsible for our ability to use DNA in the courtroom. She's also been an exceedingly important advisor to law enforcement agencies, to District Attorneys all across the country who need the kind of primer we're talking about here, but need to know what the DNA means in their particular case, what does this result actually tell me.

Again, she is one with not just a firm, incredible grounding in science, but one also with a tremendous vision for the potential of DNA technology, but her vision goes beyond that.

She's also the Acting Director of the Investigative and Forensic Science Division for the Office of Science and Technology at the NIJ, National Institute of Justice, a recognition that there is just more than DNA out there than that while DNA provides us a wonderful example of the power of technology, as do other things, that Chief Gainer mentioned, but now there's a resource that law enforcement can come to talk about these issues and get assistance on these issues and to do research and development on some of the newer technologies that are coming out, and again, that capacity is extremely important, and Dr. Forman has that kind of vision. So with that, I would ask her to come and educate us.

(Applause.)

DR. FORMAN: Thank you, Chris. That's a nice introduction. In point of fact, there are many people who could present this material; however, it's one of my favorite things to do, so I'm only too happy to be doing it.



If we could get a cadre of individuals up here to -- no. Actually, I think I can probably handle this one -- to get this started.

What I would like, if at all possible while we start, is to get a lapel mic because I like to run around and point at things on the slide. Thank you.

Okay. I have a little bit of housekeeping to do and that is ever, ever the tweaker, your information about this particular talk is laid out near your seats in a conveniently three-holed punched format which will give you sort of a run through of the slides that we're going to be talking about today, but also, I have to say, you know, come midnight that little power-point presentation was staring me in the face, so, of course, I tweaked it.

The one that you have, the one that you have in your folder is going to be a little bit different from the one that you'll be seeing right now.

We're talking about DNA evidence, so I'm going to give you the DNA 101 version. For those of you who already are familiar with how DNA works, what it is, how you can use it in the crime scene and what kinds of technologies might be coming down the pike, I hope that I will be able to add for you a few new analogies, a few new ways of saying things to add to your presentations.

For those of you who are not familiar with what DNA is, how it works, why it's such an important investigative tool, I hope that I give you a little thumbnail scale of something you can use to begin to understand what everybody is talking about when they talk about DNA.

So faster than the speeding bullet, more powerful than the locomotive, why is DNA such an important investigative tool?

I'm going to put this word up once, and I'm never going to put it up again, deoxyribonucleic acid. You only have to spell it when you're an expert witness in court because they hope you'll mess it up and then they can discredit you.

But in point of fact, the reason the DNA is so important is because of a couple fundamental characteristics.

First of all, as has been mentioned, DNA has a very high information content. With a very small sample of DNA, it is possible to uniquely identify the source of that DNA to a reasonable degree of scientific certainty to examine the person who left that DNA except for identical twins. So that is the essence of what makes DNA the most important forensic addition to evidence analysis since the fingerprint.

There are some other important aspects about or characteristics about this molecule, this DNA molecule that are important, and what I've done is just put up, you know, just a regular bunch of stuff that could happen in any old crime scene, randomly chosen, to show you that DNA can be found on any source.

You can get DNA evidence off of any kind of surface. You can get it off of mud. You can get it off of wool. You can get it off of rock. You can get DNA, you can get blood from a stone, and it is very robust. It is very durable.

So DNA evidence can last not just for the days that you could sometimes get serological evidence off of a sample, not just for the weeks that you could get other less useful serological markers off of a sample, but for years.

We are routinely, not regularly, but routinely, when we attempted, solving cases with DNA that are 20 and 30 years old.

So those cases that have been sitting on people's bed posts all of those years, there might be a solution for them. There might be an absolute solution for them, and that is the true power of DNA; its uniqueness, its ability to uniquely identify one person is distinct from another and its ability to stay on the evidence for a really long period of time.

Now, we're going to do a little basic background now. Is this working? Okay. I need 14 people to turn on the mic. I'll speak loudly for a moment and hand this off to my technology wizards over here. Can everyone hear me? Is it okay?

Okay. All right. This is the part where if you were watching television right now, probably between 30 and 80 percent of you would click the remote. All right. But we're going to do it anyway because DNA is actually very simple, very easy to understand.

DNA is an organic substance which is found in the nucleus of cells. Now, this is the part where about a third of the jury says, Cells? What's cells? And I remind the jury that probably some of them have even eaten cells for breakfast because, in fact, an egg is a specialized cell.

It has the outer membrane, the white of the egg. The albumin of the egg is the cytoplasm, and the yolk of the egg contains the chromosomes or the nucleus. It's the nucleus of the egg that contains -- it contains the genetic material which is where the DNA is located.

The DNA is comprised of four building blocks called bases. The bases have names. I won't bore you with the names. I'll just tell you the initials. The initials are A, T, G and C, and it is the arrangement of these bases in the DNA molecule which determines each one of our individual characteristics.

There is a certain structure to these bases. They can only go together in a particular way. A can only bond to T and T to A; G to C and C to G. That's the only way that this molecule can be together in a stable fashion.

The structure of DNA is like a ladder with the rungs of the ladder, these alternating base pairs, A-T, G-C, C-G, A-T and so on, and the sides of the ladder are sugar-and-frosting bonds, and then the entire ladder is twisted around itself to form that famous double-helix shape that Watson and Crick won the Nobel Prize for in the late 50's for discovering that shape.

Well, now that the remote has been used to click on to anything, I Love Lucy reruns, anything is better than this, right?

Let me just tell you that, in fact, DNA is so easy to understand. If you are, if you have a primary language that you can speak to another person that gets your wants met; Could you fill up the car with gas, please? May I have a Coca Cola? Which way is the bathroom? If you can say all of those things to another person and they can respond to you in a way that identifies that they understood what you said and meets the need that you have, you can understand DNA because DNA is simply information.

Like English, DNA has an alphabet that I just mentioned; A, T, C and G. It's got a four-letter alphabet. We deal with a 26-letter alphabet every day all the time.

In fact, the rules of our alphabet are much more difficult than the rules of DNA. I've told you that A and T must bond together or T and A to form a rung of the DNA ladder. G and C or C and G. We have much more complicated rules in our regular, everyday language.

For example, Q and U are the only things that can go together. Can you explain to an eight-year-old child why, S-N-O-W, is snow and, N-O-W, is not snow -- I said it wrong, but you get the idea.

The rules in English are much more difficult than the rules in DNA. Going along this analogy, the alphabet that we have is used to make up these different words.

The As, Ts, Cs and Gs in DNA are used to make up the genetic equivalent of a word, which is a codon, a unit of information that imparts a particular specific bit of information to your body.

Just like words are strung together to form a sentence which gives you a much more comprehensive idea of a notion than just a word, codons are strung together to form a gene, a structural unit of information that tells your body something that it needs to do, something that it needs to make. Just like a sentence can direct you, the gene directs the body.

Sentences are woven together in a book to form a chapter, so there's something integral about all of those sentences that start you out at the beginning of the chapter and get you someplace at the end of the chapter where you have more information about what was going on than you did before you started the chapter.

Exactly the same is true when you string the genes together along a chromosome. Each normal human has 46 chromosomes in each of their body cells. So there are basically 46 chapters to a human book.

Going along this analogy, a chapter, again, is woven into a book. A book starts at the beginning, builds up in the middle, all the kinds of books I read because I only read mysteries, but there you have it, starts at the beginning, builds up at the middle and concludes at the end.

So there's a whole unit of information that by the time you're through with this particular book, you have a complete idea of what occurred that was supposed to be the plot that you were supposed to understand.

In DNA, all of the chromosomes together combine your DNA book. They make you uniquely you. Your human book, a book of all 46 chromosomes in a normal human complement is called your genome and many people have probably heard about the human genome project which finished way ahead of schedule in terms of identifying how those letters of that DNA alphabet, those As, Ts, Gs and Cs, sat next to one another in one person, one genome, one human being's genetic book.

They can now read one complete book of a human being, and by having that one complete book of a human being, we will now be able to take little snippets from everyone and line them up as though it was a road map. Lining up against that one genome map, we can start mapping the rest of what it is that makes us each a unique human, a unique being.

There's one other word that I want to throw at you right now, and that word is synonym in my analogy. We all know what a synonym is. It's that little bit of flavoring that makes a word mean something that is the same, but gives it a little bit of different flavor throughout the book.

So in one of my fantastic murder mysteries, I might read that the blood flowed like crimson. In another page, I might see that the red hue of the blood, the rosy hue of the blood, the rosy this, the rosy that. You can see why I like this particular business, this applied science of DNA and law enforcement. It's really right up my alley.

Okay. So there's a way of making this book have a flavor with its different synonyms. The DNA alphabet has a flavor as well.

While people have to be fundamentally the same, there will be places where the DNA will be different. And these places where the DNA different, is different, the genes in those places are called alleles.

An allele is the synonym of a gene just like the synonym of a word for red could be crimson or rose or any of those other hues. Okay. I've probably beaten that one to death, but that's sort of the background of how you can understand DNA.

That having been said, you also need to know that DNA is a very orderly molecule. I said that you should think of DNA like a ladder.

Well, if we were going to look at a DNA ladder in each human being, that ladder would be three billion rungs long. It takes a book of seven feet thick to read an entire genome. That's how much information is compressed in each one of your cells.

So we have a very orderly molecule where the genes are arranged pretty much in the same fashion or exactly in the same fashion for all human beings and those genes are comprised of three billion pairs of bases.

Now, let me talk to you a little bit about the axioms. Here is the dogma that we recited about DNA.

First of all, we always say that no two people share exactly the same arrangement their 3 billion base pairs. Everyone is unique in their DNA, and we usually say except identical twins.

As we progress further understanding how the human genome is different between people, we will find differences. We have found differences between identical twins, but for the time being, let's just say no two people, except identical twins, share the exact same arrangement of whether they have a T next to an A next to a G next to a C, and I've only said one half of the rungs because if I say they have a T on one part of their rung, they must have an A as the other part. So I just read you one side. Okay.

However, we say 99.9 percent of all people's DNA is indistinguishable. That means that you can get on a plane at National Airport, get off the plane in Sidney, Australia and immediately tell the difference between a bushman and a bush because there's great conservation between the way the DNA is aligned in all people.

Most of your DNA is exactly the same for all people on the face of the earth and probably has been for millions of years and probably will continue to be for millions of years.

Well, now how can we say that DNA is such a uniquely identifiable way of screening who left crime scene evidence if we have to say that 99.9 percent of all people's DNA is absolutely indistinguishable? How can we say that no two people share exactly the same arrangement of their 3 billion base pairs if 99.7, 99.9 percent of them is absolutely indistinguishable?

Well, what you have to remember is that 99.9 percent is most of the DNA, but one tenth of one percent of 3 billion is 3 million.

So there are 3 million sites all along this DNA ladder where you could differentiate one person as distinct from another, and I just put up this picture of Wilt and Willy because via de la France, 3 million base pairs different and that's what it leads to, but, of course, you really just have to look around at your neighbor and identify that there are no two people in this room who you couldn't differentiate from one another.

Okay. So a little basic background. We talk a lot about DNA markers. A DNA marker is simply a distinguishing DNA characteristic. That's all a marker is.

In forensic DNA today, the year 2000, we are trying to have every case to look at 13 different markers, 13 different spots, 13 different genes, if you will, although they're not exactly genes, but 13 different places along the DNA so that we can distinguish one person as separate from another based on their evidence.

All right. So let's go through what you actually see. This is the part where you all become experts. Okay. So DNA markers can be used to differentiate people and the more markers that you use, the more uniquely you can identify one person as distinct from another.

What we have here is a representation of 24 people, person one, person two, person three, person four, etcetera displayed across this analysis. There are flanked by these funny looking things which are simply molecular ladders.

These molecular ladders function as rulers. We run them on all analyses so that when we have somebody's DNA we can line it up with the ruler and identify what characteristics that person has in relationship to the ruler. That's their only function.

Let's take a look at the particular set of 24 people, 24 people who were looking at it one genetic characteristic. Remember, I said that we're going to look at 13 characteristics, 13 markers, we're going to try to do that for every forensic case and we are going to do that for every convicted offender. This is just one.

I think that you will agree that you can differentiate one person is distinct from the other for the majority of these people.

For example, you could differentiate this person from that person, right? This person and this person, person two and three, each share one characteristic, but they are different at the second characteristic. Easy as pie to tell them apart, right?

The fourth person, complete differently from the other three and so on. You can let your eyes wander along, but you'll see -- every once in a while, you'll see somebody who you can't differentiate. For example, this person and this person.

I wouldn't be positive that these two were from different people, would you? I would have to say, I don't know. I need to look at another marker before I could tell you. I might have to look at two, three or four more markers, but by the time I was through looking at 13 markers, I should be able, I will be able to differentiate one person as distinct from another. Here's another characteristic that you should know about DNA.

You can differentiate even closely related individuals. For example, here is a mother, a father and a child. Each child inherits one characteristic from each of their parents and each of the characteristics that you need to become a human being. So this child inherited this characteristic from his mother and this characteristic from his father.

Well, these people could also have a child that looked like this and this or a child that looked like this and this or a child that looked like this and this or a child that looked like this and this. There are many ways that each child can look for each of the genetic characteristics. So that using this kind of genetic identification with all of its different alleles, with all of its different synonyms, each one of these is a synonym, allows you to differentiate even closely related individuals.

Okay. I'll come back because now it's quiz time. We're going to make everyone here an expert and, again, I just picked any old analysis just out of the archives just for fun.

Because this was so large, I had to put it sideways, so we're going to read this one sideways. All right. Now, let me orient you before you take this quiz. You see a sign up at the top that says

Lamda and down at the bottom it says Lamda and another sign under there that says 1 KB and a sign down here that says 1 KB and one in the middle that says 1 KB. Those are all molecular rulers. They're all run there so that you can size the fragments of the evidence characteristics or the known standards for the people to whom you would like to compare the evidence characteristics. Again, this is one molecular marker, no more.

You also see a lane marked TDS with two bands and a lane down here marked K 562 with two bands. Those are known human controls. Those people's DNA have not been sequenced for this particular characteristic, we don't know their exact A-T, G-C next to one another for this characteristic, but we've looked at their DNA so many times that if this pattern does not appear when you're looking at this genetic marker, something is wrong. It's a clue.

You don't want to count on the analysis unless your positive controls are accurate, and I'll tell you that the ladders ran or the rulers ran very nicely and the positive controls ran very nicely and you can count on those.

Now, let's look at the evidence. Let's see here now. We have number 52 Bundy. Does anybody see a set of characteristics in the lane marked number 52 Bundy? Are they light or dark? They're light because there was just a tiny bit of DNA in that sample.

This kind of analysis, by the way, is called RFLP analysis, and I won't bore you with the actual name of it, and this is based on crude abstracts directly from the DNA itself.

So whatever was on the evidence, however many cells were on the evidence, those cells were broken open, popped open, the DNA was purified and then it was analyzed to reveal a pattern.

When there's a very light pattern, it means that there was a little bit of DNA. There were very few cells. Okay.

In the next lane, you see a lane marked 78 Boot. Does everybody see a pattern there? You should be seeing two bands. A little bit darker. There was more DNA there. There were more cells there.

The next lane is marked number 12, Foyer. A little bit of DNA, lot of DNA?

THE AUDIENCE: A lot.

DR. FORMAN: A lot of DNA. Probably 3, 4 million cells worth of DNA right there. So that's the evidence from which these patterns were obtained.

Now let's look at the known standards that were provided by people who may or may not have been involved in the case.

You know, we put their names up here, but it could be anybody. Maybe somebody out golfing lately, I don't know.



So O. Simpson, do you see anything that matches up with O. Simpson from someplace like Bundy, for example? Okay. Anyplace else?

THE AUDIENCE: Foyer.

DR. FORMAN: Number 12, the foyer. Okay. Again, not from Rocking Horse Drive, wherever that might be.

N. Brown, do see any samples that match on N. Brown? Number 78, the Boot?

R. Goldman. R. Goldman shares a characteristic with N. Brown. He is easy to differentiate from N. Brown because he only has one and she clearly has two. So you would never say if you saw these two patterns together that this person is this person. Okay. However, he could be masked in that number 78 Boot sample. We don't know. We don't know if he's there or not.

Does everybody feel comfortable reading these? . You're all experts. Congratulations.

Okay. Let me tell you a little bit about the kinds of technologies that you're likely to run into. I imagine that that last technology was RFLP technology. It is the technology that, as Chris mentioned, I spend a lot of time in court talking about. It's reliable, yes. Okay. It is incredibly reliable; however, there are some limitations to RFLP that mean that it is a passing technology.

RFLP is, requires a stain the size of between a dime and a quarter. There has to be about a million good cells before you can reveal an RFLP pattern, and while a million good cells is really not a very big stain compared to what we used to need for serology and the level of freshness that we needed for serology, it is still a fairly large stain.

RFLP is also very technically demanding. Lots of hands on, lots, limited automation, and it also requires a fair amount of time to provide an answer.

The actual work can be done in about a day to two days, but to reveal a print can take much, much longer, sometimes even weeks. So that's just not very satisfying when we know that we can turn to other technologies and, in fact, the forensic community since 1992 has been marching towards other technologies.

Those other technologies are based on the method called PCR, polymerase chain reaction.

The polymerase chain reaction is a way of copying or amplifying a small sample of DNA into a large sample of DNA.

Remember I told you that DNA is like a ladder and that the rungs of the ladder are comprised of these alternating base pairs.

Well, it turned out I guess it was around 1990 that somebody figured out that you could unzip these base pairs, you could saw this ladder in half if you simply added sodium hydroxide or heated the ladder, the ladder would pop apart.



But the ladder does not like to be popped apart. Those base pairs like to be next to one another. They work very hard to be base pairs, and so if you add synthetic bases to a ladder that you have effectively sawed in half either with chemicals or with heat, that ladder will reform itself. It will grab a synthetic T to its A, a synthetic G to a C, a synthetic C to a G.

It will keep grabbing them until it rebuilds itself a ladder. That's what PCR. You unzip the ladder, you add some synthetic bases, it remakes itself. Now you have two ladders. You unzip those two ladders. They remake themselves. Now you have four until you have this exponential growth of DNA that you can now test.

It was the realization that you could apply this method to forensic samples that is responsible for the next generation of genetic markers that we'll be using probably for the next ten years.

Those genetic markers are called STRs, short tandem repeats, and they have the discrimination power of the earlier markers, but you can amplify them and you can, at this point at least, semi automate them, and before I'm through, I'll show you that they can be completely automated.

What you see at the top is that representation that I showed you earlier of 24 people for one genetic marker, and this is the way we have traditionally looked at DNA markers since we started using DNA in the late 80's.

So there's one genetic marker, 24 people. This is the way that we're really looking at DNA markers now. It's simply another way of looking at those markers.

Down here we have one person for one, two, three, four, five, six, seven, eight markers, and here's that molecular ruler again down at the bottom. And you simply line up the person's set of characteristics for each one of these funny named markers against the ruler and then you can name those characteristics as to where they fall on the ruler.

So that's the way that we're looking at DNA now, and that's the way the courts are accepting DNA at this point in time. Again, we're looking at 13 different STR markers, and those are the kinds of markers we'll be using in the CODIS database.

So let me tell you a little bit about what's going on now and for the future. We are looking at training, we are looking at tools, we are looking at toys.

We want things that we can give to you now, we want tools that you can use now, and we want things that will make the future easier.

Talking a little bit about training, this is something that you will hear throughout the course of this conference, the National Commission on the Future of DNA Evidence has identified serious limitations in the availability of training to law enforcement.

They have also recommended increases in funding and support to the Combined DNA Index System. Now, how many people in this room are familiar with how the combined unit index system works?

There's -- actually, you're beating the attorneys guys. It's usually only about two of those that raise their hand.

The Combined DNA Index System is a computer system that is based at the FBI that allows states to input the DNA profiles of people convicted of certain enumerated crimes in their own jurisdictions in to a national database so that those profiles can be searched nationwide by all participants who have identified biological material at a crime scene. It's a very powerful tool. It will save incredible amounts of investigative time if you can simply identify quickly whose DNA is left in a crime scene.

If that person has been previously convicted of an enumerated crime and their DNA sample is in the database, you will get a name and address associated, not, not right away, there's a few steps in-between, but you will know who that person is.

As Julie mentioned, we also are putting out a number of products of working groups, guides and pamphlets and CD ROMS.

The DNA tools that we should be talking about and thinking about for today include some of these kinds of laboratory investments that I'm not going to bore you with today, but I'm putting up here so that you can see that there is an active and ongoing effort to provide the community with tools that they can use today to give you investigative information tomorrow.

But the most important tool that we need to talk about here and now is how to implement CODIS in a way that will make your jobs not easier, I don't think your jobs are ever going to get easier, but to make your jobs more effective so that you're not pouring all of your resources, all of your human resources into cases that could be solved in a matter of days by simply searching the database.

Let me talk for one moment about tomorrow's tools. We have a very strong effort undergoing at NIJ to develop tools that, as Julie said, will bring DNA testing to a point that it is affordable for all laboratories, to a point where it is fast for all laboratories and to a point where perhaps some day, if it's appropriate, it can be brought right to the crime scene to become a better investigative aid.

Those include things like new DNA markers. I've talked about the 13 STRs that we will be using for the next decade that are the markers of use for the CODIS database and so you need to use those markers in your casework to compare against, that's true, but there are other genetic markers that we're discovering through the human genome project that can be very powerful investigative aids. Markers like single nucleotide polymorphisms that can be done virtually instantly and on a chip-base format.

Those might be the kind of investigative tool that you take in to the field and then bring back other, other pieces of evidence to be looked at more fully in the laboratory using other DNA markers.

Alu sequences, I'm going to bring them up. I'm a little nervous, but I'm going to bring them up. These are pieces of DNA that allow you to identify fairly integrately the geographic source the original geographic source of the person who left that DNA. They are called ethnicity markers.

So that person's DNA might not be in the database, but you might be able to get a lot of investigative information simply by looking at the DNA knowing what the ethnic background was of the person who left that DNA might be an investigative tool.

Let me emphasize again this is very far in the future, but these are the kinds of things that could be possible with DNA.

We're looking at new methods to make things faster, better, cheaper, well, at least less expensive. Those include time of flight in spectrometry where you can take a DNA sample and look at it for 13 genetic characteristics not in minute, but in 13/200ths a second.

I told the guy that's developing this to take his time. Go ahead. Go for a full second. Don't rush things. But he assures me that he can get it done in 13/200ths of a second.

We're looking at chips. We're looking at the kind of chip that will make miniaturization possible to ease the pain on laboratories who have no space to begin with and possibly bring it to a portable format where it might be a powerful investigative tool.

We're looking at robotics to free up the brains of people to do other kinds of more important work than just extracting the DNA.

So the future of forensic DNA, we know that technology will march on. There's nothing that will stop technology.

How we use DNA in a law-enforcement format, in a criminal-justice format depends on many, many aspects of which the technology is just the kingpin, and I think it's the kinds of discussions that you'll be having here today and tomorrow that will begin to shape out the rest of the way that this jigsaw puzzle can actually work, and I thank you very much for your time.

(Applause.)

MR. ASPLEN: Okay. Folks, I think that's a great beginning to the process. Let's take a 15-minute break, and let me -- when we come back, I'll identify some of our staff in case you need anything, but right now they're out doing things for people. So if you need anything, we'll let you know who they are. Let's try to be back in 15 minutes.

(Recess taken -- 10:00 a.m.)

(After recess -- 10:17 a.m.)

## DNA DATABASES: A POWERFUL TOOL FOR LAW ENFORCEMENT IN THE 21<sup>ST</sup> CENTURY

MR. ASPLEN: Okay, folks. If we could begin with our next panel. We're first going to hear from Dr. Dwight Adams from the Federal Bureau of Investigation.

Dwight is currently the Deputy Assistant Director for the FBI laboratory, and it's fair to say that, you know, if it were not for the Bureau, this DNA database or CODIS would not exist, that it was through their hard work and their research and their development of the software that recreated this database that we're able to access this incredibly powerful technology.

Dwight asked that I keep his introduction short, so I will do that. I will thank him also for his service as a commissioner and simply say that he's from the FBI and he's here to help.

MR. ADAMS: Thank you, I think. I'd like to spend just a few minutes, and it will be just a few minutes.

I noticed my good friend, David Coffman's, number of slides that he brought and it far exceeds mine, so I'm going to give him a lot of my time, he's going to need it, but I'd like to spend just a few minutes and speak to you about something you're already aware of, and that is the power of DNA technology, but I'd also like to venture into the potential that it has and where you can help that potential be realized.



You've all seen in the newspapers pictures like this where every week or every month you see newspaper articles that point to DNA evidence and how it helps to convict individuals.

You've also seen pictures like this where a man by the name of Kirk Bloodsworth was exonerated based upon DNA evidence, exonerated after he spent nine years in prison, after he was convicted twice for the crime of killing and raping a young girl, and this conviction occurred at the time when DNA evidence was not readily available. So it was never performed on the evidence in his case until almost a decade later.

This is Kirk Bloodsworth outside the prison at a news conference the day he was let out following the issuance of a report that same day to the Attorney General in this particular state.

So there's no debate, I don't believe, regarding the power of the technology to point to the guilty as well as to exonerate the innocent.

As Dr. Forman described earlier, we began with a technology called RFLP. That technology is represented as the slide on the left, and that technology has served us well since the middle 1980's, and it did exactly what it was designed to do, point to the guilty and exonerate the innocent.

The newspaper article on the left describes the particular case in Mansfield, Ohio where two victims of a rape identified in a lineup the individual pictured there by the name of Earl Fuller. There was also other circumstantial evidence pointing to Earl Fuller as the rapist, but after DNA testing was performed in our laboratory on the evidence and his known blood sample, we showed that Earl Fuller could not have been responsible for those two rapes, although they were conducted or perpetrated by the same individual.

The police thought that they or we had made a mistake, so they resent another known blood sample from Earl Fuller. We did it again. It showed the same result. We did it a third time. It still showed the same result. They believed us finally, and Earl Fuller was let out of jail.

We ultimately -- the police ultimately identified the right individual, his blood sample was submitted and that individual was ultimately convicted.

I use this illustration to show the power of the technology again of the approximately 20,000 cases that we've worked in the FBI laboratory using DNA technology. About 25 percent of the time we exclude the suspect as being responsible for that crime based upon DNA. That's a powerful technology, one that our old serological techniques of ABO blood groupings and protein markers could not possibly have done.

And as Dr. Forman also mentioned, we are moving into a new generation of technology. That generation of technology is called STRs, short tandem repeats.

It's a powerful technology because it's PCR based. It's much like a Xerox machine. You put in a little DNA in one end and out the other end comes millions of copies. That DNA can be partially degraded as well and it will still work.

So short tandem repeats now allow us to get DNA profiles on evidence that RFLP would never have allowed us to get a profile on.

One example is cigarette butts. RFLP might allow you to get a result about five percent of the time. Using STRs it's nearly one hundred percent of the time that you can get a DNA result from a cigarette butt or an envelope flap or the back of a stamp on an envelope.

I'd next like to talk not only about the power of the technology but its potential, and its potential is becoming fully realized in the use of CODIS. CODIS stands for the Combined DNA Index System, a system that was developed by the FBI for your use.

It's a partnership, a partnership between the Federal Government and state and local governments. It's a partnership in that it was developed by the FBI. A lot of funding has come through NIJ, through the Department of Justice, for state and local governments to implement

something like this, and it's a partnership between the state and local governments to upload their samples in to the National DNA Index System.

CODIS can simply be thought of as two separate files. Actually, there's a third that I'll mention later on in my talk, but for the moment, we'll concentrate on the two files. It's the offender file and it's the forensic file.

The offender file contains a DNA profile for convicted offenders from state and local jurisdictions.

The forensic file contains a DNA profile from crime scene evidence, crime scene evidence that has not been matched to any offender, and it's through the use of CODIS that we attempt to link cases from the offender file to the forensic file or we attempt to link one unsolved case with another in hopes of putting investigators together on the same track of the same individual.

Well, first of all, every state that is represented here needs to be congratulated, congratulated because every state in the United States has enacted legislation requiring certain convicted felons to submit to DNA testing. Some states require all felons to give blood samples; other states list particular offenses in which blood samples will be taken for DNA purposes. It's through these state-offender laws that we build the file known as the convicted-offender file.

On the other hand, the Federal Government has yet to enact legislation that would allow us to obtain known blood samples from federally convicted offenders.

Now, we've worked with state and local governments on this issue since the early 1990's, and yet, the Federal Government has been unable at this point to enact legislation giving us the authority to obtain those same type of samples from persons convicted of crimes here in the District of Columbia, on military reservations or on other government reservations throughout the United States.

Well, what is CODIS and how does it work? This slide just very briefly demonstrates the architecture of CODIS.

CODIS can be found in 114 laboratories across the United States in 43 different states. There are more laboratories that do DNA testing, but these are the ones that currently have the software of CODIS in their laboratories.

CODIS, for example, could be within the crime laboratory in Tampa, Florida you see in the bottom lower left. Tampa, Florida may have an unsolved rape case that they're working. They get a DNA profile from that unsolved rape case and they can compare it, using CODIS, to any other unsolved rape case that they have there in their local system.

They can also send that unsolved rape case profile to the state database system for Florida and ask that the unsolved case be compared against any other unsolved case in Florida or against all convicted-offender samples that are within the State of Florida.



Then if no matches are found, that sample can be forwarded on to the National DNA Index System, NDIS, and compared against any state that contains profiles for other unsolved crimes or for convicted offenders.

Now, currently all 50 states aren't a part of NDIS. Slightly more than half of the states are currently a part of NDIS, but soon, through the work of the FBI and state governments, we will have many more states on line nationally.

But suffice it to say that the system is in place, it's a powerful system, but it has the potential to show and to solve many more crimes throughout the country.

You're going to hear about some of those examples later on by our next two guests. You can also read about some of those examples in the pamphlet that I've provided in the back of the room. That pamphlet is entitled CODIS.

Well, how do we measure the success of CODIS? Well, we do so by looking at investigations aided.

Investigations aided is simply one of two forms. Either we've linked two unsolved cases together, two or more unsolved cases together, or we've linked an unsolved case to a convicted-offender sample.

Now, it's not by happenstance that our next two speakers are from two states, Florida and Virginia, that are two of the more successful states within the country in implementing the use of CODIS here in the United States.

If we look at Florida, for example, at least in May of 2000, they had over 300 investigations aided in the short amount of time that the national system has been up and running.

Likewise, Illinois, Virginia and a few other states have also shown how successful this system can be in linking cases together or linking cases to suspects in the convicted-offender file.

The states colored yellow are those states that are currently a part of the National DNA Index System. Those states that aren't colored yet are working towards becoming part of the National DNA Index System. So they may still have capabilities within their own state to compare samples, but they're not linked to the national system as yet.

I know this slide is rather busy, but we'll just concentrate on the far right. That's the year 1999.

This slide demonstrates how we're not taking advantage of the full potential for DNA. It shows that the number of convicted-offender samples collected in the United States as of 1999 was over 700,000, but it also shows that those that have been analyzed are about half. Only half of the sample have been analyzed using a DNA technology.

What's even more telling about this slide is the type of technology used. Most of those samples that have been analyzed were analyzed under the older RFLP system. Those samples now have

to be reanalyzed under the new STR system because that's the way the entire country is migrating to a quicker, better, cheaper technology of STRs.

So even though it's a little misleading, there are really less than half of the samples that have been analyzed using the newest technology and something that crime laboratories all across the country are suffering from right now, and that is the personnel and resources to be able to put these samples in to the National DNA Index System.

Likewise, casework, there are over 40,000 casework samples currently in the National DNA Index System, but yet, less than a hundred percent of those have been analyzed.

I probably said that wrong. Forty-six thousand casework samples have been collected. Less than a hundred percent of those have been analyzed and placed into the CODIS system.

So, again, the resources in the state and local crime laboratories are not there to aggressively work these cases to get them into the system and to hopefully bring about a successful resolution in matching to another case or matching to a convicted sample.

Well, the first question you might have on your mind is why the backlog? I mean, after all in the 15 years or so that we have been doing DNA technology here in the United States in crime laboratories, we began with just a handful. We now have over a hundred public crime laboratories doing DNA testing. We've also gone from RFLP to STRs, so we've got a much faster technology now. So why the backlog?

Well, the first reason would be that it's used now in more cases than ever before, but not just the cases that are currently being investigated. We're going back years and years into old cases to help solve those old cases or to exonerate wrongly convicted individuals.

Secondly, the sensitivity of the technology. As I mentioned, cigarette butts were not a very good sample ten years ago. Today they're an excellent sample.

Stamps or envelope flaps were not a good sample ten years ago. Today we can routinely get DNA profiles from them as long as they're not the type that already have the sticky on the back of the stamps. It still takes someone licking them.

Also, convicted-offender samples. Many of the states that are represented here today are already changing their legislation, changing the laws by which they collect samples from convicted offenders, increasing the numbers and types of crimes for which samples are obtained, and so the expansion of these state statutes have also become quite a burden on the crime laboratories around the country to be able to analyze these samples in a timely manner.

As I've mentioned earlier, the federal convicted offender DNA database program right now is just that. It's a program. It's an idea.

We've spent a lot of time and energy and effort in developing this program to put it into place as soon as we get legislative authority, but we're still waiting for that last piece of the puzzle.



Once we get that authority, you can see that we already have approximately 20,000 individuals incarcerated that would be required to provide a known blood sample, not to mention the 7,500 individuals that would annually provide samples as well. So we have our work ahead of us once we get the authority to begin doing what you are already doing.

Being right before lunch, you're probably looking at this illustration and thinking it looks more like huevos rancheros though than a human cell, but it was my art attempt to try to describe for you even another generation of technology, one that you may not be as familiar with, and that is the use of mitochondrial DNA.

Now, Dr. Forman described very well how the DNA that we routinely talk about is found within that nucleus, that yolk of the egg up there, but there are also small organelles called mitochondria all throughout the other part of the cell. Each of those mitochondria have a small circular piece of DNA called mitochondrial DNA.

We can analyze that DNA in a very similar fashion to how we analyze the nuclear DNA, but it has one big advantage. A lot of samples or some samples do not contain any nuclear DNA or a sufficient amount of nuclear DNA. Those samples are bones, teeth and hair.

Hair that naturally falls out does not have root material on it. It's in that root material that you would find nuclear DNA, but a naturally shed hair is not going to have nuclear DNA, but it has a lot of copies of mitochondrial DNA.

Likewise, bones and teeth, especially those that have been found out in the environment for years and years, once they're uncovered, they may not contain any nuclear DNA, but because the mitochondria are found in so many copies, they will contain or often contain mitochondrial DNA.

We have the ability now to analyze that DNA and compare it to known samples, but here's the distinction: Nuclear DNA can point to a person and say to a reasonable degree of scientific certainty it came from that individual to the exclusion of all others.

Mitochondrial DNA is slightly different. Mitochondrial DNA is inherited from your mother. So you have the same mitochondrial DNA as your mother. You also have the same mitochondrial DNA as your brothers and sisters. It's maternally inherited. So where it really pays dividends is in missing persons.

If you uncover skeletal remains at a crime scene and these remains are many years old, there may not be any nuclear DNA to analyze from those samples.

If we would go about the traditional routine of looking at dental records and other antemortem records looking to compare those bones to those records, it would come up blank. Mitochondrial DNA is a method now that we can use to compare those bones to any maternal relative believed to be related to those bones.

We've already used this on a number of cases and have been able to show a match between the bones and a maternal relative. It's not a form of individualization, but it certainly gets us very close to who that person may be.

So that third index I was talking about in CODIS, that third file would be the missing person's database. That's a database that laboratories would generate, laboratories capable of performing this technology, and they would maintain within that file voluntary samples provided by maternal relatives of missing individuals.

Then once you, in your investigations, uncover the remains of someone that is unidentified, those samples can be compared to the missing person's database in hopes of matching those up.

We've seen this and other technologies used internationally, for example, in our trip to Kosovo where we recovered 124 bodies. This is just one of the technologies that could be used to solve or to identify the bodies found within these types of crime scenes.

Not only is CODIS being widely used here in the United States, it's really becoming the international standard for DNA comparisons.

Already we are found in ten different countries, and other countries have asked for the software as well.

Now, just like we give this software free of charge to state and local laboratories, we also provide it to foreign governments as well that request it.

Now, the difference is these samples in the foreign governments and this system is not hooked to our system. We're not going to be comparing samples across the computers of a sample here in the United States with one in a foreign country, but it's up to that country to develop their network within their own country.

One example is Finland. They've only had the CODIS software for one year, but already have 1,600 offender profiles in it, over 450 casework samples in it and they've already solved 90 crimes that had gone unsolved utilizing this technology.

Well, I hope for those of you who didn't raise your hand earlier and say that, Yeah, I know what CODIS is, I hope this provided you some outline, some means of understanding what CODIS is and the potential that CODIS, through the National DNA Index System, has in solving heretofore unsolved crimes, and I would be happy later on in the panel session to answer any questions that you have related to this. Thank you very much.

(Applause.)

MR. ADAMS: Chief Gainer, are you around? I'm not sure --

MR. ASPLEN: Thank you, Dwight. To save time while they're doing this, I'll introduce our next speaker.

As you can see from the agenda, we have gone a little bit out of sequence simply because while I was the one who put the three names down on the agenda, these three gentlemen wisely figure that it would be best to let Dwight speak first, again, to kind of give you a primer about the nature of the database which would put Dave's and Paul's talk I think in a little bit more context for you.

To introduce Dr. Paul Ferrara, I necessarily have to kind of do again what I said with Chief Gainer and give him thanks on a number of levels.

Number one, he's also a Commissioner, but he's also the Chair of the Laboratory Funding Working Group for the Commission, and the first, one of the first things that the Commission did was consider the backlog problem that we'll talk about more intensely in a little bit, but they made a recommendation regarding the need to eliminate that backlog.

This year, I think as Julie Samuels mentioned, NIJ is allocating \$15 million for backlog reduction. That is because of the work of Paul Ferrara's working group and the Commission's group on identifying the nature of that problem and making recommendations to help solve that problem.

But as I was looking at Paul's resume' and the materials that you already have, I'm not going to go through all of it, I've known Paul for probably about five years now.

I'm looking at the top of the page, and the pH degrees was plural, so I leaned over and said, Do you actually have two of those? Yeah. Well, I do. He said but keep it short, would you? So I do want to keep it short, and again, give my thanks to Dr. Ferrara and turn it over to him now.

DR. FERRARA: Thank you very much, Chris. About three months ago, eight-year-old Kevin Shifflett was playing in his front yard in nearby Alexandria, Virginia with his great-grandparents when a stranger approached him, stabbed him to death, stabbed his great-grandmother and a passer by and departed the crime scene.



The police had very little to go on; however, they were able to identify the cab in which the perpetrator departed the crime scene. They were able to submit to our laboratory some of the interior of that cab which was, as you might imagine, blood stained.

As one might anticipate, various multiple DNA tests indicated that the blood belonged to that of the victim, Kevin Shifflett; however, our examiners, one of our examiners in our laboratory, our northern laboratory here in Fairfax, Virginia didn't stop with just one or two samples, but exhaustively tested different portions of that interior until she came upon a point in which there was a weak DNA profile consistent with Kevin Shifflett and a stronger foreign profile that had not, we had not seen before.

That profile was quickly searched against Virginia's DNA data bank, and within an hour of that we informed the Alexandria Police Department of the identity of that individual.

I hadn't planned on talking about that case, but it's been filling The Washington Post and the local newspapers here for the last several months.

Today's Post pretty much describes, in considerable detail, what I've already told you. So, in effect, if there is any media here, I guess this constitutes a confirmation, although we specifically do not talk to the media about active criminal investigations. That is the function of the law enforcement agency and the prosecutor.

CODIS works. That's an example of how that works. I'm going to explain in the next few minutes why it works in Virginia, and you'll hear similar stories from Florida, as Dwight mentioned two very successful programs.

Virginia and Florida both passed the early DNA data bank laws in the United States in 1989. In 1989, Virginia's DNA data bank was confined to violent offenders, murderers, rapists.

In 1990 after a study of recidivism among various offenders that Virginia's DNA data bank was expanded to include all convicted felons.

In 1996, it was further expanded to include juveniles age 14 or older who were convicted of what would have been a felony had they been an adult.

What I would like to show you now is a brief snapshot of what has transpired in those last 11 years with a particular focus on the last 18 months, and if I can learn how to -- with two Ph.D.s and I can't advance this. Let me just do it this way.

Sitting in the back earlier I realize that some of these slides are difficult to read, but this particular graph chronicles the number of DNA data bank hits that we have experienced in the Commonwealth of Virginia since 1989.

We had our first hit in 1993. As you can see, the number of hits increased dramatically in 1999 and for the first six months of this year.

I bring to your attention a very important piece of data other than the sides of the bars, and that is that blue line which describes the number of samples in the DNA data bank.

For those of you who can't read that figure, the size of Virginia's DNA data bank currently is at 120,000 individual profiles.

What we did in 1998 is enter into a contract with a private laboratory to run some approximately 70,000 samples a year for us while we concentrated on what is the second part of a very important equation, and that is running crime scene samples.

This next slide demonstrates graphically the number of DNA cases that we have conducted analyses on in Virginia's laboratories since 1989.

You will note that we did a total of 37 crime scene cases in 1989. In the first six months of this year, we have run over 1,300 crime scene cases.

Now, make no mistake, for an effective use of a data bank, the database itself without running crime scene samples is useless. You need to have a database, and you have to be able to have the capacity to run crime scene samples, and as our previous speakers have noted, the number and types of those samples is exploding, and it should, because this technology is giving rise to effective use of the most minute and varied and unusual types of samples that we have never before encountered or found usable.

We have made many of these DNA data bank hits on samples, such as a half-eaten honey bun, saliva from breath swabs of rape victims. The list and the variety of types of samples, you've heard a little bit about it already, just, I will leave to your imagination, but it's important to note that your laboratories are going to have to be prepared for the onslaught of samples if this technology is to be used to its maximum.

Now, what we found interesting is as you can see from that chart, the total number of hits as of the end of June of this year in Virginia totals now 183 with obviously 151 of them coming in the last 18 months when the database is up there in the 120,000 range.

You'll note, as Dwight Adams had indicated, there are different types of hits. You can have a case-to-offender hit where you analyze the material at the crime scene and identify the individual from the offender database or you can experience a forensic hit or a case-to-case hit where you don't identify the offender, but you identify the same person as having been involved in some other particular crime.

Among our hits already with the limited, with the limited application of CODIS, we've already had in, Virginia has already been part of four interstate data-bank hits.

One particular one of interest in Florida was a gentleman who, a gentleman, a person who had about paroled from Virginia and went to Sarasota, Florida, lucky Florida.

Fortunately, this -- unfortunately, this guy committed a series of rapes in Florida. They searched their data bank, didn't find him there, but when they searched Virginia's, we identified Mark Dagle in that particular case.

Clearly, if you look at the charts, you can easily extrapolate at our current rate, which is almost a hit a working day as I speak to you now, we would expect to have as many as at least 150 hits in the year 2000 alone in Virginia. I can't begin to project beyond that because I just don't think that we have enough data. It's more than just a linear relationship however.

We will continue to score more interstate hits as the other states come on line with CODIS and hopefully when the Federal Government has the wisdom to develop a DNA data bank of federal prisoners.

Now, what I'd like to do very, very quickly is give you a description of the types of cases, and I think you may be somewhat surprised by some of this data.

Of those 183 cases that have been solved, 80 of them have been rape or sodomy-type cases, 22 homicides, 11 rape homicides, 55 burglaries and breaking and entering, property crimes, and 15 of a variety of different types of crimes that we might not expect and, again, make no mistake this is not a technology just for violent crime.

I didn't list it because I was almost embarrassed to point out that one of the cases that we made a hit on involved a drug-possession case.

The law enforcement agency had asked us to swab the mouthpiece of a bong to see if we could identify the individual and we did. There's other reasons for us doing that, but as you can see, there's no limitation to the types of cases.

Now, let's simply look at what we can infer from the criminal histories. Why were these people that we've identified in Virginia's DNA data bank, of what charge, of what crime had they been convicted?

Now, some of this data is incomplete, because, again, there's logistical issues and problems with getting criminal-record histories.

The Virginia Division of Forensic Science is not a law enforcement agency, per se. We serve every law enforcement in the Commonwealth of Virginia, so access to criminal record histories and information from corrections is problematic, but I'll tell you this, 49 of those persons that we identified had, were in our data bank because of property crimes. Fifteen were sex offenders, as one might expect, ten grand larceny.

For those of you who have heard, Oh, what are you taking samples from check cutters and paper hangers for? Well, that's one reason. There's seven hits, and remember, these are mostly violent crimes that we're, that we were solving, and burglaries. Seven had convictions for uttering and forgery.

A drug user is not, not going to be committing future violent crimes. Well, 18 of, 18 of the people were in there for drug possession/distribution charges. Two for homicide, abduction, kidnapping. Don't ask me what they were doing out again, but they certainly were there, and at least 47 others were either not sex offenders or we have not been able to identify yet what their,



what crime they committed, but I think it's very important to look at the distribution of the types of crimes solved and the types of criminal histories that the individuals have who are being identified in these data banks.

What conclusions do we draw from all of these data? Well, some of it is quite clear. We would not have had half of that number, 183 hits, in Virginia if we did not include all felons.

If our, if our DNA data bank was limbed, as it was in 1989, for that one year, the hit rate would be at least half of what it is today.

When we did an individual careful study of 40 rape and murder cases that were solved by the DNA data bank and we carefully looked at the criminal history records of those individuals, 40 percent of those violent crimes were perpetrated by an individual who is in our data bank because of a previous property conviction. So it's not just the burglars committing more burglaries, although obviously there is a lot of that.

I think clearly that the DNA data banks is most effective by inclusion, therefore, of all felons and applied to all types of cases.

Now, I realize that many states, many localities have either no capabilities or very, very limited capabilities and will only use that limited technology in certain cases. We all started that way, but the more you develop your capacity, the more types of crimes you realize can be resolved or at least investigative information provided so critically and on a timely fashion to law enforcement that it makes it extremely powerful.

In terms of personal recommendations, clearly, at a minimum, all convicted felons, and specifically as the previous speakers have noted, we, the forensic science community, have established a gold standard, if you will, of 13 specific core genetic loci. That's what makes all of this interchange in comparison of data between states, between localities possible.

We have to develop increased capacity to run all crime scene evidence. As any of the experienced forensic laboratory people here in the room will tell you, there's a tremendous amount of evidence with potentially probative biological material present, but yet, the ability to run all of that evidence is a very difficult, time-consuming sample, time-consuming process.

I might point out -- remember I did 37 cases in 1989. I had two DNA examiners. We were using the RFLP method. We've done 1,300 plus so far this year. That 1,300 is with a staff of 35 DNA examiners in the Commonwealth of Virginia.

Now, it's not sufficient to run just crime-scene evidence on cases where the police have a suspect and prosecution is proceeding.

The whole point of DNA data banks is to provide investigative information in no suspect or non suspect or unsub cases, whatever you want to call them.

There is a propensity, understandable, and we did it in Virginia at the start, to run just those cases where the police had a suspect.

Well, there's, the non-suspect cases are the ones where the DNA data bank is tremendously effective. Not just current crimes, but old, cold cases.

We have solved some of these crimes, one homicide, one homicide, two homicides, the 1980 and 1983 cases.

The evidence was still available, the law enforcement agency, investigators came to the laboratory and said, These cases have been hanging around our neck for 20 years. Can you do anything with it?

Well, clearly we can, but it took a special effort to run cold cases, 20-year-old cases when you're fighting against a backlog of active crime scene cases.

Now, PC cases, that's not a probable cause term. That's post conviction. Now, there's going to be a lot of talk about post-conviction testing, and I'm here to tell you, and I've been involved in it for a long time, that takes a tremendous amount of time and effort as well.

So post -- so between the combination of active cases post conviction and cold cases, you've got a lot of work to do in the laboratory.

How are you going to do that? On a national level, we have got to increase the staff, improve the facility, the physical plants that the laboratories are, do work in. I don't know how many law enforcement agencies are here, and I don't know how many would raise their hand, and if I asked you, all right, Whose lab is in the basement of your building? It doesn't belong in the basement of an old schoolhouse.

Modern forensic laboratories need to be built. We are operating with almost a quarter of a million square feet of forensic laboratory in the Commonwealth of Virginia that has a population of 7 million. It ain't cheap, but you got -- if you're going to do it, you've got to do it right and you've got to have the facilities, the resources. This isn't cheap technology, but the most difficult problem that we are going to face in this country, you can throw all of the money you want at buildings and at supplies and equipment, but one of your limiting factors is going to be the highly skilled, trained examiners. Where are they going to come from?

I think we are going to have to look at establishing centers where large numbers of forensic scientists or let me say scientists, minimally with a bachelor's degree; preferably with a master's degree in biology or genetics or molecular biology have, all of the necessary undergraduate education, graduate course work, and then our training program takes about a year of that individual working in an actual working laboratory beside other fully qualified examiners learning how to do this type of casework.



To that end, recently we were fortunate in Virginia to be the beneficiaries of a million and a half dollar contribution from crime writer Patricia Cornwell to establish the Virginia Institute of Forensic Science and Medicine.

Among other trainings that was conducted, we just graduated our first six graduates. The first six DNA examiners graduated from that program. I'll tell you that I hired all six in my laboratories.

We have another class of six beginning as we speak, but we don't need six a year. We're going to need 60 a year, we're going to need 600 a year, and we're going to have to train and pay those people to keep them.

That concludes my comments, and I, like Dwight and Dave, will be available for questions after we're all finished. Thank you very much.

(Applause.)

MR. ASPLEN: While we're waiting to change computers, I'll make a couple of announcements.

First of all, we've established we're going to be in a much bigger space. We changed the space that we originally had for tomorrow that was supposed to be a little bit bigger.

Now, I understand it, we're in a considerably larger space as we anticipate we'll probably have even more people tomorrow. That will be in the Atrium Ballroom tomorrow, not the Polaris room as is listed on your schedule. It's the Atrium Ballroom. We will -- I'm sure we will have signs indicating the way to get there.

Also, again, let me just reiterate that we do have available, if anyone needs that, the sign-language interpreters as we mentioned earlier.

Also, when we're finished here with the next presentation, lunch will be set up in here in the back, and so what we'll need to do is I think stack some of those chairs and it will probably be best if we kind of move people out in that direction incrementally by rows. So I'll ask probably one of our folks from NIJ to kind of help facilitate that happening, again, to deal with the close space. We won't have these issues -- we shouldn't have these issues tomorrow.

Our next speaker is Dave Coffman, and David is from the State of Florida, and as both Paul and Dwight mentioned, Florida is another one of those states which is absolutely on the leading edge of the potential of DNA technology and databasing. Here's a laser printer, pointer if you would like it.

MR. COFFMAN: Good.

MR. ASPLEN: David, his title is crime laboratory analyst supervisor for the Florida Department of Law Enforcement in Tallahassee, but David is also a member of the DNA Advisory Board which for those of you who don't know what that is, is really the Advisory Board responsible for creating quality standards for DNA testing.

They make their recommendations to the director of the FBI laboratory, and it's that body which is, which ensures the quality and reliability of DNA testing, but most importantly about David is David is as energetic a promoter of this technology as you will find. He's on the Working Group, the Laboratory Funding Working Group for the Commission and has been extremely instrumental in the recommendations that they've developed. Again, things like CODIS database backlog reduction.

There are a number of people who are more than willing to get involved when you ask them to become involved in important issues. David is a guy who sees the need and goes and gets involved before you even ask him.

I called David and I believe that the message that I left for David when I invited him here was, Would you do me a favor and come and preach the gospel, because I think that when you're done listening to David you'll understand that that's just how passionate he is about it and that especially the citizens of Florida are all the better for it. So David.

(Applause.)

MR. COFFMAN: Thank you. First of all, I want to thank DOJ for asking me to come speak, and I think Chris's comments basically means that I stick my nose in where it's not wanted is how that's summarized, but no.

I am very passionate about this topic and, because I have seen it work in Florida and I'm seeing it work in other states as well now.

Dwight mentioned the number of hits and investigations aided that we've had in Florida. I really would like to think that's not because we have more criminals, but because we have more victims in Florida. So that's just another way of looking at it.

So when you have a lot of tourists and lot of people coming to retire, that's just like an easy source of -- you would believe how -- well, I shouldn't say that. You all wouldn't come to Florida then. That's what's funding our program. Never mind. Tourists are never a bother to Florida.

DNA analysis in the criminal justice field, first I just want to go over why do we have a DNA database, a little legislative review of our state and how we progressed and also some success stories, and I do have a lot of slides. I put them all in your book for a reason just to give you examples of different kinds of hits. I will not be able to, more than likely, get to all of them today, so don't worry. I will stop at 30 minutes, I promise.



Rape in the U.S., there's a total of 500,000 sexual assaults on women; 170,000 pleaded rapes, 140,000 attempted rapes and 190,000 other sexual assaults.

Now, the attacker unknown to the victim, and this was 1995 statistics, is one out of three. So about 33 percent of the rapes that we have out there, the victim does not know the attacker. So that's a perfect use of the DNA database to help resolve these cases.

By the way, this number is up. In the 1992 statistics that I used to use, it was one out of five the victim did not know her attacker. So it is on the rise as far as not the number of rapes, but the victim not knowing who attacked them.

The mean age of the first offense is about 18 years. The number of detected sexual assaults per rapist in a prison they've found to be about three. Undetected sexual assaults is about five, and this, that number was determined by interviewing inmates.

So, you know, it's kind of a fussy number because some of them would say, Yeah, I did 600 or some of them would say, No, I didn't do the one I'm in prison for now. So they kind of threw out the high and the low and came up with about they figured five that we don't ever detect or link to an individual.

Recidivism rates for offenders on community supervision, this is not in your handout because I got this faxed to me by mistake. It was a grant proposal, but it had some good facts in it, so I decided to use it.

Recidivism rate on offenders on community supervision. Now, this is people on state parole or probation. It's not counting local jails or anything. In the year they looked at, there were 300,000 on community supervision in the nation.

Of those 300,000, 13,000, 13,200 people were murdered by those people; 13,000 people were raped by those 300,000; 39,500 were robbed; 39,600 were burglarized; 19,200 were assaulted and 7,900 stole a car.

So the point is -- and, by the way, these numbers are where they were arrested and actually obtained a conviction. It doesn't count the ones that were charged or -- so this is pretty powerful stuff that these people are out on the street and they're committing these crimes.

Rape in the U.S. is considered the costliest crime with victim costs as high as 127 billion. It actually exacts a higher price than murder, and the quotes for this information are on the slide.

Now, they did -- by the way, do you see that thing swirling? I feel like Paul when he said he's got two Ph.D.s. I cannot figure out how to make it stop swirling on every slide. I got most of them, but some of them I can't do it. So pardon me if those things swirl around there for a while.

Rape in the U.S., individual cost, it's a study about this thick, so I can't even tell you how they came up with all of these numbers, and this is supposed to be the individual cost to the victim. So it's not even counting your investigative time.

So when it's talking about the police and fire services, that's literally just interviewing the witness or taking the rape kit to the hospital. It's not your investigation.

But just individual cost they estimate rape brings a cost of about \$87,000 per rape to society. That's what it costs society.

Now, there you go again. This is what we presented this year. We expanded our database this year, and this is what we presented to our Governor on two different occasions, privately and then also to our legislature, and we did get our expansion with one no vote. I mean it was a unanimous vote.

And the reason -- Florida is a very big performance-based budgeting state. We call it PV squared, and you hate to, you hate to reduce what we do to dollars and cents because there's just a societal value to doing this. It shouldn't be about dollars and cents, but when you're going out and trying to get support from the legislature where they have got all of these people wanting a piece of pie, you better find a way to bring it down to dollars and cents.

So I provided this to you so maybe when you go back and help the crime laboratories in your states and jurisdictions to get some funding this may help you.

We use the average cost of rape as 87,000. We also have studies that show the average number of rapes per offender is eight to 12. There's kind of a range. I found several studies.

Let's assume that an offender commits eight rapes. Our CODIS hits stops an offender midway through his career, if you want to call it that, thus preventing four rapes.

So for four prevented rapes, times 87,000, it comes up to be \$348,000 in societal savings.

Now, this is the one that we tried to drive the point home. We try to be as conservative as possible, so don't think we're padding the numbers or anything.

Let's just say CODIS has matched approximately a hundred sexual assault cases to offenders. Assume that a DNA hit prevents only 25 percent of those offenders from committing just one more assault when then get out.

Now, keep in mind we already know their recidivism rate is 67 percent. Sometimes I have seen studies as high as 74.

Let's just say we prevent just 25 percent of them from reoffending. Eighty-seven thousand times 25 rapes, is \$2.1 million, which, and I swear to you, we came up with this conservative estimate before we realized that the number added up to exactly what we were asking for in this legislative session. I promise. I really do. It really was.

Remember, the average offender commits eight to 12 rapes. So we're talking some real savings for society. We're talking for a better community, a better life for your citizens of your state, and let's face it, in Florida, I think one reason we're very progressive about crime is we are, I mean, I

joked about it, but we are a tourist-based state. That's a lot of our funding. We want a safe place for people to come visit Florida. It's very important to us. So that's why we haven't had problems getting the -- well, it took five years, but once they came on the bandwagon, now everybody wants to help.

This is a pie chart, and I know it's hard to read, but just to show you that the, this part right over here, that's the people on probation and that's on parole. So most of these violent offenders are out on street able to commit more crimes.

Our state began collecting from sexual assault and lewd and indecent acts because basically, we didn't even have the DNA technology up and running yet. They didn't have the staff. I was the staff for about two and a half years, and then we added murder in 1993.

Then we started getting our hits and we started seeing a trend. We started looking at the criminal history of these people.

Also, I started listening to you, the investigator. I'd get calls -- we get calls daily. I would say about -- we have a phone log, about ten calls a day from investigators around the state wanting to know if this guy is in the data bank. They want to make sure he's in there, and we, we started finding out, early on we started finding out they said, Well, look, this guy should be in your database. Why don't you have him? He was charged with sexual assault.

So I started digging, found out he was charged with sexual assault, but he was convicted of jaywalking. You know how plea bargaining works.

And so I started calling -- I don't like plea bargaining personally, but I started calling around to State Attorneys around our state, and I found out the most common in every jurisdiction plea bargain for someone charged with a sexual assault is aggravated in battery in our state. I don't know what it is in your state.

So we added aggravated battery, we added home-invasion robbery. We're kind of trying to introduce them to the concept of adding burglary, you know, down the line and car jacking.

Now, the reason we added car jacking is our psychological profilers in our department said that's a very confrontational crime and said they're the ones that wanted us to add that, and also, when we ever, whenever we make a hit, we send a copy of our report and a summary of it to our psychological profilers because that hit we just solved here could help them with a case that they're working in another jurisdiction. So we try to get everybody involved.

So anyway when I first started I thought, Well, shoot, the law says that FDLE analyzes it, Department of Corrections collects it and if the guy's on probation or parole, the sheriff collects it.

Well, I soon found out that all of these eight, that all these people have to cooperate to get the samples for those people on probation and parole.

Even with the -- we even hired a person in my database to go out and talk and keep up with the compliance level of people on probation, and even with our best efforts, we're about 35 percent compliant.

It's just a, it's just murder to get the court order issued at the time of conviction because it's just, I don't know -- is anybody from the Miami area in here? Okay.

In Miami, they have 250 attorneys on their felony squad. They lose about 15 a month. So they have constant turnover. So it's just hard to keep all of the State Attorneys trained to request a blood sample to be added to the database, so that's a big part of our problem.

So how can DNA help solve crimes. We've already mentioned, heard that from the other speakers. It can by linking an unknown sample to a convicted offender. That's the one everybody wants. Linking an unknown sample to a solved case.

Now, the reason I mention this is even amongst my colleagues, I've been surprised to hear people say, Well -- say you're in a jurisdiction of, I don't know, Oklahoma and they say, Well, we didn't do the full CODIS core loci because it matched our offender and that's all we needed and we got a conviction on just three loci, we didn't need all 13.

Well, we're trying to build a national DNA database. You can't have a moppet view of your county anymore and said, It's only, it's good enough for our county. We don't need to worry about the nation as a whole because your case that you link to an offender or a suspect could solve seven rapes in Florida that we did not have an offender, and we'll never know that unless you work all of the loci and put it up in the national database.

So we've had probably 25 cases to where a case in this jurisdiction was unsolved, but it did match a case in another lab where they had the suspect and they left the profile in there. So it's really important to consider that.

Also, linking two or more unsolved cases and by excluding suspects, we've done that several times. In fact, just recently we have a case where the individual was convicted of a sexual assault. There was no DNA evidence circumstantially. He was just claiming his innocence.

And by the way, I won't give you where this occurred or anything because it's still in the hopper right now and I don't know how it's going to come out.

But they felt he did another, another rape as well, so they pursued him after he was convicted of the first one for the second one. He said, I did not do this.

When they brought in all of the evidence and examined it, they found the DNA profile there. The prisoner insisted that it be searched in our offender database, and we matched it to another offender.



So now there's a question if they felt he was that strong of a suspect in the first one, they're kind of re-looking at the first one now as seeing how the second guy that's involved, if he could have done the first crime. So it just has unlimited potential.

Right now we've collected about 70,000 offenders. Now, keep in mind up until July 1, we were getting about 580 samples a month in our database. Now we're getting 4,000 because our burglary law expansion went into effect in July 1. We've had 235 hits statewide, and we've aided in over 365 investigations.

Now, the reason I say that, we've had cases where we've linked, it's one hit, but we've helped resolve 12 sexual assaults once they knew that that case was linked. We don't count each individual case individually. We just count the hit and then however many cases that go into the investigations aided.

Here's our hits by year, and when we first started, it took a few years because we were only maybe completing 40 samples a month at that time, and actually, with my current staff that we have now, just two years ago we were completing about a thousand samples a month in the old RFLP technology.

With the same technical staff I have now, except now I have actually gave up two positions last year, we decreased our technical staff by two in the database, not in the casework, and now we're doing 6,000 a month because we've been using automation since 1996 and robotics and it's, and now that we're doing STR, it's more amiable to automation even more. We're actually getting a lot more done with fewer people on the technical side. There's a whole administrative side that's another issue.

I do want to say something about this first. If you'll notice, we were getting about three to five hits the first few years once the hits started, and then in 1995 is when we jumped from four to 19 in one year. That's the year we added aggravated battery, and we helped resolve a lot of historical rapes that were sitting in the database searching all the time. We added aggravated battery.

Then we kind of booked along there until 1998 where all of the sudden we went up to 67 hits in one year. That's the year we became totally current for the first time with all of our offenders being worked.

Also, there's another factor you have to include because we also track, is it a rape that was done before the guy went into prison or one that was after?

The average length of time someone spends time in prison for a sexual assault is about seven years. If you notice, that's about seven years after we started collecting. So they're starting to get out and reoffend. So you have to consider that factor, too.

In 1998, we had a little -- excuse me. In 1999, we had a little dip in our numbers. That's because you've heard of the STR technology. All of the crime labs in the state shut down, RFLP started training people for STR so not as many no-suspect cases were being worked and meanwhile, we had to convert our database to STR.

Well, right now we're about halfway converted. We're -- like I said, we're completing 6,000 a month, and we've had 30 hits so far in 2000. So we're creeping back up to our 1998 standard, and hopefully, we'll go beyond since now we have burglary.

Here's just a quick rough of the hit comparisons by state and, of course, Virginia with one hit a day per average. I figure I can use this slide maybe two more months and then they're going to go past us.

Florida national's standing investigations aided as well, that just makes sense. If you have more hits, you're going to have, aid more in investigations, too.

How to ensure a successful database? You've got to collect the blood samples. I tell you this because some of you are probably involved in the collection process for your, your state database and just keep that in mind. That's something that needs to be a policy in your agency to make sure that these blood samples do get to the crime lab that's doing your data banking.

You've got to analyze the blood samples. Well, I think with NIJ's help and the federal funding, we are accomplishing that now as you speak and also the advance in automation and robotics is helping that.

And then perform DNA cases, DNA analysis on cases without suspects. You've got to do that.

I don't know if you remember the -- was it Finland? The Finland scenario where they had 1,600 offenders and 90 hits. Well, they had 450 cases that they analyzed. They had a much larger ratio of cases to offenders than any of us do in this country. That's why they're solving the cases.

You're not going to solve anything unless you work the case. The reason I say that is because we have helped one agency in our state, and it's statewide and it's nationwide problems.

Crime labs don't have enough people. Most crime labs aren't big enough. They base their budget over what they got last year, not what's out there to be worked. And now that we can -- I think the oldest case we've worked is a 33-year-old homicide, quadruple homicide in Tallahassee.

How can you plan your budget when you're, you don't even -- like Paul says, you're not even getting what's out there to be worked now and now they want you to work stuff as old as 33 years old.

So you need to fight for your crime labs to help them out with this. I mean, it's just, it's just phenomenal the amount of work that's out there.

This agency that we helped and within a month's time we helped solve 14 rapes in their city from two different serial rapists. We made a case-to-case hit.

That state when we had a press conference with it, it turned out that they have over 600 rape kits in their freezers that they've never submitted to FDLE. That's just one agency.



And we said, Why haven't you submitted them? They go, Well, you've got a 180-day turnaround time and we don't want to bog down your system with the cases that we need to go to trial next month with cases that are unsolved and there's no clues.

Well, it shouldn't be that way. We got to find a way to work the no-suspect cases, and you hear a lot of talk about the arrestee issue and Police Commissioner Safir goes around talking about collecting arrestees, but, you know, what I have found is Police Commissioner Safir is saying more than that.

He's saying you've got to work those no-suspect rape cases. They're just not wanting to do all arrestees. They're going to work the 16,000 rapes that are in their freezers.

I've talked to more police chiefs and sheriffs that have walked away from one of Police Commissioner Safir's talks and all they want to do is say all arrestees in their county.

You've got to attack it both ways because it's an expensive proposition to go to arrestees, and I think working the casework is more important because even with the few crimes we collect now in some of our jurisdictions we're up to 50-percent resolution rate. If the lab works two cases, we're going to solve one.

So even with the limited samples, we've got the potential to solve most of your cases right now, and I agree with Paul, our eventual goal will be all felons, but I think arrestees ought to be approached with, unless you approach it like New York is wanting to where you work the no-suspect case, you need to be careful about approaching that issue.

Real quickly, we had a cold hit to a 1993 murder of an elderly woman, Martha Roberts in, this was in '95. We also solved a five-year-old homicide -- excuse me. This was another sexual assault. This is our very first hit in Dade County, a Dade County woman.

Then we had a five-year-old homicide. This was our first homicide that we solved of a woman found in the woods. She had semen on her face and in her mouth, and they were able to get a profile and for five years they were testing suspects and we finally matched on it in 1993.

These cases had two things in common. They were solved by the DNA database, there was no other clues, they had no other leads and all of these offenders had prior burglary in their criminal history.

So our year 2000 legislative priority was to add burglary as a qualifying offense, and we could not have done what we have done in our state, the Florida Department of Law Enforcement -- it wasn't me. I mean, we helped -- you know, we helped do what we got from our Commissioner, our legislature, but our Commissioner has stood behind us from day one.

He's worked with the Police Chief's Association and the Sheriff's Association in our state, and it was because of his support that we're able to do this.

He has totally supported us from day one, and just to let you know, you know, we're the statewide Law Enforcement Agency for Florida, this was the number one priority of everything he wanted to implement this year. This was our number one legislative priority, and every time we have anything with our database involved it always is.

So you've got to have support with people like you if you're going to get anything accomplished. It was effective July 1, by the way.

Why add burglary? There's a 67 percent recidivism rate among convicted sexual offenders, and the average number is eight per offender.

We found by looking at the criminal histories of they guys after we linked them to rapes and homicide that 52 percent of our hits the offenders had a prior burglary in their criminal history and throughout, by the way. Not just prior, but throughout.

Collecting samples, here's our logic. Collecting samples from offenders convicted of burglary could help ensure their DNA profiles are in the database before commission of their first violent act.

Now, let's -- I'm just sitting aside here that we're going to solve a bunch of burglaries. Let's face it, they break in, they cut themselves, there's blood.

Probably burglary is the number one -- we don't have them as high a priority, but probably there's more burglary cases to be worked through serology and DNA than there are rapes and homicides.

So it just makes good sense for the time, to add them for the types of crimes we're getting in the crime labs anyway, but we want to try to prevent these violent crimes, not just put them together after they have committed it.

Now, here's the criminal history of the offenders linked to sexual assaults and homicides. Eleven percent had a previous firearm possession. Thirty percent had a previous drug charge. Thirty-four percent had a previous grand theft. Thirty-four percent had a previous robbery. Fifty-two percent had a burglary, and only 18 percent of the people we linked to rape and homicide had only the crimes that we collect for in their criminal history.

That shows you how, you know, that's why all felons is the way to ensure that this doesn't happen, but using this information, performance-based budgeting, we tried to point this out and they added burglary without a problem in our state this year.

Now, I was criticized by a national organization, ACLU, for maybe not having a broad enough database of information. I had a couple hundred cases to look at.

So I went to our prisons, and I said, Would you mind looking at the approximately 200,000 people that are either on probation or in our prisons and would you run a query for me and tell me what are the people that are in prison for burglary now, what are their past criminal history?

Fourteen percent of them had a prior burglary, I mean homicide. These are people in prison for burglary. What have they done else that they've been caught for? These are just -- 14 percent had a homicide. Nine percent had sexual assault. Thirteen percent had aggravated battery.

Remember in our state, aggravated battery and sexual assault are sometimes on in the same. Nine percent with lewd acts with a 45 percent total.

So 45 to 52, that's a statistically valid comparison, and it was a much larger sampling that we took it from. So we feel very justified in adding burglary to our database to help solve crimes.

Real quickly, I know I've got about six minutes. I'm going to stick with it, I promise.

The James Stengel case, this is our first one. This shows you the value of a database, not just keeping one in your jurisdiction, but being part of the state or national system.

James Stengel lived in Daytona Beach. He committed his first rape -- well, excuse me. He committed a rape where he got caught in Orlando about 90 miles away. We linked him to a 1991 rape in Miami using the database. It was our first hit.

Real quickly, the guy did not want to -- after I've got five boxes of information together for the defense discovery motion, the guy decides to plead because he didn't want a lot of publicity.

Well, this was our first database hit. He got a lot of publicity whether he wanted it or not. They put his picture in the Miami Herald. A man in Miami cut out the article, sent it to his daughter in Kentucky. He said -- she was raped in 1991. She was a flight attendant, was raped in 1991 in Florida. He said, Maybe they can solve your case.

She opened up the article, saw the picture, said that's the man that raped me. So we called. It turned she had been raped in a jurisdiction that didn't have DNA testing for their crime lab and they weren't part of our jurisdiction, so they sent it to the FBI. We called the FBI, they sent the profile down, we searched our database and it matched James. So our first hit led to our second hit. There he is.

By the way, he was an exotic-male dancer or whatever, like a Chippendale thing, and he would pick his victims out of the audience and stalk them for several weeks is how he would do that.

He would go to their house, say that their girlfriends asked him to do a private dance for them. The victims would let him know. He would ask if he could change. He would go to a bedroom, unlock the window, change, do the dance and leave and then in three or four days come back and come through the unlocked window because most people don't check -- in Florida, your windows are shut all the time. It's too hot to have them open, so people don't check to see if their windows are locked every night. So he came back through the open window.

Old and cold cases, our Ft. Lauderdale area, the Ft. Lauderdale sheriff's office has an old-cold quad where they're looking at these old cases.

This was a 12-year-old case at the time that we made the hit. A 1986 homicide case, Armand Carruci was stabbed 82 times and then burned. Blood recovered from the scenes that wasn't Carruci's and they had no suspects.

Ft. Lauderdale did save the biological evidence. In November, the DNA database received a sample from a convicted sex offender, Scott Edward Williams. He was serving -- oh, in May 1998, 12 years after the murder, the DNA database hits on Williams as the person who left the blood at that crime scene.

Williams was serving a two-year sentence for sexually assaulting a six-year-old boy. By the way, it was his own son.

When confronted, Williams confesses to Carruci's murder. He said it was -- now, keep in mind, 82 stab wounds and set on fire, it was self-defense.

May 26, 1998 a warrant was used for the arrest of Williams, and there he is. That guy is wound tight. You know it.

No, he did confess to the crime, and he later did, he committed suicide because he was two weeks from getting out of prison, and with this murder charge, he just couldn't bear it. So he confessed to the investigators, he called his wife, confessed to her and then they found that he had killed himself in prison.

This was a series of six rapes in Jacksonville between '95 and '98. The assailant was riding a bike when he approached several of the victims, and by the way, it was a pink bike. I don't know why we couldn't catch him, but, a guy riding around on a pink bike.

Five of the assaults occurred between 5 and 6:30 a.m. All assaults occurred in a small geographic area of Jacksonville. Here they are.

Evidence from all cases were submitted to the FDLE lab in Jacksonville and they connected them. All cases were linked, and on May '99, the cases were linked to Anthony Orick.

By the way, he had an aggravated battery -- no. Excuse me. He had a sexual assault charge from 1986. He had a parole violation of carrying a gun. So he went back into prison.

Our law is retroactive, so it doesn't matter when you commit your crime, when you get back in the custody of the prison, we draw you if we don't have you already, so that's how we got him. Orick was submitted on the basis of a sexual battery conviction. There he is.

This one we had no-suspect evidence. It's important. This is to bring that point home. Nine assaults in the D.C. area occurred.

The FBI lab worked all of those cases and did link them. Three assaults we had already linked in Florida that we knew were from the same perpetrator, but when the national system came up on line, we linked these 11 cases, excuse me, 12 cases together.

Within a week of having these linked it helped the investigators in Florida firm up their case. They had a list of suspects, and they kind of dismissed this one guy. Well, when they found out this guy travels frequently between Washington to Florida, he came back up to the top of the list and they sent out a bulletin to pick him up.

He showed up dead in a drug-related killing. So getting the blood samples was no problem. We didn't have to go to court, and we compared the case and it did match those 11, 12 cases.

By the way, these 12 cases occurred within a 12-month period of time between two jurisdictions that far apart.

Florida prisoner matched North Carolina's sexual assault. The man was previously convicted in jail in North Carolina for this crime.

When we matched it and called them and told them we had a hit, they said, Well, wait a minute. We've already convicted somebody of this crime. It matched one of our offenders that had absconded from probation, and he was picked up and rearrested in the very town where this raped occurred in North Carolina. So an innocent man was freed due to the database match as well in this case. That's the offender from Florida.

Real quickly, and this will be my last one, parentage DNA tests. We had a rape homicide where they really felt like they knew who it was, but he had moved to West Virginia from central Florida so asked me what could we do.

They found semen at the crime scene. The father of the suspect was in the database. The whole family has some real problems with the law, and the father was in our database.

So I told them, Do not tell me the guy's name. I don't want to know his name, just send the profile.

We searched on what we call low stridency search which would only bring back if you matched half the profile.

Out of our entire database, we pulled out two people. I wrote a report up and said they might want to look at these two people. One of them was this guy's father.

So as they proceeded to moved forward with the investigation, if they were going to get a court order to get his blood, he was in West Virginia. By the way, this is central Florida, and please forgive me, this is a joke so don't take any offense, I'm cracking on my own state too here, but West Virginia and central Florida, you know there's a trailer park in this story.

The guy had a fight with his common-law wife, ran over to his mother's trailer. The woman ran over to his mother's trailer to hide. He was banging on the door to come into the trailer and the mother shot, fired a warning shot through the door to just tell him to go home and it ended up killing him.

So we had another case where we didn't have any problem getting the blood sample to compare, and he was the person that did it.

I wish I could into more, but I swore I would keep to 30 minutes. I'm trying to break the representation of the mouth from the south, but anyway, there's one thing I do want to do, this is for me personally because this one of my personal hobbies is I collect law enforcement lapel pins. There is it on the wall. So if any of you have an law enforcement pins, please send them to me. I'd be very grateful. Thanks for your attention.

(Applause.)

MR. ASPLEN: Again, see what I mean? Now, if I could -- if somebody in the back there could raise the lights a bit.

As I said in the beginning of the meeting, I think that what we're about to do now it may well be the more important part of this get-together, and it's the discussion aspect of it to find out what's going on out there and what the issues are out there.

Let me first ask whether or not you have any questions of any of the three gentlemen who spoke?

(No response.)

MR. COFFMAN: You can ask about that last case that I skipped. That way I could get it in. Ask about the last case so we can get it in.

MR. ASPLEN: Tell us about the last case, will you please? No, go ahead. We've got time.

MR. COFFMAN: No. The last case I was going to tell you was it was a case where we had three rapes one week apart in Tallahassee.

Tallahassee is a capital city college town. This kind of stuff doesn't really happen, and one of the victims was killed.

The guy would strangle the women to the point of, choking them to the point they passed out and then rape them.

Well, one woman was a very petite woman and he crushed her throat and she did die. Her four-year-old son found the body the next morning when Mommy didn't get breakfast for him. It was a very emotional case for us and anybody, so we did link that the three were done by the same person.

The crime lab did that. They sent out a bulletin, and you as investigators solved this case. That's not the point of the story, but when the bulletin went out, a similar case happened in Orlando where a woman was strangled to the point of passing out, was raped, but when she came to, the rapist had -- she had fought really hard. He was tired. He falls asleep. He was there.

So she snuck away, called the police and they came picked him up. They got a blood sample. They said, This sounds like what happened in Tallahassee. They sent it up, and he was the one that was doing the rapes in our town that lived in Orlando.

So anyway, we put it through the database right before Christmas before one of our analysts went on vacation to search, and we matched about six rapes from 1995 in Orlando that were in there pending to be worked, I mean pending to be matched or solved.

And when it hit the press and was all in newspapers and everything, the paper, the picture was printed, and for three days I said, I know this person. That face looks familiar. I can't place him.

So one of the people from our central receiving came and said, Well, David, you know the guy. That's the guy that delivered your database furniture.

It turns out he worked for the prison industry. You all have Pride or something of that sort in your state where you have to buy this high quality furniture for the prisons and for your office, you know.

So he was delivering our database furniture and actually had gotten insulted when I told him I had to escort him to the lab. He said, What do you think I am, a criminal? I thought that was a KSA for the job, you know, to work from it.

Anyway, just to let you know, it confirmed our fact that's why we don't leave anyone unescorted in our lab, and it's just, you just never know. You never know who it's going to match up to, but that one really hit close to home. Now, do you have any real questions?

MR. ASPLEN: Any questions? Sir.

MR. VUILLEUMIER: George Vuilleumier, National Association Chiefs of Police. Has there anybody here heard of a case where DNA has not been admissible in court's evidence?

MR. ASPLEN: Yeah. There are cases like that, but actually, it's kind of, it's kind of a historical perspective, if you will.

Generally speaking we have fought a lot of those admissibility battles and we've won them. You will still find pockets as new technologies come along where you may have difficulty getting in whatever the new technology of the data is, be it mitochondria, be it STR technology, etcetera, but for the most part, absent a particular issue in a particular case, from a scientific standpoint there aren't any jurisdictions that don't understand and allow the admissibility.

Where you most see problems in the admissibility of DNA comes not in the issue of for liability to science, but it comes in the particular aspects of that case and the particular collection procedures, the reliability of the DNA in that particular case.

DR. FERRARA: I might add we had a case in Richmond. It was a data-bank hit. There was very -- this was a number of years ago.



To make a long story short, when we reported to the, the results of the hit to the law enforcement agency and to the, ultimately to the courts, we had reported that the likelihood of it being, of selecting some other person at random from this was about one in 2,800.

The defense filed a motion to dismiss and that motion was granted, and the statement by the judge was that one in 2,800 did not rise to the standard of beyond reasonable, reasonable doubt, and I found that interesting because I never knew exactly what the numerical value of reasonable doubt was, but that was the only situation other than -

MR. ASPLEN: Sir.

MR. WHITE: Stephen White from Pennsylvania. Is there a list anywhere that I could find out who in Pennsylvania is the head of data? Is there a list of state by state of who is the head of their --

MR. COFFMAN: Chris Tomsey is, who you need to speak to in Pennsylvania, and we probably could -- I think I have a list at my office I could get to you.

MR. WHITE: I'll trade you a lapel pin.

MR. COFFMAN: Oh, that's great. Yeah.

MR. ASPLEN: Any other questions? The one in the back there.

UNIDENTIFIED SPEAKER: We just had some difficulty with, with a case in Michigan dealing with Burke and Elmer kits and proprietary information which the company is unwilling to share and I know that's come up in a couple of other states as well. I'm interested in whether or not the Commission or ASCLD or one of the members that might be on the panel are aware of any concerted effort to address this nationally with Burke and Elmer?

DR. FERRARA: Bill Spencer.

MR. COFFMAN: He's not going to stand up.

DR. FERRARA: Bill, do you want to address that at all?

(No response.)

DR. FERRARA: I guess not. I -- to answer that, I'd be speaking out of school. So I can't touch that if none of the manufacturers are willing to discuss it.

The issue comes with releasing what is proprietary information, and there's two principal manufacturers of the test kits that we use and I believe that that issue is going to be resolved in the near future.



MR. COFFMAN: We have a similar case right now that's happening in Florida, and the same thing, they're having a hard time getting this information.

The biotech field is very competitive, and the, I think from what was told to us in a statewide meeting we had in Florida where they were present it's, it's the people in the forensic group of this big corporation convincing the legal group that they're going to have to do this, and it's not a dead issue, and I think they -- I feel confident they will, but like, like we said, I can't speak for them. That's just what we were told.

MR. ASPLEN: And you are certainly not alone, you know, aside from Virginia and Florida. I know California has got the same issues going on. It's a big issue, and I think that it is so big that, as David and Paul pointed out, there's a lot of pressure being put on the companies in that regard, so.

MR. COFFMAN: Because the fact remains is there are two companies, and if we start losing cases because they won't release information, we'll look at the other company.

MR. ASPLEN: Right. It will only take one company to make the change and then that will resolve the issue.

DR. FERRARA: I think it's an unfortunate decision that would preclude the evidence because the prime sequence is not released, but that's the courts and we know what we're dealing with there.

MR. ASPLEN: If I could ask a question of you folks and that's this: Can you give us a sense of the extent to which your colleagues, folks in your jurisdictions, either at the executive level or lower have, an understanding of the capabilities that Dave and Paul talk about and is there an understanding of these kinds of applications? Is there a good grounding in the database system and the kinds of cases we can solve?

Anybody. I see, I see both this and this. If somebody could stand up and say, Well, yes or no or hear the considerations. Anybody? I see the heads. Dr. Caldwell.

DR. CALDWELL: Chris, I think the, there's a broad understanding that DNA is available, but a not-so-broad understanding the more non-urban you get as to what it involves involving the data collection and preservation, and it comes back to lack of information and lack of access to the development of technology, but I think the -- if I could toot the horn of the Working Group, the trifold that you put out and all of those things are working that their way through that process and making them aware of the capabilities of the process.

MR. ASPLEN: Thank you.

DR. FERRARA: If no one has any questions, there are a couple of points I'd like everybody -- you'll hear criticisms of DNA data banks as infringement on, for example, privacy issues.

Just so you're aware, we've been talking, you heard Lisa talk about the 13 core genetic locations that these data banks use.

Keep in mind that those locations really don't provide any type of medical or physical traits. They are identifiers as such, but they really provide no genetic information to the laboratories. Whoever has them, has them.

Now, critics have said, Well, yeah, that's fine and good, but you guys hang on to the samples and, therefore, what's to prevent you from doing genetic research?

I'm a strong proponent of retention of the samples for quality assurance purposes. Obviously, as you've heard from this discussion, the laboratories have everything that they can do just to keep up with the casework and are not about to go around doing any genetic research, but those are the kinds of criticisms that you will hear with respect to expansion of DNA data banks, particularly that we're going down the slippery slope as it were, and the fact does, is important that these don't represent -- these are the best regulated data banks in the country. They're very well regulated.

Ironically, those same individuals worry about insurance companies and employers who, of course, as a matter of routine ask for blood samples or urine samples anyway and which all of this information could be ascertained. So I think it's important to keep that in mind.

MR. ASPLEN: Sir.

UNIDENTIFIED SPEAKER: Question. What does it take to convert from the RFLP test to the STR? What does it take to convert them? Is it a test of the sample again or is it just a conversion?

MR. COFFMAN: Yes. When we started back in '90, we were, you know, you'd extract the DNA.

Now, the one thing about the RFLP, you know, Lisa was showing you the DNA molecule. The RFLP test actually cuts that molecule up into little pieces, but what we did early on is we saved a portion of the DNA extracted so, because we knew that the technology would change, and that's why we still want to retain the samples.

And so we -- like right now it's very easy. It's actually just evaluating the data. We just take them out of the freezer and load it on our robot, and then it, we can do about 250 samples a day of historical samples that we save the extracted DNA.

So it can be done as long as the sample was not -- you can't get all 13 of the core loci if the sample was cut up. So you can do that.

MR. ASPLEN: Question in the back there.

MR. WHITE: Yes. I'm John White from Dothan, Alabama. I wanted to say first to Chief Gainer that a goober is a peanut. Isn't that right?

MR. GAINER: Yes, that's right.

MR. WHITE: And a lugie is I think what he was trying to say. Educated people refer to them as lugies or oyster for the uneducated people.

What is the possibility that the federal, the federal authorities could assist states in lobbying state legislatures to significantly and adequately fund our local state labs? That's the obvious difficulty in Alabama is getting the funding to test our backlog of cases.

MR. ASPLEN: Let me give you a little bit of the lay of the landscape in terms of what's going on right now and then these guys can help out.

There is an effort afoot in that regard. As I mentioned, and I know that Julie Samuels has mentioned, right now NIJ is putting out about \$15 million for that purpose or specifically for the purpose of eliminating the convicted offender backlog.

I shouldn't say eliminating. I should say reduce the convicted offender backlog. That is not monies being allocated for forensic or crime scene samples to be tested and put into the database; however, the conversation continues and it is anticipated that we will get another 15 million next year.

However, pending in congress right now there are a number of Bills that would provide for not just continued convicted offender funding, but also funding for the forensic index cases.

One Bill which was introduced by Senator Hatch, and we'll hear more about this tomorrow from Tim Schellberg, but one of those Bills is attached to post-conviction regulations.

Essentially if a state certifies that they're doing post-conviction cases or analysis or allowing that to be done, then they, they can receive the benefits of a, I think that one is about a \$50 million program again for both convicted offender and for forensic index.

There's also a Bill in the House right now which was introduced by Representative McCullam who is the chair of the Crime Subcommittee, and Tim would be better at this, I believe, the Subcommittee of the Judiciary Committee.

Now, that allocates about \$145 million for both convicted offender and for forensic index kind of split out over the next four or five years.

So there is a lot being talked about and there's a lot on the table, but it's a political process right now and it's a presidential election year, so there are a lot of dynamics that are going on.

That's one of the reasons this meeting is so important. This is the kind of thing that the voice of the law enforcement community needs to speak about. So those are some of the things that are going on there.

I guess the other thing that the Federal Government is doing right now is really eliminating the issue.

By nature of the Commission process, we've been able to give them a lot of information. We've been able to explain the backlog scenario and, you know, it's an issue that has been talked about before.

I mean it's not like it's new to the FBI. The FBI as known that this problem exists, and they have been talking about it also.

The Commission provided a different forum, a broader forum to talk about the issues to make it a, you know, big public concern and a congressional concern. So that's a little bit of insight into some of the federal initiatives in that regard.

MR. ADAMS: My position with the FBI would prohibit me from lobbying a legislative group. Of course, that doesn't prevent me from talking to a group like this, but we're prohibited by law from lobbying the legislature. I guess that's why you have the convicted-offender laws and we do not at this time.

MR. COFFMAN: I also wanted to say this was the first year -- we've been in operation for 11 years, and we've operated off of grants the entire time.

Well, the first five years we operated on, you know, thank goodness for drugs, right, because we had forfeitures in Florida, and that's what we operated off on, the Ferraris from south Florida and the boats and everything else like that, but then we started getting federal funding.

There is federal funding that is given to called state called Byrne, B-Y-R-N-E, and it's for law enforcement or criminal-justice purposes, and we've been very fortunate that we have gotten two four-year Byrne grants. We're in two year of the two second. So we're operating under that.

You know, use that. I mean, if you have a competing issue going, going up for a Byrne grant in your state, see what the others are. If one of them is to help your crime laboratory, you weigh it and see if it's worth, you could maybe back off a little bit and let them have it for a change because I know in our state until we came along the corrections usually typically always got the Byrne grants, but not any more.

MR. ASPLEN: Keith.

MR. COONROD: Keith Coonrod, president elect of ASCLD, also director of Toxicology and Drug Chemistry Services for New York State Police.

A couple of things to answer your point, too, ASCLD is involved and there is what they called CFS organizations, which is consolidated forensic science organizations whereby the American Academy, ASCLD, a lot of major organizations have gotten together and what we've done is we have consolidated our efforts by actually hiring people to assist us in dealing with lobbying and

issues regarding funding of forensic science and of laboratories. So that's also something going on too to make everybody aware.

The other point I would like to make out that Paul had brought up in terms of retention samples, one other point is we heard earlier about changing from the RFLP to STR technology. The fact that we had to go back and reanalyze a lot of these samples now with STR technology, if we're not allowed to retain those samples, all of those cases would not have been allowed to be put into the database because they wouldn't have existed.

So as technology changes -- that's one of the other key points about retaining these samples. As technology changes, all of these samples that have been obtained from convicted offenders would not be available to put in to the new technology databases. That's one of the other points too that I wanted to make sure everyone was aware of.

MR. COFFMAN: I'm glad you brought that up because in our state as well, not only the convicted offenders, but our crime labs kept the abstract from cases that were unsolved.

For instance, there was one particular case that originally occurred in 1987, a rape case, pretty, pretty violent, you know, almost, the victim almost died, and that case has been worked in four different technologies and the last one was STR and we finally hit it on. So they kept their cases.

Before our labs, that lab went on line with STR, they worked all of their historical unsub cases before they announced that they were on line so they could get those done, and we, I think out of the 30 cases that they had worked they had deemed they had enough we hit on 15 of them.

MR. ASPLEN: Another kind of point to the gentleman who asked what can the Federal Government help to do in terms of, you know, our state governments and funding and things like that. The nature of that question was one of the big issues that kind of developed the idea for this conference.

Dr. Forman and I were speaking at a national conference of state legislatures meeting, and quite frankly, we were really giving it to this group of legislators that we were talking about because we were talking about unfunded mandates. We were talking about the fact that these legislators had overnight created these databases and had immediately then thereupon thrust, you know, 20, 30, maybe a hundred thousand DNA cases on to their laboratories of convicted offenders, but they didn't follow up with the appropriate amount of funding, okay.

We were really, really sticking it to them pretty hard, and one legislator kind of raised his hand and stands up and he says, Let me explain something to you. He says, Here's the way we work. We're all law and order. I mean we kind of get it. We want to do the right thing, but here's the way we make our decisions.

We get a list from law enforcement for their allocation and they give us a list of their top five priorities, and we give them whatever we can, which is usually their top two or their top three. When this issue becomes part of that list and up on that priority level, then they'll get the funding.

This conference is not about telling you what your priority list should be. It's not for anybody here to say you should be doing DNA testing over buying bulletproof vests for your police officers. That's not the point.

The point is to talk about what the issues are so that you can make really good educated decisions in considerations like this.

Let me put this picture or face on this issue. This is the scenario that we all dread when we think about the nature of backlogs and what our real capabilities are with this technology, and it's something that I know both David and Paul have gone through personally.

Imagine any this scenario. A rapist gets convicted of rape and he steps out of jail because he has the minimum. Remember what David's statistics are on rape and what we intuitively know and what we know anecdotally from our jobs in terms of recidivism.

That individual goes out and after a couple of months he knows what we know statistically will probably happen. Okay. He goes out and he reoffends.

Let's say at that point our law enforcement officers do their job well, and they go out. They get a good crime scene sample.

Let's say the woman has a rape examination done. We send it to the laboratory. We get it DNA tested. We take that DNA test and we run it in the database, but when the guy left the prison gates while he gave a blood sample pursuant to law, that blood sample is sitting in storage for two, three, four years is not an common scenario. It's not tested. It's one of these backlog cases.

What happens when they run the crime scene sample through the database? Absolutely nothing. There's nothing to hit it against.

What happens when this perpetrator then goes out and rapes victim number two? What is victim number two? Technologically completely preventable, absolutely preventable, and I know that both David and Paul have been in the situation where they have had to say to victims, We're really sorry that this happened to you, but we have this guy's sample in the system or we had his sample, we just didn't have the time or the money to test it before he got to you, to your daughter or to whatever. Now, take that kind of microscopic example and expand it out.

Dwight talked about the 700,000 cases that have been collected, but we haven't analyzed all of them. Add on top of that about a million cases where we haven't even gotten to draw the blood from the person in the first place.

The real backlog of cases of rapists and burglars and such who should be in the database and aren't is well over a million.

People who are out on parole against which society should be protected but aren't by this technology because of this incredible backlog. That's the problem with, the convicted had.

Look at the forensic index half of backlog problem and it looks like this: The Commission did a survey by the Police Executive Research Forum on the number just of rape kits in the United States that have not been tested for DNA.

Over 180,000 rape examinations have been done on women, which is not a pleasant experience, and those kits sit on storage facility shelves.

I'm not telling you anything you don't know. I know this. I know they're your shelves a lot of times and I know it's not because you don't want to test them. I know it's not because you don't understand the nature and the power of the technology, but that's the national picture.

So you take that little microscopic look and you apply it to the broader picture and you realize the extent to which we're not accessing the power of this database, and we'll hear tomorrow from Don Dovaston about what they're really doing in the UK and really expanding the power beyond what David and Paul are talking about.

But that's the nature of the problem, and I say that by way of maybe some assistance when you need to go and you need to talk to your state legislators or your funding agencies in terms of what the practical effects of these backlogs really are.

Are there any other questions or any other comments from the panelists? Sir.

MR. SOMMERS: My name is Kevin Sommers. I'm with the Fraternal Order of Police, and I'm a former sex crimes investigator, and if we lived in a perfect world where we were getting all of the samples, getting them analyzed and getting everything in to the database, we're still, we're doing everything that we need to do in the law enforcement aspect, but then we have to look at the legislative aspect.

We're facing a problem in Michigan where we have statutes of limitations. We have this technology available, it was touched on earlier, where we can go back 30 years.

I have seen television programs where they do DNA research on Egyptian mummies from thousands of years ago and are able to do some analysis in that way.

In Michigan, we're faced with a problem where we've only got seven years to build that case, or if it's a juvenile, it's ten years or until the victim reaches their 21st birthday.

Is there any type of a information available -- we're looking to pass legislation in Michigan, we're lobbying for it now -- where we expand the statutes of limitation? Is there any information available that we can go back to our legislators and get this passed.

MR. COFFMAN: Well, I was just going to say I'm glad you're moving forward with that because I believe in 1997 we no longer have a statute of limitations on sexual assault in Florida.

After the fourth sexual assault that we were able to resolve using the database and we couldn't touch the statute of limitations ran out, we went to the legislature and put our case in front of



them, and there were other issues involved that had been brought up in past years. We'd like to think this helped take it over the edge.

There are certain rules. They have to report it within 72 hours and that type of thing, but, bus that's what we did. We basically removed the statute of limitations on sexual assault.

Actually, I was in Washington a few months ago and I heard on MPR that this is causing a whole discussion even among the legal community because statute of limitations were originally or at least part of the reason they were there is because of eyewitness testimony fading over time. If we have DNA, that's not an issue. So it may, it may slowly resolve itself, but anything we can provide you we would be happy to as.

MR. SOMMERS: I'd appreciate it. Thank you.

MR. ASPLEN: There are a number of states that are addressing the exact same issue you are, and what we can do is we can try to get you some information on what those states are so you can take a look at some of their legislation, how they're addressing the situation.

Again, it's a matter of how can the law enforcement community be advocates for that kind of change, but there's another, and I think one of our speakers alluded to it earlier, there's another way to deal with that problem, and Norm Gahn is going to talk about it tomorrow, but you probably heard what they're doing in Wisconsin.

What they're doing is they're taking cases and in a John Doe fashion they're filing the case not as a John Doe or a/k/a, but they're filing it based on genetic profile which, quite frankly, is infinitely more reliable than either the a/k/a, the John Doe description or the person's real name as you think it to be. So that's another way.

For those of you who are concerned, especially if you have particular cases in your particular jurisdictions where you know the clock is running, this may be an alternative for you that you may want to consider, and Norm will give you all of that information tomorrow.

MR. COFFMAN: Real quickly. In this session right toward the end they tried to arrive at a statute in Florida or propose a Bill that would make it in to law that if you had a DNA profile of more than the population of the United States, the frequency, that the statute of limitations would not be, would not be applicable no matter what the law, but it got in too late.

Be careful when you work with that. Our attorneys nearly turned in almost a replica of what Norm did, and he was dealing with a specific case and they mentioned RFLP loci. So be careful how you word it if you do work on that.

MR. ASPLEN: Any others? Sir, I'm sorry. Thank you.

MR. MICHAUD: Tom Michaud, New Jersey Police Chiefs. Just for my own information, there's been a lot of talk about funding and lack of funding.

How much more expensive is it to build a DNA database versus a fingerprint database? I'm not familiar with all of the technical tests and collection that has to be undertaken, but I'm just wondering, is it twice as expensive, three times or more?

DR. FERRARA: I'm not sure with respect to, say, how much it cost to enter one set of inkten-print cards in to an APIS system, but with respect to entering a single DNA profile into a databank, you're talking about something in the area of maybe 60 to \$75 per sample.

If that's -- Mark, is that a reasonable figure? That's about the going rate, but I just don't know how it compares dollars and cents to a ten-print card.

MR. ADAMS: I think the question could be answered that it's considerably more in terms of technology and the equipment required and the amount of time it takes to perform the analysis and the cost of the reagents of the chemicals necessary to perform the test for DNA versus latent fingerprints.

I know that doesn't help, but it's more.

MR. MICHAUD: It does because if a Police Chiefs Association were to put pressure on the legislative branch to -- if a Police Chiefs Association were to put pressure or whatever influence we have on our legislators to change the laws to build a larger database, I know we're going to hear about the funding issue and, so I was asking just so I would have a general idea of what the opposition was going to be when, when we asked about that. But thank you.

MR. ASPLEN: Any other questions?

(No response.)

MR. ASPLEN: We're getting close to lunch, I know. Okay. Folks, thank you very much. We're not going to call people by rows because we realize people are going to want to take a break, go out, go the bathroom or have a cigarette or whatever.

I would encourage you though to come back and start to get lunch as quickly as possible. We do have a luncheon speaker.

There are two doors here also. If you would like to exit out this way, we'll open these doors up and we'll begin the luncheon presentation a little bit before, by about 10 of, I'm sorry, yeah, by about 10 of. Thank you.

(Recess taken -- 12:20 p.m.)

(After recess -- 1:00 p.m.)

## WORKING LUNCH

MR. ASPLEN: Okay. Folks. While the last couple of folks are getting their lunch, let me shut the doors first.

I would like to introduce our luncheon speaker for today, Maureen Casey. Maureen is currently the Deputy Commissioner of Policy and Planning for the New York City Police Department. She's here representing Commissioner Safir.

She joined the Police Department on April 7th of '97. She was appointed Counsel to the First Deputy Commissioner. As Counsel to the First Deputy Commissioner, she provided legal and policy advice on a number of issues, including projects such as technological development, particularly DNA.

Currently as Deputy Commissioner of Policy and Planning, she's responsible for ensuring maximal organizational efficiency and effectiveness by conducting in-depth research, by planning and policy analysis.

For those of you who are somewhat familiar with the national landscape, if you will, in terms of what different states are doing in, related to the DNA technology, while you probably understand that Florida and Virginia are kind of in the lead in the race, if you will, New York is coming up behind fast and furious.

Their commitment to -- while they were say more thoughtful to their approach and took more time thinking about it initially, what they are doing right now to expedite, number one, their infrastructure, number two, the samples that they're collecting and the scope of utilization of DNA technology and, number three, what they're doing to address their backlog problems is absolutely remarkable and I think serves as a great model both the city and the state for the effectiveness of good organization at the top and good commitment and full commitment by the top brass, if you will, to this technology.

You can do remarkable things in a very short time, I think which is exactly what New York has done. So with that, let me turn it over Maureen Casey.

(Applause.)

MS. CASEY: Thank you, Chris, and I'm very glad to be here today. One thing I think we know is that we learn, often learn best by repetition, and I think what you're going to hear from me today will be a repetition of some of the things that you have already heard this morning and some of the things that I know



you will hear from our guest speaker from England tomorrow, so I'm going to move on.

As Chris said, I am currently the Deputy Commissioner of Policy and Planning at New York City Police Department, and one of my responsibilities there, at the direction of Commissioner Safir, is to coordinate the department's DNA's initiatives.

On behalf of Police Commissioner Safir, I want to thank NIJ, DOJ and the National Commission for providing this opportunity to discuss DNA technology and its importance for law enforcement. Commissioner Safir believes, as do I, that all of you can play an important role in promoting the effective use of this technology and significantly improving the quality of policing throughout the United States.

I hope that at the conclusion of my presentation you'll be encouraged to return to your respective jurisdictions and urge your federal and state legislators to increase funding for DNA testing and to develop laws that will most effectively allow us to solve more crimes.

It is also the Commissioner's hope that you will use DNA more in your own respective departments, and with all due respect to my colleague from Florida, Dave Coffman, I think if Commissioner Safir were here, he would be very happy if the only thing you left this room with was that you were calling for DNA testing of all arrestees. There's a little bit more to what we're looking to do, but that is his ultimate goal.

I will begin by speaking about the present state of DNA use in policing and then make recommendations concerning where we believe law enforcement should be headed in using DNA.

In the United States, we have many people doing great work using DNA technology. Most major police or sheriffs' departments have had some cases within their jurisdictions where a laboratory was called upon to compare a crime scene sample to a profile of a suspected offender.

This is the most basic use of DNA technology. The police have a crime scene sample, and a suspect either volunteers or by court order provides a sample for comparison.

We recently saw such an example in Virginia where the Fourth Circuit Court of Appeals stopped the execution of a convicted offender to allow for this type of comparison to be made. Similarly, Governor Bush in Texas recently stayed an execution to allow for such testing.

While such an approach is useful in solving individual crimes, it does not begin to touch upon the potential scope and magnitude in which DNA testing may be employed.

The second way in which DNA technology is being used is through DNA databanking. In this process, samples are taken from offenders and their profiles are placed in a databank where they can be compared to other DNA profiles recovered at crime scenes.

Every state in the nation has a law that allows for DNA databanking. The most progressive law in databanking is Louisiana's.

Their statute allows the police to take DNA samples from most people they arrest for felonies and for some misdemeanors.

Unfortunately, however, as is common, the many of us see, funding was not allocated to create the infrastructure or hire the employees required to implement the law.

As such, they have not been able to move forward with their major DNA testing initiative in any significant way.

Louisiana's law is the only one of its kind in the nation. What is more the norm are laws that allow DNA samples to be taken from convicted offenders. While these laws differ from state to state, they generally apply only to convicted felons.

In New York, for example, we take DNA samples from about 65 percent of the convicted felons. Looking at other states, Massachusetts has about 40 crimes for which samples may be taken. Virginia's law covers all convicted felons, including juveniles.

The samples taken under these laws are usually obtained through blood testing. When analyzed, the samples reveal a DNA profile that is uploaded into a databank. When the profiles obtained from crime scene and the suspect or offender profile match, an identification has been made.

While the system seems simple, we as a country are still quite limited when it comes to successfully implementing large-scale use of DNA testing.

Relatively speaking, most states have few profiles in their databases and even fewer crime scene samples analyzed.

As you have heard already this morning, two states which have led the way in the use of DNA technology are Florida and Virginia.

Florida prosecuted the first DNA case in this country in 1968 and established its convicted offender databank in 1990. Virginia passed the first DNA databank law in the country in 1989.

No withstanding their accomplishments and successes in this area, these states have only approximately 500 matches between them.

The difficulty confronting these states is reflective of the problem throughout the nation. There are insufficient funding and inadequate laws to allow for a comprehensive DNA testing and databanking system that we believe this country requires.

The place to look for a model for DNA testing is England. In less than six years, the English have put together the world's most comprehensive system for identifying criminals by using a national system to collect, collect DNA samples from arrestees and at crime scenes.

At presently, they are typically identifying 300 to 500 criminal suspects per week using this system and have made as many as 900 matches in a single week.

I should also point out that the English have proven that government can act quickly when it is determined to do so.

It took just six months from the time that a final determination was made to proceed with the national databanking system until that system was ready to collect and analyze samples.

There are certainly key elements in the English system that are worth emphasizing.

First, unlike the United States, the English police take DNA samples from people at the time of arrest. They do not have to wait months or years until the person is convicted in order to get a sample to compare to other crime scene profiles.

This can save a tremendous amount of money since other investigations can be quickly completed through the exclusion of suspects or the identification of perpetrators.

Second, the English takes samples from felony and misdemeanor arrestees. They will allow samples to be taken from any offender arrested for what they call a recordable offense. These are roughly the equivalents of our fingerprintable offenses.

The English have the wisdom to realize that those who commit minor crimes also often commit more serious ones. In fact, arresting offenders for driving while intoxicated has led to DNA matches being made for murder. This kind of success is hardly surprising.

We in this country regularly identify murderers using fingerprints taken from suspects during previous arrests made for minor offenses.

What is disappointing is that we do not have the ability or legislative authority to do the same thing using DNA profiles.

The English databank was launched in April of 1995 and today has over 800,000 profiles of suspects and convicted offenders.

Using the database, approximately 72,000 suspects have been linked to crimes, and in another 10,000 cases one crime scene has been linked to another even though a suspect has been yet to identified.

What is perhaps most interesting about this system is that it is being used to solve both violent crimes and property crimes.

As law enforcement professionals, we know that we are quite successful at solving major crimes such as murder; however, property crimes, such as burglary and auto theft, have very low clearance rates of about 14 percent nationally.

DNA evidence provides us the opportunity to significantly improve our success rate in solving these crimes, too.



In England where there are over 72,000 DNA suspect matches, over 42, over 40,000 of these are for burglary and 15,000 are for auto theft.

It is worth noting that these matches are being made even though English police have not been concentrating on property crime. They expect these numbers to go much higher as they take more and more crime scene samples at the location of property crimes.

In addition to having the greatest success in solving crimes through DNA, we believe England is using the most acceptable method of taking samples from suspects.

Instead of taking blood, the English use a soft cotton swab, called buccal swabs, to obtain samples from the inside of the suspect's cheek.

It is important that we as we move forward in using DNA technology, we should begin to use buccal swabs since they are less intrusive than taking blood.

While England has implemented this very successful system over the past six years, we as a nation have struggled to implement the federal system called CODIS or the Combined DNA Index System.

CODIS seems to link many of the laboratories being used throughout the United States. At present, as you all have already heard this morning, approximately 43 states and the District of Columbia participate in CODIS.

Unfortunately, however, although there are approximately one half million profiles in the CODIS system, CODIS has made less than 500 suspect matches and about the same number of scene-to-scene matches.

The reasons for this are several. First, the system, aside from the crime scene profile compliment is made up exclusively of convicted offenders. There are no profiles from those just arrested.

Since many of these convicted offenders are presently in prison for serious offenses, they are not committing the offense that we seek to solve with new crime scene evidence.

Second, over 200,000 of the profiles in CODIS were analyzed using an older technology. Since this technology is being replaced, the early samples must be reanalyzed before comparisons can be made.

The third problem we face is there is an estimated 500,000 additional samples that have been taken from convicted offenders that have never been analyzed and are not in the CODIS system.

What is perhaps even more upsetting, as Chris Asplen already mentioned, is that in as many as one million other cases, convicted offenders who should have had samples taken from them never did. It's not clear that we will ever recover all of those samples.



A separate issue plaguing this country concerns the biological evidence and storage from 180,000 rape cases. This evidence has never been analyzed to determine if it contains offender DNA.

We probably have hundreds of murderers and thousands of sex offenders walking our streets today who could be put in prison if this analysis was done.

Having said all of this, we do not wish to suggest that everything going on in the United States is negative. As I stated previously, there are many people doing great things and working to expand our DNA capabilities.

For a moment consider, New York State since I am most familiar with it. When Commissioner Safir spoke in February of 1999 to the National Commission of the Future of DNA Evidence, the law in New York allowed us to take DNA samples from only eight percent of convicted fellows, and these, as you can guess, were only the most serious offenders who were convicted of crimes such as murder and sexual assault.

At the same time, the New York State Police, which maintains the state convicted offender database, was not yet analyzing the samples even from this limited pool of offenders.

The New York City Medical Examiner who maintains the New York City databank was not linked to the state system and, of course, the state was not part of the national CODIS system.

At the NYPD, we had 16,000 rape kits in storage that had never been analyzed and there was no clear plan on how to proceed.

Well, in the last year, a great deal has changed. First, at the Police Commission's urging, the governor of New York and the state legislature have move forward and expanded the law to require 65 percent of convicted felons to be included in your database.

Among the crimes included are weapons offenses, robbery and the higher level narcotics violations. We're also very pleased that burglary was included since as we know from the excellent DNA work being done in Virginia and Florida, this addition will help us identify many sex offenders.

I'm also glad to report that more recently New York's governor called for an additional expansion of a databank to include all convicted offenders and for the establishment of a DNA databank to help identify missing persons.

In August of 1999, the State Police laboratory went on line with CODIS, and in April of this year, the New York City Medical Examiner went on line with the state laboratory and is uploading profiles to them. This brought almost immediate success with the first match occurring within days of going on line. One suspect was linked to three rapes that occurred within our city transit system.

New York State's convicted database has over 8,000 profiles and more are added every day. In addition, they have put into place a comprehensive program to ensure that samples are taken from appropriate offenders, including those on parole and probation.

We estimate that there will be over 30,000 samples collected annually. Among those involved in the collection process are correctional staff, physicians' assistants and a private contractor.

Also, as of January 1, 1991, Commissioner Safir changed NYPD policy regarding the analysis of rape kits. The old policy limited analysis to known suspect cases. Now every sexual assault kit in New York is being processed by the medical examiner.

We have also increased the number of submissions from other violent crimes and have a pilot program in two of our Bronx precincts to process burglaries for DNA evidence.

At the same time, we recognize the importance of dealing with our backlog of rape kits and are proceeding to hire outside contractors to process these kits. Within the month, the city will be awarding three contracts to private forensic laboratories for this analysis.

In sum, the process will work as follows: The kits will be shipped from NYPD to the labs. The labs will then inventory the kits and screen for the presence of semen. DNA analysis will be performed on positive kits. Profile information will be forwarded to the city's DNA lab, and the remaining kits will be returned to the department.

We're very excited about this initiative as we know this process will solve many crimes.

One of those laboratories that we will be contracting with is represented here, and the Cellmark, Mark Stolorow is here. The other two labs are Bodie Technologies and Gene Screen in Texas.

Just as an aside, a year ago when the Police Commissioner said, Maureen, you have to find a way to deal with this backlog, it's the only way we're going to get any credibility, I'm moving forward with the arrestee issue, I explained to him that the medical examiner's office did not have the capacity to analyze the backlog. They could barely keep up with the existing caseload, and he said, What about contracting out? And I said, Nobody does it in this type of volume. He says, I like it when nobody else has done it. Find a way to get it done, and I called Paul Ferrara in Virginia and I called Dave Coffman in Florida and I started talking to a lot of my colleagues and they're saying, It's never been done. It's never been done. It's evidence in a case. You can't do it. Well, we're doing it, and we're going to be awarding those contracts within the month and we're very excited because we know we are going to solve many crimes.

Because of all of our efforts, the work load of, and the demands on, our medical examiner have significantly increased. In response to this in January of this year at a "State of the City" address, Mayor Guiliani announced the intent to create a major state-of-the-art DNA laboratory in New York City.

Now, obviously, the lab we have in New York is doing excellent work. In fact, I believe it is doing more casework than any other government lab in the country.

Still we believe with the continuing development of high sensitivity testing our caseload of crime scene evidence may increase from about 3,000 cases annually to almost a hundred thousand in the next five years and that's in New York City alone. So it's very important that we expand our capabilities as quickly as possible.

As I previously discussed, Commissioner Safir would like to see our laws expanded to allow us to take DNA samples from offenders at the time of arrest, specifically for fingerprintable offenses.

We believe these samples should be taken using buccal swabs. Naturally if the person is acquitted or not prosecuted, the profiles should be removed from the data bank and the sample destroyed.

Just to give you a sense of the impact of such a policy, the British Forensic Science Service had 36,000 matches when the Commissioner spoke to the National Commission about a year ago. Recently they had over 72,000 matches.

We have to keep in mind, too, that England is about a fifth of the size of the United States. Were they our size and at that same rate, they would have 350,000 matches since 1995.

That is the kind of success we are capable of having and we must move toward to obtain funding, training and facilities to achieve this.

Many question whether we really believe that it is necessary to take DNA at the time of arrest. Isn't it enough to wait until people are convicted?

We believe it is quite clear that samples need to be taken at the time of arrest and I want to explain some of those reasons why.

First, we have to realize that comparing a DNA profile is in many ways similar to comparing fingerprints. This is something that is done at the time of arrest and not at the time of conviction.

We take fingerprints at the time of arrest to check for warrants, and then we compare them to fingerprints taken at burglaries and other crimes. We certainly do not wait until that person is convicted or acquitted six months or a year later to see if he is wanted for other crimes.

Second, people are often not convicted of the specific crime they are actually charged with or commit. There are a number of reasons for this, including the need to plea bargain cases to keep the criminal justice system moving efficiently; however, this leads to situations where the police have apprehended someone for an offense that is clearly included in the DNA databank statute of the individual state, but because the person accepts a plea bargain for a lesser offense, their DNA will not be placed in the databank. By taking the DNA at the time of arrest, we would avoid this problem.

There are also some people who suggest that we should only have profiles from convicted felons in our data bank because only those who commit the most serious crimes should warrant this

degree of government intrusion; however, since the Police Commissioner favors the use the buccal swabs to take DNA samples, the degree of intrusion is, in fact, minimal.

Equally people should be aware that the DNA profiles being placed in law enforcement databanks do not reveal genetic predisposition. So we reject arguments that such databanks will lead to some type of Orwellian state or genetic discrimination.

The profiles look like bar codes and they can be compared to profiles. That's the purpose they serve.

In fact, if the public, including you and I, need fear anything regarding the use of DNA information, it is the relationship between the medical establishment and insurance companies who regularly exchange confidential information and are not subject to the current prohibitions on sharing DNA information that currently exists for law enforcement.

In addition, our experience in law enforcement supports the concept of taking DNA at the time of arrest even for low-level offenders. We know, and a 55 percent reduction in major crimes since 1993 in New York City spurred by addressing small offenses supports our understanding, that offenders who commit minor crimes very often commit more serious ones.

In April, an NYPD transit officer seized a loaded semiautomatic firearm when he stopped a man for jumping a turnstile in the subway system.

We should not have to wait until we catch a person with a gun like that before we can take a DNA sample from him. We should the take sample when he is arrested for committing his first fingerprintable offense which, by the way, includes not paying a subway fare. So that when we recover a gun like this at a homicide, we can swab it and know who was carrying it.

A final point concerning DNA at the time of arrest. Consider how many investigative hours could be saved by reducing investigation time on the crime of arrest as well as other unsolved crimes.

All over this country people are sitting in jail awaiting trial, some undoubtedly having committed rapes and other crimes for which DNA profiles are sitting somewhere in the CODIS system at the local, state or national level. But instead of law enforcement being able to quickly make these comparisons, we have to wait for the person to go to trial on the current offense, hopefully be found guilty of an offense that happens to be covered by the state's statute. Then hope that the state is actually taking the required samples and analyzing them.

Meanwhile, investigators are working day and night on other cases that the same person may have been involved with and often following up false leads that go nowhere.

By taking samples at the time of arrest, we could free up this investigative time and allow for other investigations to proceed.

More importantly, we could give peace of mind to victims who would know their attackers have been caught. It is also quite probable that by implementing universal DNA testing of those arrested and the concomitant crime work that would have to accompany it, we would identify many innocent people who have been falsely identified or convicted.

Now, some may raise the obvious concern, and it's already been raised here today, Won't it be expensive. The simple is answer initially it will be, but we believe the expense will be well worth it.

In the United States, close to 15 million arrests are made each year. Let us assume for argument sake that we plan to take DNA in 12 million of those cases.

At \$30 a sample, and I think that with economies of scale, the cost may even be less expensive, it would cost about \$360 million for the first year. It could be expected for the cost to decrease each subsequent year as we've devised methods, probably using fingerprints checks, to avoid taking samples from people whose DNA profile is already permanently in the database.

At the same time, I think we should dedicate an equal or greater amount of funding to allow for the analysis of casework. So let us assume we are working toward a goal of about a billion dollar expenditure.

That sounds like an incredible amount of money, but consider this. Nationally, the direct and intergovernmental criminal justice expenditure cost is over \$120 billion a year. The New York City Police Department, for example, has a budget of over \$3 billion a year. An increase of \$1 billion would be less than a one percent increase in the national criminal justice expenditure.

Another way to think about it, for those who feel the cost is prohibitive, is in terms of the cost other major government projects. Consider the United States military's B-1 Bomber. Each one cost about \$1 billion.

My point is not to take anything away from the military, but we believe a comprehensive program that will place murderers, rapists and other criminals behind bars, warrants at least equal funding. And we think that the Federal Government has a large role to play in providing that funding. We are not claiming that \$1 billion is the ideal number, but certainly it is that magnitude of scale to which we should be looking?

In fairness, we are heading in that direction. Although I would like to see us move even more quickly, there are a number of Bills in Congress that will provide as much as \$60 million in the next two years to address the backlog of convicted offender and casework samples. This funding, if approved, will certainly help us make an impact on our backlogs.

As we gain more federal funding, there are certain elements we need to look for in terms of how it may be spent: First, and most obviously, the funding must be available to address the convicted backlog and to address unanalyzed evidence from unsolved cases.

Second, we must be able to use it for training and facilities development.

Third, the funding must be available for use in public, private partnerships.

Fourth, we need to be able to use it to ensure compliance with standards established by the FBI and its DNA advisory board.

Lastly, there must be flexibility in how the funding is to be used. The funding must be allocated so that different jurisdictions can use it consistent with their own needs. Given the issues that have just been cited, I think the question we need to address is, Where should we go from here?

First, we have to speak in one clear voice that calls for the DNA testing of all persons arrested for fingerprintable offenses. We take fingerprints at the time of arrest and there's no reason that DNA samples cannot be taken at the same time. It is more than just coincidence that Dr. Alex Jeffreys, the first person to use DNA in a British criminal case referred to the DNA profile as a DNA fingerprint. In fact, in England at the moment, DNA is actually being listed literally from fingerprints.

Second, we have to address our backlogs. We have to analyze crime scene evidence that is sitting in storage. The cost of analyzing can be expensive ranging from a few hundred to a few thousand dollars.

We will have to choose judiciously as we proceed, but this evidence must be analyzed. This is going to require significant funding, but when murderer after murderer and rapist after rapist are arrested, the investment will be worth more than the expenditure.

Just as an aside, I should mention that the mayor of the city of New York has put up the \$12 million that will be required to analyze the 16,000 rape kits that we have in storage, appreciating the fact that we believe rapist after rapist will be caught.

Third, we also have to ensure that our existing laws regarding the taking of DNA samples from convicted offenders are enforced. It makes little sense to have these laws available to us if we are not using them.

Clearly, we have to push to achieve laws that allow us to take samples from all arrestees, but we cannot open ourselves to criticism by not using the existing laws to their fullest.

Fourth, at the same time, we have to take a very close look at our crime scene work. DNA evidence is very sensitive and can be easily contaminated. Sneezing, coughing or even leaving a fingerprint or a hair at a crime scene can introduce new DNA into an area.

DNA testing is becoming increasingly sensitive and advanced. In fact, in the near future, as you've heard about today, microchip technology will make it possible to conduct DNA analysis right at the crime scene.

A mobile unit the size of a briefcase will have all of the equipment and chemicals required to analyze evidence and produce a DNA profile in as little as 30 minutes.

We are all aware that defense attorneys will look for every opportunity to suggest that the police made a mistake.

Let's not give them that opportunity by having procedures or practices that allow for second-rate, crime scene investigations. Let us begin to establish a common set of guidelines on how to train officers to preserve crime scenes and collect evidence properly.

Our goal must be to provide a bottom-up, top-down comprehensive training program that teaches every officer and supervisor about the sensitivity of DNA evidence and how to preserve crime scenes and prevent evidence contamination.

Certainly, we appreciate the efforts of the Commission and the National Institute of Justice in publishing the pamphlet, What Every Law Enforcement Officer Should Know About DNA Evidence. I hope that you have been able to get copies of these for your departments.

We have to teach our crime scene officers the best methods for DNA-evidence collection and how to judiciously choose when and where to gather that evidence.

In New York, Commissioner Safir is sending some of his crime scene unit officers to England to study the best methods used there.

Fifth, to achieve these goals, we have to go to our legislators and make it quite clear that we require extensive funding and that the fund willing more than pay for itself through crime reduction. To show them how successful the implementation of comprehensive DNA programs are, we must use the media time and time again to showcase our successes. When DNA testing solves a crime, particularly a heinous one, let the world know about it.

Let me tell you about one of our cases. In New York City from 1993 to 1999, 51 rapes and sexual assaults were committed by seemingly the same man.

During the first rape, the rapist, Isaac Jones, left behind evidence. Unfortunately, we had no DNA databank. Jones was out on parole at the time he committed the first sexual assault.

When we finally arrested Jones in 1999, we linked him to 17 sexual assaults using DNA evidence, and we believe him to be responsible for 51 attacks in all.

Had New York State had the DNA law that Commissioner Safir advocates when Jones committed the first attack in 1993, 50 innocent victims would not have had to suffer the horrors of a sexual assault.

It's time we change our laws. Equally when we are unable to quickly solve a terrible crime because the suspect is not in our DNA databank, even though he has been arrested many times for so-called minor offenses, we should let the public know that, too.



We need strong public support to be successful it in implementing a comprehensive DNA program. To get this support, we have to make it clear that DNA testing will benefit them in other ways as well.

The public must know that if a member of their family is an innocent suspect in a criminal investigation, DNA testing will help the person's prove the person's innocence.

It has done this already for at least 73 convicted people, many of whom were found guilty of murder or rape, and at least eight of whom were on death row.

The public must also understand that DNA testing is a tool that we are going to use not only to catch murderers and rapists, but also burgers and car thieves.

As such, DNA testing has the potential to be financially beneficial to the public by reducing crime through the greater use of DNA testing. House insurance and car insurance will be more affordable.

We must also educate the public and dispel the myths advanced by some civil libertarians. We must make it clear that we will not provide the DNA information collected to medical researchers or insurance companies. It will not be used for anything except law enforcement investigations.

When we make all of the benefits of DNA testing clear to the public and dispel the myths, we can then ask them to put pressure on our law makers to give us the DNA testing at the time of arrest.

We know that this is an ambitious agenda. It will challenge the capacity of existing resources, but it is also an incredibly exciting time.

From his bully pulpit as Police Commission of New York City, Commissioner Safir has and will to continue to fight to get more resources and greater so we may have even greater success in solving crime. I ask you to join us in these efforts.

I want to leave you with this picture. A man in a HAZMAT suit or even a space suit. That is what the criminal of the future should look like because in anything less, we will catch him using DNA testing evidence.

Again, on behalf of Commissioner Safir, I thank you for your time and attention. Keep up the great work you all are doing and go back and fight to get this country the DNA programs and funding we all need. Thank you very much.

(Applause.)

MS. MUNDY: Joy Mundy from the New York Police Department. In all of your logistics of studying the costs, have there been --

THE AUDIENCE: We can't hear you back here. Can you use the microphone?

MS. MUNDY: I'll put this way: I'm a brunt sergeant trying to solve auto theft, okay, and the biggest problem we have is putting suspects in jail because we don't have enough prison systems.

So what I want to know is has there been any studies done by the NYPD to see what the impact will be on the prison systems, if that's going to be something coming back to haunt us on the other end.

MS. CASEY: I think the one thing I can say, and Chris mentioned this when we started, New York City and New York State are working together to develop and look at the full system impact.

The State Police are the keepers of the state convicted offender databank. Katie Lapp, Governor Patoki's director of criminal justice, oversees the entire criminal justice system from local police departments through the tail end of the system of parole. So Commissioner Safir is working with her to look at those types of issues.

To tell you that we have done a very specific study at this point, no, but we definitely appreciate the fact that this will have long-term consequences for the entire system. So it's one direction that we are going in. Any other questions?

(No response.)

MS. CASEY: Thank you very much.

MR. ASPLEN: Thank you, Maureen. We are a little bit ahead of schedule, so why don't we take a break until quarter of, relax a little bit. We'll clear out a few more of the plates and things like that and we're back at quarter of and we can start up on time.

(Recess taken -- 1:25 p.m.)

(After recess -- 1:50 p.m.)

## EDUCATING LAW ENFORCEMENT

MR. ASPLEN: Okay. Folks, to start the afternoon, I'd like to introduce the moderator of this particular panel on educational issues, and it's Chief Darrell Sanders who is the chief of police of Frankfort, Illinois.

Chief Sanders, as many of the other participants, is also a member of the National Commission on the Future of DNA Evidence and is a member of the crime scene working group also that again developed a number of the training tools that we've talked about.

Originally he started his career in Charleston County, South Carolina, but was not terribly long ago was the president of the International Association of the Chiefs of Police, and I would say, again, that the Commission owes Chief Sanders a great debt of gratitude.

Among other things, perhaps if there's a most important function, what the Chief does is always, always in our deliberations grounds us in the importance of the police officer on the street.

It is very easy in big federal bodies and commissions and big grand discussions to lose that perspective, to lose the perspective of what the officer needs on the street when he's doing his job or she's doing her job every single day, and Chief Sanders has always been really fantastic at bringing us back to that important, central issue. Chief Sanders.

(Applause.)

CHIEF SANDERS: You can tell he's an attorney of the prosecutor. He sat there with a straight face. What he would like to say is most of the times at these meetings I'm the jerk that causes all of the trouble. So he wanted to be --

As a matter of fact a proof in point, with all due respect to Chris, they keep talking about Florida, Virginia and New York fast coming up. I'm trying to figure out what happened to Illinois. Director Nolan is here, superintendent Hilliard is here, the former Commander of Konen from Chicago PD, I guarantee you show, or Illinois is right up there with them.

So New York, all due respect, you're not going to pass them until you get past us. So I just had to, I just had to clear the record there a little bit, if could.

If we could though, if I could be serious, and sometimes that's very difficult for me to do, but one of things, this is very exciting, this DNA stuff. It's very,



very exciting.

When you think about it, I've been on this Commission, and honestly we've had some knockdown, drag-out discussions about some of these issues especially with me sitting next to Barry Scheck. Barry and I have, we disagree on a lot of things, and I mean that respectfully, he's really a great guy. He agrees wholeheartedly in DNA evidence, but it's just that his and my perception of issues -- for instance, the DNA testing of all arrestees. Barry and I will never agree on that. I mean, it's that kind of thing. So we have these issues, but things that come up all the time I consider as slams against law enforcement to where they're suggesting that we destroy evidence intentionally so that they can't be used for post-conviction relief and those kinds of things. I take great offense to that.

The other thing is that they make it sound like that, and one of the interesting things about this Commission is I have a 27-man police department in we call it South Suburban, Chicago. It's actually a semi-rural area.

I sat at the same table with Superintendent Terry Hillard of the Chicago Police Department who has got a little over 12,000. For us to be able to have these discussions about what our needs are, something that benefits me, is impossible for him to enact, so to speak, and those kinds of things.

So when I say it's exciting, I really mean that this is exciting, but at the same time, it's scary. It's scary in that I believe that -- look at the O.J. Simpson case and the fact that LAPD and how bad they made LAPD look as a result of the handling of that evidence.

This stuff is real dynamite as to its potential, but it also has the potential for being very catastrophic to us if we do not prepare ourselves, and I say ourselves, because most of the time when you hear about all of this stuff I think, Oh, that's Terry Hillard's problem, that's not mine.

This is everybody's problem because it's going to apply to all of us, and what's more concerning to me is that it's first-responders responsibility. It's not the technicians.

I mean, you got your evidence techs, you got this. If you have a big case and you're a small agency, you call upon somebody like the Illinois State Police to help you out. They'll send their highly qualified individuals.

First responders have a responsibility here that you're not going to be able to get around, and the thing that concerns me when I say it concerns me is I want you to think about the fact that we don't respond properly.

What's going to happen when it's in the newspaper? I mean, they won't allow me -- Chris has told me I'm not allowed to talk about any of the other issues that we talk about in the Commission because we'll never get to the presenters; but in this light, I would hope that you pay very close attention to these two presentations and at the end that we do have an opportunity to have an open debate or discussion about some of the things that are going to be pertinent to us educating police officers.

My argument has been, will continue to be, that our police officers do their jobs and they do them very well. They have to be given the opportunity. They have to know about the technology and be given the tools that they need to be able to do that. That's my belief, so that -- that's my perspective. That doesn't mean it's correct.

That doesn't mean it's correct. I just means that's one man's perspective, and what I'm hoping is before this session is over that we will be able to talk about that and come to a conclusion about some of the things that we need to do to educate all police officers as to the potential of DNA, their responsibility from first responder.

So with that, if I could take just a second out and actually, the first gentleman I'm going to introduce, if I was to introduce him properly, we'd be here for about 45 minutes to be able to try to properly introduce him.

As I said to him, he really doesn't need any introduction to the members of law enforcement. It's Dr. Lee Colwell.

Lee is the director of the criminal justice institute the National Center for Rural Law Enforcement. He's got a distinguished 40-year career with the FBI, and I won't say anything more than that because I think he can speak for himself. Dr. Lee Colwell. Lee.

(Applause.)

DR. COLWELL: Good afternoon. Listen, it's not going to get any better than that.

I'm glad to see that Chris finally accommodated these senior members of law enforcement like myself because my capacity to endure long presentations was reached three or four times this morning, but then the problem is when he does give us a break, we stand outside and Darrell and I were talking about well, how can we get everyone back inside. He said, Well, he might announce that they were about to have a drawing for a cash door prize.



It's really an honor for me to have been asked to participate in this very significant and very important summit for DNA for law enforcement, and I'm especially grateful to Attorney General Janet Reno for sponsoring this program and for approving the funding that permits us all to come together, and also, I can't make any remarks without acknowledging the critical role of Chief Justice Shirley Abramson who chaired the Commission, Julie Samuels of NIJ, the Acting

Director, who continues to support the initiative of the DNA program and a special comment about Chris Asplen.

Chris is one of the most unique individuals I have ever met, and he came to the table for this DNA Commission with exceptional qualifications and a burning interest and desire to do something for law enforcement.

I must say that his stewardship of this as Executive Director in the past almost three years now has just been above approach, and I would like -- I don't know if he's in the room here so I'm not saying it because he's present, but whether he's in the room or not, I would like for us to just acknowledge that with an expression of our appreciation.

(Applause.)

DR. COLWELL: Finally, in acknowledgments, I want to express my appreciation for NIJ and Chris inviting people, and also to Chief, for getting non-urban law enforcement involved, and the Chief has been exceptional in bringing the focus of the Commission back to the realities, the fact that 89 or almost 90 percent of the law enforcement agencies in this great country of ours are in non-urban areas.

In addition, he used the word teach, and Commissioner, Maureen Casey used this word. Nowhere did they use the word training, and that's a change, a major change in our philosophy in law enforcement I think where when we approach the issue of the technology and how to use it of DNA and the forensics and how important that is, we're using a new term that as opposed to training in the past, we talk about teaching law enforcement, the importance of it.

I was pleased also, Ms. Forman, Dr. Forman this morning taught us about DNA a real quick educational course, and someone else this morning made the comment about how much smarter law enforcement people are today than they were sometime back in the past.

Now, I'm gratified to stand here with my gray hair and see that there's a lot of gray hair here in this audience, and in my career of the FBI, I was there 29 years, 11 months and three days, but it was kind of -- when I became and my career elevated to a policy level, people would come in and talk about how much smarter the FBI agents were than they were ten years ago, and after I while I got to where Darrell was beginning to be offended by that because when I went in the FBI in the late 50's, they talked about the new crop of FBI agents being smarter than the ones that were there at that time.

Then I saw the same thing happening in the 60's, in the 70's and the 80's and I guess it's going on in the 90's.

It's true that technology and information is so much more available today, that people have to appear smarter, but I don't accept the fact that they're smarter than the rest of us.

I was in Australia recently and I found out a new way to go to sleep at night, and they told me -- I said, What do you do? I have trouble sleeping. My doctor tells me, Well, that's a factor of age.



They said, Well, you're doing it wrong. I said, You know, count sheep at night. They said Well, you're doing it wrong. This was a sheep, what we would call a rancher. They call them farmers over there. He said, You've got to count the legs and divide it by four and then you'll go to sleep.

I think just as the ICP in 1932 or about 1932 recognized the need for a comprehensive national management system for the fingerprinting system that we're approaching that when it comes to DNA and the need to get information out, the need to be a resource for every law enforcement entity in this country.

How that would, how the organizational structure might be a symbol. I don't know. Something was mentioned this morning about 13 regions or districts, but I think there is more and more clearly evolving a need for those regions or whatever it might be.

I could not help but be reminded in hearing the outstanding presentations the last four or five hours of an experience I had in the 70's in the FBI looking back at its history where Presidents of the United States would order the FBI to increase its staff by a thousand FBI agents.

Do you remember that in 1969? Then again in 1970. Then again in 1972. Then again in 1978 or '79, and then again in 1980 and '81, and then when I think about what we were doing in hiring more and more police officers around the country and I don't know what the number is, it varies from 40,000 to a hundred thousand, what are we doing to this system without paying attention to the needs of the crime labs and the needs of the prosecutors in our country.

For years, the Department of Justice would increase its investigators without any thought as to what impact that would have on the U.S. Bureau of Prisons or the prosecuting, the ability of the prosecutors to handle the cases that would be generated by that and the ability of the courts to handle those cases.

I assume that we still believe that if we hire more police officers and we hire more FBI agents or federal law enforcement agents that we believe that they will increase the investigations and the solutions and that if that is true, then it's going to impact on other entities of the criminal justice system.

So I think one of our arguments in advocating more funding for the crime lab is just that. Law enforcement is certainly more effective and efficient today than it was ten years or 20 years ago. It manages its cases much better, and it's more successful. I think the solution rights are going up.

Just look at the evidence that's been presented in the last few hours about how the clearance rates can be affected by competent staffed, well-funded crime laboratories.

I am here to talk about education. For the past ten years, the Criminal Justice Institute has been involved in management education for non-urban law enforcement. It's been involved in research for non-urban law enforcement, and it's been involved in the delivery of forensic educational programs for law enforcement.



It's the only entity of its kind in the United States that I'm aware of that houses under one umbrella forensics, management education and research that is university based and practitioner oriented.

We have another unusual characteristic or mandate in our legislation in the State of Arkansas, and that is that the legislature in the enabling legislation for the National Center for Rural Law Enforcement and the Criminal Justice Institute order us to go forth outside the boundaries of the State of Arkansas and do whatever we could with some state funding to improve the educational programs and the forensic knowledge and the research capabilities, where needed, outside the State of Arkansas.

Now, we have a great deal of, not a great deal, but some federal funding that supports that national effort.

The Criminal Justice Institute itself has three components, and it focuses on management, law enforcement, forensics and research and the National Center.

The Law Enforcement Management Center, we focus on those who supervise others in law enforcement. Not, not the -- we're not a basic training academy. It's those who use, who supervise others through tax knowledge. In other words, municipal law enforcement agencies and sheriff's offices.

We put through our programs over 2,000 officers. This last year it was 4,600. We deliver programs throughout the state. We use other universities and colleges.

If they are aligned with a law enforcement agency, a chief or a sheriff must be a cosponsor of any education programs we put on through our satellites and other institutions of higher learning.

We present no programs that are based on development of theory or concepts unless it is reviewed by advisory board law enforcement practitioners. We want to make sure that all of our programs that are delivered are relevant to what is needed by the actual practitioner.

I mentioned the Center for Research and Assistance. That we do -- we've performed the first statewide analysis of crime in the state. We find that the court dockets are 26 months behind.

Now, judges don't like to hear that. Prosecutors love to hear it sometimes because it calls attention to their inability to get cases before the court.

We do position descriptions for -- everything that we do is at no cost to law enforcement. Remember, we focus on the non-urban areas, and those agencies have a static tax base and their training budgets or educational budgets may be as low as \$400 per department and sometimes on average around \$1,200 per department, and we're talking about 89 percent of the law enforcement agencies in the country. In the State of Arkansas, it's about 97 percent of the law enforcement agencies.

We also write, free of charge, policy manuals for these small agencies, and it's on the web page. We can give any law enforcement agency in the country RRCs, we provide policy manuals, if they ask for it, either hard copy, CD Rom or they can download it from their computer.

Those policy manuals from jail supervision to supervision, to all kinds of, any policy that's a matter of concern for a law enforcement agency are created through a battery of attorneys and prosecutors and law enforcement officials, and we don't advocate that that manual should be used as is. It should be reviewed by the chief or the sheriff and the prosecutor and those that are responsible for that liability in their particular area.

We also do testing for selection for new candidates in the law enforcement agency. We send people on site. We provide the tests. We provide the results of the tests to that agency or whoever the hiring authority is. We do not participate in the selection itself. We also do research on the courses and effects of certain actions in a law enforcement agency.

The Forensic Science Education Center is responsible for hands-on focus crime scene death investigation programs. We have several programs, and we keep the number in the class no more than 25 and preferably around 15 or 20 so that we can have direct contact between the students and the instructors, and one of our premier instructors, Darrell you would be pleased to know, is from the State of Illinois.

CHIEF SANDERS: I am pleased to know that.

DR. COLWELL: His name is Hayden Baldwin. He's retired from the Illinois State Police. This is in the area that the Chief talked about in his introduction, and that is the first responders.

In the non-urban areas, you may not have a homicide but once a year or a few burglaries during the year, but what happens, they have responders and they show up and they do what we lovingly refer to or affectionately refer to at the National Center and the Institute, there's a circle of wagons.

If I can demonstrate just a little bit, they arrive at the crime scene and as another one arrives, they kind of go around and look at the crime scene and decide what has happened, and I do not say that in a derogatory sense at all, but that is what has happened. It does happen frequently.

The history, and I've talked a little bit about the history of the Institute and the Center and I won't go into that. The needs are pretty apparent. I think most of you, 90 percent of the law enforcement agencies, ten percent of police serve the population of more than 25,000. Of that 90 percent -- if you take the whole universe of it, only ten percent of law enforcement in the United States serves a population of more than 25,000.

Of those areas that have a population of more than a hundred thousand, only two percent of the law enforcement agencies serve those populations, and it's true that we could have a more efficient law enforcement community in the United States if all of these law enforcement agencies were consolidated, but that's not what this country is about.

It's about diversity and delegation. It's not about centralization of an authority, especially in the police area.

Our country's founding father and the political philosophy in this country is not about the consolidation authority, such as law enforcement, but it's about making sure that's fragmented in a way.

So our problem in law enforcement is coordination, communication and cooperation, and I think when all this is said and done about this conference and what the needs are, law enforcement has to take the lead role in talking and working with the crime labs and with the prosecutors' offices in any coordinated effort that will affect the legislators in the days, in the months to come about additional funding.

Some of our activities -- since 1990, we have conducted a number of national forums and surveys and just to give you a quick profile about who the non-urban law enforcement is and what their needs are, we refer to them as small town and rural law enforcement agencies, and that consists of the majority of sheriffs and the majority of chiefs of police.

They have limited financing. They have limited staffing. They tend to be generalists. They are limited in their access to needed education and training programs, but their functions, as in the major cities, fall into four categories as defined by our surveys in our research. It's administrative operations, legal issues, investigative operations and forensic crime scene investigations. Not any surprises there to anyone.

Some of the things that I want to emphasize about our national crime picture is that while we all have been thrilled with the reduction of crime nationally, if you take that same uniform crime report and pull out 90 percent of the law enforcement agencies, these non-urban, rural agencies, you will see that crime has not gone down in the rural or non-urban areas. To the contrary, violent crime, some categories of violent crime have increased.

In my own state, Arkansas, in the last ten years when you take out the 13 cities that have a population of more than 25,000 in the state, and we have 495 municipal governments and 75 counties, when you take out those 13 cities with a population of more than 25,000, our crime in the State of Arkansas has gone up 82 percent in the last ten years. Nationally in the non-urban areas, the crime has, the crime rate has gone up 53 percent.

Now, while this represents only one-third of our nation's population, it is in those areas that doesn't have constant TV coverage, has a low tax base, doesn't have a full-time daily newspaper and it just escapes unless you got a very vocal Chief, like the Chief here, those problems and issues can go -- maybe I should leave that. I want to change that. I'm sorry, Chief. A very articulate Chief. So it's a major problem.

The importance of DNA, you've heard all about that this morning, and I'm not an expert on DNA, although I've been privileged to serve on their work group, but it does represent the most critical form of evidence in my view.

You know, in law enforcement, we -- in investigations, you get information, you collect information from witnesses and signed statements and observation and the crime scene, but it's been underscored by major cases in the United States in the last eight years the most critical forum, the most reliable forum of information is physical evidence if, and only if, it's properly identified, properly collected, properly preserved and properly analyzed, properly stored and available for retrieval as you, as you've heard earlier.

Education and training and equipment and technology are the three big issues.

We operate several, as I mentioned earlier, forensic courses. By the way, if you don't know, I would like to interrupt my comments and acknowledge the presence of Dr. Cheryl Pescovich-May who is the director -- stand up, Cheryl. Come on Cheryl. Believe me -- thank you.

(Applause.)

DR. COLWELL: Believe me, she's not reticent in her home environment. We're very proud of Dr. May, and we recruited her from our medical school at the University of Arkansas School of Medicine.

Anyway, she operates several programs, and she's determined that it cost \$125 to \$250 per day for hands-on programs based on our experience, and we pay for the travel and the lodging and the meals.

Now, Arkansas don't -- with exception of an Embassy Suites and a couple other hotels, we don't have these \$150 and \$250-a-night lodging, but we're getting there.

Confronted with a training or educational budget, police call them training budgets, of about a thousand dollars or less per department, that doesn't go very far.

We have put on a three-day class, and just that one class would deplete one department's education and training budget.

We tailor our curriculum based on these surveys and Oakside body of chiefs of police to meet the needs of the particular law enforcement community that they're presenting to. We have a distance-learning program. We use your satellite centers. We focus on competencies and assessment in developing the courses. We emphasize the selective submission of physical evidence to the crime lab who we work very closely with in the state.

We buy equipment and try to make that available where we can, and we attempt to expose the first responders in a broad knowledge base paradigm of the advantages of DNA as an example and what more what not to do until a larger agency, such as our State Police or a larger municipal law enforcement agency or sheriff's office is able to come in and help.

So ours is more an orientation, an educational process of what not to do, and obviously, an identification of those things that they need to do to protect the crime scene.

The Commission Work Group published, I believe it was a trifold on what you needed to know as a law enforcement agency.

Increase the -- what is needed to increase the knowledge and skills, access to needed equipment and that, of course, increases the ability to solve crimes through science and prevent crimes indirectly.

Property crimes increase in our area and all over the country as time goes by, but I think the 1998 data showed a slight decrease of a greater increase was in the urban areas.

Clearance rates for crimes in rural, non-urban areas is about 19 percent, pretty close to that in the urban areas.

When I was in my former life in the FBI, the national clearance rate, which we don't talk about much in law enforcement, all crimes considered was only 14.7 percent. Some of them, as I say, goes -- we don't want to go there when we talk about solution rates.

But technology, as was evidenced by the presentations earlier today, especially in the areas of violent crime involving rape and when they're linked with burglaries and residential burglaries can lead to significant and important solutions.

The impact in the rural communities of DNA can be tremendous. There already exists between law enforcement and their communities, whether it's a sheriff or a Chief, strong social ties.

The law enforcement officers are more likely to be in church or in a social gathering with the victims than any other law enforcement agency, those in the non-urban areas, because it's just a smaller area and they're more in contact with the community. It's not a slap at the urban areas at all. It's just a factor of small population areas and the high visibility of law enforcement in those areas.

I think the education of the smaller law enforcement agencies in this country is of paramount importance, and any election year of the national offices, such as we're going through this year, we hear calls for law and order, we hear calls for improvement in our criminal justice system, we hear calls for the need of the protection of our citizens, and DNA I think, as unlike any other innovation or technology development in the last 20 or 30 years, stands out as a shining bright light for law enforcement if it's properly developed in our laboratory facilities or increased, enlarged and incompetencies increased can be a deacon, so to speak, for citizens knowing that law environment can not only do the job, but will do the job.

The funding issue is very direct I believe, and I think as one of the presenters this morning mentioned that, I guess it was Chris mentioned in dealing with members of the legislatures they do, I believe, pay attention to what law enforcement identifies as its higher priority.

I know in my state and in the 17 other states that I've lived in the legislatures worked in that way. The Law Enforcement Association, such as the Chiefs of police Association with each state, the Municipal Police Associations, the Sheriffs Associations are the ones that really prepare that list

of priorities for the legislature, the members of the legislature, and I think law enforcement has historically underestimated its influence when it comes to the political process.

It's really not politics to express the needs for conducting criminal investigations and analyzing it. That's not political in talking to a member of the legislature or your mayor or your county judge.

It's articulating the needs in a way that can be funneled in to the policy makers so that they can make meaningful decisions about the funding priorities that they're faced with.

I do not, did not when I was in the FBI, and do not today, consider it lobbying to talk about the needs of law enforcement because they are very real. They are very human needs.

There's not a Chief that I've ever met who did not know his elected representative, his or her elected representative who was not in contact with them, a sheriff is the same way, and who did not come into contact with that elected official as a matter of routine.

You show me an elected official, whether it's a member of, a Senator figure or a representative at a state level or a member of the United States congress, a Senator, or a representative or a mayor who refuses to see and talk with their Chief or their sheriff and I'll show you someone that's not going to be in office very long.

So you have an open door, and I know it's easy for me to stand here looking for a university and saying, Well, it's okay to go ahead and talk to everybody. I think law enforcement should and must take the lead in advocating the needs for additional funding.

I think the best way to characterize that is to say that it is an educational need because there's so much information, bad publicity about what DNA is and what it does. It's up to law enforcement to overcome that with their prosecutor, through their prosecutor that they use with the elected officials, and you can do that by, with that educational process, and I think there are plenty of people in our country that will come and speak and make presentations to the associations and to those meetings.

We in Arkansas have gone to the Chief Association in the last four or five years, six years, bring in people from out of state who are recognized national experts in the field to help brief the members of the legislature in particular areas.

So I would encourage cooperation, coordination and communication between the crime labs and the prosecutors, and I would advocate that the law enforcement take a leading role in that.

Finally, we have found in our relationship and our attempt to assess small town and rural, non-urban law enforcement agencies that they don't have a lot of time.

We do not put on any course that is more than three days and usually two days, two and a half days in length because they cannot be away from their county or municipal area for longer than that.

Plus, some of the agencies, if you take one person from an eight-person department, you take a good percentage of the, of the people. They have a high turnover because many of them, officers are going on to a larger department, but the need is great, and we believe the best way to handle, to make effective what this Commission has learned in its almost three years of deliberation is through educational programs like we have or similar to what we administered at the National Center and at the Institute in the State of Arkansas that are, that make no attempt to try to develop an understanding of what DNA is, as Lisa so effectively did to all of us this morning. I'm now an expert on DNA, aren't you? But it makes no attempt to do that. It talks about what not to do and those significant and important things that must be done.

I think if we do that, you'll see the clearance rate of those very significance violent crimes, rape and so forth, in the rural areas rise.

They don't have as many cases as we do in the larger areas, but their interest and their commitment and their dedication to doing a good job professionally is unequal anyway.

We had one of our sheriffs who came in after one of our management courses and he said, he really expressed his appreciation for the content of the courses, especially on the fact that it was free, and he said, You know, we're tired of being just good old boys. We want to be something better than that.

I think if this Commission results in anything significant, which it's already done, it will highlight the needs of the crime labs throughout the country and the needs of all law enforcement to take advantage of this technology that is still evolving and is so important to the solution of crime, and the way to do that is through educational courses, not training. Thank you very much.

(Applause.)

CHIEF SANDERS: I was not kidding you about not getting a break. As soon as this session is over, you will get a break. I don't think they're listening to me out there.

You guys think about this. Do you know what I was thinking about when I was sitting there listening --

THE AUDIENCE: We don't want to know.

CHIEF SANDERS: Yeah, you don't want to know what I was thinking about. Shut up.

(Laughter.)

CHIEF SANDERS: Unfortunately, he knows me. He's a profiler, too. That's what's bad.

No. Actually, I was thinking about it as this technology, I'm thinking about when I'm a young policeman and how everybody used to give me so much crap because on TV they could always, you know, they solve crimes from a cigarette butt, and now before my career is over here we are, we can solve crimes from a cigarette butt. That's what I was really thinking about.



Now, wasn't that profound? I will tell you the other profound thing. If things don't change, they're going to stay the way they are.

(Laughter.)

CHIEF SANDERS: I'll tell you, and I'm trying to figure this out. Why do we drive in a parkway and we park in a driveway?

THE AUDIENCE: Take the mic away.

CHIEF SANDERS: Yeah, take the mic away. Actually, I am just trying to kill time while he is trying to turn this one off and that one on.

I guess while he's doing that, I could actually do the introduction and then I could sit down here and I'll have to listen. Oh, my gosh, somebody put fingerprints on this thing.

If I could, the next presenter is Keith Coonrod. Keith is the director of toxicology and drug chemistry services for the New York State Police laboratory system and has been in the forensics business for 23 years.

Mr. Coonrod has served on the board of directors for American Society of Criminal Laboratories Directors, ASCLD, and is currently President Elect of ASCLD.

Keith received his Bachelor's degree in criminology and forensic chemistry from Indiana State University and a Master's in public administration from Merst College. Mr. Keith Coonrod.

(Applause.)

MR. COONROD: First of all while we're setting up the computer, when I was asked to do this presentation, I was wondering, Well, how am I going to address this Summit dealing with law enforcement on the topic of educating. Where do I start? Where do I begin? How do I take and do this presentation? Really, that's already been done here today.

The beginning of the education segment by the fact that we've all been brought together today, we're talking about education, we're talking about DNA, we're talking about training, awareness of DNA, that has actually started here by the fact that we've gotten together. That's the first most important step.



Now, what we do from here on is up to us, and that's the second most important step. So if we carry this message back to our agencies and we spread the word regarding DNA technology, what it can do for you. What do we have to do? We have to become more aware of DNA technology regarding crime scenes' first responders.

A lot these things that we have heard today, that's the most important, is the message that we take back to our agencies.

So my part has already been done, and that is starting or beginning this particular segment regarding education and so, therefore, that's the key is what do we do from here.

First of all, I want to take and, wearing two hats, that as the President Elect of ASCLD, which is the crime laboratories directors. Really we have membership throughout the whole world, and also that as being administrator of the New York State Police, another New York thing coming here, but I'll get to Illinois later.

I want to talk about what's the past role of forensic laboratories in support to law enforcement. In the past really what's happened is the laboratories have supported law enforcement whereby you submit evidence to us, we perform an analysis of that evidence, and basically, we're there to support you in the arrest and conviction of a particular suspect that you have worked hard through your investigation; however, the role of the laboratories has changed, and its current role right now is, Yes, we're there to support law enforcement by analyzing that evidence which supports an arrest of a particular suspect, but also, the one I want to talk about more today is the investigative tool.

There's three major tools that laboratories have they didn't have ten years ago, and they are databases. They involve AFIS, the Automated Fingerprint Identification System. They involve the drug fire, IBIS Systems. They also now involve the DNA database, and that's the one that I want to talk about is that investigative tool.

In thinking about how to put this program together, here again, the way that I elected to do that was, in part, taking this group and hopefully providing some information to you that provides some education to this group so that you can understand the importance of DNA and DNA technology and, here again, take that back to your agencies. So that's the way that I'm going to approaching this. Let's talk about the investigative tool, first of all.

First of all when we're doing DNA technology, it provides or develops leads for the investigators. Also, we talked about the technology today, STRs, things like that, we're going to get into. It provides results faster to law enforcement agency. It also provides more evidence.

We heard Terrence Gainer talk about toothpicks as far as evidence. All of this technology is just changing so fast.

Some of the slides that I saw earlier today, Dwight, I've got to update one of my slides later on as far as the number of laboratories. I had 93 I think. He's got 114. New York State has 63 hits in the state versus the one.

Here again, the people that are in the know that deal with DNA like us, the technology is changing so fast for us it's very hard to stay communicating with one another and keep current.

So you can imagine what about you yourselves as the law enforcement community. How do you keep up to date? How do you keep ahead as far as what's the technology that's out there, how to handle the evidence, how to deal with the evidence? This is some of the issues that I want to talk about.

How can you take advantage of the DNA technology and law enforcement? First of all, get educated. We talked about education, we talked about training. We can also use the term awareness.

The keyword, if there is nothing else that this group walks away from, I hope that this is at least the one keyword, and that's communication. If we do not communicate and talk, then we will not become educated and trained and become aware regarding DNA technology.

Listening to past speakers this morning, one of the things that I have heard is laboratories, prosecutors, law enforcement agencies. All of us are part of the law enforcement community, the criminal justice community. We must communicate in order to effectively work and apply this tool. That is what's key.

How can we communicate? First of all, how do you become educated? How do you become aware regarding DNA? As I said, being here today is the first step. Visit your laboratory. How many people here have been in to a forensic laboratory? A fair amount. But then there's still a fair amount that have not.

What you need to do is -- as President Elect of ASCLD, one of my major responsibilities this year is I have to put together, in part, an agenda for a symposium. Every year we have a symposium. This year it's our 28th. It's going to be Buffalo. Everybody says because I'm from New York, I had something to do with that. It's just the luck of the draw the way it worked out.

But one of the things is this year at our symposium that we're doing is I'm concentrating on a couple major themes. One of them deals with education and training of our forensic scientists.

You heard Paul Ferrara talk about the Cornwell Institute down in Virginia. One of the major problems that we have within the forensic community is training and educating our people.

Take the firearms examiner. It takes us about two years to train a firearms examiner. Basically, it's a mentoring relationship one to one.

When two years comes up and all of the sudden the person gets a better offer to go to Illinois because they pay higher than we do, there you go, two years has gone out the window and you have to start over again.

We all have limited resources whether we're talking about crime laboratories, whether we're talking about law enforcement. What we have to do is, yes, while we're trying to seek funding and support, we also have to work smarter, more efficiently and more effectively.

One of the things that we're doing is actually Paul Ferrara is going to be working on one of my panels at the symposium coming up in September and that panel is going to be looking at alternatives for training a forensic scientist.

For instance, what about the program at the University of Illinois in Chicago that Bob Hanson is working with. That's very closely with Illinois State Police. What about the Cornwell Institute in Virginia? What about distance learning with Jane Holmer and that the FBI is working on?

We're going to be looking at all of these programs, all of these alternatives. How can we educate our people, our staff, our limited resources in the future? We simply cannot do it the way we've been to do it.

I'm not advocating getting rid of mentoring. There still is a place for that, there always will be, but maybe two years of mentoring is not the way to do it. Maybe one year of working through a university or some programs involving some education, some training and then going on with a year of mentoring might be a better way to take and approach that.

So as President Elect of ASCLD, this is some of the things that we're working on dealing with crime lab directors in our limited resources of forensic scientists, but the big thing is, is start right out by communicating with your laboratory, talk with them. Ask them, Gee, can I come in and visit? Can I talk with somebody in your laboratory? Can I see what it is you're actually doing there?

Yes, our resources are limited, but I would be surprised if any laboratory would just shut you right off and say, We don't even want to talk to you.

The quality of our evidence coming into the laboratory is directly linked to the quality of evidence that you collect and you submit to the laboratory.

In New York State, we have a commission on forensic science. New York State is the only state that mandates you must be accredited if you are a crime laboratory operating, a public laboratory operating in the State of New York. Mandatory. You have to be accredited, all of the crime labs.

Barry Scheck sits on the Commission, and everybody goes, Oh, my gosh. You poor guy. I feel sorry for you, but on the other hand, he's always said, My major component or my major beef is going to be the crime scene. It's not going to be the DNA technology, the STRs.

This is one of the areas that law enforcement really needs to spend some time on is the quality of the evidence, the collection of evidence, the preservation of evidence, recognizing what is DNA evidence.

Here today we've already heard about toothpicks and all of this type of evidence. Five, ten years ago that was not even an option. You'd overlook toothpicks has Terrence Gainer had said.

So start out -- communication is key. Start out by going and visiting your laboratory, asking for assistance in putting together a training program even whether it be at the laboratory or whether it be remotely at your particular site.

In New York State, one of the things that's happening is the New York State Police has put together two programs. One is something I've heard a lot about here today, first responder.

Almost everybody has talked about first responder. Yes, we understand it's very important. It's the first person at the scene. But really what are the components of a first responder? What should you do? How should they react? How should they preserve the scene?

It's going to be up to this group here. I'm not going to stand here with any magical answer saying, This is it what you have to do to educate law enforcement. The initiative is going to be you.

Going back saying, Look, I've heard so much about this DNA it really kind of scares the bajeebers out of me because there's so much that I don't know that we really have to start doing some training, get educated regarding DNA, and we're going to have to take and start some programs ourselves to deal with that.

New York State Police did do that in putting together a responder course to actually train law enforcement officers throughout the State of New York on how to actually be a first responder, the dos and don'ts regarding evidence collection.

What about going to a scene? We all know when you have a crime scene, we kind of talked about -- we heard Lee talking about circling the wagons.

Well, I know first experience in a lot of scenes I have been to, sometimes we ourselves, the top brass that are there, are the first ones to go inside that circle and starting pawing around, looking around to see what's going on, but yet we're probably the last ones that really should be in there. So how do we approach crime scenes we may have to look at that may have to change?

Why is this important, all of this stuff that we're talking about? I want to look at some of the issues regarding DNA technology.

First of all, the new don of DNA technology, the DNA database. We've heard discussions regarding the database. I'm not going to linger on it.

We've heard about CODIS, which is a combined DNA identification system, which really is a DNA database.

Also, we've heard about change in technologies. You've heard about RFLP, and then now we've gone on to STR technology.

So what you're getting is this is a changing science that's going on. We've also talked about mitochondrial DNA. All of these have direct impact on law enforcement on how to recognize, handle, preserve, collect evidence and get it to the laboratory for potential analysis.

STR, which is the one that's currently being used, is called short-tandem repeats and it's basically known as third-generation DNA testing. Approximately 63 percent of the DNA labs nationally are doing this, but it provides to you faster tests and actually more evidence, more probative evidence for you to work with.

The law enforcement community needs to know how do I use the DNA database. It's a very, very important tool. So you have to be aware of how to take and use this and use it to your advantage.

Now, one of the main purposes of CODIS or any database is to develop investigative leads. It's there to provide information to you to say, Hey, look, here's a couple of suspects or a particular suspect really at this point that maybe you want to take a look at that was involved in another crime over here that we have reason to believe based on the database hit that may be involved in your particular crime over here.

This is the one I got an update since I was here today. We went from 94 to 114 laboratories. I want to thank you for that one, but, here again, it changes.

We have two indices we've head about and talked about today, forensic and convicted offenders. That will help us as law enforcement agencies, and we talk about the convicted offender index where you get patterns from your offenders, you get case to offender hits. We've talked about patterns from evidence where it's case-to-case hits, the forensic index.

All of this is really important. Building this big index, the more numbers that we get in, and we have heard about all of these laboratories have all of these cases waiting to get into the DNA database that are not there.

New York State has 9,500 cases right now in to our database. We have 53,000 cases waiting to go in. We have 63 hits in New York State right now.

Can you imagine how many more hits we'll get once we get those 53,000 cases that are in there?

All of this is important to get this database built up. The bigger the database, the more information we're going to be able to provide to you in law enforcement, but there's some real key points here.

First of all, law enforcement needs to be aware, they need to be educated, they need some training regarding DNA evidence awareness. Also, appropriate evidence handling.

The American Society of Crime Laboratory Directors Laboratory Accrediting Board, which accredits crime laboratories throughout the world, right now a little over 200 laboratories are accredited.



They are this September introducing a new component for accreditation and that is crime scenes. Any laboratory or any agency that has a crime scene component, in addition with another component, let's say fingerprints, the latent fingerprint section or drug chemistry or trace work doing arsons, etcetera, but any facility that has a crime scene component with another component can apply to have that section accredited.

So that means that there's a certain level of standards that they have to achieve, and this is happening September we're going to have a whole segment at our symposium in Buffalo just dedicated to accrediting the crime scene discipline, how to go about doing that.

How do you take and train or educate? How do you do competency testing? How do you do proficiency testing? There's a lot of real tough issues here.

One of the things that we're doing in New York State because it's mandatory accreditation, we have no choice in New York State. Either you're accredited or out the window you are. You don't do forensics.

One of the thing we're doing, and I'm actually going to be bringing it to the symposium, is we have a crime scene trailer, a 35 foot mobile trailer that right now as we speak it's traveling all throughout New York State.

One of the problems we've heard about here is how do you educate urban and suburban law enforcement communities? This trailer is going out to them.

So instead of saying, Okay. You come to the laboratory where maybe you only have one or two laboratories in your state and it's located the in the capital or one area and you happen to be 350, 400 miles away and it's not practical if you have 12 or 15 people in your agency to take and send them to the laboratory. What we're doing is we're actually bringing the training out to the area.

The crime scene trailer, it's interesting what it is. It has a mock crime scene set up in it. It has a series of video cameras with live audio/video feed, and during our presentation, we're talking about crime scenes, we're actually going to be having the crime scene unit processed, and the video cameras will be there and it will be live video feed into the crime lab directors while the presentation is going on.

So what we can do is we can actually set up classrooms whereby people can see, law enforcement officers can, detectives and investigators, how to and, just as importantly, how not to process a crime scene, and that's one of the ways that we're actually dealing with how to overcome this education or training aspect in the State of New York dealing with crime scenes.

The other thing is, is how to apply the maximum-case application. Let's just talk about some of the nuts and bolts as far as DNA testing. What is DNA evidence?

We'll go back to Lisa's DNA 101. Where do we find it, and how do I take care of it? These are the three critical components that we really need to be aware of if we're going to be using DNA technology.



First of all, what is DNA evidence? Very simple. Anything biological. It can be blood, semen, sperm, hair, tissue, bones, organs, tooth pulp. We've heard about, talk about mitochondrial all of the way through to -- of course, labs really hate getting in feces and stuff like that, but unfortunately that's part of our job and the way it goes.

Also, we heard about toothpicks. Pap smears we've used, things like that. Anything that's biological is potential evidence.

Don't overrule it. If there's a question, contact the laboratory and ask them, Look, you know, is it possible? Should I take and consider submitting this to the laboratory? It doesn't hurt to get on the phone and call and ask.

I'm on call. In New York State, we do basically a five-week rotation, and I don't mind the phone call at 2, 3 o'clock in the morning. It takes me a couple of minutes to wake up and usually they're going a hundred miles an hour. It's like, Whooah, whooah, start over again. There is no dumb question.

I would rather have you ask me a simple question about submitting evidence, Is this evidence, than to not ask it at all. Here again, communication is key.

People constantly shed DNA. There's about three trillion cells in the human body. We only need about 100 for DNA analysis. So there's a different perspective from what we've heard about this morning when we were talking about DNA and cells, and I don't have any great pictures of cells that I'm going to show you. This is after lunch, so.

With knowledge and a little imagination, what we talked about electric shavers, toothbrushes, hat bands, pillow cases, dental floss, bandages, Pap smears, all host of things that could be potential evidence.

We have to be aware of the broad amount of potential evidence that's out there when we go to a crime scene. Here again, sometimes it's not always apparent. So do not hesitate to call the laboratory, contact them and ask them.

Second of all, how do I take care of this evidence? If I can recognize it, how do I take care of it? Collection and preservation is critical for the reliability of evidence, DNA evidence and the admissibility of evidence.

Contamination is a major issue that law enforcement agencies must be aware of with some, here again, some knowledge, some awareness. It can easily be overcome, and it should not be an issue, but there's different types of contamination. There's cross-contamination.

In other words if someone is using tweezers and the gloves and they're not changing it and they're using it from one piece of evidence to the next on through, things like that is what we have to be concerned about.

Self contamination whereby our own officers that are collecting it, he or she can actually contaminate the evidence. The day of going to a crime, crime scene and probably where everybody who is there in that scene giving a buccal swab is probably not that faraway.

Off-site contamination, materials being transported on shoes, clothing, things like that we're going to have to be aware of.

Here again, when you have a crime scene, the first thing you should ask yourself is, Is everybody here at the crime scene necessary? If they're not necessary, why are they even there.

One of the other things, the third initiative we're working in New York State to deal with that issue alone is we're right now in the stages of having a vehicle built, we're working on the bid process right now, and one of the main functions of this vehicle is going to be that when you have a crime scene to have one of our people go in with a video unit, a high-res video unit to basically keep everybody out.

So that way if we have a colonel, a major, a captain that wants to see the crime scene, there you can see it right there with a live video feed. There's no reason for you to be in there at the crime scene.

The other thing that this provides, too, is from the forensic point of view is, let's say, you have blood spatter on the wall, but you don't have an expert who is right there maybe that can interpret this blood spatter as to whether it's a high velocity spatter indicative of maybe somebody being hit with a blunt object or whatever, but through this technology, what we're able to do is to be able to have experts in other locations even look at that.

So, here again, this whole field of forensics is changing or providing information to you faster even way beyond just DNA technology that we're talking about.

Then finally, types of contamination or case subjects, allowing access to what we're talking about.

How do you avoid contamination? Very, very simple some of this stuff. What your people need to know. They need to be trained. They need to be educated, and for instance, double glove and change your gloves. Use clean collection instruments. Wrap the items separately and seal.

You heard about plastic versus paper if you're at the grocery store. Well, some of it goes back to very basics of just wrapping things separately, sealing them.

Don't mix the classes of the evidence. Protectively wrap stained items. Air dry. Do not allow items to touch. Then don't reposition items without proper protection.

Also, here again, training and education, anything biological, assume it's infectious. Best approach.

The final thing is, is this a DNA case? We're talking about DNA and we're talking about all of the DNA evidence and what the DNA can do for you, but let's not forget, not all cases are DNA cases, and that's one of the first things that we have to take a look at.

We've heard about the limited resources of the laboratory. One of the things that I get frustrated with is where there is good evidence, non-DNA evidence out there, and they want us to take and do some DNA evidence for icing on the cake and this becomes a real tough, tough issue.

What we all want to do is we ought to be able to analyze, as Paul said, all evidence at the scene. That's what we ultimately want to do. I think everybody would like to do that.

The reality is we just simply can't. There's not enough resources that the laboratories currently have to be able to do that. So one of the things that we have to do is we have to communicate.

When you have a major crime scene, what about getting the laboratory together, the lead investigator together, the prosecutor together and go over the items of evidence maybe even before its analyzed to determine what's going to be probative, what is not going to be probative and getting all of the heads together so you know what can be analyzed, what should be analyzed, what should be analyzed first to give you those leads, to give you that investigative lead and give you that information. That's one of the most critical components. As I said, go back to this keyword communication.

On a major crime scene, the three different groups of the criminal justice community should begetting together to discuss the case to determine what should or should not be done on that and when should it be done, who should do it and what time frame. That shouldn't be done two weeks before it's going to go to trial. It should be done right from the get-go especially on a major case.

What's the definition of a DNA case? It's a case with any biological evidence that will be probative in court where identification is key or necessary to an investigation. If it's not probative, maybe it shouldn't be done.

Steps to building a monster index, that we talked about. Here again, we said DNA evidence awareness, the appropriate handling of the evidence and the maximum case application. Getting together, talking about, We're going to do these five items first to begin with and then we're going to continue on and see where we go from there.

The bottom line that we want to remember is, first of all, getting educated about DNA technology, how to properly utilize DNA technology, when to utilize DNA technology. These are key critical components.

What is DNA evidence? We need training on recognizing what is DNA evidence. Where do I find it? How do I take care of it? These are the things that we need to educate our law enforcement officers about in order to be able to use the technology that we've discussed today.

The benefit of being educated and trained in DNA technology. I want to go over a couple of things. As I said, it leads to good quality leads, faster analysis time and more evidence.

Better utilization of critical law enforcement staff, now that has been alluded to already this morning and we've heard a couple of things regarding the utilization of staff. We've also heard about it costing \$127 billion for a victim I think is what the earlier discussion was when we were dealing with, with a particular case, but I want to bring out one other people, and let's talk about the law enforcement staffing.

Is there any law enforcement agency here that wants to raise their hand that says they have got more than enough staff and they don't know what to do with everybody they have? I don't think so. Are there any crime lab directors that would be here? They wouldn't raise their hand either.

The bottom line is there's not anybody in this room that has ample staff to do your job. Here again, go back to what I said earlier, we have to work smarter, more efficiently and more effectively.

In doing that if we apply and utilize some of these technologies that are there, let's take, for instance, this particular slide right here or let's just say hypothetically you have a major homicide and you may throw 20 people at this major homicide, it's pretty major, this major homicide, and if you do not apply the technology, let's say you have got 20 people and it slowly goes down in number of people, but it carries out through to eight months, so at the end of eight months you have two or three detectives or investigators, that's represented by the light blue line in terms of those resources you have thrown at them.

Yet, if you're utilizing technology properly because you're aware, you're educated and you're properly trained on how to utilize some of this technology you can throw people 20 at it, but in a relatively short period of time you may have that case where it might be solved in a much quicker time.

The difference between the dark area and light area is that is the resources now that you can apply to some of those other things that you need to that you don't have enough resources to deal with.

So by working efficiently, smarter, more effective, you'll be able to apply your limited resources also the same way more efficiently, more effectively and also smarter, and really that's it. I want to thank everybody.

(Applause.)

CHIEF SANDERS: Does anybody have any questions? Wait a minute. You have to have some kind of questions. They just want to go on break, that's all it is.

Let me ask you something. As great as this stuff is, doing it replaces good, old-fashioned police work? No. And the fact that you get a hit, do you think that solves your case? No.

They're leads. They're investigative tools. I think it's important that we think about that. One of the things I wonder about is that, with this working group that I serve on with the Commission, we developed that trifold that you heard about.

The reason we came up with the trifold was because we talked about the fact that there's a lot of people that don't have computers. A lot of police agencies still don't have computers, especially smaller agencies, so we have this trifold that we sent out that's supposed to be everything that every or what every police officer should know about DNA, how it's disseminated, those kinds of things. I think all of that is important.

We got into this thing with the CD Rom, so we developed -- there's a CD Rom for first responders and initial investigators or crime scene techs, and then a second one that's going to be more in depth than those kinds of things. I think it's the greatest thing since sliced bread.

I've got my officers. I can train them, and then Superintendent Hillard is trying to figure out how is he going to present that to his officers. It's a, it's a whole different thing, so I am just wondering how you guys felt about that.

We've got the entire universe here today as far as law enforcement. Do you guys perceive that as a problem? Do you have any suggestions on how we might overcome some of this stuff? I see. That's the way we're going to play this game. Okay.

DR. COLWELL: I mentioned our forensic courses that Dr. May presents. We take them on the road. We got the CD ROM courses that she has, but we present them. We take quadrants of the state, and we make sure there's a program presented that will reach every law enforcement agency with no more than one-hour driving time because, as you mentioned, they do not have a computer, they do not have a CD ROM, they don't have access to the Internet. That's one way with that part of it.

CHIEF SANDERS: I was hoping we could kick this around a little more because I can see not too far down the road where some of us are going to get blind sided because this is wonderful for you guys to be exposed to it, but if we don't get it exposed to the entire law enforcement community, somebody is going to pay the price and it's always -- they like to -- did somebody raise their hand? Oh, my gosh. I can't see you. Go right ahead. Please. See, I knew if I started doing four score and 20 years ago, our forefathers said, I can do that stuff. Go ahead, sir.

MR. BALDWIN: I'm Allan Baldwin from the great state of Nebraska.

By the way, what you're doing there and with the different ideas is you have to have a variety of different methods to get your message out and those education and training lots, whether it be going to some of the remote agencies or whether it be just shipping some CD ROMs over to some other agencies, a variety of different techniques because that's what we live with out there, a variety of different types of law enforcement agencies. That's it.

CHIEF SANDERS: What about the FOP? I saw you're here. I know my guy, they do this for me. That means dinosaur. They tell me I was a policeman 20 years ago, I don't know anything about it anymore.

But honestly, what is it that the individual officers -- what's your perspective on it how as far as how we educate our officer towards this DNA stuff? And do you think it's necessary that we develop all of these different ways or is there only one solution that you see?

UNIDENTIFIED SPEAKER: Absolutely. Education is always going to be good, and I don't think we -- being a working sergeant, sometimes we just don't have the time to give our officers the amount of training that they need and, you know, I know from my perspective a lot of my guys, we receive pamphlets on using DNA evidence, and there's just total misunderstanding of what DNA evidence is for. They think it's just for the rape or the homicide.

We've got to get the education out there for the people some way or another just so they know exactly what's going on and the tools that are available to them either for simpler crimes other than the rapes and the murders.

CHIEF SANDERS: That's one of the things that we've discussed considerably on the Commission as well because I keep saying, I don't have murders in my community, we don't have rapes, those kinds of things as a normal course of activity.

We have a whole lot of burglaries and that kind of thing and that this technology ought to be applied the same way, which causes another problem as far as then you have got to make sure that you don't overwhelm your laboratories, but I'm going to tell you that in my community when the people find out how much we can do with DNA, they're going to be wondering why we're not doing something with it with burglaries and stuff. Superintendent, I saw you wanted to say something.

THE SUPERINTENDENT: Yes. How many agencies got that pamphlets?

CHIEF SANDERS: How many agencies here represented got that trifold pamphlet we sent out? That's good.

THE SUPERINTENDENT: We have a lot to get out.

CHIEF SANDERS: Yes, we still do.

UNIDENTIFIED SPEAKER: How many didn't get it?

CHIEF SANDERS: How many did not get the pamphlet? Dr. Forman, do you have some pamphlets?

DR. FORMAN: We have pamphlets and, and what we need are their names and their agency numbers.

CHIEF SANDERS: I don't know if you can hear her from the back of the room. She said if you make sure we get your name and agency, we will make sure we will get the stuff to you if you don't take it with you now. Yes, sir. Go ahead.

MR. KILEY: Bill Kiley from Suffolk County in New York. With regards to getting the word out, one of the vehicles that I'd recommend really looking at is web based. A lot of agencies still might not have Internet access through the agencies, but somewhere in that community it's there and 20-minute web-based training I think can be accessible to most of us around the nation.

CHIEF SANDERS: I don't know. Of course, I'm a country boy, but I know that to me, interactive stuff is better because I can read that thing, but what I read and understand may not be what was intended. That's one of the good things about that CD ROM is because it has a question-and-answer period, and if you don't get it right, it tells you right away kind of thing, but how you could do that. Yes, ma'am.

MS. MUNDY: Another suggestion that Seattle Police lack is we have no training on DNA and we didn't have any trainers. So the best source we went to was our state crime lab and the head of the state crime lab came to us and trained us. So that's a really good resource.

CHIEF SANDERS: I see Dr. Forman back there saying we should either talk louder or use those microphones, but basically what you said was that in Seattle that they didn't have the trainers for the DNA so they went to the crime lab and the head of their crime lab actually did it.

Actually, that's one of those great things about being on this Commission. The people that are in the crime labs will definitely teach you how the clock works I can tell you. So anything else? Yes, sir.

UNIDENTIFIED SPEAKER: I think the biggest problem is that most people, especially the patrolman have no idea what the crime lab does. Until I became a detective and got into specialization, I had no idea what they did. Basically, I thought it ended me at the patrol level and that was it. I never knew what happened to it when it went out farther.

CHIEF SANDERS: He makes a very valid point. He was saying that when he was a patrol officer he didn't know what the crime lab did and he wasn't sure what his responsibility was.

I think that's one of the things when we were talking about with first responder that we're talking about is of utmost importance is because it all starts there. As you know if you have been a detective long and all, that if the first guy doesn't do what he's supposed to, the rest of us suffer. I mean, it's that kind of thing. So you do make a very valid point. Yes, sir.

UNIDENTIFIED SPEAKER: I don't think it makes any difference what vehicle you use, whether it be CD ROM or anything else, until you guarantee the funding, then you can have good quality hands-on education is what I understand we are talking about. Doing it is not going to make any difference. Funding is the key in all of it.



CHIEF SANDERS: Yes. For my own personal benefit, does everybody here pretty much agree with me though that police officers want to know that police officers care and they'll do what they're afforded the opportunity to do or am I living in a dream world? Do you know what I mean? Because I'm getting close to retiring, you know, but I mean honestly, that's what I believe. I think that if we afford them the opportunity that people are going to be amazed at the results. Is that pretty much a consensus in this room?

UNIDENTIFIED SPEAKER: Yes.

CHIEF SANDERS: Yes, sir.

MR. RADOSEVICH: Fred Radosevich, New Mexico Association of Chiefs of Police, but I think one thing we're overlooking are the more police officers we train, if the labs can't handle the caseload, like in New Mexico now they are 150 cases behind, we've got rape cases they're not even testing because they can't keep up with them, the labs are going to get so overloaded the police officers will eventually say, There's no sense in doing this because they're not processing it anyway. So we have to make sure that not only are we doing the education level, but we're securing the funding and the resources for the laboratory to be able to take on that.

It's kind of like your drug cases and stuff, when you hire a bunch more police officers. You put your narcotics use together and all of a sudden you flood the courts, you flood the DA's office without any help. It's not doing any good.

So I think you have to look at the whole picture and make sure we train the officers and also make sure that the labs have the resources available to them to do the analysis.

CHIEF SANDERS: Yes. I think you make some excellent points. I think that the Commission is actually aware of that for sure. I know --

MR. COONROD: I would like to make a comment in reference to that. You're absolutely right.

One of the things that we just did is two weeks ago I was down here, again, at the invitation of NIJ to do clips on our crime laboratory improvement dealing with funding, and we've heard there's a lot of different funding issuing, the National Forensic Science Improvement Act, the State's Coalition is very involved with that, and fortunately the late Senator Coverdell was the sponsor of that, but you're absolutely right in terms of we have to take and work together between all of the agencies. That's a real critical key component, and I think that -- that's why I said communication is a key. We can't forget that.

CHIEF SANDERS: But in addition to that, you might -- when's he's talking about communicating, one of the things that we talked about with the Commission is the fact that you're going to want to talk to your laboratory about what they want you to submit and all of those kinds of things, because, you're right, if you're overwhelmed no matter how much funding we get, that's one of the arguments they always make. If you build the prison, we've got the police who will fill it up. There's no doubt about it. We're that good at what we do.

MR. COONROD: One of the things that came out in the recent Summit though which I think is interesting, and this was an idea that came from DEA, and that is where for some of the agents they have in the field there are so many support personnel, basically a ratio, if you want to call it that, between support people or lab people and the number of agents that are out there, and that was brought up at the last clip summit meeting that we had with NIJ, and I think that was a very important message that I know that I will try to take and push, and that is you can't increase one without the other. That have to work hand in hand, that's exactly the point that you're making, and we may have to take a look at their ratio or if law enforcement is brought up to a point, we also have to take and build up at that ratio the support services for that in order to allow you to do your job and provide those investigative leads to you, etcetera. So I think the two kind of go hand in hand. We can't split those.

DR. COLWELL: Darrell, you'll be pleased to know that the University of Chicago in 1959 developed a model that's never been used by the law enforcement.

On point with what you're saying, Keith, and that is that you reach a point of diminishing returns with the number of officers you assign to a case, and the same thing applies if you hire a lot of police officers and investigators and you don't have the prosecutors or the jails and the other components, it's not going to work.

CHIEF SANDERS: Go ahead, sir.

MR. LATTA: Yes. My name is Joel Latta. I'm a lieutenant in the Burbank Police Department in Burbank, California, and the Executive Director of the International Association for Property and Evidence. We put training seminars on around the country on how to imagine property routes.

Nothing I have heard today has talked about where are we going to put all of this stuff, and this is not in the form of a question, but kind of a comment and it might bring some -- there's a lot of detectives around the country that don't want to get rid of anything forever because of maybe technology in the future, and I think one of the things when we talk about staffing and so many support staff for those that are at the crime scene, as we collect this stuff over the years, we're going to need many large warehouses to keep all of our stuff unless we come up with some standards in saying, Do we really need the entire mattress? Or the standard says, No, we don't need the mattress. We need the cutout out of it, but the detectives, if we don't train them properly, will want the whole bedroom, and that's happening right now.

CHIEF SANDERS: Yes. Of course, this is just one segment of what's going on, but I'm sure before it's over, you'll hear talk about we've got demonstrations about how they had to buy freezer trucks in Orange County so that they could store the different stuff that they were storing.

UNIDENTIFIED SPEAKER: Los Angeles is doing that also.

CHIEF SANDERS: Yes. At least the Commission is very, very aware of it. You were going to say something all of the way in the back? Yes, sir.

UNIDENTIFIED SPEAKER: Yes. Getting back to an educational standpoint, I came to this conference thinking I was going to be bamboozled with a bunch of scientific talk, and what I found is that it's been extremely simplified where let's face it, most of us that have gone into law enforcement did so because we were not smart enough to get a real job.

CHIEF SANDERS: Now you know what I mean by I have been keeping them grounded. That's what they were talking about.

UNIDENTIFIED SPEAKER: I think this is what we need to take back to our agencies and to our officers out on the road is just the simple thing like, What is DNA evidence. Anything biological.

I picked up something great there that I can take back to my evidence technicians, to my officers, and I think what we need to do also is publicize the positive cases where we are getting convictions and clearances.

Obviously, Dr. Forman still has an axe to grind over the O.J. case because she brought it up so many times, but I think some of the officers look at that particular case when there was such monumental evidence and there was an acquittal.

I think people still look at that, Well, yeah, we've got DNA, but it doesn't always work. And I think we need to publicize the positives when, like they touched on earlier. When there's a good case, where we do get a conviction, let's get it out there. Let the citizens, let the people know just what we're doing with DNA technology.

CHIEF SANDERS: And Dr. Forman can speak for herself, but surely, surely you agree with, at least to me, in that one of the things that the O.J. Simpson trial pointed out to us was how bad it is if we don't do our job and how simple it is to contaminate that evidence and take this great, wonderful technology and put it in a negative light, and I would think that that's the only reason that Dr. Forman uses that case so that you understand that this is great and all of the stuff was there, but if it's not handled correctly or even if it is and we leave that appearance that we didn't do it properly.

I think that's of the reasons I believe it's so important that we do this education thing, we do it will correctly so that people can't look at us and say, Oh, my gosh. Sanders missed up this and some killer went free because I didn't do my job as the first guy on the scene.

That's really my message is today because that's what I believe, is that to me, the O.J. Simpson trial, is the benchmark, and that's what made us all vulnerable and those kinds of things. So any other questions? Go ahead. You're retired, aren't you?

UNIDENTIFIED SPEAKER: Yes, I am. Yes, sir, I am.

CHIEF SANDERS: Semi retired. Yes, sir. Go ahead.

MR. McINTYRE: Bill McIntyre for Atlantic County, New Jersey.

CHIEF SANDERS: Wait a minute. Let them get the microphone because they can't hear you.

MR. McINTYRE: With my mouth? Bill McIntyre for Atlantic County, New Jersey. I was a homicide detective for some years up there, and two things you should know about.

About training, you can do it cheaper than you think. We got tired of waiting for somebody to give us training. We put our heads together. When I say we, some of fellows and women who were in the crime scene working group and myself and McLaughlin, they funded. We had people come in.

We trained 235 police officers from nine different states in Toronto for basically nothing. It was a free seminar. It didn't cost them anything. Just get there, and we had two days of training. We had a lot of positive comments about it. You can do this. If you want to find out how to do it, see me and talk to me and I'll tell you how to do it.

The other thing is just because we don't have the technology today and the storage today doesn't meant that we shouldn't collect it and preserve it for tomorrow. This is the beginning, not the end.

I see cases of 1991, old cold homicide cases that we did, RFLP did not give us the answers we wanted. STRs will, and when STRs won't, Y chromosome may.

These are things of the future. The future is going to be incredibly bright, and I'm kind of upset that I had to retire or decided to retire, but -- I didn't have to retire.

CHIEF SANDERS: We won't talk about that.

MR. McINTYRE: We won't comment on that. The future is very bright and very exciting and you should be excited about it, and we do need the funding, and we need the funding for labs and storage, and as administrators and chiefs, you should be advocates for that, and if you're not, shame on you. You have to get excited about this stuff.

CHIEF SANDERS: Thank you. Dave has some sort of announcement to make and then -- never mind, I was going to tell you we're going on break you may not listen to his announcement. Go right ahead.

MR. COFFMAN: No several people asked me for the information I had on the types of offenses that people commit while they're on community service. They made a hundred copies of that page, and I'm just going to -- I'll leave it up here on this front table and you can just pick it up. So the people I said I'll fax it to, this is it.

CHIEF SANDERS: Any other questions? I don't know -- oh, there she is. Robin, do you have any idea how long we're going on break or anything. We're going to reconvene at 3:45. Thank you very much.

(Recess taken -- 3:30 p.m.)

(After recess -- 3:45 p.m.)

## EDUCATING LAW ENFORCEMENT

MR. ASPLEN: Okay. Folks, to start the afternoon, I'd like to introduce the moderator of this particular panel on educational issues, and it's Chief Darrell Sanders who is the chief of police of Frankfort, Illinois.

Chief Sanders, as many of the other participants, is also a member of the National Commission on the Future of DNA Evidence and is a member of the crime scene working group also that again developed a number of the training tools that we've talked about.

Originally he started his career in Charleston County, South Carolina, but was not terribly long ago was the president of the International Association of the Chiefs of Police, and I would say, again, that the Commission owes Chief Sanders a great debt of gratitude.

Among other things, perhaps if there's a most important function, what the Chief does is always, always in our deliberations grounds us in the importance of the police officer on the street.

It is very easy in big federal bodies and commissions and big grand discussions to lose that perspective, to lose the perspective of what the officer needs on the street when he's doing his job or she's doing her job every single day, and Chief Sanders has always been really fantastic at bringing us back to that important, central issue. Chief Sanders.

(Applause.)

CHIEF SANDERS: You can tell he's an attorney of the prosecutor. He sat there with a straight face. What he would like to say is most of the times at these meetings I'm the jerk that causes all of the trouble. So he wanted to be --

As a matter of fact a proof in point, with all due respect to Chris, they keep talking about Florida, Virginia and New York fast coming up. I'm trying to figure out what happened to Illinois. Director Nolan is here, superintendent Hilliard is here, the former Commander of Konen from Chicago PD, I guarantee you show, or Illinois is right up there with them.

So New York, all due respect, you're not going to pass them until you get past us. So I just had to, I just had to clear the record there a little bit, if could.

If we could though, if I could be serious, and sometimes that's very difficult for me to do, but one of things, this is very exciting, this DNA stuff. It's very,



very exciting.

When you think about it, I've been on this Commission, and honestly we've had some knockdown, drag-out discussions about some of these issues especially with me sitting next to Barry Scheck. Barry and I have, we disagree on a lot of things, and I mean that respectfully, he's really a great guy. He agrees wholeheartedly in DNA evidence, but it's just that his and my perception of issues -- for instance, the DNA testing of all arrestees. Barry and I will never agree on that. I mean, it's that kind of thing. So we have these issues, but things that come up all the time I consider as slams against law enforcement to where they're suggesting that we destroy evidence intentionally so that they can't be used for post-conviction relief and those kinds of things. I take great offense to that.

The other thing is that they make it sound like that, and one of the interesting things about this Commission is I have a 27-man police department in we call it South Suburban, Chicago. It's actually a semi-rural area.

I sat at the same table with Superintendent Terry Hillard of the Chicago Police Department who has got a little over 12,000. For us to be able to have these discussions about what our needs are, something that benefits me, is impossible for him to enact, so to speak, and those kinds of things.

So when I say it's exciting, I really mean that this is exciting, but at the same time, it's scary. It's scary in that I believe that -- look at the O.J. Simpson case and the fact that LAPD and how bad they made LAPD look as a result of the handling of that evidence.

This stuff is real dynamite as to its potential, but it also has the potential for being very catastrophic to us if we do not prepare ourselves, and I say ourselves, because most of the time when you hear about all of this stuff I think, Oh, that's Terry Hillard's problem, that's not mine.

This is everybody's problem because it's going to apply to all of us, and what's more concerning to me is that it's first-responders responsibility. It's not the technicians.

I mean, you got your evidence techs, you got this. If you have a big case and you're a small agency, you call upon somebody like the Illinois State Police to help you out. They'll send their highly qualified individuals.

First responders have a responsibility here that you're not going to be able to get around, and the thing that concerns me when I say it concerns me is I want you to think about the fact that we don't respond properly.

What's going to happen when it's in the newspaper? I mean, they won't allow me -- Chris has told me I'm not allowed to talk about any of the other issues that we talk about in the Commission because we'll never get to the presenters; but in this light, I would hope that you pay very close attention to these two presentations and at the end that we do have an opportunity to have an open debate or discussion about some of the things that are going to be pertinent to us educating police officers.



My argument has been, will continue to be, that our police officers do their jobs and they do them very well. They have to be given the opportunity. They have to know about the technology and be given the tools that they need to be able to do that. That's my belief, so that -- that's my perspective. That doesn't mean it's correct.

That doesn't mean it's correct. I just means that's one man's perspective, and what I'm hoping is before this session is over that we will be able to talk about that and come to a conclusion about some of the things that we need to do to educate all police officers as to the potential of DNA, their responsibility from first responder.

So with that, if I could take just a second out and actually, the first gentleman I'm going to introduce, if I was to introduce him properly, we'd be here for about 45 minutes to be able to try to properly introduce him.

As I said to him, he really doesn't need any introduction to the members of law enforcement. It's Dr. Lee Colwell.

Lee is the director of the criminal justice institute the National Center for Rural Law Enforcement. He's got a distinguished 40-year career with the FBI, and I won't say anything more than that because I think he can speak for himself. Dr. Lee Colwell. Lee.

(Applause.)

DR. COLWELL: Good afternoon. Listen, it's not going to get any better than that.

I'm glad to see that Chris finally accommodated these senior members of law enforcement like myself because my capacity to endure long presentations was reached three or four times this morning, but then the problem is when he does give us a break, we stand outside and Darrell and I were talking about well, how can we get everyone back inside. He said, Well, he might announce that they were about to have a drawing for a cash door prize.



It's really an honor for me to have been asked to participate in this very significant and very important summit for DNA for law enforcement, and I'm especially grateful to Attorney General Janet Reno for sponsoring this program and for approving the funding that permits us all to come together, and also, I can't make any remarks without acknowledging the critical role of Chief Justice Shirley Abramson who chaired the Commission, Julie Samuels of NIJ, the Acting

Director, who continues to support the initiative of the DNA program and a special comment about Chris Asplen.

Chris is one of the most unique individuals I have ever met, and he came to the table for this DNA Commission with exceptional qualifications and a burning interest and desire to do something for law enforcement.

I must say that his stewardship of this as Executive Director in the past almost three years now has just been above approach, and I would like -- I don't know if he's in the room here so I'm not saying it because he's present, but whether he's in the room or not, I would like for us to just acknowledge that with an expression of our appreciation.

(Applause.)

DR. COLWELL: Finally, in acknowledgments, I want to express my appreciation for NIJ and Chris inviting people, and also to Chief, for getting non-urban law enforcement involved, and the Chief has been exceptional in bringing the focus of the Commission back to the realities, the fact that 89 or almost 90 percent of the law enforcement agencies in this great country of ours are in non-urban areas.

In addition, he used the word teach, and Commissioner, Maureen Casey used this word. Nowhere did they use the word training, and that's a change, a major change in our philosophy in law enforcement I think where when we approach the issue of the technology and how to use it of DNA and the forensics and how important that is, we're using a new term that as opposed to training in the past, we talk about teaching law enforcement, the importance of it.

I was pleased also, Ms. Forman, Dr. Forman this morning taught us about DNA a real quick educational course, and someone else this morning made the comment about how much smarter law enforcement people are today than they were sometime back in the past.

Now, I'm gratified to stand here with my gray hair and see that there's a lot of gray hair here in this audience, and in my career of the FBI, I was there 29 years, 11 months and three days, but it was kind of -- when I became and my career elevated to a policy level, people would come in and talk about how much smarter the FBI agents were than they were ten years ago, and after I while I got to where Darrell was beginning to be offended by that because when I went in the FBI in the late 50's, they talked about the new crop of FBI agents being smarter than the ones that were there at that time.

Then I saw the same thing happening in the 60's, in the 70's and the 80's and I guess it's going on in the 90's.

It's true that technology and information is so much more available today, that people have to appear smarter, but I don't accept the fact that they're smarter than the rest of us.

I was in Australia recently and I found out a new way to go to sleep at night, and they told me -- I said, What do you do? I have trouble sleeping. My doctor tells me, Well, that's a factor of age.

They said, Well, you're doing it wrong. I said, You know, count sheep at night. They said Well, you're doing it wrong. This was a sheep, what we would call a rancher. They call them farmers over there. He said, You've got to count the legs and divide it by four and then you'll go to sleep.

I think just as the ICP in 1932 or about 1932 recognized the need for a comprehensive national management system for the fingerprinting system that we're approaching that when it comes to DNA and the need to get information out, the need to be a resource for every law enforcement entity in this country.

How that would, how the organizational structure might be a symbol. I don't know. Something was mentioned this morning about 13 regions or districts, but I think there is more and more clearly evolving a need for those regions or whatever it might be.

I could not help but be reminded in hearing the outstanding presentations the last four or five hours of an experience I had in the 70's in the FBI looking back at its history where Presidents of the United States would order the FBI to increase its staff by a thousand FBI agents.

Do you remember that in 1969? Then again in 1970. Then again in 1972. Then again in 1978 or '79, and then again in 1980 and '81, and then when I think about what we were doing in hiring more and more police officers around the country and I don't know what the number is, it varies from 40,000 to a hundred thousand, what are we doing to this system without paying attention to the needs of the crime labs and the needs of the prosecutors in our country.

For years, the Department of Justice would increase its investigators without any thought as to what impact that would have on the U.S. Bureau of Prisons or the prosecuting, the ability of the prosecutors to handle the cases that would be generated by that and the ability of the courts to handle those cases.

I assume that we still believe that if we hire more police officers and we hire more FBI agents or federal law enforcement agents that we believe that they will increase the investigations and the solutions and that if that is true, then it's going to impact on other entities of the criminal justice system.

So I think one of our arguments in advocating more funding for the crime lab is just that. Law enforcement is certainly more effective and efficient today than it was ten years or 20 years ago. It manages its cases much better, and it's more successful. I think the solution rights are going up.

Just look at the evidence that's been presented in the last few hours about how the clearance rates can be affected by competent staffed, well-funded crime laboratories.

I am here to talk about education. For the past ten years, the Criminal Justice Institute has been involved in management education for non-urban law enforcement. It's been involved in research for non-urban law enforcement, and it's been involved in the delivery of forensic educational programs for law enforcement.

It's the only entity of its kind in the United States that I'm aware of that houses under one umbrella forensics, management education and research that is university based and practitioner oriented.

We have another unusual characteristic or mandate in our legislation in the State of Arkansas, and that is that the legislature in the enabling legislation for the National Center for Rural Law Enforcement and the Criminal Justice Institute order us to go forth outside the boundaries of the State of Arkansas and do whatever we could with some state funding to improve the educational programs and the forensic knowledge and the research capabilities, where needed, outside the State of Arkansas.

Now, we have a great deal of, not a great deal, but some federal funding that supports that national effort.

The Criminal Justice Institute itself has three components, and it focuses on management, law enforcement, forensics and research and the National Center.

The Law Enforcement Management Center, we focus on those who supervise others in law enforcement. Not, not the -- we're not a basic training academy. It's those who use, who supervise others through tax knowledge. In other words, municipal law enforcement agencies and sheriff's offices.

We put through our programs over 2,000 officers. This last year it was 4,600. We deliver programs throughout the state. We use other universities and colleges.

If they are aligned with a law enforcement agency, a chief or a sheriff must be a cosponsor of any education programs we put on through our satellites and other institutions of higher learning.

We present no programs that are based on development of theory or concepts unless it is reviewed by advisory board law enforcement practitioners. We want to make sure that all of our programs that are delivered are relevant to what is needed by the actual practitioner.

I mentioned the Center for Research and Assistance. That we do -- we've performed the first statewide analysis of crime in the state. We find that the court dockets are 26 months behind.

Now, judges don't like to hear that. Prosecutors love to hear it sometimes because it calls attention to their inability to get cases before the court.

We do position descriptions for -- everything that we do is at no cost to law enforcement. Remember, we focus on the non-urban areas, and those agencies have a static tax base and their training budgets or educational budgets may be as low as \$400 per department and sometimes on average around \$1,200 per department, and we're talking about 89 percent of the law enforcement agencies in the country. In the State of Arkansas, it's about 97 percent of the law enforcement agencies.

We also write, free of charge, policy manuals for these small agencies, and it's on the web page. We can give any law enforcement agency in the country RRCs, we provide policy manuals, if they ask for it, either hard copy, CD Rom or they can download it from their computer.

Those policy manuals from jail supervision to supervision, to all kinds of, any policy that's a matter of concern for a law enforcement agency are created through a battery of attorneys and prosecutors and law enforcement officials, and we don't advocate that that manual should be used as is. It should be reviewed by the chief or the sheriff and the prosecutor and those that are responsible for that liability in their particular area.

We also do testing for selection for new candidates in the law enforcement agency. We send people on site. We provide the tests. We provide the results of the tests to that agency or whoever the hiring authority is. We do not participate in the selection itself. We also do research on the courses and effects of certain actions in a law enforcement agency.

The Forensic Science Education Center is responsible for hands-on focus crime scene death investigation programs. We have several programs, and we keep the number in the class no more than 25 and preferably around 15 or 20 so that we can have direct contact between the students and the instructors, and one of our premier instructors, Darrell you would be pleased to know, is from the State of Illinois.

CHIEF SANDERS: I am pleased to know that.

DR. COLWELL: His name is Hayden Baldwin. He's retired from the Illinois State Police. This is in the area that the Chief talked about in his introduction, and that is the first responders.

In the non-urban areas, you may not have a homicide but once a year or a few burglaries during the year, but what happens, they have responders and they show up and they do what we lovingly refer to or affectionately refer to at the National Center and the Institute, there's a circle of wagons.

If I can demonstrate just a little bit, they arrive at the crime scene and as another one arrives, they kind of go around and look at the crime scene and decide what has happened, and I do not say that in a derogatory sense at all, but that is what has happened. It does happen frequently.

The history, and I've talked a little bit about the history of the Institute and the Center and I won't go into that. The needs are pretty apparent. I think most of you, 90 percent of the law enforcement agencies, ten percent of police serve the population of more than 25,000. Of that 90 percent -- if you take the whole universe of it, only ten percent of law enforcement in the United States serves a population of more than 25,000.

Of those areas that have a population of more than a hundred thousand, only two percent of the law enforcement agencies serve those populations, and it's true that we could have a more efficient law enforcement community in the United States if all of these law enforcement agencies were consolidated, but that's not what this country is about.

It's about diversity and delegation. It's not about centralization of an authority, especially in the police area.

Our country's founding father and the political philosophy in this country is not about the consolidation authority, such as law enforcement, but it's about making sure that's fragmented in a way.

So our problem in law enforcement is coordination, communication and cooperation, and I think when all this is said and done about this conference and what the needs are, law enforcement has to take the lead role in talking and working with the crime labs and with the prosecutors' offices in any coordinated effort that will affect the legislators in the days, in the months to come about additional funding.

Some of our activities -- since 1990, we have conducted a number of national forums and surveys and just to give you a quick profile about who the non-urban law enforcement is and what their needs are, we refer to them as small town and rural law enforcement agencies, and that consists of the majority of sheriffs and the majority of chiefs of police.

They have limited financing. They have limited staffing. They tend to be generalists. They are limited in their access to needed education and training programs, but their functions, as in the major cities, fall into four categories as defined by our surveys in our research. It's administrative operations, legal issues, investigative operations and forensic crime scene investigations. Not any surprises there to anyone.

Some of the things that I want to emphasize about our national crime picture is that while we all have been thrilled with the reduction of crime nationally, if you take that same uniform crime report and pull out 90 percent of the law enforcement agencies, these non-urban, rural agencies, you will see that crime has not gone down in the rural or non-urban areas. To the contrary, violent crime, some categories of violent crime have increased.

In my own state, Arkansas, in the last ten years when you take out the 13 cities that have a population of more than 25,000 in the state, and we have 495 municipal governments and 75 counties, when you take out those 13 cities with a population of more than 25,000, our crime in the State of Arkansas has gone up 82 percent in the last ten years. Nationally in the non-urban areas, the crime has, the crime rate has gone up 53 percent.

Now, while this represents only one-third of our nation's population, it is in those areas that doesn't have constant TV coverage, has a low tax base, doesn't have a full-time daily newspaper and it just escapes unless you got a very vocal Chief, like the Chief here, those problems and issues can go -- maybe I should leave that. I want to change that. I'm sorry, Chief. A very articulate Chief. So it's a major problem.

The importance of DNA, you've heard all about that this morning, and I'm not an expert on DNA, although I've been privileged to serve on their work group, but it does represent the most critical form of evidence in my view.



You know, in law enforcement, we -- in investigations, you get information, you collect information from witnesses and signed statements and observation and the crime scene, but it's been underscored by major cases in the United States in the last eight years the most critical forum, the most reliable forum of information is physical evidence if, and only if, it's properly identified, properly collected, properly preserved and properly analyzed, properly stored and available for retrieval as you, as you've heard earlier.

Education and training and equipment and technology are the three big issues.

We operate several, as I mentioned earlier, forensic courses. By the way, if you don't know, I would like to interrupt my comments and acknowledge the presence of Dr. Cheryl Pescovich-May who is the director -- stand up, Cheryl. Come on Cheryl. Believe me -- thank you.

(Applause.)

DR. COLWELL: Believe me, she's not reticent in her home environment. We're very proud of Dr. May, and we recruited her from our medical school at the University of Arkansas School of Medicine.

Anyway, she operates several programs, and she's determined that it cost \$125 to \$250 per day for hands-on programs based on our experience, and we pay for the travel and the lodging and the meals.

Now, Arkansas don't -- with exception of an Embassy Suites and a couple other hotels, we don't have these \$150 and \$250-a-night lodging, but we're getting there.

Confronted with a training or educational budget, police call them training budgets, of about a thousand dollars or less per department, that doesn't go very far.

We have put on a three-day class, and just that one class would deplete one department's education and training budget.

We tailor our curriculum based on these surveys and Oakside body of chiefs of police to meet the needs of the particular law enforcement community that they're presenting to. We have a distance-learning program. We use your satellite centers. We focus on competencies and assessment in developing the courses. We emphasize the selective submission of physical evidence to the crime lab who we work very closely with in the state.

We buy equipment and try to make that available where we can, and we attempt to expose the first responders in a broad knowledge base paradigm of the advantages of DNA as an example and what more what not to do until a larger agency, such as our State Police or a larger municipal law enforcement agency or sheriff's office is able to come in and help.

So ours is more an orientation, an educational process of what not to do, and obviously, an identification of those things that they need to do to protect the crime scene.



The Commission Work Group published, I believe it was a trifold on what you needed to know as a law enforcement agency.

Increase the -- what is needed to increase the knowledge and skills, access to needed equipment and that, of course, increases the ability to solve crimes through science and prevent crimes indirectly.

Property crimes increase in our area and all over the country as time goes by, but I think the 1998 data showed a slight decrease of a greater increase was in the urban areas.

Clearance rates for crimes in rural, non-urban areas is about 19 percent, pretty close to that in the urban areas.

When I was in my former life in the FBI, the national clearance rate, which we don't talk about much in law enforcement, all crimes considered was only 14.7 percent. Some of them, as I say, goes -- we don't want to go there when we talk about solution rates.

But technology, as was evidenced by the presentations earlier today, especially in the areas of violent crime involving rape and when they're linked with burglaries and residential burglaries can lead to significant and important solutions.

The impact in the rural communities of DNA can be tremendous. There already exists between law enforcement and their communities, whether it's a sheriff or a Chief, strong social ties.

The law enforcement officers are more likely to be in church or in a social gathering with the victims than any other law enforcement agency, those in the non-urban areas, because it's just a smaller area and they're more in contact with the community. It's not a slap at the urban areas at all. It's just a factor of small population areas and the high visibility of law enforcement in those areas.

I think the education of the smaller law enforcement agencies in this country is of paramount importance, and any election year of the national offices, such as we're going through this year, we hear calls for law and order, we hear calls for improvement in our criminal justice system, we hear calls for the need of the protection of our citizens, and DNA I think, as unlike any other innovation or technology development in the last 20 or 30 years, stands out as a shining bright light for law enforcement if it's properly developed in our laboratory facilities or increased, enlarged and incompetencies increased can be a deacon, so to speak, for citizens knowing that law environment can not only do the job, but will do the job.

The funding issue is very direct I believe, and I think as one of the presenters this morning mentioned that, I guess it was Chris mentioned in dealing with members of the legislatures they do, I believe, pay attention to what law enforcement identifies as its higher priority.

I know in my state and in the 17 other states that I've lived in the legislatures worked in that way. The Law Enforcement Association, such as the Chiefs of police Association with each state, the Municipal Police Associations, the Sheriffs Associations are the ones that really prepare that list

of priorities for the legislature, the members of the legislature, and I think law enforcement has historically underestimated its influence when it comes to the political process.

It's really not politics to express the needs for conducting criminal investigations and analyzing it. That's not political in talking to a member of the legislature or your mayor or your county judge.

It's articulating the needs in a way that can be funneled in to the policy makers so that they can make meaningful decisions about the funding priorities that they're faced with.

I do not, did not when I was in the FBI, and do not today, consider it lobbying to talk about the needs of law enforcement because they are very real. They are very human needs.

There's not a Chief that I've ever met who did not know his elected representative, his or her elected representative who was not in contact with them, a sheriff is the same way, and who did not come into contact with that elected official as a matter of routine.

You show me an elected official, whether it's a member of, a Senator figure or a representative at a state level or a member of the United States congress, a Senator, or a representative or a mayor who refuses to see and talk with their Chief or their sheriff and I'll show you someone that's not going to be in office very long.

So you have an open door, and I know it's easy for me to stand here looking for a university and saying, Well, it's okay to go ahead and talk to everybody. I think law enforcement should and must take the lead in advocating the needs for additional funding.

I think the best way to characterize that is to say that it is an educational need because there's so much information, bad publicity about what DNA is and what it does. It's up to law enforcement to overcome that with their prosecutor, through their prosecutor that they use with the elected officials, and you can do that by, with that educational process, and I think there are plenty of people in our country that will come and speak and make presentations to the associations and to those meetings.

We in Arkansas have gone to the Chief Association in the last four or five years, six years, bring in people from out of state who are recognized national experts in the field to help brief the members of the legislature in particular areas.

So I would encourage cooperation, coordination and communication between the crime labs and the prosecutors, and I would advocate that the law enforcement take a leading role in that.

Finally, we have found in our relationship and our attempt to assess small town and rural, non-urban law enforcement agencies that they don't have a lot of time.

We do not put on any course that is more than three days and usually two days, two and a half days in length because they cannot be away from their county or municipal area for longer than that.

Plus, some of the agencies, if you take one person from an eight-person department, you take a good percentage of the, of the people. They have a high turnover because many of them, officers are going on to a larger department, but the need is great, and we believe the best way to handle, to make effective what this Commission has learned in its almost three years of deliberation is through educational programs like we have or similar to what we administered at the National Center and at the Institute in the State of Arkansas that are, that make no attempt to try to develop an understanding of what DNA is, as Lisa so effectively did to all of us this morning. I'm now an expert on DNA, aren't you? But it makes no attempt to do that. It talks about what not to do and those significant and important things that must be done.

I think if we do that, you'll see the clearance rate of those very significance violent crimes, rape and so forth, in the rural areas rise.

They don't have as many cases as we do in the larger areas, but their interest and their commitment and their dedication to doing a good job professionally is unequal anyway.

We had one of our sheriffs who came in after one of our management courses and he said, he really expressed his appreciation for the content of the courses, especially on the fact that it was free, and he said, You know, we're tired of being just good old boys. We want to be something better than that.

I think if this Commission results in anything significant, which it's already done, it will highlight the needs of the crime labs throughout the country and the needs of all law enforcement to take advantage of this technology that is still evolving and is so important to the solution of crime, and the way to do that is through educational courses, not training. Thank you very much.

(Applause.)

CHIEF SANDERS: I was not kidding you about not getting a break. As soon as this session is over, you will get a break. I don't think they're listening to me out there.

You guys think about this. Do you know what I was thinking about when I was sitting there listening --

THE AUDIENCE: We don't want to know.

CHIEF SANDERS: Yeah, you don't want to know what I was thinking about. Shut up.

(Laughter.)

CHIEF SANDERS: Unfortunately, he knows me. He's a profiler, too. That's what's bad.

No. Actually, I was thinking about it as this technology, I'm thinking about when I'm a young policeman and how everybody used to give me so much crap because on TV they could always, you know, they solve crimes from a cigarette butt, and now before my career is over here we are, we can solve crimes from a cigarette butt. That's what I was really thinking about.

Now, wasn't that profound? I will tell you the other profound thing. If things don't change, they're going to stay the way they are.

(Laughter.)

CHIEF SANDERS: I'll tell you, and I'm trying to figure this out. Why do we drive in a parkway and we park in a driveway?

THE AUDIENCE: Take the mic away.

CHIEF SANDERS: Yeah, take the mic away. Actually, I am just trying to kill time while he is trying to turn this one off and that one on.

I guess while he's doing that, I could actually do the introduction and then I could sit down here and I'll have to listen. Oh, my gosh, somebody put fingerprints on this thing.

If I could, the next presenter is Keith Coonrod. Keith is the director of toxicology and drug chemistry services for the New York State Police laboratory system and has been in the forensics business for 23 years.

Mr. Coonrod has served on the board of directors for American Society of Criminal Laboratories Directors, ASCLD, and is currently President Elect of ASCLD.

Keith received his Bachelor's degree in criminology and forensic chemistry from Indiana State University and a Master's in public administration from Merst College. Mr. Keith Coonrod.

(Applause.)

MR. COONROD: First of all while we're setting up the computer, when I was asked to do this presentation, I was wondering, Well, how am I going to address this Summit dealing with law enforcement on the topic of educating. Where do I start? Where do I begin? How do I take and do this presentation? Really, that's already been done here today.

The beginning of the education segment by the fact that we've all been brought together today, we're talking about education, we're talking about DNA, we're talking about training, awareness of DNA, that has actually started here by the fact that we've gotten together. That's the first most important step.



Now, what we do from here on is up to us, and that's the second most important step. So if we carry this message back to our agencies and we spread the word regarding DNA technology, what it can do for you. What do we have to do? We have to become more aware of DNA technology regarding crime scenes' first responders.

A lot these things that we have heard today, that's the most important, is the message that we take back to our agencies.

So my part has already been done, and that is starting or beginning this particular segment regarding education and so, therefore, that's the key is what do we do from here.

First of all, I want to take and, wearing two hats, that as the President Elect of ASCLD, which is the crime laboratories directors. Really we have membership throughout the whole world, and also that as being administrator of the New York State Police, another New York thing coming here, but I'll get to Illinois later.

I want to talk about what's the past role of forensic laboratories in support to law enforcement. In the past really what's happened is the laboratories have supported law enforcement whereby you submit evidence to us, we perform an analysis of that evidence, and basically, we're there to support you in the arrest and conviction of a particular suspect that you have worked hard through your investigation; however, the role of the laboratories has changed, and its current role right now is, Yes, we're there to support law enforcement by analyzing that evidence which supports an arrest of a particular suspect, but also, the one I want to talk about more today is the investigative tool.

There's three major tools that laboratories have they didn't have ten years ago, and they are databases. They involve AFIS, the Automated Fingerprint Identification System. They involve the drug fire, IBIS Systems. They also now involve the DNA database, and that's the one that I want to talk about is that investigative tool.

In thinking about how to put this program together, here again, the way that I elected to do that was, in part, taking this group and hopefully providing some information to you that provides some education to this group so that you can understand the importance of DNA and DNA technology and, here again, take that back to your agencies. So that's the way that I'm going to approaching this. Let's talk about the investigative tool, first of all.

First of all when we're doing DNA technology, it provides or develops leads for the investigators. Also, we talked about the technology today, STRs, things like that, we're going to get into. It provides results faster to law enforcement agency. It also provides more evidence.

We heard Terrence Gainer talk about toothpicks as far as evidence. All of this technology is just changing so fast.

Some of the slides that I saw earlier today, Dwight, I've got to update one of my slides later on as far as the number of laboratories. I had 93 I think. He's got 114. New York State has 63 hits in the state versus the one.

Here again, the people that are in the know that deal with DNA like us, the technology is changing so fast for us it's very hard to stay communicating with one another and keep current.

So you can imagine what about you yourselves as the law enforcement community. How do you keep up to date? How do you keep ahead as far as what's the technology that's out there, how to handle the evidence, how to deal with the evidence? This is some of the issues that I want to talk about.

How can you take advantage of the DNA technology and law enforcement? First of all, get educated. We talked about education, we talked about training. We can also use the term awareness.

The keyword, if there is nothing else that this group walks away from, I hope that this is at least the one keyword, and that's communication. If we do not communicate and talk, then we will not become educated and trained and become aware regarding DNA technology.

Listening to past speakers this morning, one of the things that I have heard is laboratories, prosecutors, law enforcement agencies. All of us are part of the law enforcement community, the criminal justice community. We must communicate in order to effectively work and apply this tool. That is what's key.

How can we communicate? First of all, how do you become educated? How do you become aware regarding DNA? As I said, being here today is the first step. Visit your laboratory. How many people here have been in to a forensic laboratory? A fair amount. But then there's still a fair amount that have not.

What you need to do is -- as President Elect of ASCLD, one of my major responsibilities this year is I have to put together, in part, an agenda for a symposium. Every year we have a symposium. This year it's our 28th. It's going to be Buffalo. Everybody says because I'm from New York, I had something to do with that. It's just the luck of the draw the way it worked out.

But one of the things is this year at our symposium that we're doing is I'm concentrating on a couple major themes. One of them deals with education and training of our forensic scientists.

You heard Paul Ferrara talk about the Cornwell Institute down in Virginia. One of the major problems that we have within the forensic community is training and educating our people.

Take the firearms examiner. It takes us about two years to train a firearms examiner. Basically, it's a mentoring relationship one to one.

When two years comes up and all of the sudden the person gets a better offer to go to Illinois because they pay higher than we do, there you go, two years has gone out the window and you have to start over again.



We all have limited resources whether we're talking about crime laboratories, whether we're talking about law enforcement. What we have to do is, yes, while we're trying to seek funding and support, we also have to work smarter, more efficiently and more effectively.

One of the things that we're doing is actually Paul Ferrara is going to be working on one of my panels at the symposium coming up in September and that panel is going to be looking at alternatives for training a forensic scientist.

For instance, what about the program at the University of Illinois in Chicago that Bob Hanson is working with. That's very closely with Illinois State Police. What about the Cornwell Institute in Virginia? What about distance learning with Jane Holmer and that the FBI is working on?

We're going to be looking at all of these programs, all of these alternatives. How can we educate our people, our staff, our limited resources in the future? We simply cannot do it the way we've been to do it.

I'm not advocating getting rid of mentoring. There still is a place for that, there always will be, but maybe two years of mentoring is not the way to do it. Maybe one year of working through a university or some programs involving some education, some training and then going on with a year of mentoring might be a better way to take and approach that.

So as President Elect of ASCLD, this is some of the things that we're working on dealing with crime lab directors in our limited resources of forensic scientists, but the big thing is, is start right out by communicating with your laboratory, talk with them. Ask them, Gee, can I come in and visit? Can I talk with somebody in your laboratory? Can I see what it is you're actually doing there?

Yes, our resources are limited, but I would be surprised if any laboratory would just shut you right off and say, We don't even want to talk to you.

The quality of our evidence coming into the laboratory is directly linked to the quality of evidence that you collect and you submit to the laboratory.

In New York State, we have a commission on forensic science. New York State is the only state that mandates you must be accredited if you are a crime laboratory operating, a public laboratory operating in the State of New York. Mandatory. You have to be accredited, all of the crime labs.

Barry Scheck sits on the Commission, and everybody goes, Oh, my gosh. You poor guy. I feel sorry for you, but on the other hand, he's always said, My major component or my major beef is going to be the crime scene. It's not going to be the DNA technology, the STRs.

This is one of the areas that law enforcement really needs to spend some time on is the quality of the evidence, the collection of evidence, the preservation of evidence, recognizing what is DNA evidence.



Here today we've already heard about toothpicks and all of this type of evidence. Five, ten years ago that was not even an option. You'd overlook toothpicks has Terrence Gainer had said.

So start out -- communication is key. Start out by going and visiting your laboratory, asking for assistance in putting together a training program even whether it be at the laboratory or whether it be remotely at your particular site.

In New York State, one of the things that's happening is the New York State Police has put together two programs. One is something I've heard a lot about here today, first responder.

Almost everybody has talked about first responder. Yes, we understand it's very important. It's the first person at the scene. But really what are the components of a first responder? What should you do? How should they react? How should they preserve the scene?

It's going to be up to this group here. I'm not going to stand here with any magical answer saying, This is it what you have to do to educate law enforcement. The initiative is going to be you.

Going back saying, Look, I've heard so much about this DNA it really kind of scares the bajeebers out of me because there's so much that I don't know that we really have to start doing some training, get educated regarding DNA, and we're going to have to take and start some programs ourselves to deal with that.

New York State Police did do that in putting together a responder course to actually train law enforcement officers throughout the State of New York on how to actually be a first responder, the dos and don'ts regarding evidence collection.

What about going to a scene? We all know when you have a crime scene, we kind of talked about -- we heard Lee talking about circling the wagons.

Well, I know first experience in a lot of scenes I have been to, sometimes we ourselves, the top brass that are there, are the first ones to go inside that circle and starting pawing around, looking around to see what's going on, but yet we're probably the last ones that really should be in there. So how do we approach crime scenes we may have to look at that may have to change?

Why is this important, all of this stuff that we're talking about? I want to look at some of the issues regarding DNA technology.

First of all, the new don of DNA technology, the DNA database. We've heard discussions regarding the database. I'm not going to linger on it.

We've heard about CODIS, which is a combined DNA identification system, which really is a DNA database.

Also, we've heard about change in technologies. You've heard about RFLP, and then now we've gone on to STR technology.

So what you're getting is this is a changing science that's going on. We've also talked about mitochondrial DNA. All of these have direct impact on law enforcement on how to recognize, handle, preserve, collect evidence and get it to the laboratory for potential analysis.

STR, which is the one that's currently being used, is called short-tandem repeats and it's basically known as third-generation DNA testing. Approximately 63 percent of the DNA labs nationally are doing this, but it provides to you faster tests and actually more evidence, more probative evidence for you to work with.

The law enforcement community needs to know how do I use the DNA database. It's a very, very important tool. So you have to be aware of how to take and use this and use it to your advantage.

Now, one of the main purposes of CODIS or any database is to develop investigative leads. It's there to provide information to you to say, Hey, look, here's a couple of suspects or a particular suspect really at this point that maybe you want to take a look at that was involved in another crime over here that we have reason to believe based on the database hit that may be involved in your particular crime over here.

This is the one I got an update since I was here today. We went from 94 to 114 laboratories. I want to thank you for that one, but, here again, it changes.

We have two indices we've head about and talked about today, forensic and convicted offenders. That will help us as law enforcement agencies, and we talk about the convicted offender index where you get patterns from your offenders, you get case to offender hits. We've talked about patterns from evidence where it's case-to-case hits, the forensic index.

All of this is really important. Building this big index, the more numbers that we get in, and we have heard about all of these laboratories have all of these cases waiting to get into the DNA database that are not there.

New York State has 9,500 cases right now in to our database. We have 53,000 cases waiting to go in. We have 63 hits in New York State right now.

Can you imagine how many more hits we'll get once we get those 53,000 cases that are in there?

All of this is important to get this database built up. The bigger the database, the more information we're going to be able to provide to you in law enforcement, but there's some real key points here.

First of all, law enforcement needs to be aware, they need to be educated, they need some training regarding DNA evidence awareness. Also, appropriate evidence handling.

The American Society of Crime Laboratory Directors Laboratory Accrediting Board, which accredits crime laboratories throughout the world, right now a little over 200 laboratories are accredited.

They are this September introducing a new component for accreditation and that is crime scenes. Any laboratory or any agency that has a crime scene component, in addition with another component, let's say fingerprints, the latent fingerprint section or drug chemistry or trace work doing arsons, etcetera, but any facility that has a crime scene component with another component can apply to have that section accredited.

So that means that there's a certain level of standards that they have to achieve, and this is happening September we're going to have a whole segment at our symposium in Buffalo just dedicated to accrediting the crime scene discipline, how to go about doing that.

How do you take and train or educate? How do you do competency testing? How do you do proficiency testing? There's a lot of real tough issues here.

One of the things that we're doing in New York State because it's mandatory accreditation, we have no choice in New York State. Either you're accredited or out the window you are. You don't do forensics.

One of the thing we're doing, and I'm actually going to be bringing it to the symposium, is we have a crime scene trailer, a 35 foot mobile trailer that right now as we speak it's traveling all throughout New York State.

One of the problems we've heard about here is how do you educate urban and suburban law enforcement communities? This trailer is going out to them.

So instead of saying, Okay. You come to the laboratory where maybe you only have one or two laboratories in your state and it's located the in the capital or one area and you happen to be 350, 400 miles away and it's not practical if you have 12 or 15 people in your agency to take and send them to the laboratory. What we're doing is we're actually bringing the training out to the area.

The crime scene trailer, it's interesting what it is. It has a mock crime scene set up in it. It has a series of video cameras with live audio/video feed, and during our presentation, we're talking about crime scenes, we're actually going to be having the crime scene unit processed, and the video cameras will be there and it will be live video feed into the crime lab directors while the presentation is going on.

So what we can do is we can actually set up classrooms whereby people can see, law enforcement officers can, detectives and investigators, how to and, just as importantly, how not to process a crime scene, and that's one of the ways that we're actually dealing with how to overcome this education or training aspect in the State of New York dealing with crime scenes.

The other thing is, is how to apply the maximum-case application. Let's just talk about some of the nuts and bolts as far as DNA testing. What is DNA evidence?

We'll go back to Lisa's DNA 101. Where do we find it, and how do I take care of it? These are the three critical components that we really need to be aware of if we're going to be using DNA technology.

First of all, what is DNA evidence? Very simple. Anything biological. It can be blood, semen, sperm, hair, tissue, bones, organs, tooth pulp. We've heard about, talk about mitochondrial all of the way through to -- of course, labs really hate getting in feces and stuff like that, but unfortunately that's part of our job and the way it goes.

Also, we heard about toothpicks. Pap smears we've used, things like that. Anything that's biological is potential evidence.

Don't overrule it. If there's a question, contact the laboratory and ask them, Look, you know, is it possible? Should I take and consider submitting this to the laboratory? It doesn't hurt to get on the phone and call and ask.

I'm on call. In New York State, we do basically a five-week rotation, and I don't mind the phone call at 2, 3 o'clock in the morning. It takes me a couple of minutes to wake up and usually they're going a hundred miles an hour. It's like, Whooah, whooah, start over again. There is no dumb question.

I would rather have you ask me a simple question about submitting evidence, Is this evidence, than to not ask it at all. Here again, communication is key.

People constantly shed DNA. There's about three trillion cells in the human body. We only need about 100 for DNA analysis. So there's a different perspective from what we've heard about this morning when we were talking about DNA and cells, and I don't have any great pictures of cells that I'm going to show you. This is after lunch, so.

With knowledge and a little imagination, what we talked about electric shavers, toothbrushes, hat bands, pillow cases, dental floss, bandages, Pap smears, all host of things that could be potential evidence.

We have to be aware of the broad amount of potential evidence that's out there when we go to a crime scene. Here again, sometimes it's not always apparent. So do not hesitate to call the laboratory, contact them and ask them.

Second of all, how do I take care of this evidence? If I can recognize it, how do I take care of it? Collection and preservation is critical for the reliability of evidence, DNA evidence and the admissibility of evidence.

Contamination is a major issue that law enforcement agencies must be aware of with some, here again, some knowledge, some awareness. It can easily be overcome, and it should not be an issue, but there's different types of contamination. There's cross-contamination.

In other words if someone is using tweezers and the gloves and they're not changing it and they're using it from one piece of evidence to the next on through, things like that is what we have to be concerned about.

Self contamination whereby our own officers that are collecting it, he or she can actually contaminate the evidence. The day of going to a crime, crime scene and probably where everybody who is there in that scene giving a buccal swab is probably not that faraway.

Off-site contamination, materials being transported on shoes, clothing, things like that we're going to have to be aware of.

Here again, when you have a crime scene, the first thing you should ask yourself is, Is everybody here at the crime scene necessary? If they're not necessary, why are they even there.

One of the other things, the third initiative we're working in New York State to deal with that issue alone is we're right now in the stages of having a vehicle built, we're working on the bid process right now, and one of the main functions of this vehicle is going to be that when you have a crime scene to have one of our people go in with a video unit, a high-res video unit to basically keep everybody out.

So that way if we have a colonel, a major, a captain that wants to see the crime scene, there you can see it right there with a live video feed. There's no reason for you to be in there at the crime scene.

The other thing that this provides, too, is from the forensic point of view is, let's say, you have blood spatter on the wall, but you don't have an expert who is right there maybe that can interpret this blood spatter as to whether it's a high velocity spatter indicative of maybe somebody being hit with a blunt object or whatever, but through this technology, what we're able to do is to be able to have experts in other locations even look at that.

So, here again, this whole field of forensics is changing or providing information to you faster even way beyond just DNA technology that we're talking about.

Then finally, types of contamination or case subjects, allowing access to what we're talking about.

How do you avoid contamination? Very, very simple some of this stuff. What your people need to know. They need to be trained. They need to be educated, and for instance, double glove and change your gloves. Use clean collection instruments. Wrap the items separately and seal.

You heard about plastic versus paper if you're at the grocery store. Well, some of it goes back to very basics of just wrapping things separately, sealing them.

Don't mix the classes of the evidence. Protectively wrap stained items. Air dry. Do not allow items to touch. Then don't reposition items without proper protection.

Also, here again, training and education, anything biological, assume it's infectious. Best approach.

The final thing is, is this a DNA case? We're talking about DNA and we're talking about all of the DNA evidence and what the DNA can do for you, but let's not forget, not all cases are DNA cases, and that's one of the first things that we have to take a look at.

We've heard about the limited resources of the laboratory. One of the things that I get frustrated with is where there is good evidence, non-DNA evidence out there, and they want us to take and do some DNA evidence for icing on the cake and this becomes a real tough, tough issue.

What we all want to do is we ought to be able to analyze, as Paul said, all evidence at the scene. That's what we ultimately want to do. I think everybody would like to do that.

The reality is we just simply can't. There's not enough resources that the laboratories currently have to be able to do that. So one of the things that we have to do is we have to communicate.

When you have a major crime scene, what about getting the laboratory together, the lead investigator together, the prosecutor together and go over the items of evidence maybe even before its analyzed to determine what's going to be probative, what is not going to be probative and getting all of the heads together so you know what can be analyzed, what should be analyzed, what should be analyzed first to give you those leads, to give you that investigative lead and give you that information. That's one of the most critical components. As I said, go back to this keyword communication.

On a major crime scene, the three different groups of the criminal justice community should begetting together to discuss the case to determine what should or should not be done on that and when should it be done, who should do it and what time frame. That shouldn't be done two weeks before it's going to go to trial. It should be done right from the get-go especially on a major case.

What's the definition of a DNA case? It's a case with any biological evidence that will be probative in court where identification is key or necessary to an investigation. If it's not probative, maybe it shouldn't be done.

Steps to building a monster index, that we talked about. Here again, we said DNA evidence awareness, the appropriate handling of the evidence and the maximum case application. Getting together, talking about, We're going to do these five items first to begin with and then we're going to continue on and see where we go from there.

The bottom line that we want to remember is, first of all, getting educated about DNA technology, how to properly utilize DNA technology, when to utilize DNA technology. These are key critical components.

What is DNA evidence? We need training on recognizing what is DNA evidence. Where do I find it? How do I take care of it? These are the things that we need to educate our law enforcement officers about in order to be able to use the technology that we've discussed today.

The benefit of being educated and trained in DNA technology. I want to go over a couple of things. As I said, it leads to good quality leads, faster analysis time and more evidence.

Better utilization of critical law enforcement staff, now that has been alluded to already this morning and we've heard a couple of things regarding the utilization of staff. We've also heard about it costing \$127 billion for a victim I think is what the earlier discussion was when we were dealing with, with a particular case, but I want to bring out one other people, and let's talk about the law enforcement staffing.

Is there any law enforcement agency here that wants to raise their hand that says they have got more than enough staff and they don't know what to do with everybody they have? I don't think so. Are there any crime lab directors that would be here? They wouldn't raise their hand either.

The bottom line is there's not anybody in this room that has ample staff to do your job. Here again, go back to what I said earlier, we have to work smarter, more efficiently and more effectively.

In doing that if we apply and utilize some of these technologies that are there, let's take, for instance, this particular slide right here or let's just say hypothetically you have a major homicide and you may throw 20 people at this major homicide, it's pretty major, this major homicide, and if you do not apply the technology, let's say you have got 20 people and it slowly goes down in number of people, but it carries out through to eight months, so at the end of eight months you have two or three detectives or investigators, that's represented by the light blue line in terms of those resources you have thrown at them.

Yet, if you're utilizing technology properly because you're aware, you're educated and you're properly trained on how to utilize some of this technology you can throw people 20 at it, but in a relatively short period of time you may have that case where it might be solved in a much quicker time.

The difference between the dark area and light area is that is the resources now that you can apply to some of those other things that you need to that you don't have enough resources to deal with.

So by working efficiently, smarter, more effective, you'll be able to apply your limited resources also the same way more efficiently, more effectively and also smarter, and really that's it. I want to thank everybody.

(Applause.)

CHIEF SANDERS: Does anybody have any questions? Wait a minute. You have to have some kind of questions. They just want to go on break, that's all it is.

Let me ask you something. As great as this stuff is, doing it replaces good, old-fashioned police work? No. And the fact that you get a hit, do you think that solves your case? No.



They're leads. They're investigative tools. I think it's important that we think about that. One of the things I wonder about is that, with this working group that I serve on with the Commission, we developed that trifold that you heard about.

The reason we came up with the trifold was because we talked about the fact that there's a lot of people that don't have computers. A lot of police agencies still don't have computers, especially smaller agencies, so we have this trifold that we sent out that's supposed to be everything that every or what every police officer should know about DNA, how it's disseminated, those kinds of things. I think all of that is important.

We got into this thing with the CD Rom, so we developed -- there's a CD Rom for first responders and initial investigators or crime scene techs, and then a second one that's going to be more in depth than those kinds of things. I think it's the greatest thing since sliced bread.

I've got my officers. I can train them, and then Superintendent Hillard is trying to figure out how is he going to present that to his officers. It's a, it's a whole different thing, so I am just wondering how you guys felt about that.

We've got the entire universe here today as far as law enforcement. Do you guys perceive that as a problem? Do you have any suggestions on how we might overcome some of this stuff? I see. That's the way we're going to play this game. Okay.

DR. COLWELL: I mentioned our forensic courses that Dr. May presents. We take them on the road. We got the CD ROM courses that she has, but we present them. We take quadrants of the state, and we make sure there's a program presented that will reach every law enforcement agency with no more than one-hour driving time because, as you mentioned, they do not have a computer, they do not have a CD ROM, they don't have access to the Internet. That's one way with that part of it.

CHIEF SANDERS: I was hoping we could kick this around a little more because I can see not too far down the road where some of us are going to get blind sided because this is wonderful for you guys to be exposed to it, but if we don't get it exposed to the entire law enforcement community, somebody is going to pay the price and it's always -- they like to -- did somebody raise their hand? Oh, my gosh. I can't see you. Go right ahead. Please. See, I knew if I started doing four score and 20 years ago, our forefathers said, I can do that stuff. Go ahead, sir.

MR. BALDWIN: I'm Allan Baldwin from the great state of Nebraska.

By the way, what you're doing there and with the different ideas is you have to have a variety of different methods to get your message out and those education and training lots, whether it be going to some of the remote agencies or whether it be just shipping some CD ROMs over to some other agencies, a variety of different techniques because that's what we live with out there, a variety of different types of law enforcement agencies. That's it.

CHIEF SANDERS: What about the FOP? I saw you're here. I know my guy, they do this for me. That means dinosaur. They tell me I was a policeman 20 years ago, I don't know anything about it anymore.

But honestly, what is it that the individual officers -- what's your perspective on it how as far as how we educate our officer towards this DNA stuff? And do you think it's necessary that we develop all of these different ways or is there only one solution that you see?

UNIDENTIFIED SPEAKER: Absolutely. Education is always going to be good, and I don't think we -- being a working sergeant, sometimes we just don't have the time to give our officers the amount of training that they need and, you know, I know from my perspective a lot of my guys, we receive pamphlets on using DNA evidence, and there's just total misunderstanding of what DNA evidence is for. They think it's just for the rape or the homicide.

We've got to get the education out there for the people some way or another just so they know exactly what's going on and the tools that are available to them either for simpler crimes other than the rapes and the murders.

CHIEF SANDERS: That's one of the things that we've discussed considerably on the Commission as well because I keep saying, I don't have murders in my community, we don't have rapes, those kinds of things as a normal course of activity.

We have a whole lot of burglaries and that kind of thing and that this technology ought to be applied the same way, which causes another problem as far as then you have got to make sure that you don't overwhelm your laboratories, but I'm going to tell you that in my community when the people find out how much we can do with DNA, they're going to be wondering why we're not doing something with it with burglaries and stuff. Superintendent, I saw you wanted to say something.

THE SUPERINTENDENT: Yes. How many agencies got that pamphlets?

CHIEF SANDERS: How many agencies here represented got that trifold pamphlet we sent out? That's good.

THE SUPERINTENDENT: We have a lot to get out.

CHIEF SANDERS: Yes, we still do.

UNIDENTIFIED SPEAKER: How many didn't get it?

CHIEF SANDERS: How many did not get the pamphlet? Dr. Forman, do you have some pamphlets?

DR. FORMAN: We have pamphlets and, and what we need are their names and their agency numbers.

CHIEF SANDERS: I don't know if you can hear her from the back of the room. She said if you make sure we get your name and agency, we will make sure we will get the stuff to you if you don't take it with you now. Yes, sir. Go ahead.

MR. KILEY: Bill Kiley from Suffolk County in New York. With regards to getting the word out, one of the vehicles that I'd recommend really looking at is web based. A lot of agencies still might not have Internet access through the agencies, but somewhere in that community it's there and 20-minute web-based training I think can be accessible to most of us around the nation.

CHIEF SANDERS: I don't know. Of course, I'm a country boy, but I know that to me, interactive stuff is better because I can read that thing, but what I read and understand may not be what was intended. That's one of the good things about that CD ROM is because it has a question-and-answer period, and if you don't get it right, it tells you right away kind of thing, but how you could do that. Yes, ma'am.

MS. MUNDY: Another suggestion that Seattle Police lack is we have no training on DNA and we didn't have any trainers. So the best source we went to was our state crime lab and the head of the state crime lab came to us and trained us. So that's a really good resource.

CHIEF SANDERS: I see Dr. Forman back there saying we should either talk louder or use those microphones, but basically what you said was that in Seattle that they didn't have the trainers for the DNA so they went to the crime lab and the head of their crime lab actually did it.

Actually, that's one of those great things about being on this Commission. The people that are in the crime labs will definitely teach you how the clock works I can tell you. So anything else? Yes, sir.

UNIDENTIFIED SPEAKER: I think the biggest problem is that most people, especially the patrolman have no idea what the crime lab does. Until I became a detective and got into specialization, I had no idea what they did. Basically, I thought it ended me at the patrol level and that was it. I never knew what happened to it when it went out farther.

CHIEF SANDERS: He makes a very valid point. He was saying that when he was a patrol officer he didn't know what the crime lab did and he wasn't sure what his responsibility was.

I think that's one of the things when we were talking about with first responder that we're talking about is of utmost importance is because it all starts there. As you know if you have been a detective long and all, that if the first guy doesn't do what he's supposed to, the rest of us suffer. I mean, it's that kind of thing. So you do make a very valid point. Yes, sir.

UNIDENTIFIED SPEAKER: I don't think it makes any difference what vehicle you use, whether it be CD ROM or anything else, until you guarantee the funding, then you can have good quality hands-on education is what I understand we are talking about. Doing it is not going to make any difference. Funding is the key in all of it.

CHIEF SANDERS: Yes. For my own personal benefit, does everybody here pretty much agree with me though that police officers want to know that police officers care and they'll do what they're afforded the opportunity to do or am I living in a dream world? Do you know what I mean? Because I'm getting close to retiring, you know, but I mean honestly, that's what I believe. I think that if we afford them the opportunity that people are going to be amazed at the results. Is that pretty much a consensus in this room?

UNIDENTIFIED SPEAKER: Yes.

CHIEF SANDERS: Yes, sir.

MR. RADOSEVICH: Fred Radosevich, New Mexico Association of Chiefs of Police, but I think one thing we're overlooking are the more police officers we train, if the labs can't handle the caseload, like in New Mexico now they are 150 cases behind, we've got rape cases they're not even testing because they can't keep up with them, the labs are going to get so overloaded the police officers will eventually say, There's no sense in doing this because they're not processing it anyway. So we have to make sure that not only are we doing the education level, but we're securing the funding and the resources for the laboratory to be able to take on that.

It's kind of like your drug cases and stuff, when you hire a bunch more police officers. You put your narcotics use together and all of a sudden you flood the courts, you flood the DA's office without any help. It's not doing any good.

So I think you have to look at the whole picture and make sure we train the officers and also make sure that the labs have the resources available to them to do the analysis.

CHIEF SANDERS: Yes. I think you make some excellent points. I think that the Commission is actually aware of that for sure. I know --

MR. COONROD: I would like to make a comment in reference to that. You're absolutely right.

One of the things that we just did is two weeks ago I was down here, again, at the invitation of NIJ to do clips on our crime laboratory improvement dealing with funding, and we've heard there's a lot of different funding issuing, the National Forensic Science Improvement Act, the State's Coalition is very involved with that, and fortunately the late Senator Coverdell was the sponsor of that, but you're absolutely right in terms of we have to take and work together between all of the agencies. That's a real critical key component, and I think that -- that's why I said communication is a key. We can't forget that.

CHIEF SANDERS: But in addition to that, you might -- when's he's talking about communicating, one of the things that we talked about with the Commission is the fact that you're going to want to talk to your laboratory about what they want you to submit and all of those kinds of things, because, you're right, if you're overwhelmed no matter how much funding we get, that's one of the arguments they always make. If you build the prison, we've got the police who will fill it up. There's no doubt about it. We're that good at what we do.

MR. COONROD: One of the things that came out in the recent Summit though which I think is interesting, and this was an idea that came from DEA, and that is where for some of the agents they have in the field there are so many support personnel, basically a ratio, if you want to call it that, between support people or lab people and the number of agents that are out there, and that was brought up at the last clip summit meeting that we had with NIJ, and I think that was a very important message that I know that I will try to take and push, and that is you can't increase one without the other. That have to work hand in hand, that's exactly the point that you're making, and we may have to take a look at their ratio or if law enforcement is brought up to a point, we also have to take and build up at that ratio the support services for that in order to allow you to do your job and provide those investigative leads to you, etcetera. So I think the two kind of go hand in hand. We can't split those.

DR. COLWELL: Darrell, you'll be pleased to know that the University of Chicago in 1959 developed a model that's never been used by the law enforcement.

On point with what you're saying, Keith, and that is that you reach a point of diminishing returns with the number of officers you assign to a case, and the same thing applies if you hire a lot of police officers and investigators and you don't have the prosecutors or the jails and the other components, it's not going to work.

CHIEF SANDERS: Go ahead, sir.

MR. LATTA: Yes. My name is Joel Latta. I'm a lieutenant in the Burbank Police Department in Burbank, California, and the Executive Director of the International Association for Property and Evidence. We put training seminars on around the country on how to imagine property routes.

Nothing I have heard today has talked about where are we going to put all of this stuff, and this is not in the form of a question, but kind of a comment and it might bring some -- there's a lot of detectives around the country that don't want to get rid of anything forever because of maybe technology in the future, and I think one of the things when we talk about staffing and so many support staff for those that are at the crime scene, as we collect this stuff over the years, we're going to need many large warehouses to keep all of our stuff unless we come up with some standards in saying, Do we really need the entire mattress? Or the standard says, No, we don't need the mattress. We need the cutout out of it, but the detectives, if we don't train them properly, will want the whole bedroom, and that's happening right now.

CHIEF SANDERS: Yes. Of course, this is just one segment of what's going on, but I'm sure before it's over, you'll hear talk about we've got demonstrations about how they had to buy freezer trucks in Orange County so that they could store the different stuff that they were storing.

UNIDENTIFIED SPEAKER: Los Angeles is doing that also.

CHIEF SANDERS: Yes. At least the Commission is very, very aware of it. You were going to say something all of the way in the back? Yes, sir.

UNIDENTIFIED SPEAKER: Yes. Getting back to an educational standpoint, I came to this conference thinking I was going to be bamboozled with a bunch of scientific talk, and what I found is that it's been extremely simplified where let's face it, most of us that have gone into law enforcement did so because we were not smart enough to get a real job.

CHIEF SANDERS: Now you know what I mean by I have been keeping them grounded. That's what they were talking about.

UNIDENTIFIED SPEAKER: I think this is what we need to take back to our agencies and to our officers out on the road is just the simple thing like, What is DNA evidence. Anything biological.

I picked up something great there that I can take back to my evidence technicians, to my officers, and I think what we need to do also is publicize the positive cases where we are getting convictions and clearances.

Obviously, Dr. Forman still has an axe to grind over the O.J. case because she brought it up so many times, but I think some of the officers look at that particular case when there was such monumental evidence and there was an acquittal.

I think people still look at that, Well, yeah, we've got DNA, but it doesn't always work. And I think we need to publicize the positives when, like they touched on earlier. When there's a good case, where we do get a conviction, let's get it out there. Let the citizens, let the people know just what we're doing with DNA technology.

CHIEF SANDERS: And Dr. Forman can speak for herself, but surely, surely you agree with, at least to me, in that one of the things that the O.J. Simpson trial pointed out to us was how bad it is if we don't do our job and how simple it is to contaminate that evidence and take this great, wonderful technology and put it in a negative light, and I would think that that's the only reason that Dr. Forman uses that case so that you understand that this is great and all of the stuff was there, but if it's not handled correctly or even if it is and we leave that appearance that we didn't do it properly.

I think that's of the reasons I believe it's so important that we do this education thing, we do it will correctly so that people can't look at us and say, Oh, my gosh. Sanders missed up this and some killer went free because I didn't do my job as the first guy on the scene.

That's really my message is today because that's what I believe, is that to me, the O.J. Simpson trial, is the benchmark, and that's what made us all vulnerable and those kinds of things. So any other questions? Go ahead. You're retired, aren't you?

UNIDENTIFIED SPEAKER: Yes, I am. Yes, sir, I am.

CHIEF SANDERS: Semi retired. Yes, sir. Go ahead.

MR. McINTYRE: Bill McIntyre for Atlantic County, New Jersey.



CHIEF SANDERS: Wait a minute. Let them get the microphone because they can't hear you.

MR. McINTYRE: With my mouth? Bill McIntyre for Atlantic County, New Jersey. I was a homicide detective for some years up there, and two things you should know about.

About training, you can do it cheaper than you think. We got tired of waiting for somebody to give us training. We put our heads together. When I say we, some of fellows and women who were in the crime scene working group and myself and McLaughlin, they funded. We had people come in.

We trained 235 police officers from nine different states in Toronto for basically nothing. It was a free seminar. It didn't cost them anything. Just get there, and we had two days of training. We had a lot of positive comments about it. You can do this. If you want to find out how to do it, see me and talk to me and I'll tell you how to do it.

The other thing is just because we don't have the technology today and the storage today doesn't meant that we shouldn't collect it and preserve it for tomorrow. This is the beginning, not the end.

I see cases of 1991, old cold homicide cases that we did, RFLP did not give us the answers we wanted. STRs will, and when STRs won't, Y chromosome may.

These are things of the future. The future is going to be incredibly bright, and I'm kind of upset that I had to retire or decided to retire, but -- I didn't have to retire.

CHIEF SANDERS: We won't talk about that.

MR. McINTYRE: We won't comment on that. The future is very bright and very exciting and you should be excited about it, and we do need the funding, and we need the funding for labs and storage, and as administrators and chiefs, you should be advocates for that, and if you're not, shame on you. You have to get excited about this stuff.

CHIEF SANDERS: Thank you. Dave has some sort of announcement to make and then -- never mind, I was going to tell you we're going on break you may not listen to his announcement. Go right ahead.

MR. COFFMAN: No several people asked me for the information I had on the types of offenses that people commit while they're on community service. They made a hundred copies of that page, and I'm just going to -- I'll leave it up here on this front table and you can just pick it up. So the people I said I'll fax it to, this is it.

CHIEF SANDERS: Any other questions? I don't know -- oh, there she is. Robin, do you have any idea how long we're going on break or anything. We're going to reconvene at 3:45. Thank you very much.

(Recess taken -- 3:30 p.m.)



(After recess -- 3:45 p.m.)

## POSTCONVICTION DNA TESTING: THE IMPLICATIONS FOR LAW ENFORCEMENT

MR. ASPLEN: Okay. Folks, if we can take our seats, please, for the final push of the day.

I don't know whether or not it was a good thing to put the two lawyers at the end of the day; however, as I look out and I see the extent to which the seats are still full, that's a good sign at least, but we're very fortunate to have the two lawyers that we do have here.

The first attorney that I want to introduce is Lisa Weinreb. Lisa has served as Deputy District Attorney for San Diego County since 1995 as Deputy. Correct? Okay.

She serves on the Board of Directors for San Diego County Bar Association, Crime Victims United and San Diego County Bar Foundation.

She has served as a special assistant to the Assistant, to the Assistant District Attorney for the City of San Diego. She's currently an adjunct professor of trial advocacy at Case Western School of Law and has instructed for the California District Attorney Association National Institute of Trial Advocacy, the National Conference of Child Abuse Awareness and Prevention and the Tennessee District Attorneys General Conference on Domestic Violence.

But quite frankly, what she is doing right now with her colleague, Woody Clark, in San Diego is some of the most important work in the post-conviction area that's going on in the entire country because what San Diego has done is they have, I guess, first recognized the responsibility that all parts of the criminal justice system have in these post-conviction matters.

San Diego is the first county in the country that is proactively looking at post-conviction cases. They're going back and reviewing over 500, and she'll tell you about them, cases without being asked to, without motions being filed, without defense attorneys screaming and ranting and raving, but rather recognizing that this technology does put us in somewhat of a different position.

And I think it's fair to say that San Diego isn't doing this because there is a great concern about the validity of their convictions. I don't think that's the case at all.

I don't think they're doing this because there's a great concern about the quality of the law enforcement work that went into investigating their cases. No.

It's a recognition that things are a little bit different now because of DNA and, again, it's a recognition that prosecutors may have some responsibility.

They are taking the lead, and I believe that there are now a few other counties that are beginning to consider doing that same thing and a couple other counties that may follow, but if we talk about something being visionary and something being on the cutting edge in terms of the lawyer's aspect of DNA and the prosecutor's role in integrating DNA into the system, you don't get more leading edge than Lisa Weinreb. So with that, Lisa.

(Applause.)

MS. WEINREB: Thank you very much, and thank you for that introduction, Chris.

Well, you know, some people have asked me a lot of questions about this particular project, and they must think we're crazy I think, but the way it really came up is we were sitting in a Legal Policy Committee meeting. We have these once a month. It's compiled of a number of the Deputy DAs in the office, the Assistant DA and occasionally the Elected DA comes into the meeting.



So at some point, I believe it was in March, we were having this meeting, and in the meeting Woody Clark, whom I know many of you know, a deputy in my office, wonderful, wonderful man was bringing up and updating us on some of the federal legislation as it relates to post-conviction DNA testing, and he was giving us an update to tell us, you know, these are coming down the pike, what we are going to have to do when one of them eventually becomes law and how it's going to affect law enforcement and how it's going to affect our office directly.

So in that discussion, one of the deputies pipes up and said, Well, why should we sit back wait for them to come us? Why don't we just go ahead and look at our cases and look at them on our own, be proactive, instead of reactive?

Well, as you can imagine in a group full of litigators, Deputy DAs, there was quite the heated discussion about the whole issue, and the DA who was in there said, Absolutely. That's exactly what we ought to do. He said, We're going to be proactive and we're going to go out there and we're going to look at our own cases. We're going to test our own cases.

Just like Chris said, It wasn't that we were concerned because of the quality of the work. We just have seen what is going on nowadays with post-conviction DNA testing. We see what's happening all over the country with people being exonerated. I think that we're finally coming to the realization that what we do is not perfect.

So despite all of our best efforts over the years, despite wonderful police investigations, despite very hard work on behalf of the prosecutors, inevitably, we see that sometimes there are people who are convicted who are not guilty, and I know many of you have looked through this book that National Institute of Justice put out which profiles a number of those cases. It's pretty amazing to see some of those cases.

What we've had to do in reviewing our cases is just take a step back for a moment and put on a different hat or look at these cases from a completely different perspective because when you look at some of these cases where there's some overwhelming evidence, eyewitnesses and some serology from before and then a proclamation by the defendant that he's not guilty, sometimes you tend to say, Well, no way. With all of this evidence, guilty. Forget it.

But now in looking at some of these cases in here and reading some of the fact patterns and then you find out that it exonerates them, it's pretty eye opening.

So after we decided we were going to take that proactive stance, the DA turned to Woody and myself and said, All right. Get busy.

So where did we start from there? Well, Woody and I named the project the DNA Project. So it's something pretty original and unique, but it's the best thing we could come up with.

So from that we decided, okay, now what are we going to do? We knew there was going to be a whole host of problems that we were going to encounter. We didn't know what we were going to find, so what we ended up doing is we -- can turn a little bit of the lights up? Thank you. So I can see what I'm doing up here.

We decided we were going to first decide what was going to be the standard that we were going to apply to some of these cases, and what we did is we looked at some of the federal legislation that was out there to kind of make that decision.

Now, you're I think going to have some discussions about this legislation more tomorrow so I'll be really brief about this, but there are two Bills that are floating around out there. Well, we're going to call the Leahy Bill, and what that says is that in post-conviction DNA testing, testing can be done if that testing can produce noncumulative exculpatory evidence that's irrelevant to the claim that that person was wrongfully convicted or sentenced.

Now, this is a very broad, broad range and it allows a lot of latitude in what can be tested.

In this particular one, I can give you an example of where this might come into play where somewhere someone would be allowed to have this tested.

Imagine, as I'm sure some of you might have seen, let's say that there's a rape case and it's an adult woman who is the victim and perhaps this happened let's say in a hotel room on bedspread of the hotel room.

So let's say this defendant is continually claiming innocence and is telling you, Go test that bedspread. You're not going to find my DNA there. There wasn't ejaculation. So we don't know what we're going to find.

So if we go and we start testing that bedspread, you can imagine that we're going to find a lot of different samples of DNA on that, maybe not this person. So that is one that we might not want

to be tested; however, that information, let's say it comes up and it doesn't come up going to that defendant, is certainly relevant to that claim that he's been wrongfully convicted.

What is important for law enforcement to recognize that also in this federal legislation it deals with evidence retention, and that is, of course, a big issue and concern to all of us. Does that evidence still exist?

But with this federal legislation, it tells us that we must keep the evidence for as long as that defendant is in custody.

If someone is sentenced for life that's a long time, and we know that our evidence rooms are packed the way it is. But this is something that you have to know that might be coming down the pike, so you have to think about that and consider that.

Then there's the Hatch Bill. The Hatch Bill basically allows post-conviction DNA testing if there's a potential to produce some evidence that could establish a defendant's actual innocence.

Now, under the rape case scenario I gave you, I don't think that would be one that would be tested under the Hatch Bill.

The actual innocence standard is one that the DA's office is using in determining which cases we are going to be testing.

So if it's just going to be some information, yeah, there might be some testing that can be done. But is that going to answer the question and prove actual innocence? If it won't, then we're not going to go forward and test.

Under this Hatch Bill, evidence retention is also addressed, and that just basically says that once a motion is made for post-conviction DNA testing, the law enforcement has to take those appropriate steps to preserve that evidence until all of the, those proceedings dealing with that are completed.

So does it deal with what happens before that request is made? I don't think so. But this is also against something we all need to think about.

I've been speaking with some people in the audience about what the policies are of their particular police departments, and it's varying in degrees.

I know that in San Diego homicides they basically keep forever. I don't know. We'll see, but that's, they're supposed to be keeping those forever, and other things they just wait until the appeal period is done. Then they send a notification to the prosecutor asking if it's okay if they destroy that evidence. So typically, that was done.

But recently we have contacted all of the different police chiefs in our county and have asked them in certain cases, Please don't destroy this evidence, and so if those requests are coming to

our office, we're not going to be approving any destruction of evidence at this time until our project is done at least.

There is also kind of a similar Bill right now in California that's going through. It's dealing with noncumulative evidence. It's material and relevant to the defendant's assertion of innocence. So I don't know what's going to happen with these Bills, but that's coming down for California and for us. So with those two -- with all of that legislation in mind, this is how this whole project came about.

So what is this project that we're doing and how have we determined who we're going to test and who we're going to look at.

Well, what we decided is that we were going to take a look at all of those defendants who are currently in prison serving their original term and that they were committed to prison 1992 or earlier. Those were our parameters.

So we called the California Department of Corrections and asked them to run a database search for us and produce this list for us. So that gave us a number of inmates, 560, from that inquiry in San Diego County alone.

So we have that list. We know what prison they're in. We have got their case number. So then it became the process of how do we go about reviewing these cases?

We hired two law students to do it, at least to do the initial hard work. So these two students are sitting in this little, tiny cubicle with two little computers and surrounded by boxes upon boxes of DA files.

You can almost not find them when you walk in there to try to talk to them amongst all of these boxes, but these are two law students who have been given directives by Woody and I about exactly what they are to look for.

We have created a review sheet that they are to follow. It's like a template. They fill it out. They fill out the case summary, the information, the crime, how long they're in prison, when they were convicted, when the offense occurred.

So they fill all of this out after reviewing the file, and I'm going to get exactly now then how it goes.

When they're going to do is they're going to have to request each one of these files. Sometimes they're off site and they have to be delivered to them. They're going to look through. They're going to go alphabetical order A to Z. Unless we get a particular question from an attorney, from an inmate, then we'll just pull that case and look immediately at that one and then continue on.

So to this checklist that I was telling you about, after they fill this out, they're also going to attach a number of court documents to that list that Woody and I are then going to review after they create the packet.

So Woody and I are the two Deputy DAs who are reviewing every one of these packets that come to us.

So what we're looking at in these particular packets that these clerks are preparing is they have to tell us on this sheet and on this report what was the statement the defendant made to the police, if any. So they're going to write out a summary of that in their report.

We also want to know what statements, if any, were made at trial or was it a plea, and then we're going to ask them, What statements were made to the probation officer? Because those are also very important to us.

So if they're continually claiming innocence throughout, then, of course, that's something we're going to look at a lot more closely, but, of course, they're admitting to the crime, pleading guilty, we're pretty much done with that case.

Now, at the end of this list, you see the parole board exception. We keep pretty detailed files in our office in what we call the Lifer Unit. It's a unit that handles all of our parole hearings, and so we have all of the transcripts of the parole hearings and reports made to the board. We will look at those statements made by the offender, but those will not exclude them from additional review.

If someone is claiming innocence all through the process and then all of a sudden at their parole hearing is singing a different tune, what we know that sometimes they might be saying just what the board wants to hear so they can get out. That's not -- if they're admitting it to the parole board, that's not going to exclude them from our further review.

Cases that are not included are some of our three-strikes case. I think you're all familiar with the three-strikes-and-you're-out law in California. They'll get life after their third strike. We're not looking at those or our one-strike sex cases.

We have particular sexual assault cases that qualify for 15 or 25 years to life based upon certain circumstances surrounding those, but both of those really didn't go into effect until 1992 or later. So those are not in our group of cases.

So, like I said, we're looking for cases that will show actual innocence, that there will be dispositive physical evidence that will show actual innocence.

Then let's say we find a case that we think falls within our guidelines. Of course, our next hurdle would be evidence preservation. Does it still exist? So we'll go, of course, first to the police department and then probably to the courts to see if any evidence was moved into evidence.

Then if we determine that the evidence still exists after we've reviewed it, we determined we would like to look further, then we find out there's evidence for us to move forward on, we will then take that case to our major case review panel.



What that is, is a panel comprised of very experienced trial lawyers in our office, and what's typically brought in front of this panel is cases where we want to seek the death penalty on.

So we'll present that case to the major case review and they make recommendations to the District Attorney who makes the final call. So we will be presenting that case to major case review before we move forward.

All right. Again, I referred to this book by the National Institute of Justice. There was a Frederick Daye case discussed in there which was a San Diego case. Back in 1995 DNA evidence exonerated them, so it just brought home the fact that we're not infallible and that science is not infallible. So that was another reason that we thought this was a proactive stance that we could take to make sure that something like this doesn't happen again. Again, a case two eyewitness identification, some serology evidence and then later testing exonerated the defendant.

All right. So now once we've decided after we have done a major case review, we're going to be going forward on some additional testing on our case, we're going to have to offer this service to the defendant through their counsel.

We've had meetings with the public defender's office in our county discussing this project with them and have also spoken with the president of the Defense Attorney's Bar Association and confirmed that this is the way the process is going to proceed. So we're going to first have to contact the last known attorney of record to offer this testing to them.

Then we're going to probably use either government or private laboratory, obviously what else is there, to test these different testings and we're going to incur those costs ourselves. The county and the DA's office will do that, but we also have to also advise the client, the defendant's client, the defendant that they will be placed in CODIS if they're not already in there and that there's possibilities that they would be linked to other crimes.

So I imagine at that point we might have some people not opting for our additional DNA testing. We'll see if Chris can speak to that. I am not sure.

So it will stop there or then it will continue, and we don't know what's going to happen after that, I'll let you know, but we have not gotten quite that far in our process.

I can tell you where we are so far. So I've explained the process first to you that the law clerks produce this packet that then I review, I make my comments, and then that packet goes to Woody so he can do an independent review and he makes his comments.

There's sometimes cases where Woody and I just sit down and talk about it. I say, You know, let's talk about this case. It's interesting issues. They're claiming innocence. Let's just discuss the evidence.

In this packet also that the clerks provide us are change of plea forms, probation reports, any statements made to police, so we are looking over the work of the law clerks. We're not relying simply upon all of the work that they're doing.

Another important piece of information is if somebody pleads guilty and it is a West plea or Alfred plea, we have different terms, that's basically a pleading guilty to take advantage of the plea bargain. That's not going to automatically exclude them also from additional review if it's a West or an Alfred plea. We will still look into that, but we do also make those clerks attach a copy of the change of plea form, any appellate decision, any statements and aggravation filed by the prosecutor at sentencing, any statements in mitigation, a number of different documents that would assist us in reviewing this case further.

Also, if there's any evidence listed in the file, as there should be, we have them attach those evidence lists for us, and if there's been any prior serology testing, any type of testing like that done on some biological evidence, we want those attached as well for us to review.

So as a part of that result -- so far those law clerks in about seven weeks, that's how long the project has been up and running, have reviewed 96 inmates. Of those, about 82 of them were homicides and 14 were just others, attempted murders, sexual assaults, very aggravated robberies with guns, gun uses, things of that nature.

So far, 36 have completely gone through the process that I described, Woody and I both reviewing the cases. Thirty-five were rejected based upon a host of reasons, either they're pled guilty or maybe they were gang drive-by shootings. I have seen a lot of those where there's no serology evidence whatsoever that we could possibly test. So those are also rejected.

One we have sent off for further investigation. We took a little field trip to the basement of the courthouse to find if there evidence still existed in a case from 1990 because the police department had destroyed the evidence after ten, ten and a half years, you can imagine.

So lo and behold, the court still had a pair of jeans and a T-shirt worn by a 12-year-old victim in a sexual assault case. So we're just going to take a look at this and see if there's even any biological evidence on that clothing. So that's where we are right now.

If we then find something, we might take it then to major case review and then go forward, but actually, it's too early to tell right now.

So far also in those 96 that we found, 54 of them went to trial and 42 pled guilty, but what's really interesting is only 17 of those 54 were actually denying their guilt. The rest of them just wanted to take their chances to see if they could get a better deal than perhaps what we were offering or were claiming self-defense or a different level of intent. It wasn't first degree murder, it was second degree murder. So only 17 of those were saying, It wasn't me. I didn't do it. So it's just very interesting to see what we're actually looking at.

Out of also the ones that we were looking at, four of these cases were direct inmate requests. We're receiving lots of fan mail from the local prisons all throughout California, so four of them were saying, You know, I'm innocent. Please look at my case, which we're doing. We pulled those cases.

One an attorney referred to us and we're looking into that. One an inmate's mother sent us a letter saying, Oh, my son is not guilty. Please look into it, and one we got out of county request, so I referred that over to Los Angeles for them to take a look at.

Actually, we also got one letter from someone just telling us really what a great job we were doing. So it was kind of nice just to hear that.

So that's basically the project that San Diego County has embarked upon. It's quite a process. So we're just a short time into it. So I'm sure that there will be a lot more statistics and a lot of information to glean from the entire project, but again, I want to reiterate that now looking back on all of the cases where there has exonerations we at the DA's office felt that we needed to take a proactive stance, look at these cases, understanding that science has changed so very much over the past ten years that there are tools out there that we didn't have before.

So if we could just use those tools and look at some of these cases, you know, a year of our time is not all that much when you look at perhaps somebody might be sitting in prison who shouldn't be. We're willing to take that time, expend the effort and making sure someone has not been wrongly convicted. Thank you so much.

(Applause.)

MR. ASPLEN: You know, we lawyers take a lot of crap, but --

UNIDENTIFIED SPEAKER: Deservedly so.

MR. ASPLEN: All right. Deservedly so, but I think when you look at something like this and you look at lawyers doing something that is so involved in what is really the truth-determining process, a lot of times we get caught up in the adversarial process and it's necessarily about, you know, guilt beyond a reasonable doubt. It's not about actually truth. It's rare we get to deal in the realm of actual truth.

As an attorney when you see something like this, quite frankly it's a profession that I could be pretty proud of. So thank you.

Let me ask you this: I don't know what was said. I don't want to know. I'm feeling pretty good right now. I'd like not to blow it.

(Laughter.)

MR. ASPLEN: Let me just ask you this question: What are your concerns about things like evidence storage now that we're having to go back and look at these cases sometimes proactively, sometimes not proactively? Do you have any? Ma'am.

MS. ARCHETTO: Linda Archetto. I'm the director of laboratory services for the Las Vegas Metropolitan Police Department.

We've had a couple of cases that have come up for either review through appeals or, and one even that was an innocence project case where the laboratory has been called to gather up the evidence and send it somewhere, and in the process of trying to find where the evidence is, we, since it has already been to court, the District Court now has the responsibility for maintaining that evidence, and what we found is actually kind of frightening because although the Police Department has an evidence-storage system that is, has certain rules and things, we found that the District Court evidence fault system is not manned in the same fashion.

MR. ASPLEN: How diplomatic.

MS. ARCHETTO: And they've really been angry with us because the evidence is in District Court, and just last week before I came I had an argument with a defense attorney who had submitted a court order to the laboratory for us to produce certain kinds of evidence, and we produced what we had, which was very limited, and the rest of the evidence was in the District Court evidence vault, and he was furious with us that we didn't go get it and send it to his lab of choice.

That's one of the problems that we're having is just trying to get people to understand once that's gone to court, we're not responsible for it any more and the manner in which it is stored, of course, you know, leaves much to be desired. So that's just one of the issues that we found with some of these things.

But I have a comment about what you said. I just wondered if your laboratory is scared to death what you're going to generate for them.

MS. WEINREB: I hope we don't have to generate all that much. Can you guys here me back there? Well, we recognize that we can't inundate one our own laboratories there. We're going to have to send them out, maybe rely upon the FBI crime lab, I don't know. Hint, hint. Now that I've just volunteered them.

MR. ASPLEN: Dwight, get off the floor. Breathe.

MS. WEINREB: So far out of 36 that we reviewed, only one is something that we're looking at. So you can see that our numbers, even if we come up, if that maintains the same course, it's not going to be an enormous number of cases.

So we recognize that we can't inundate our own crime labs so they can keep up with their casework or other private laboratories. So we're very mindful of that. We've spoken with other crime labs around and tried to let them know what we're doing.

MR. ASPLEN: If I could add to that anecdotally, one thing we do know is that in states like Illinois and New York specifically that have actually had post-conviction legislation on the books for a couple of years now, we haven't seen an avalanche of post-conviction cases. You know, that great fear of we're opening the floodgates really hasn't come to fruition.

You know, again, it's a different proposition when you're doing it proactively, but in terms of what they're getting in those states that have the laws, it hasn't been a great burden on the systems. Paul.

DR. FERRARA: I had a question of Lisa. When you mentioned the agreement on the part of the person convicted, that if you were to proceed with testing that that be allowed to be entered into the databank, you took, you're taking cases from 1992. Doesn't California's databank law dictate that their sample is in the databank anyway?

MS. WEINREB: Yes, it does, but with backlog, I don't know if they're in there or not. So I suppose that we're just covering our bases.

DR. FERRARA: Oh, I see.

MS. WEINREB: Yeah. They are already required not in every felony though, but in most of our sexual assaults, homicides, things like that.

DR. FERRARA: Yes, I assumed in these kinds of cases.

MS. WEINREB: Yes.

DR. FERRARA: If you determined that in like that one case that's being investigated that an additional, that another trial is indicated in California, is that in the purview of the District Attorney to order a new trial at any period of time after the original trial?

MS. WEINREB: No. We're going to need to speak with the Attorney General's Office as it relates to those matters. Are you saying if we decide that there's evidence we tested and its exonerated?

DR. FERRARA: Yes. Assuming we have a limited amount of time after conviction that new evidence can be introduced and, of course, in Virginia it's only 21 days.

MS. WEINREB: Yeah. Oops.

MR. PLOURD: Arizona is at ten.

DR. FERRARA: Actually, I think they expanded it now to 45 days, but --

MS. WEINREB: There are parameters. We're going to be testing if it's showing innocence. So I suspect if we come up with a sample and it shows actual innocence, we're going to petition with the defense to get that person out of custody.

DR. FERRARA: Or the Governor could grant clemency.

MS. WEINREB: Yes, that's right.

DR. FERRARA: Thank you.

MR. ASPLEN: Superintendent.

UNIDENTIFIED SPEAKER: Do you inform the victims?

MS. WEINREB: You know, we haven't gotten that far yet because -- we're going to.

UNIDENTIFIED SPEAKER: There's problems there.

MS. WEINREB: I know.

UNIDENTIFIED SPEAKER: Everybody is always looking out for the defendant. What about the victim?

MS. WEINREB: No, no. Absolutely. We need to get our victim witness involved. We have separate, as many DA offices do, their victim witness division who deals with that, and yes, we'll have to get involved with the victim, explain the entire process to the victim, the victim's family. Who knows, are we going to have to go in later and get additional samples from other, from maybe other partners if it's a sexual assault case. There's a whole host of events that we would hope we wouldn't have to go through, but yes.

Actually, Woody and I did talk about it in this last particular case that we were looking in a little further. Do we want to go to the little girl's mom and talk to her about this?

If it gets further and after decide we're going to go forward, yes we will have to and we will talk with the victim's family using our victim services.

Could I pose a question out there? I'm interesting in knowing if there, what the different policies are of some your other police departments of evidence retention. I've only spoken with a few. But do you keep homicides forever, closed homicides? I'm not talking about these open ones and how about sexual assault cases?

UNIDENTIFIED SPEAKER: For 25 years.

MS. WEINREB: For 25 years on homicides or sexual assaults?

UNIDENTIFIED SPEAKER: Sexual assaults.

MS. WEINREB: Anyone different?

MR. ASPLEN: Anybody less than 25 years? About how long?

UNIDENTIFIED SPEAKER: Our agency, if the person is finished their time or died in prison, the detective will make the decision after talking with the DA. So you could have a guy maybe

get arrested for a murder, ended with second degree or manslaughter or something, does four or five years in jail and we'll get rid of it after he's out of prison.

MS. WEINREB: How about a case where all of the appeals have been exhausted, do you still keep it after that?

UNIDENTIFIED SPEAKER: Generally, we've gotten rid of it in a timely manner after the appeals.

MR. ASPLEN: Sir.

UNIDENTIFIED SPEAKER: Homicides always we're keeping them forever, sexual assaults, and it's really an issue now and I think it's going to be more so in the future. We haven't. Once we get through the appeal period, then the sexual assault evidence, that was gone.

We were speaking earlier what's going to happen now as -- I mean, STR is the evolving technology now. Will we be in a position where we'll have to hold evidence for sexual assault cases almost forever because of evolving technology.

MR. ASPLEN: Right. That's the big question. Go ahead, sir.

UNIDENTIFIED SPEAKER: Can I ask a question of Lisa, please?

MR. ASPLEN: Please.

MS. WEINREB: What is your thought process on if the person has been convicted and does his time and gets out of detainment?

MS. WEINREB: Of retaining the evidence?

UNIDENTIFIED SPEAKER: Yeah.

MS. WEINREB: Well, my -- well, I'm trying to think of what other reasons to retain the evidence other than if the person just wants to continue it and have it wiped off their record, fine.

In our case, we would have three strikes. It's still a strike, so that might be a reason.

If I can tell you, for example, in the case that we're looking at the guy is currently serving 29 years on a different case, 12 years on a case we're looking at.

So if we exonerate him, he's not getting out of prison, but it's going to maybe erase a strike for him so that when he does get out in another 19 years he doesn't have two strikes as opposed three.



MR. ASPLEN: You'll actually see that in the federal legislation that's been introduced that they talk about it specifically in the context of either, you know, the conviction that you're serving time on or some other conviction which enhanced the particular sentence that you're serving.

So you may well be in a situation where it's a crime that the individual did their time for; however, it did count as a strike and it goes away. So you destroy the evidence because he's in for another five or ten years, but they want you to go back and retest it, but it's gone because it could essentially -- it could get him off of life sentence. The three strikes -- if they're in a life or if it's a death-penalty situation, that's really important to understate the issue. Yes.

UNIDENTIFIED SPEAKER: One other point about retention of evidence, I would say in Kentucky we were so excited when we first got our DNA CODIS hit within state, an unsolved case from 1996, and we were going back to the prosecutor and going back to the law enforcement agency with our CODIS hit, that initially the suspect was exonerated that we got him originally.

So when we went back to the PD to prosecute this case and advertise our first CODIS hit, come to find out the evidence had been destroyed and we had to drop the prosecution of the case and not go public with it.

MR. ASPLEN: Ouch. Another issue that comes up in this particular instance necessarily then is, Okay. What then do we retain? Not how long do we retain it, but if we have to anticipate the defense filing an appeal for, you know, any biological evidence that may have been exonerative to their client and given the nature of the technology that we've learned a little bit about, didn't go into a whole lot of detail, but given the extent to which we can get a DNA profile from a biological substance that we can't even see, okay, we can get evidence so small to give us a DNA profile. When they say retain the evidence till whenever, what does that mean?

If what we found is a blood spot in a car, does that mean that we have to retain the spot that we cut out, the swatch that we cut out of the seat or does it mean that we need to retain the seat or does it mean that we need to retain the car?

The implications are pretty obvious, but I think it's the kind of thing that we need to, again, deal with somewhat proactively and think about, and you folks need to talk to your prosecutors and try to get what their opinion is. There may be some guidance in the case law, but quite frankly, I kind of doubt it. I kind of doubt it because we haven't had to really deal with this that much before, but it's a big issue and it's one that we've talked about a lot.

Again, considering that federal legislation has been pending, the issue of what a biological sample is or what evidence is a huge question. Sir.

UNIDENTIFIED SPEAKER: Do you ever see the day that the technology can be advanced where you don't have that, ask this question if everybody is relying on DNA evidence in the first instance that then they wouldn't have to worry about saving it or would that still continue?

MR. ASPLEN: That's the whole point of this whole endeavor. The whole point is this post-conviction issue theoretically is a finite issue. It's a finite group of cases, a finite universe.

As we do more to use DNA in the investigative process, you obviously can't have anybody at the end of the trial period going, But wait, they didn't do DNA testing because you already did. So the answer is clearly yes.

The post-conviction dynamic is a limited finite dynamic that we have to deal with right now because of the chronological stage that we're in with the development of the technology.

If we get to the point where we are doing DNA testing in every case from the investigative stage, post-conviction DNA cases are no longer an issue.

MS. STERNICK: My name is Jennifer Sternick. I'm a prosecutor for Providence, Rhode Island, and I think that that question is starting to be answered by the way we're handling cases now.

I know that I've prosecuted in both Virginia and Rhode Island, and routinely in both of those states we are during the process of the prosecution offering the defense the evidence now. You don't like our test, you don't like our statistics, you don't like the lab, you don't like the kit, you do it. Do it now before we get to trial.

I think that what we're seeing is they don't want to do because they know once I've got a one in 400 trillion chance of it being somebody else, the last thing they're going to do is make that number go up by a hundred fold by getting another test that we can add to the mix.

So while I think with the old cases it's still an issue, I think the problem is we're stuck with what did we do with the evidence ten years ago? Do we still have it?

But now we know and now, you know, the DNA advisory board, ASCLD, everybody is saying, Keep the samples. Let them test it. It's the best defense. If somebody really thinks they're innocent, let them do it now. We should be open to that. We should be secure enough in the testing that we believe in it, and we should let them do it. I really think that's going to answer the question pretty quickly.

MR. ASPLEN: Amen. Is there another question down here or comment?

MR. CORNELIUS: I'm Tom Cornelius. I'm from Colorado Chiefs of Police. Maybe I missed something, but what about the unknown hits that we might get?

If you don't retain the evidence on somebody who has done some time in the penitentiary once they have served their time or whatever and later on down the line through, through better database information someone who had no idea this guy was the suspect gets hit, then we've got no evidence on the suspect in that case because it's been destroyed. What about that?

MR. ASPLEN: I'm sorry, try the question again.

UNIDENTIFIED SPEAKER: Let's say someone gets convicted of a sexual assault and does some time in a penitentiary. Then after they've served their time, they get out of the penitentiary and their evidence is destroyed and five years later you get another hit on something that was still in the database but that physical evidence doesn't exist any more.

MR. ASPLEN: On that original case?

UNIDENTIFIED SPEAKER: Right.

MR. ASPLEN: Well, the data that's in the database isn't going to come out, so you're going to have him in as a convicted offender, and if you had him in as a, from, on the crime scene of the forensic index, that's still going to be in there. That profile will still be there.

So I don't see a reason why you would go back and test the original evidence on that original case that's destroyed because you have got what you want already if I understand.

UNIDENTIFIED SPEAKER: You have already what you want already from a prosecution standpoint, but isn't the defense going to argue that they want that retested and there's nothing to retest?

UNIDENTIFIED SPEAKER: Chris.

MR. ASPLEN: Yes.

UNIDENTIFIED SPEAKER: What I think he's really getting to is the idea of the, if you have a CODIS hit, you still need to get a serve warrant, you still need to draw your suspects blood and you're going to retest it against your forensic sample. That's what he's getting at.

MR. ASPLEN: Does anybody have a response for that? Go ahead, Matt.

MR. REDLE: I think the response to that is you still got the evidence from your new case, right. All CODIS did was it pointed you in the direction of who you needed to get the search warrant for.

You're now going to get that blood sample, you're going to test that blood sample, you're going to get that match and you're going to test it against the match you got on your forensic sample. Okay?

MR. ASPLEN: Anybody else? Sir.

MR. GILSTRAP: Name is Preston Gilstrap. I'm with the NBP. I'm an old Baptist preacher. I don't know how to use this thing. I'm confused.

MR. ASPLEN: Okay.

MR. GILSTRAP: If is this best thing since sliced light bread, why haven't the Feds bought into the thing completely and have mandatory DNA lines on all people in federal regulations and in the penitentiaries and all of this if it's a good thing? If it's truly a good thing, why don't we lead out and then you can bring everybody in because if you're just a little bit hypocritical about the way you really want this thing done, why don't you just bang it to the floor or just tell us the real deal without the underlying thing and if there's another shoot it's going to hit the floor.

(Applause.)

MR. ASPLEN: Now, you're talking about the post-conviction testing itself?

MR. GILSTRAP: No. I'm talking about DNA testing.

MR. ASPLEN: Okay. All right. Remember what Dwight said, the FBI doesn't even have a federal offenders' database established yet.

MR. GILSTRAP: Yes.

MR. ASPLEN: Right. This is the time when you look at the stenographer and say, Take your fingers off. I was going to say if there's somebody else who doesn't endanger their job, number one, it all comes down to money. Even if you think it's a good idea, because we all think it's a good idea, and certainly the Attorney General thinks it's a good idea, it all comes down to money.

MR. GILSTRAP: It's not about money.

MR. ASPLEN: No, it is about money.

MR. GILSTRAP: No. When we reduce it to money, we take humanity out of it, we take justice out of it. Justice is about restoration. It's not about anything else. It's not about revenge or any of those things. It's about restoration. You don't reduce it to money. When we reduce it to money, we take the human element out of it.

MR. ASPLEN: Okay. Well, then implementation is about the funding. I agree with you a hundred percent. I agree with you a hundred percent.

In the concept -- you're right, it's not about money. The concept is -- I'll tell you a story. It's about saving people's lives.

I mean, it is rare in the criminal justice system that the allocation of dollars so tangibly, and I'll go word for word, is so tangible that it affects people's lives. Okay.

It is rare that you have an opportunity to spend \$50 and literally take somebody off the street that's going to save their life.

This is not midnight basketball. This is if you don't spend the money, then you wind up with some rapist or some murderer out on the street who's going to take your son, your daughter or whatever, your neighbors or whatever. Okay. You're absolutely right.

But where does the money come from? The money comes from Congress, be the Federal Congress, the National Congress or be it your State Congress.

It's not like you people don't get it. It's not like victims don't get it. It's not like prosecutors don't get it. Where am I? They're the ones that need to get it. So, you're right, the issue itself is not about money, but getting where we need to go is about money.

Now, if we did absolutely nothing, okay, in the next ten or 15 years, in ten or 15 years, we would have a pretty solid database. We would have a database where we had most of the data in it that we need, but, quite frankly, there's a lot of lives to be lost between now and then.

The issue isn't do we get between here and there in ten years? The question is how quickly can we get between here and there? So that's the whole point.

The answer to your question unfortunately is that the money isn't there to implement what we all know works, and that's one of the reasons that we're having this meeting.

(Applause.)

MR. ASPLEN: Thank you for that opportunity. Matt. Stop me, please.

MR. REDLE: Matt Redle. I am a prosecutor from Wyoming, and in terms of the Fed's buying in, one of the Bills that the Hatch proposal does provide that the Fed's would become a part of CODIS, and their prisoners and, in fact, their delinquent, their adjudicated delinquents would also be a part of CODIS database.

MR. GILSTRAP: Is it in committee?

MR. REDLE: Yes. Thank you.

MR. ASPLEN: Another question in the back there?

MR. CATTERSON: I have a comment more than anything else. I would like to drag this back to, before we got off on a tangent on the Fed's. We can pick. My name is Jim Catterson. I'm the District Attorney of Suffolk County in New York, and if Lisa -- I was fascinated, Lisa, with the project that you got into because really we're in the business of truth finding. It's great to win a case. As the supreme said, we can strike hard blows, but not unfair ones. We certainly have a continuing obligation to look into our cases.

The question is, How long do we let the evidence survive? You know, the worst thing you want to hear is, Oh, my gosh, do you still have that over there?

Let me tell you a quick story, if I can, to indicate why we should save it for a lot longer than most people in this room would agree.

In 1982, there was a vicious rape on Long Island. A housewife returned home from shopping, she was assaulted by a masked stranger, and I say masked, a ski mask. He looked her in the face and he said, I'm back. We're going to do it again. She had been raped six months before in the same place.

The person was eventually, great identification as far as height, picking people out of the lineup and an audible identification, went to trial, conviction.

Nine years later we got a request from a defendant who was in jail who's now represented by Mr. Scheck that he'd like to have DNA testing, and at that time, we resisted. We didn't know what we were getting into, but eventually, without my knowledge, the lab sent it out to a friend of Dr. Scheck's and Mr. Scheck is out in California, name is not important.

Didn't have enough evidence for RFLP, and about eight months later decided that he had enough for a PCR and then he decided, and testified, that while all of the markers were the same, there was an additional marker.

The test in New York is that newly discovered evidence, if the evidence as produced could convince, could demonstrate to a trial jury that they could have found a different result based upon newly evidence we're duty bound to vacate the judgment and dismiss the entitlement.

We fought and we fought and we fought and we lost, and I finally had to go along with this. This was 1991 when I didn't know PCR from RFLP.

The lab maintained the evidence, and in August of 1996, a young woman was pulled over a throughway, expressway, a guy flashing a badge, I'll make it as short as I can, taken into the woods, forcibly raped. The individual then irrigated her with a bottle of water. She got the last couple of numbers of the license plate, you can see this one coming, traced it to only one car like that in Montauk registered to a woman who drives up in the car; the same individual.

If we did not have the evidence, we couldn't have gotten him on sealing order, we could not have compared the semen that was found on her jeans, it was on her leg and transferred to her jeans, compared to the known sample of the individual who we hadn't let out. P.S., he's back in jail doing another 15 years.

So there's one compelling argument the other way, Lisa, of why we may want to save this material a lot longer than we thought we should have saved it or it works.

The talk about I'm the person who got himself out of jail "by DNA" it's big a question of whether STR would have explained it today, but that's another story. We put him right back in for a subsequent rape based upon the same evidence. So there's the best I can tell you.



## DEFENSE BAR PERSPECTIVE

MR. ASPLEN: Thank you. Okay. It's time to move on to our last speaker. Chris Plourd is a criminal law specialist and he's been practicing litigation for the past 19 years, and he specializes in forensic criminal and civil cases. He's been engaged extensively in litigation and consulting, particularly on scientific matters.

He is a member of the American Academy of Forensic Scientists, the Association for the Advancement of Science in the American Society of Forensic Oncology, Odontology, and Chris is another individual who has been very involved in the Commission process.

He's a member of the Working Group for crime scene investigation and, quite frankly, a critical member of that working group because, and I think all of us would agree, it is essential to know where your opponent is coming from when you proceed in matters like this.

The best idea that you can have of what the attack is going to be on your evidence is going to put you in the best light to address that attack.

So I want to thank Chris for all of the work that he's done up to this point in the Commission work and for the work that he's going to continue to do because we're not quite finished with him, but I want to introduce Chris Plourd to you. Thank you.

(Applause.)

MR. PLOURD: It's a pleasure to be here. I hear it's lonely at the top, but being the only defense attorney in this room with that point of view, it's real lonely at the bottom, too.

I talk a lot to attorneys, sometimes I lecture to judges and so forth regarding DNA evidence. Most times it's to people that don't know a whole lot about it.

When I gave my secretary this calendar, this schedule to calendar for me and she looked at it, she's Hispanic and she says, *voi aken tir el enfossa de los la onus*, you're going into the den of the lions, that's true, but I reassured her that lions don't like sharks, so I might be okay.

The points that I want to talk about are varied. I look at things from a different perspective because I kind of look like, from the inside out, from the outside in. I've got to look for some angle because I'm obligated to represent my client.





For example, when you hear talk, and the truth is that laboratories are understaffed, my perspective is totally different. I go to laboratories all the time to look at case files.

I've been involved in this technology for a number of years, and whenever I go to a laboratory, I usually have two people watching me the whole time. I think they must have nothing better to do. I have guards when I look through the files, so that's my perspective in some respects.

I want to talk about a couple of things. In reality, the defense lawyer is sort of the last person that gets involved in this whole forensic evidence DNA technology because he's going to have to do something with it once it's utilized, either plead guilty for his client if he looks at it and concludes that it's probative and convincing or go to trial and try to contest it. Sometimes he doesn't have a choice.

The third area is if he needs to use it for his case, and I've been very much involved in a number of those types of cases. In fact, my experience is, is that the first case that I had it was the prosecution that raised a fraud hearing and contested the DNA evidence that exonerating to the client claiming that the technology was not valid that was used by the defense. This was when the technology was virtually brand new.

My history is essentially that in 1986 I was appointed to represent a defendant who was accused of capital murder, it was an African American young man who was a parolee and he was accused of murdering a young lady, a Caucasian white school girl who was walking to school. She was 16 years old and brutally raping and murdering her, and this was the very difficult case for any lawyer, any murder case is, but this one was particularly difficult.

There were only -- there was an attempt to do some DNA testing on some hairs, particularly one hair, and there was, they couldn't do RFLP testing and there was only one lab that did PCR testing and it had never been validated, and we basically argued about this and eventually did the DNA work, but there were only three private labs in the country that did DNA testing, no government labs.

So I had to learn about DNA testing, and then all of these years later is the result. I had to continue to learn about it, and eventually the case was resolved by a hung jury and eventually settled, but the technology has advanced quite a bit since then. It's changed.

When the technology was first introduced, it was RFLP technology, and it, two labs were doing it. Then eventually the government labs got into the RFLP program and PCR was sort of kind of on the back burner.

In fact, the person that was proposing the PCR technology might be useful was sort of put down in the early days as being, you know, it's not valid, it has too many problems, and then quickly within five years it just overcame and now RFLP technology has gone by the wayside.

It's good to know the history about how DNA testing has evolved because it continues to evolve, and what I have seen is that governmental entities have put a lot of resources into a particular technology. It takes a lot of time.

By the time it gets going real strong, then the next technology takes over and you're already committed to this whole technology, and it's real tough to, you know, switch over and it's expensive. It's not easy to get governments to approve it.

I want to quickly go through some slides and make a few points as I go along. I want to talk about -- I have to touch all of these different areas because I'm the only one here for the defense, and I'm going to mention a couple of things. Some things are going to be controversial, but these are the issues that are really addressing things.

The first thing I wanted to bring up was, is that for a lot of practical reasons there's not, the courts are not throwing out DNA testing. You know, you mentioned DNA testing. Generally, generally courts are going to accept. It even though it's a new type of test, it's a new technology, it is over with.

The only thing that's being debated now is which test do we do. Do we do this mitochondrial test or do we do some other type of test? Rare exceptions to that, but in general, that's the case.

One of the principal reasons is really, is that defense lawyers, in general, for, one economic reasons and, two, for practical reasons aren't contesting these cases any more.

I get a call once a week on a case, on cases from around the country and the question is always the same. We want to fight this DNA test. I'm very excited. I say, oh, that's wonderful. Send me \$350,000, because that's about what it takes to do a scientific validity test when you're hiring experts and you're going to have six to eight weeks of a hearing and hire every prominent expert in the country. Well, obviously, the test doesn't get done.

The next thing is defense lawyers, like myself, Well, we use these tests to free innocent people. How can we go into court? So we sort of had to put those challenges to the wayside.

The only challenges that are coming about now are really technical. You heard, and it's a very valid question, the defense asked for discovery from the company who developed the test. They claim a trade secret, and they beat it on a technicality because they convinced some judge that that's something that they need. I don't involve myself in that, but that's what's going on now. Technical challenge has nothing to do with scientific validity.

So basically, courts are accepting these tests pretty regularly. Even the mitochondrial tests, several appellate courts have done it. There's a lot of new technology. This is the old technology, like reverse dot blots, PCR. It's sometimes very complicated. It's been replaced by very computer generated. It's a new look. It's extremely specific. You can test a lot of different genetic markers that can sort out mixtures. This was a big problem for a number of years.

A lot of cases were inconclusive because you could not separate one person's DNA from another. Now you're able to do that. Major component; minor component. These are critical issues.

This is what's being litigated in court, you know, who is the major contributor? Why is somebody a major contributor versus a minor contributor, etcetera? What does it really mean? And there are a number of key situations that it applies to.

In the courtroom, you have a number of new genetic markers, and I know we've talked about it. I won't go into all of them.

You have new types of DNA. That's the mitochondrial. Also the Y chromosome male DNA or boy DNA, and then incredible technology as far as the ability to test robotics, doing, you know, mass quantities of testing, and that's just growing exponentially, and some of the human genome work is going to really make that even more significant.

They you have a little bit of non-traditional biological evidence; plant, dog, cat DNA, things like that that comes up very rarely, but is significant in the right type of case.

We get into the new and the old cases, and I want to touch on some points on both of them. They're both very similar basically as far as the problems and the issues.

As far as innocent people and as well as old, cold cases, basically these are the general statistics is that when the innocence projects that are going on around the country approximately 75 percent of the people that want their case looked at don't get it looked at because the evidence is gone, destroyed or never existed or whatever the case may be. The courts are throwing it away. The police departments are throwing it away, so they're off the plate right from there.

Out of ten cases that get looked at, seven actually identify the person who is in custody. Approximately three, these are the general numbers and it's not very statistically significant, three out of ten get exonerated after all of this is gone through. That seems to be the general consensus of how the numbers are coming down. Most people get no test because there's no DNA to test.

With reference to genetic markers, the current wave is RFLP, DQAL, poly markers, that's out, but a lot of labs are still spending a lot of resources doing it, but the STR loci profiler, that's where, that seems to be the gold standard now. That's going to be around for a long time. I think it's wise to invest in those technologies because they're very robust and they're very specific and they're database oriented.

The Y chromosome helps in certain types of case when you can't get a result because you have too much female DNA or other DNA mixed with male DNA and you're looking for the male suspect.

There's a tsunami coming as far as the technology because there's been so much research on how to collect more DNA from smaller samples and doing mitochondrial DNA, and it's just overloading the court system in laboratories. It's phenomenal.

When you're training all of these law enforcement officers, as has been started to happen, they're starting to collect stuff. It's been mentioned a lot. It's going to overwhelm the system, and it's done that already and it's going to get worse by tenfold in the next couple of years.

I'm going to skip the mitochondrial because you have heard a lot of technology stuff and the first responders.

It's basically because you're now starting to educate people on collection, storage, identification. Crime labs are very good now at extracting better techniques or using better techniques to extract so that they actually recover more DNA. You get it from virtually everything.

I've got a handout that demonstrates that, a little abstract of an article that lists about 40 different things that nobody would have ever thought of that you could collect DNA from and it's in your program material.

Cases that have gone to court regarding animal DNA, vegetable, that's basically identifying biological material. Semen, insects, viral DNA, I'll talk a little more about that. There's an article regarding that.

I'm going through these quickly, but for example, one of my areas that I looked at extensively and done a lot of research on it and tried to convince NIJ to grant more funding to the research on this is when children are sexually assaulted, sometimes it doesn't get reported until they go to the doctor and they have some type of venereal disease, and there's some investigation going on, there's some research going on that these are, these viral venereal disease are polymorphic. In other words, that they're not all the same. You can separate them.

So you can tie that child's disease to a particular offender if he has the same strength, the same type. Very, very interesting research, and those are some of the toughest cases that you can ever run into as far as an investigator.

I can't see these very much because they're basically items of evidence and so forth, but I wanted to talk about a few more things and then I'll wrap it up.

There was a good question that the preacher brought up about why the Feds aren't, you know, buying in the CODIS and so forth, and it's a very sensitive subject, but basically, it's a very hot topic and it has to do with DNA databasing. It has to do with taking arrestee samples, and that is racial profiling.

There is a perception that some believe, and me being a criminal defense lawyer, I've seen it happen. At least in my mind, I've come to believe it. I didn't believe it when I started doing this work, but when you take arrestee samples and if there is some element of racial profiling going on, some probable cause determination based upon the color of the individual's skin, you're disproportionately putting in, those minorities into the databank and you're disproportionately affecting those minorities.

That's a very valid concern and that's something that's going to hamper, if not kill, arrestee sampling. Unless you can prove as law enforcement professionals that you don't have any racial profiling going on in your department, people are not going to allow you to take arrestee samples. It's simply not fair.

Even convicted offenders are disproportionately impacted if the premise is correct that people get stopped arbitrarily because of race. Well, you disproportionately have more minorities in your database because they get stopped and they happened to get caught more often than other people. It's a very interesting issue, and believe you me, it's not going to go away.

With reference to innocent people, I want to talk about some cases, but I want to talk about what I call the shark attack. In other words, how does the defense lawyer attack the DNA evidence assuming the testing itself is done reliably?

Well, it's really the, it really comes from the Simpson case. You juice the DNA. You attack the collection. That's where it's going to come from. The garbage in, garbage out, mishandling of the evidence.

The evidence in the Simpson case was extremely strong, but it was an attack based upon mishandling and basically, even though some will say that the result was predetermined, basically the jury reacted to that. They didn't trust the police officers.

Well, they grew up with those police officers, and essentially, the attorneys in that case were preaching to the choir because they were willing to accept something that they live with their whole lives.

I went up to the O.J. case a number of times. I actually helped out in a little respect with the prosecution in the case, but when I saw the jury, I understood completely how that case was going to go down, and you get a whole different perspective if you go and you look at the whole dynamic theory.

Mishandling of the evidence is a critical concern because you're getting test results from such low quantities that you're going to pick up very minute, low copy numbers is what they're calling it, DNA sources that you'd never expect and it's really to going to spin some cases around the wrong way.

I want to finish up by talking about a couple of cases that I have been involved in, and I get involved in cases around the country, but I do most of my work in the San Diego area and I'm very confident that they won't find very many wrongfully convicted people in San Diego because a lot of testing has been done in that area.

It's been a very lucrative area for attorneys at least since the 90's and late 80's because one of the first PCR DNA cases was litigated there that DNA testing has been used, and a number of times it's used in crime labs because they're overstaffed or under-educated they miss the evidence, and it's the defense that finds the evidence and then gets the test done or works with the prosecution

to get a test done and they're exonerated. Then they don't get convicted so that they don't have to be unconvicted.

There was one recent case, and I think it's important to look at cold cases, you know, cases that couldn't be solved, weren't solved, and when you do solve them, that's a rare event. You got a lot of media coverage. It's a great thing.

Why didn't you solve them? Because you don't want to make those mistakes in other cases obviously. Did you buy -- the polygraph test turned out to be bogus or whatever the reason was. Did you accept somebody's alibi and then put the person off the suspect list?

The same is true of innocent people that have been proven positively to be innocent. Why were they convicted? You don't want to make those mistakes again.

The big debate about the innocence project and the people that have been exonerated is that, Well, you have proven conclusively that X number of people have been falsely convicted. Now you've got 100 cases over here where there's no DNA evidence. Well, you know because the same type of evidence was used with them, some of those are innocent, too. You just can't prove it one way or the other because you have the eyewitness, you have the false confession because you're seeing these types of cases. These things are happening.

Now, when there's no DNA evidence, why would one think it does not happen in some of those cases? This do not mean that eyewitnesses are not good evidence because it could be perfectly valid, but it could also be one hundred percent wrong.

A couple of cases and I'll let it go. One case in San Diego County about to go to trial. It was going on for a couple of years. The defense was claiming that the suspect transient did a murder of this girl.

The three defendants, some of whom confessed, some made admissions were about to go to trial one after the other, and then the defense had a DNA done, with the cooperation of the prosecutor, and apparently some blood was missed, some blood spatter off a garment that the transient who the prosecution could not commit, came back a blood spatter from the victim. They took this off the suspect the morning after the crime. They had three basic confessions and they had to dismiss the case.

Litigation follows and there's now money litigation where the children's parents are suing for damages. The case is still very controversial. Some people still think the kids are guilty even though the DNA test exonerates them.

Another case, a gentleman by the name of Herman Atkins, an African American gentleman in the Riverside area in 1986.

Basically, he gets arrested, charged and convicted and spends 12 years in prison for rape. The victim worked at a store, and the African American person went in. There were some other

shoppers. He waited for the other ones to leave and then with a very brutal attack and a repeated forced oral copulation, the rape then occurs, ejaculation.

The victim is taken for a rape kit. Back in those days, serology was the type of testing that was done. Nothing conclusive came out of that.

The victim went to the police station, was just looking through yearbooks and mug shots and various things and happens to see a wanted post of Mr. Atkins on a police officer's desk for some other petty claim, burglary, robbery out of LA, That's him. Does a photo lineup. The victim is positive. Mr. Atkins goes to prison.

Eventually DNA testing shows that absolutely conclusively it was not Mr. Atkins. He spent 12 years in prison, but the victim was one hundred percent certain.

Take-away comment there or the point is the victim just happens to pick somebody out because they notice them. You know, it's not sort of like a lineup or there has to be something else that ties the person to the crime. You've got to be suspicious of that because sometimes victims feel compelled to do something like that.

Now, my favorite case is the case of Greg Martin. I've got a copy of a letter in the program materials, as well as some envelopes, and this was a DNA case because we did some DNA testing on this envelope, and Greg Martin, I got to know his father because I did a little education.

I educated his father on some DNA testing because his father was a detective, and we had a couple of days on the witness stand with him and he learned a lot, and I enjoyed teaching him a few things and he was very respectful of the fact that I was very assertive, aggressive, knew what I was talking about and brought up some very valid points.

Well, one morning I get a call from Greg Martin's father. He had just retired and basically he wanted my help. His son was in jail for murder, a very difficult murder, a baby murder. Nothing gets worse than a baby murder.

That's the one type of murder case where you really feel that the jury not only wants to kill your client, they want to kill the attorney, too, for representing him. It's a very, very difficult case.

So essentially, Greg had a little switch of position in his life because he had met a girl, the girl had a baby and they had kind of fallen in love. He moved in with her about a month and a half later. This baby -- he calls 911. His girlfriend had just left to go to work and he goes back into the apartment and the baby's crying and then codes and paramedics come and basically the baby is brain dead.

Since he was there, they feel that he had done it, and his girlfriend, you know, in the abundance of loyalty testifies at the preliminary hearing a few days later it wasn't me, and it had to be one or the other, and essentially he gets charged with murder.



So instead of being a jailkeeper, Greg Martin, who was a Deputy Sheriff as he happened to be, became jailed. He was put in jail with a million dollar bail. His girlfriend -- we did a lot of investigation. His girlfriend had a history of abuse on the child that predated this relationship, and we had a great case with the girlfriend we felt showing a history, but the case took a long time. He was in jail for a year.

She had a little mental problem, and she starts writing a letter. She complaining about us be we're investigating her.

She writes a letter, Yes, I killed my baby. So what the f\*\*k are you going to do about it? Well, she was the District Attorney's star witness and she had testified at the prelim and was their star witness at trial. I thought that this was impeachment. It affected her credibility about hurting this kid.

So we had to disclose this and eventually there was a mistrial, and we had to do some testing and so forth because what happens is they went to interview her and she died writing the letters. Well, he's in jail. So we had to get the envelopes tested, eventually handwriting is done and he's exonerated, but he's a good example. Even a law enforcement officer can be exonerated through DNA testing.

I've gone on a little longer than I think I should have because we're a little bit over time. I apologize.

The last thing I want to mention, and this is a good point, it's an investigative point, is I look at a lot of cases and a lot of times because of the old technology you get inconclusive results in cases that you may have handled, but you get -- the lab reports now is inconclusive, but you get kind of faint results that might be able to suggest to you that you're looking in the right direction or that you're not going in the right direction.

So you may want to look at those cases because I do that all the time, and I can pretty much predict how cases might come out based upon faint results that aren't interpreted because they don't meet certain threshold limits. You can learn a lot from those and then now get more sophisticated, more sensitive testing.

It's been a pleasure being here. I always enjoy doing this, and I want to thank you for your attentiveness.

(Applause.)

MR. ASPLEN: I also want to thank you for your attentiveness. Again, we know it's been a bit difficult because of the cramped quarters, but we're going to take care of that tomorrow.

Remember that tomorrow we are in the Atrium room. Also, tomorrow you'll notice on the agenda that the 8 o'clock session, while it's the coffee break, we're really going to be doing some stuff there, so I really do encourage you to try to be here at 8 o'clock because what we're going to

do is we're going to role out to you folks our CD Rom training that I think, and I hope, that you'll find quite good.

So we're going to kind of go through that with that with you before we actually start the real program. The Attorney General is still scheduled for 9 o'clock, so hopefully that will we remain the case. Have a good night.

(Thereupon at 5:10 p.m. the proceedings was adjourned.)

**CERTIFICATE OF NOTARY PUBLIC/REPORTER STATE OF MARYLAND: COUNTY OF BALTIMORE**

I hereby certify that the foregoing transcript is a true and accurate record of the proceedings.

In witness whereof, I have hereunto set my hand and affixed my Notarial Seal, this 4th Day of August, 2000.

## DAY TWO INTRODUCTION

Meeting in the above-captioned matter was taken on Friday, July 28, 2000, at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C., commencing at 8:45 a.m. before Carol T. Lucic, Notary Public.

REPORTED BY: Carol T. Lucic

MR. ASPLEN: If we could take our seats, please, I would like start off by introducing our first speaker this morning, Mary Lou Leary, who is designated by the President to serve as the Acting Assistant Attorney General of the Office of Justice Programs. It is fair to say that this audience and you participants in this particular conference understand the import of the Office of Justice programs in terms of getting things like technology and innovative programs into the hands of your law enforcement officers.

Mary Lou is now responsible for that integration of those programs and those technologies into your hands and ultimately onto the streets. Mary Lou comes from Main Justice immediately prior to her position at OJP, but prior to that she was the Deputy Associate Attorney General and also served as chief of staff to the Associate Attorney General in the U.S. Department of Justice. Prior to coming to the U.S. Department of Justice from January of '97 to '98 she served as United States Attorney for the District of Columbia.

Throughout the course of the last day and a little bit this morning I've offered at times my personal thanks to people, and my personal thanks to Mary Lou is that she hired me, and at times I thank her for that, but that's actually most of the time.

Before that she began her career as an assistant district attorney for Middlesex County in Massachusetts. She's a prosecutor's prosecutor, and the law enforcement community is well served by having her now as the person in charge of the Office of Justice Programs.

So with that, Mary Lou, thank you for being here.

MS. LEARY: Thank you, Chris. I think that you all can tell from the results of this meeting over the last day or so that Chris is probably one of the best hires that I made at the U.S. Attorney's Office, and then when the Department of Justice called me when I was serving as U.S. Attorney and said we really need somebody to help us with this DNA Commission, we need somebody who understands it,



who has been out there, who has been doing this kind of work; could you please send Chris Asplen over here, I thought, oh, boy. You can imagine how good he is in trial, what a great prosecutor he is, but I could see that greater good called for Chris' services, and I'm just delighted with the results.

I'm grateful to you, Chris, for the work you've done on this conference, and I think it has been terrific. It's wonderful to see all of these folks come together, police, prosecutors, technicians, a whole range of people from across the country. It's a very, very, important gathering, and you all are the folks who will go back to your districts and make things happen and push the envelope with DNA and use it. So I'm grateful for you taking the time out to be here.

I'm delighted to be at this summit because I think the issue of DNA technology is an absolutely critical one for all of us who are involved in the criminal justice system. As you heard from Chris, I kind of grew up professionally in the criminal justice system, serving first as an Assistant DA in Massachusetts and then 15 years in the U.S. Attorney's Office here in D.C., so I know the kinds of challenges that you all face in your work, and believe me I'm with you.

Yesterday you heard a lot about how DNA data banks have been a very powerful tool for law enforcement, and you heard about all the work that's going on in the federal, state, the local levels, work that's geared towards improving our capacity to use DNA evidence in criminal cases. You heard some about how post-conviction DNA testing is being used to overturn convictions and to exonerate the innocent.

I think one of the issues that I would like to talk to you about is something that we didn't really discuss very much yesterday, and that is the very human impact that DNA evidence can have on victims.

When we talk about DNA evidence in this country, the focus in the last few months or perhaps a little bit longer has really kind of shifted to post-conviction testing and post-conviction issues and exonerating the innocent, and this, of course, is a very powerful tool and it's important to be sure that nobody in this country is unjustly convicted and remains unjustly convicted post-conviction, but I think it's also critical to remember the role that the criminal justice plays in protecting the public and insuring justice for victims.

These two goals should be the primary focus of DNA technology, and, as I'm sure that you all recognize, victims have often been ignored in the criminal justice process. It really wasn't until the 1980s when the President's task force on victims of crime began that focus that we started recognizing the rights of crime victims and working to address their needs. I'm sure that everyone in this room has had an experience with a victim of crime where you have come away from your interaction with that victim feeling like no matter what the outcome of the case, you helped to restore some sense of wholeness, some sense of dignity, and some sense of justice to that victim, and there cannot be any greater reward for those who work in the criminal justice system.

We've come a long way in addressing victims in the last 20 years. I think that police, prosecutors, and others in the criminal justice system respond much more sensitively to the needs

of victims. Every single state in this country has enacted victims' rights laws, and more than 10,000 victim assistant programs have been developed across the country. Every state now has a crime victims compensation program. But in our discussions of DNA we find we have sometimes forgotten to talk about how we can use DNA as a tool in moving forward in addressing the needs of victims. I saw firsthand as a prosecutor the impact, the powerful impact that DNA evidence can have; when you get a DNA match, that powerful sense of closure and relief that can bring to a victim.

I would like to share with you the story of a couple of victims and the impact that DNA had on their cases and on their lives. Let me tell you about Debbie Smith. In 1989 Debbie Smith was dragged from her home to a wooded area nearby. She was brutally beaten and repeatedly raped. During that attack her assailant kept saying to her over and over, "I know where you live, and if you tell anyone, I'll come back and I'll kill you."

When Debbie finally dragged herself home, all she wanted to do was take a shower and wash away the pain. Of course, she didn't understand that in doing so she would also wash away critical DNA evidence, but Debbie's husband was a police officer, so he convinced her to wait, to notify the police, and to go immediately to a hospital where trained medical people could examine her and check the physical evidence that might identify her attacker.

When Debbie came to testify before the DNA National Commission, she described her six and a half years of anguish as police continued to pursue her case and there were no results. Her life was consumed by fear. She was always looking over her shoulder sure that her attacker would come back and kill her.

Finally in 1995 Debbie's long nightmare ended when forensic scientists for the State of Virginia discovered a match in the DNA data bank. Her attacker was already in jail. He was serving time for abduction and robbery. Debbie described her feelings, and for the first time in six and a half years she said I could actually feel myself breathe. I felt validated. It was a real name and a real face to go with my nightmare. Finally I could quit looking over my shoulder, and finally within the pain began to subside, healing began, and peace came at last.

Debbie learned later that her assailant had gone to jail only months after raping her, but because there was a backlog in Virginia's DNA database, she had to wait six years to hear about it. She lived with that for six years.

There is a Florida victim who has a similar story. This is the story of Kelly. At the time that Kelly was raped Florida was not processing nonsuspect cases because they didn't have the funding to do so, but three years later there was one detective who was persistent, and he asked that they dust off the rape kit from Kelly's case. Some officers thought that that rape was similar to crimes that had been occurring in Daytona Beach, less than two hours north of her home.

When they entered that data into Florida's local DNA database, they found almost instantly a match with the FBI's CODIS system. So although her rapist's profile didn't match the profile of the Daytona Beach rapist, it did match that of another man who was already serving a 25-year sentence for beating and raping a woman just six weeks before Kelly's attack.

So both of these courageous women are using their stories now to help other victims and to insure that offenders are appropriately sanctioned. Kelly travels around the country giving rape awareness seminars and talking about the healing process and talking about the importance of DNA in solving cases. She actually drafted a bill that was introduced in the Florida legislature that mandates consecutive sentences for convicted sex offenders and murderers in prison who are found guilty of subsequent offenses, and last May that bill was signed into law.

I think these two cases illustrate the tremendous role that DNA can play in solving crimes and bringing peace of mind and justice to victims. I think these cases also illustrate the critical need to increase our capacity to analyze DNA evidence. We have all 50 states now requiring DNA samples to be taken from convicted offenders, but not all 50 states are hooked into the FBI's national database, and most states have huge backlogs in collecting and analyzing samples. The FBI's CODIS system has a large backlog as well.

The National DNA Commission has identified the elimination of DNA backlogs as an urgent priority. Here at the Department of Justice we are absolutely committed to helping to reduce this backlog. This year we will be awarding \$15 million to states to help reduce their DNA backlogs. This will help free up laboratory resources to analyze new DNA case work samples and will permit more comparisons between known offenders and the unsolved or what we call cold cases.

Another \$15 million will support the crime laboratory improvement program. This program provides assistance to improve and expand forensic services in state and local forensic laboratories. We've asked Congress to increase the funds for this program and for the DNA backlog initiative next fiscal year. We've actually asked for a total of \$50 million to support these efforts.

But you know these improvements will come too late for some crime victims. One Los Angeles woman that I know of who was bound and was brutally raped for hours by a man who broke into her home as she slept, seven years after her attack DNA evidence identified her assailant. Unfortunately for this victim, the break in her case came one year too late because in California rape cases have a six-year statute of limitations.

Because current crime backlogs often mean that victims have to wait for many years for DNA evidence in their cases to be analyzed, some states are actually extending or dropping the statute of limitations on prosecuting rape and other violent offenses. In 1997 Florida removed the statute of limitations on any rape case where potential DNA evidence has been collected. Some states are looking at removing the statute of limitations on other violent crimes as well. Some states have begun filing John Doe cases against serial rapists using only the genetic profile.

These actions I think give hope to victims who are waiting for their attackers to be identified, prosecuted, and convicted. As the leading law enforcement officers and lab folks in this country, I hope that you will take the time to think about the impact that DNA evidence and DNA technology can have on crime victims and think about how you can work to increase the capacity of DNA evidence to insure justice for victims of crime. I hope that you go back and use your influence to promote the use of DNA in criminal cases and to convince your state and local purse holders to support crime labs for analyzing DNA evidence.



We will never be able to provide enough federal money to clear up the backlogs across the country. We have to have support at the state and the local levels as well. So I urge you also to support more training in DNA evidence identification, collection, and preservation. That training really should include guidance on working with victims and helping folks understand the importance of DNA in identifying an offender and securing a conviction.

Most rape victims' very first instinct is to just wash away all signs of the crime. These victims need sensitive counseling. They need appropriate counseling and immediate referral to sexual assault nurse examiners or other trained medical personnel who can collect the DNA evidence. Once that evidence is collected I hope that you will encourage your officers to work closely with prosecutors and with crime lab personnel to solve crimes and insure justice for victims.

I know that law enforcement personnel are often really frustrated, as I was frustrated, by the amount of time that's needed for crime lab analysis, but I think we've heard here from the beleaguered state crime lab directors those labs are often times doing the very best they can with extremely limited resources, and they need our support.

Finally, I encourage you to encourage your departments to be dogged in pursuing cold cases that could be solved with DNA technology especially in those states where the statute of limitations has been dropped. Advances in DNA technology can mean hope for victims who are lost in a kind of a purgatory of not knowing who or where their attackers might be and whether they might come back and attack them again. As Debbie Smith told the DNA Commission, every day a victim has to wait is another day stolen from her life.

I want to thank all of you for accepting the Commission's invitation to learn more about the issues of DNA technology. I want to thank you for the work you do in protecting the public, and thank you very much for all you do for the victims of crime, who really depend on your sensitivity and your professional expertise. The Department of Justice stands behind you in your work and will continue to support you. Enjoy the conference.

MR. ASPLEN: When the Attorney General signed the charter for the National Commission on the Future of DNA Evidence, it was a recognition that we have before us a tremendous opportunity here. It was an opportunity to bring together all representatives of all parts of the criminal justice system to have a national discussion on ways to improve that system using technology.

I should say that when somewhat characteristically the Attorney General at its first Commission meeting asked the commissioners to act immediately and not to wait until the end of its process to make its recommendations to her, we began the implementation of that vision. I think it's fair to say that absent the Attorney General's vision on these issues we wouldn't have the national discussion that we have right now on issues like post-conviction testing and on finding ways to get it right every time, and it's fair to say that we wouldn't be here today talking about the kinds of issues that we are that are so important to putting this technology into the hands of law enforcement officers and by doing that, by putting it in the hands of law enforcement officers, by saving people's lives very tangibly, very visibly, every single day, that is a wonderful, wonderful vision.



So if I might introduce to you and I might say very proudly so a great friend of law enforcement, the Attorney General of the United States, Janet Reno.

MS. RENO: Thank you, Chris, and thank you all. I am delighted to be here today, and I want to thank everyone that is participating because I think this is one of the most important issues that face. I particularly want to thank the Commission. It's not my vision; it's the Commission's work that has advanced this so far, and it is critical work. I believe it has been instrumental in promoting a national discussion, and I think we are now beginning to see the results.



The development of DNA technology has done so much in these ten years to improve our criminal justice system. I remember as a prosecutor in Miami beginning to understand absolutely the awesomeness of it all and not quite able to get my hands around it. I realized how long I had been in Washington by recognizing that eight of these ten years have been spent here watching it just mushroom across the nation. We have seen it go from a technology used by a few prosecutors in a few jurisdictions to a technology now accepted in every court in the United States. We now have legislation in every state creating DNA databases of our most violent offenders. We can now identify suspects in cases where no other evidence exists but the saliva or the skin cells. We can now use DNA to solve cases that are 10, 20, or 30 years old, and we can identify a suspect in a crime from Florida from his prior conviction in the State of Illinois.

However, while we have come so far and achieved so much with this technology, there is still far to go. I believe that what the Commission recognized in asking that the conference be held is that we still have a tremendous amount of work ahead of us if we are going to fully realize the potential of this technology and make our communities and our nations safer, and I believe strongly that while it is science that has given us this powerful tool, our ultimate success in realizing its potential lies in our commitment to those who must use it, in our commitment to you in law enforcement.

DNA evidence lies as only potential until it is properly identified, collected, stored, and analyzed, and we must make sure that we remember it is human beings that are doing that. We can never say that it will be technology that solves the problem. It will always be humans interpreting the evidence, using the evidence, collecting the evidence, maintaining the evidence that will insure ultimate success.

We need to insure that our police officers and crime scene technicians have the knowledge, the skills, and the tools necessary to collect evidence so that if DNA evidence exists at a crime scene, they can find it, collect it, and preserve it in a way that guarantees its reliability. This means investing in the training and education of our law enforcement officers and a commitment to provide them with the resources necessary to take full advantage of the power of DNA evidence.

The Commission's training pamphlet, "What Every Law Enforcement Officer Should Know About DNA Evidence" was made available to every officer in the country. While NIJ originally printed 1 million copies of the pamphlet, demand was so great that we had to print another 500,000 copies. I think the need for that kind of basic knowledge is clear, and I understand that this morning you also got a demonstration of the Commission's DNA CD-ROM training for first responders.

As we begin to rely more on technology and not just DNA, we need to rethink our commitment to the training and education needs of our officers, and I think this is going to become more and more critical for every police department in the country. It is so difficult when resources are limited, when you need every officer on the streets or in some critical role to pull them in for training.

That training is going to be absolutely critical as technology changes before our very eyes. It is going to be critical in a whole range of issues, but clearly in DNA, clearly on issues relating to cyber crime, how we keep up with the technology that staggers the imagination, and, as Adlai Stevenson said, converts vanity to prayer.

That presents a management problem, but let's use technology to try to deal with the management problem as well. Let's be creative in learning to do distance learning. It may be just distance learning from the squad car to headquarters with a video system in the squad car that can permit interactive learning, but we have got to be prepared in these next 10 and 15 years to educate our officers in a whole range of issues, and DNA is again one of the most critical.

We must realize that law enforcement differs. The issues facing a sheriff in Wyoming who may be first officer on the scene, crime scene technician, detective, victim advocate all in one are very different from the issues of the specialized crime scene technician in Washington, D.C., facing limited evidence, storage space, and more crime scenes than she can respond to in a day. Nevertheless a victim in either jurisdiction deserves the benefit of this technology.

How can we best support our law enforcement officers' efforts to protect our citizens through the use of this technology? We must be sure that when law enforcement does its job of properly identifying and collecting the appropriate evidence, that our laboratories have the capacity to test the evidence and that our databases have all the DNA profiles in it necessary to catch the right perpetrator, and as always, when we use technology to identify the correct suspect, we then exonerate someone who might otherwise wrongly have been caught up in the web of suspicion.

It is important that we all speak with one voice, one powerful voice to make this happen. Our goal should be an investigative process where DNA is identified and collected properly at the

crime scene, processed, and run through the database quickly, and leads to the identification of a suspect followed up quickly and reliably not because the technology will replace the value of traditional investigative work, but because by using DNA and DNA databases efficiently and effectively our detectives can focus on other aspects of the case or even move on to the next. We can more efficiently reallocate our resources.

But we have got to explain that. We as we go to state legislatures and as we go to Congress have got to let them know not only are we saving lives, not only are we catching dangerous offenders, but we are also making law enforcement far more efficient.

Think of the cases that you have had to deal with or have had some familiarity with where you have followed every lead that led you towards one person and for nine months you followed the case leading towards that one person. You have been building a case, following every point that points to this one person, and then boom, it's not that person. Somebody else confesses, and you look at the money that you've spent.

We've got to put it in dollar and cents terms so that people will understand the savings that DNA can produce if we do it the right way, use it the right way. While individual state offender databases in the CODIS system have been available for a relatively short period of time, one thing is absolutely clear. They do work. Perpetrators are being identified all over the country as crime scene DNA samples are being entered into the system and are being compared. Crime scenes are being linked to other crimes enabling different law enforcement agencies to work together, taking advantage of each other leads, creating partnerships in investigations that would not exist absent this system. As a result of that cooperation more crimes are being solved more quickly.

We have got to speak with one powerful and united voice that lets all the funding authorities in government understand this is a mighty tool. It can be used so effectively. It can save money, it can solve crimes, and it can make law enforcement more efficient each time we do so.

Early on in its work the Commission recognized a significant barrier to our utilization of these databases that have much potential. Throughout the country our state and local laboratories have significant backlogs of DNA offender database samples and crime scene samples waiting to be tested. There are in excess of 1 million convicted offenders whose DNA profiles should be in this database, but are not, and perhaps more tragically the Commission has found that there are over 180,000 rape kits sitting on the storage shelves of police departments throughout the country.

When the victim of a sexual assault crime consents to a medical examination, even assuming the help of an experienced sexual assault nurse examiner, it remains one of the most horrible and traumatic experiences possible, but that victim proceeds with that examination with the hope and the assurance that there will be a benefit to her continued trauma. That victim believes that the results of that examination will be used to help identify and convict her attacker.

Currently in over 180,000 cases across this country that victim is wrong because we are not able to bring to bear the most powerful technology we have to catch rapists, DNA and the DNA

databases. Our laboratories simply lack the resources necessary to perform their case work analysis and their database analysis, which can reach the tens of thousands. The advent of the CODIS system has exponentially increased the workload of crime labs, but the funding necessary to make the advantages of CODIS a reality needs to keep pace.

It's a simple cost-benefit analysis. We know the more offenders we have in the databases, the more arrests we will make and the faster we will make them. That translates tangibly and immediately to a reduction in crime and the number of future victims, but in order to reap those benefits we must invest in the people, the training, the technology necessary to reduce those backlogs accurately and efficiently and as quickly as possible. We must never be in a position where we say to a victim that the guilty person was in our system, but we just did not have the time or resources to identify them before you became their next victim.

Finally we must continue to integrate DNA technology into our criminal justice system in ways that maximizes its investigative potential, but at the same time done in a way that serves to promote public trust in the system. Our civil rights and civil liberties are precious not only to privacy advocates, but to every single one of us, and as we find new and better ways to solve crimes using this powerful tool we must be mindful of our stewardship of the rights of the individual, the rights of the accused. We must proceed wisely, thoughtfully, and with an eye towards the constitution and how it will be interpreted in light of these new applications of technology.

I like to think of what John Marshall as chief justice would have thought when he talked about the constitution as a living document and what he would think as he applied the constitution to the technology and the development of science today. I think he has been proven right, but he has been proven right that it is a living document, that it can adjust to all sorts of circumstances because people have tried so hard to insure that he was right and have tried to apply the technology in a way consistent with our constitution.

These tools have given us the opportunity in some cases to see where we have been wrong and where mistakes have been made, and I see this as an opportunity. It is an opportunity for us to learn from our mistakes so that our criminal justice system continues to serve as a model for democratic societies. It is important as an opportunity to engender public trust in our system, a system that is never, ever afraid of the truth or the tools that help uncover the truth.

To that end I have requested the National Institute of Justice to consider the feasibility of a study that would look into why wrongful convictions occur and how we can prevent them. This does not suggest that our system is fraught with mistakes and wrongful convictions. I don't think that is the case. Rather, such a study like the appropriate use of DNA technology is important because those of us charged with the administration of justice cannot be concerned with averages or percentages. Our mission must be the concern for the individual in every case. It must be to protect the innocent person as well as to convict the guilty. This is a hallmark of our system. We have an obligation to seize every opportunity we have to improve our system.

We have made some progress in understanding why innocent people are convicted because DNA has given us the tools to identify those people. Sometimes it's eyewitness testimony. Five people

seeing something happen have five different versions. Sometimes it is what I call the blinders theory. Somebody decides that person did it, pursues every lead he can to identify that person as the defendant, and shuts out every clue that would lead to the real perpetrator. Sometimes it's a jailhouse confession. We must use this tool to show what we have done in the past that can be improved on for the future.

In closing let me speak of the true foundation of our success, the dedication and integrity of our law enforcement community, for our success in the future of our criminal justice system lies not on our greater reliance on technology, but in that officer who walks the streets, who covers miles in a rural county in a sheriff's car. It lies in the evidence. It lies in the detective. It lies in the chief who knows the value of this tool and uses it to its fullest.

As it was in the past, it will be in the future. The success of our criminal justice system lies with you. In these past seven and a half years law enforcement across this land has been on the front line. Crime is down now seven years in a row because of you, because of you focusing on punishment and prevention, on professional law enforcement, on the use of technology. It has been an incredible experience to watch you at work in your communities across this land.

We can either become complacent and watch the crime rate go back up or we can continue the dedicated effort that you have demonstrated in these years. We can gain support from city and county commissions, from state legislatures, from Congress by showing them the return on their dollar, if you will, but most of all we can show them that by the dedication and the excellence reflected in this room and around the country in law enforcement agencies across the country we can use technology. We can use data. We can use facts. We can correlate those facts together and in the end we can, if we work together, eliminate the culture of violence in this country. We will never eliminate violence completely, but we will return this nation's level of violence to those of others around the world.

The experience of being Attorney General has been an extraordinary one to try to use the law the right way to make America safer, healthier, freer. My contact with law enforcement, however, has been one of the great experiences. You do an incredible job for this nation, and I would just like simply to say thank you from the bottom of my heart.

MR. ASPLEN: Thank you, Miss Reno. I believe that we do have a few moments for a few questions from the participants.

MS. RENO: I would also ask you one question. If you were the Attorney General of the United States, what would you do to support your efforts on DNA or otherwise across the country? That's simple. Thank you all.

MR. WHITE: I'm John White from Dothan, Alabama. I would threaten to cut off highway funds and maybe they will fund us properly.

MR. CATTERSON: Jim Catterson, district attorney in Suffolk County. How are you, General? Everyone in this room in law enforcement is there because not only are they good, but they understand the structure and the system from whence they come. We found out through NDAA



that the clout of the prosecutors in the country is disproportionate to the numbers, and I think the same thing is true with law enforcement officials such that every one of you know a Congressman, a Senator who relies on you for good advice and counsel from time to time, and it seems to me that the -- and I don't want to use the word lobby effort, but persuasive efforts of law enforcement in dealing through the process, in putting the word out to the Congress, which is where the funding must eventually and ultimately come from, is something that has been overlooked many times by law enforcement officials.

They assume the system is going to keep working, and yet the old squeaky wheel syndrome is so important. I think we have a squeaky wheel that needs a lot of grease, and I think the grease in the form of a personal lobbying effort by law enforcement officials with their Congressmen and with their Senators to get the word out almost as well as the criminals have gotten their word out and how we've protected their rights -- I think it's about time that the victims' rights, which is a made-for campaign type issue that should be very attractive to every political official, is something that we can do as a group.

I think if we had a little guidance, and I know you yourself don't lobby except at the highest level in making the truth known, and that's not lobbying somebody said yesterday. I agree with that. But I think as a collective body they could assist you in bringing the word from 101,000 different sources to the Congress because that ultimately is what the bottleneck could be.

MS. RENO: That's awfully kind of you because I can't tell anybody to contact Congress and I would not, but let me just stress to you how important it is that you be able to demonstrate clearly with hard facts and figures the people that have been apprehended and convicted, the dead ends that have been avoided, the savings involved, but most of all the reduction in crime and the saving of lives, and the more we can describe that to everyone, I think the more effective we will be.

MR. KOSIENSKI: I have a statement to make for you. It's not a question. First of all, we're proud to be here with you today. My name is Chief Robert Kosienski of the Meriden Police Department, Connecticut. This is an outstanding, very educational, informative technology summit that we're at. I'm very proud to be here. I've learned an awful lot. I thought I knew a lot, but to be here with you today certainly makes me proud and thank you.

MS. RENO: Thank you, sir.

MR. ASPLEN: Believe it or not, I believe that I have in fact found probably the one person who could possibly follow that up in our next speaker. It's a rather daunting task I know, and it is just kind of a professional jibe, if you will, to put the extra pressure on him, but I really believe that Jim Wooley is the best person to talk to us about the issues that he's going to discuss.

As the Attorney General mentioned, it's critical that as we seek to integrate DNA technology into the system, we are mindful of what the law and the constitution has to say about that.

Jim is a commissioner on the National Commission on the Future of DNA Evidence, but Jim was also an Assistant United States Attorney from 1990 to 1999 in the Northern District of Ohio. He

also served as the U.S. Attorney assigned to the organized crime strike force and was the ethics officer from '98 to '99. Before becoming an Assistant U.S. Attorney he served as an Assistant District Attorney assigned to the trial division of the Manhattan District Attorney's Office.

Jim is absolutely instrumental in much of the training and education that goes on in the country for prosecutors. He is, quite frankly, one of the most well-versed individuals on DNA in the courtroom that I have ever met.

The other thing that you should know about Jim, though, is that Jim is one of the persons responsible for our being able to use DNA in the courtroom in the first place. We talked a little bit yesterday about some of the, quote, unquote, admissibility wars and the DNA wars of the late '80s and the early '90s. Well, Jim was right in the middle and was responsible for one of the most significant cases in the admissibility of DNA evidence in the country.

So we owe a great debt of gratitude not just for his training and his knowledge of the subject and for his being here today, but for the actual work that he has done in the courtroom in making this technology a real reality for us and a tool that we can actually use in the courtroom and at the crime scene.

So with all thanks in taking up the task of following the Attorney General of the United States, ladies and gentlemen, Mr. Jim Wooley.

MR. WOOLEY: It's an honor and a privilege to be here and be on the same program as the Attorney General. I will be available for photos and handshakes when I'm done as well. It's an honor and a privilege. It's also at another level a relief that she left in case I go in the tank here, you don't want to dive in front of her.

Like everyone else, I should thank Chris for having me here today, but I can't thank him because I hate him. But it's a hair thing. It's very shallow. I don't know where to go with that other than to continue to be angry about it. Actually in all honesty Chris may be the most knowledgeable lawyer in the country about these issues at this point in time, and you can get his photo later. You may want that one.



I have had involvement in these issues for several years -- well, you know, the last 10, 11 years, and I've always had involvement as a prosecutor in these issues. I am now in private practice. I feel I need to say, though, to my friends from the crime labs who encountered me getting coffee this morning that no, I haven't gone to what you folks lovingly refer to as the dark side. I've left



and gone actually to what I would call the dull side, frankly. I'm at a corporate law firm doing some things. Mostly I've got several hundred children and I need to get them all educated, and I'm trying to address that. They're in dire need of higher education, my kids. If you knew them, believe me you would agree.

I'm going to talk today about the legal issues that are arising and being discussed and the current debate of DNA in light of today's technology, the DNA availability and capabilities, but I have to qualify what I'm going to tell you up front by repeating something you already know, that is, I'm a lawyer. I'm not a scientist. My profession has shown a remarkable, almost limitless ability to screw things up when talking about science.

Let me read you some real trial transcript testimony. This stuff circulates around. Maybe you have heard this. The defense attorney has the coroner, the chief scientist witness for the State on the stand. This is a lawyer talking about science.

"Doctor, before you performed the autopsy did you check for pulse?

"ANSWER: No.

"Did you check for blood pressure?

"ANSWER: No.

"Did you check for breathing?

"ANSWER: No.

"So then it's possible that the patient was still alive when you began the autopsy.

"ANSWER: No.

"Well, how can you be so sure, Doctor?

"ANSWER: Well, let me put it this way: The man's brain was sitting on my desk in a jar, but I suppose it's possible he could be out there practicing law somewhere."

How good is that?

What we've seen, though -- and I'll get to some discussion of these issues in minute -- what we've seen, though, is that we lawyers have also brought our A game in this regard to the legal discussion. Remember the World Trade Center bombing case? Terrorists blew up the World Trade Center and sent a letter to the New York Times claiming responsibility for it.

The FBI does a PCR DNA test on the envelope, the flap, and the stamp, and comes up with a very interesting result, that one of the suspects licked the envelope flap or that his DNA profile is present on the envelope flap. It also comes up with this result: Larry Pressley, the FBI guy, comes up with this result: Someone else licked the stamp, which my immediate reaction to that

was that's a hell of a conspiracy, folks. You've got your envelope lickens, your stamp lickens. That's quite a division of criminal labor there.

Anyway, this is a big case. This is the then trial of the century, and you would expect that the lawyers involved in this matter will have their real scientist thinking caps on and we'll have a high-level legal discussion about this issue in court. By the way, this wasn't my case. This was a case with a lot of good evidence and it was very important, so by definition it wasn't a case I prosecuted.

Let's see how the lawyers talked about DNA in the then trial of the century. Here is the cross-examination:

"Can an animal have its own DNA?," of Larry Preston.

Larry says: "Well, sure. I'll allow that.

"Would a horse be different?" This is how we're trying the case in the trial of the century in New York City.

Larry is thinking, man, horse. "Yes, sure, to my knowledge," as opposed to anybody else's knowledge. Well, according to me it's different. Some folks may find some similarities, fans of Mr. Ed. I don't know.

This is cross-examination. This is the point they're making.

"So the horse DNA, if it's sitting up there on the envelope flap would not affect the results." That's the level at which we lawyers were discussing this.

Again to his knowledge, no.

Do you know what they were getting at there? I've shown this to a lot of people. Does anybody know what they're getting at? Glue. Where do you get glue? From a horse, which is one of the amazing things in the world to me scientifically, horse, glue. But that's what they're getting at.

The guy moves away. The lawyer moves away from attacking -- he drops the idea that he can sell to a New York jury that a horse blew up the World Trade Center and claimed responsibility for it, and he moves on now to challenge the statistics, and he is going to make some points regarding how they have different statistical estimates you can find from different databases for this DNA profile.

So he cross-examines Larry this way: "These databases, this one shows 3.6% of the population has this profile.

"Yes, sir.

"Someone running the same test is saying 4%.

"No. They say 3.6."

Here is what our attorney colleague says about this: "Would that be three adults and a kid?"

We're rolling. That's how we talk about it. Except for guys like Chris, who are very fluent, that's how we lawyers talk about this. If we're not dazzling people with important questions about these matters in court, what else are we doing to them?

This is the last thing the guys says, which I thought was the understatement of the trial: "Please forgive me. Some of my questions may appear stupid, but I have them and I just want to go over them while you're here," which to me, if you think I look stupid asking these questions while you're here, imagine how stupid I'm going to look if I'm still asking them after you're gone. I don't know this guy. He's probably the greatest guy in the world, but whatever.

This is an old case, but there is something timeless about goofing on lawyers. Anyway, so if we're not dazzling them with this kind of Q & A, what else are we doing to them? In Ohio we're putting them to sleep. The trial court dismissed one juror during trial for having slept through the entirety of the DNA testimony. That's a lot of sleep, folks. If you're getting seven or eight a night or even close to that and sleeping all day long, that's a lot of sleep. But we grow them smart in Ohio, so what does a defense lawyer do with this in a pretty significant case? Finds a way to cooper that up into an argument that the guy shouldn't have been convicted. We know he was convicted, those of us who were prosecutors for a long time. They can attest to this because of the simple matter that a sleeping jury is a convicting jury. I learned that a long time ago.

But what the lawyer does, he argues on appeal that everybody was sleeping through the DNA testimony, and he supports his motion with affidavits of spectators, which is crap, because if the jury was asleep, they were asleep, too. There is no question about that. But the appellate courts in Ohio consisting of Ohio raised lawyers are one ahead of this guy. They dismiss this and they say the trial court said it closely observed the jurors and believed that the closing of the eyes was due to concentration and not to sleeping.

I have found this to be a very handy device at NIJ Commission meetings when Chris is speaking. Afterwards, he says, "Jim, you were sleeping? No, Chris. I was concentrating. I can't explain the drool and stuff, but I was concentrating when my eyes were closed."

Let me turn to the issues that you will need to be considering in your jurisdictions, and I think that these issues all flow. I view myself as very much a Joe bag of doughnuts guy on this science stuff. They all flow from the recognition and understanding of two very fundamental and rather simple but unique aspects of DNA typing as we now know it.

First, DNA answers the question that we have been asking forever and a day, which is can we make some meaningful association between a piece of biological evidence at a crime scene and a person? DNA answers that question better than anyone ever dreamed science could answer that question years ago. You know from people much smarter than me that DNA works on different types of evidence, hair, sweat, saliva, skin cells, on shirt cuffs, collars. It works on small, older, very, degraded samples. It gives far more powerful results both in terms of inclusion and

exclusion. We're not just doing blood and semen anymore on big, fat fresh samples and getting one in ten or one in hundred. We're not looking at hairs and seeing whether they're visibly consistent. We're getting dispositive evidence with DNA.

What does that mean? It means we want to use it a lot. It's that simple. Understanding that and understanding this leads you to an understanding of all issues. You get more private information with DNA in addition to more crime solving information. When you have got someone's DNA, and now we want a lot of it from a lot of different kinds of people, theoretically you have the ability to learn a hell of a lot more about that person beyond whether or not they just can be associated with a piece of biological evidence. You can screen them and see if they're carrying a disease that makes them predisposed to get Alzheimer's, a disease gene for Alzheimer's or one that has been associated with colon cancer or breast cancer. Theoretically that can be done by people who possess a person's DNA. You can't do that with any other piece of evidence that you ever would collect in a criminal investigation.

All current issues I believe flow from a recognition of these two simple things about DNA life as we now know it. There are a lot of issues. There are tons of issues, and you can talk about each one for days and days and days, but what I'm trying to do is I've tried to identify issues that I think relate to your lives as law enforcement officers. I'm not going to talk about core presentations and trial preparations beyond just goofing on me basically, on lawyers, and I'm not going to talk about issues that I think are settled. We're not going to explain why we think it's constitutional to go ahead and get DNA samples from convicted felons and put them in databases. We all know that's a settled issue. I'm not going to tell you what the resolution of these issues should be, which, as I think about it, I don't know why I'm here, frankly, but somebody had to go after the AG.

Actually I think that's for you and your prosecutors and your legislatures and people in your jurisdictions to have those discussions, and I think there are an incredible amount of materials from the debates that have gone on and discussions in the Commission that you would be well served by reviewing, but you need to have these discussions in your jurisdiction, but you're going to be facing and talking about these issues.

In current case work there is no legal issue about whether or not you're going to be able to use DNA in court if you use it at a crime scene, but what I think you're going to face now because everybody knows you can use it in every court in this country -- I think some people disagree with that, but on this one I'll give you my side of it. They're wrong, I believe. It's just used everywhere.

What you're going to be facing now, though, as law enforcement officers is what I would call a DNA expectation, and that's fact finders, juries, judges nudged along by able, informed defense attorneys will be expecting that DNA will be done increasingly and in cases involving evidence you never thought would involve DNA, you know, envelope flaps, stamps, cigarette butts, shirt cuffs, shirt collars, telephone mouthpieces, rims of drinking glasses.

If it's not done in cases, I think fact finders are going to ask you why. They're going to ask and they're going to put this to you: Why didn't you process the crime scene and handle the evidence

in a way that maximizes the chance that we could have done some DNA testing? So the extent to which you have crime scene processing, evidence handling issues, you need to consider how much additional training you need to put in place. You need to re-examine your standard crime scene processing approaches, evidence handling, chain of custody issues to make sure that are you're taking a DNA-wise approach to every case because you're going to pay a price for it I believe in cases that you never thought you would have years ago because the technology is that good.

The next issue that you're going to face in current case work is this question of who to sample. I mean as the techniques continue to improve and it's easier and easier to get powerful results on less and less biological material and it's easier to sample people -- you don't need blood; you can swab the insides of their mouths -- you put that together, and you're going to maybe decide you want DNA from a lot more folks than you ever thought you needed biological evidence from. Do you want it from arrestees?

You will face and discuss this issue I think of whether or not you should collect samples from all arrestees at or near the time they have been arrested before they have been convicted. People you have probable cause to believe committed a crime, do you attempt to collect a DNA sample from each person you arrest on a felony? This has been proposed in New York, talked about at the Commission. There are a lot of issues here relating to this. Do you attempt to collect DNA samples at arrest from suspects only in cases where you have biological evidence or do you try to get it from all felony arrests? Do you need a separate search warrant for the taking of DNA samples at the time of arrest or can it be justified on some other ground such as it's a lawful search incident to a lawful arrest?

Then you have this secondary issue, which most -- I mean is not to say it's less important. If you take DNA samples on arrests, you develop a DNA profile, and then the guy is exonerated, what do you do with the DNA profile after you've analyzed it and the sample you got from this guy? Do you keep it like a mug shot and throw it in a drawer and use it for future investigative purposes because you got it lawfully or do you treat it differently because it's not a mug shot? It's very different from a mug shot. From a mug shot you can't tell whether or not somebody is going to get sick. There is no theoretical possibility you can abuse that mug shot in that kind of setting. So do you destroy it in light of the unique nature of what you're holding onto?

You're also going to be taking samples from people who will never be convicted, like the arrestee who is exonerated or from folks who will never be charged or never even be accused, the elimination samples, the husband or the boyfriend you want to exclude. I mean if it gets easy enough that you decide you want to do this, you'll do these mass screenings like they did in England. You get 10 or 12 guys from a building to give a sample in a case just to eliminate them. What do you do with the samples from those folks after you've eliminated them? Do you hang onto them? Do you get rid of them? How do you get them from people that you have no probable cause to believe they've committed a crime? How do we generally get that? Generally you get it from consent. You ask them for it, and they give it to you by consent, but now what you face is do you say something or anything different about what you're asking them to do in light of what you're asking them to give you?

Another issue you will face in current case work that's being discussed at the Commission level and other places is this relating to the fact that DNA could be an identifier of physical characteristics. As the technologies get better and the scientists can do a lot more with crime scene analysis, scientists will tell you we don't know who that is obviously, but I can tell you I think you're looking for a person from this racial group and from this ethnic background. Well, that is damned useful crime solving information, the same way if a victim told you the man that raped me was a white man or the man that broke in my house was Hispanic. But there are a lot of people, a lot of very smart people that are very concerned about the idea of the state developing and using genetic tests that classify people by race or ethnicity.

Moving away from current cases, cold cases, these cases that you thought were dead, dead ends a long time ago, there may be promise now in light of the new improved -- there definitely is promise now in light of new improved DNA capabilities, and I think what you need to do is consider whether or not you're actually going to put in place some kind of a program to re-examine old, unsolved cases. There is a fellow out in Oakland, Alameda County named Rock Harman at the Alameda County DA's office that would be an excellent resource for this discussion because he has put in place such a program, and he goes back and he digs through old cases, and has taken the position that no case is too old.

Recently, just this year, because of that program and that effort the Alameda County prosecutor brought charges against a guy on a 1984 rape and murder of a teenager. This was a child killer who was already on death row who they found 16 years later through finding old evidence and working it up. The suspect, the guy that they found did this other crime, was already on death row for something else he had done, but it was still an incredible relief and closure for that family.

I'll read you a quote. I should have put this up there, but I didn't. Here is the quote from the article about this case where they announced they caught this guy 16 years later because somebody decided with the new DNA capability I'm going to go back and look at these old cases. I'm going to see what I can do. This is from the dad of this poor kid. "You remember the day you had to identify her in the morgue, and that vision never leaves," said Julie's father, Jim Connell, at the news conference Tuesday. "When you don't know who the killer is, you're always thinking it's somebody walking by."

So even though the guy was on death row and he wasn't out there, still the kind of things you can do and the things you can bring to families of victims and victims after a long period of time on these cold cases with this DNA I think almost makes it imperative that people think about a program to re-examine old, cold cases. There is no such thing as a dead case anymore with biological evidence.

Because it's so good, you're going to face issues of statutes of limitations. You need to look at them in your state, look at what they are, see if you should talk to people about whether or not they can be lengthened. Someone you will hear from in a little bit, Norm Gahn, an excellent, knowledgeable guy about DNA from the Milwaukee DA's office, I'm sure is probably going to tell you what he did in a case. He indicted a DNA profile to deal with the six-year statute of limitations. He found that the same profile was present at several different crime scenes. He



indicted the profile. He had to because the statute of limitations was only six years. It's a very creative way and resourceful way to deal with a problem that I think maybe needs to be addressed, lengthen the statute of limitations.

Most importantly to you guys I think in light of this is you need to look at evidence retention and destruction policies in light of the knowledge of how useful this stuff is now in cold cases. You need to consider what you're doing with things now. Do you have a policy that maybe doesn't make sense, a policy to destroy things after time that maybe doesn't make sense in light of the current capabilities? What are you doing with your old rape kits?

The last set of issues relates to post-conviction. Issues in old, not cold cases because they're solved; someone has been convicted and someone is going to prison on evidence that didn't include DNA. They've been convicted in a pre-DNA world, and now we're having cases looked at in the post-conviction mode. This is an issue. I drop names because they're informed people. You talk to them. Barry Scheck at the project Innocence has done a lot of work in this regard, and Barry is a defense attorney and a law professor, but also you should talk to a fellow by the name of Woody Clark, who is a prosecutor from the San Diego County prosecutor's office where within his office they're doing some things with respect to post-conviction cases on their own without prompting from any particular defendant in a defense bar. We've got statutes in Illinois. We've got statutes in New York. We're having current discussions about a federal statute that would allow post-conviction testing for DNA.

Relating to this evidence retention destruction policy, I think I need to mention just this simple concept to you. The laws can be different in every jurisdiction, but generally I think the case law is that when a defendant is seeking relief because the police destroyed evidence that could have been tested and maybe provided exculpatory information, the defendant won't get relief unless he can show bad faith on the part of the police officers.

It's a Supreme Court case that holds that, and I think that that's a pretty fair paraphrase of what that law is. But now what is or is not bad faith will be judged in the DNA world, and everybody will be tagged with the knowledge of knowing everything about DNA capabilities when you think about destroying evidence.

Finally there is a spill-over issue I think from all this post-conviction DNA activity, and that's this, and this will happen over time. I don't think it's there right now, but in every case where DNA proves a man innocent who was previously convicted it's contradicting something else. It's contradicting some other form of traditional evidence, and it creates the possibility, a very real possibility over time that people's confidence in that type of evidence is going to be eroded, eyewitness testimony, hair comparisons, confessions, jailhouse snitches, all that stuff. I think in doing your jobs as law enforcement officers I think it's a good idea to maybe keep that in mind when you're doing your cases. Maybe you don't stop at the one good eyewitness, not that you would, but you've got to keep in mind that people's thoughts about the infallibility of things like that will change over time the more and more cases that are discovered where people were convicted on that type of evidence and DNA later proved them innocent.



Those are the issues that I think are most worthy of your immediate attention, and I would recommend you to people associated with the Commission, mostly Chris, and through him he can find you people. I like to keep him very busy. He ages too well, and I would like to see him under a little more stress. Keep him very busy, and then take these issues back to your jurisdiction, and I think you will embark on pretty significant discussions over these types of issues.

It is an honor and a privilege to be here amongst you, and I'm grateful for the opportunity to have done that. I will leave you with a Q and A again to my savvy attorney cross-examining the coroner, and then I will be done.

"Doctor, how many autopsies have you performed on dead people?"

"ANSWER: All my autopsies are performed on dead people."

I appreciate the opportunity to have addressed you today. Thank you very much.

MR. ASPLEN: See what I mean? Let's take a 15-minute break. Again, we thank you for all your attention.

(Whereupon a brief break was taken, after which the following heard:

MR. ASPLEN: I have been reminded to make the announcement about sign language interpreters that are available if anyone needs them, so please let us know.

We decided to take a break before the discussion section. It has kind of been a little bit of a long morning, so we decided to take a break. Quite frankly, I forgot that we were supposed to have the discussion session afterwards, so we're going to do that now for as long as we need to for anybody who might have any questions or concerns about these kinds of issues.

Again, as Jim mentioned and as we've talked a lot about in the Commission, one of the most important things that we have to be mindful of as we seek to take advantage of new investigative possibilities with this technology is that we don't make mistakes, that we don't do things that the day after we try it winds up in the newspaper as something that is not supported by community or is not understood by the community so that it can be supported by the community.

So much of this also has to do with educating our communities about what we're trying to do, how careful we are about privacy, how the fact that in the DNA database, how those 13 core STR loci don't tell you anything about an individual's physical characteristics. They don't tell you anything about ethnicity, that they are just digitalized representations. We need to make sure that our communities understand that so that they can again be confident in the applications that we're making in what is a genuinely sensitive area when we talk about DNA.

Does anybody have any questions about things like that?

MR. HERRIN: George Herrin from the GBI in Atlanta. Jim or Chris, either one of you can answer this. Could you tell me what the constitutional or the feeling of the lawyers in the

audience here are about the constitutional issues relating to search and seizure or unreasonable search and seizure if you collect buccal swabs from an arrestee, because you are doing according to some civil libertarians some sort of an invasion of their bodily space to collect that sample? It's not just the same as a fingerprint.

MR. WOOLEY: Fourth Amendment cases have focused on whether you have a bodily intrusion over years on the general theory and belief that you have an expectation of privacy of things inside. I'm not sure what the analysis will be with buccal swabs. Because it's so easy to get them, you don't have an expectation of privacy, which is the lynchpin of Fourth Amendment analysis. If you have an expectation of privacy with respect to something you are being searched by your state or government when they're taking that from you, and that needs to be justified by various requirements under the Fourth Amendment.

This is where again it's a personal thing for me. I think where that plays out that is you have an expectation of privacy with respect to your genetic material in that setting, and I think whether you take it from a buccal swab or from a stick, I think you need to justify that under the Fourth Amendment depending on where in the process you're taking that. Is it a search incident to lawful arrest pursuant to a search warrant or from an inmate who has already been convicted who has a lessened expectation of privacy at that point? I do think that you need to analyze that under traditional Fourth Amendment principles, though. I don't know if Chris agrees with that.

MR. ASPLEN: I do, but I think in practical application I think some things to look towards I guess in the context of that, I think a buccal swab, if states decide to analyze it a little differently, obviously it would be better than a stick, but this will be decided initially on an individual basis in individual jurisdictions. You know, state constitutions and constitutional law especially when issues first arise often times rise up somewhat differently unless and until it gets to the United States Supreme Court.

What is really, really important in all of these issues is going to be that when you consider doing something like that, that you have a very good discussion with your prosecutors, that you understand what the legal landscape is ahead of time in your jurisdiction according to the jurisprudence of your particular state.

Another example of that is the idea of doing an intelligence screening. If you choose to take advantage of that investigative tool, what you need to understand is the concept of informed consent in your jurisdiction. You all know that if we look at what informed consent is for a statement, if you will, there is a difference between taking a statement from a guy who is chained to your desk as opposed to taking a statement from a guy who you've offered a drink, the door is open, you can leave any time, here is a cigarette, et cetera, et cetera.

There is this whole spectrum of cases. It's going to be the same kind of things in issues like arrestee testing, in issues like intelligence screens. It's going to be an analysis that occurs on very specific facts according to very specific case law in your jurisdiction. Don't ever make a move like that without having a very thorough discussion with your prosecutors.

There are also I think going to be some technology issues that may help some of those considerations. One of the things that will be interesting to look for will be the developing technology on taking DNA from fingerprints themselves. We can possibly imagine a time when an individual is arrested. He's brought in. You're essentially taking two types of fingerprints. Your taking one for the standard fingerprint analysis, and then you're taking a second set on a tacky substance and maybe swabbing that. I don't know exactly how that would go, but actually getting DNA from the skin cells left from that other set of prints, the extent which that may help that constitutional analysis of actually drawing it, I don't know; however, it's not the actual draw itself. It's what are you taking, not how are you taking it. It's what of mine that belongs to are you taking. So there are kind of two analyses that go on there.

MR. WOOLEY: The thing that overlays or overrides it is this theoretical possibility that when you get that from someone, you're getting something a lot more theoretically about this person than you would ever need in your crime solving life. In other settings that's just not the case. You get a guy's mug shot. That's all you need it for. The whole world knows what he looks like anyway. You can't do anything with that.

Those voices will weigh in on these debates at the highest level. You get a case before the Supreme Court and you will see amicus briefs filed by groups everywhere on that issue.

MR. ASPLEN: Let me explain something that Lisa pointed out, the use of term "intelligence screen." We haven't talked about that much. What I mean by an intelligence screen is when you go and you ask a large number of people to give voluntary samples. Like the example that Jim used, you have a building and you want to test 10 or 12 guys from the building in which a crime occurs. That's an intelligence screen. You don't want to get to the scene of a crime and say, hey, I know they do this in England and they're really successful, so before anybody leaves I want somebody at every door and I want you to ask them for a sample. Hey, the headline in the newspaper the next day is really bad, but what is worse is the legislation in the legislature the day after the headline that now precludes you from doing it. Now you are affirmatively precluded from taking that action because we didn't do it the right way in the first place because we weren't thoughtful about it and didn't roll it out in a way that was legal, but was also in a way, as we will talked about, that engenders public interest. So there are those important considerations.

MR. CHANDLER: Keith Chandler, chief of police, Melbourne. I think the answer to the first part of the question is no, but I'm not sure about the answer to the second part. Obviously there is no case law out there or we would have been talking about it; is that correct?

MR. WOOLEY: On which issue?

MR. CHANDLER: On DNA sampling.

MR. WOOLEY: There is case law that says that when you take someone's DNA, you've searched them.

MR. CHANDLER: And it has been upheld?

MR. WOOLEY: Most of the case law I'm familiar with relates to on that issue the data banking issues, the CODIS things. People challenge those statutes. Prisoners challenge those. They say you can't take it and then they say I have been searched, and my understanding of that case law is that generally, well, you're sitting in a different spot, pal, because you have been convicted and you're sitting in prison, and we can come in your cell and we can do all sorts of different kinds of things to you in light of where you are in the system.

So when you start with the premise that it is a search, then you just move it to different places in the process and see what do you have to do to justify it, and I think that -- well, anyway I answered your question.

MR. CHANDLER: The second part or the first part is if there is law out there anyway, can we maybe get some cites so we can let our attorneys look at them as we try to expand the use?

MR. WOOLEY: That's going to cost you. I'm sorry. I can't see you because of the light. Are you really a big guy?

MR. CHANDLER: I'm not really a big guy, but my gun is.

MR. WOOLEY: Why don't you and I get together later and I'll give you a list of cites.

MR. ASPLEN: I think, quite frankly, you really should go to your prosecutor because you've got to bring your prosecutor into this. Don't assume that your prosecutor understands this issue. Don't assume that they understand the implications of something like this. You have been here for a day and a half now. I think that now you go to your guys and you say hey, we were talking about this issue at this conference I was just at at D.C. Can we sit down and talk about some of these issues and what can you tell me about it? They may have to go and do the research. That's their job.

MR. WOOLEY: Part of the research should be a stop at the NIJ Commission's materials, which have a lot of those cites and stuff in it where people have come in. Legal issues, working groups, post-conviction legal issues have been written about. There is a string of cites. I mean it can be a jurisdiction-by-jurisdiction thing.

I think probably everybody understands this, but the constitution at the United States level sets a floor, and then through the 14th Amendment every state has to pay attention to certain of the bill of rights. It's just the way it works, but each state can add another layer of requirement on its law enforcement folks as long as it doesn't go below the United States Supreme Court floor.

So in your state you may give people more rights than under your constitution there. I know that was the case when I was in New York in a DA's office there. Back then in the '80s it was pretty common to find that the United States Supreme Court would set a constitutional floor this way, but in New York we couldn't do a certain thing. Once a guy indicated he was thinking about talking to a lawyer we couldn't even ask him a question again, so you have got to look at it on a jurisdiction-by-jurisdiction basis.

MR. CHANDLER: Thank you.

MR. SANDERS: We were talking about this this morning, and I was asked about what about if a person gets a blood transfusion, and, of course, I'm automatically thinking we're talking about retention of samples, and I started to espouse all the discussion we had, but the question really was, so if I have a blood transfusion, does that change my DNA and would that be a defensible argument? I know we talked about it, and I didn't know who you might want to talk about it, but I'm sure if we talked about it this morning at our table, then other people, it will come to them what happens if in fact a person receives a blood transfusion? I just put it on the floor to see if you would like to respond to it or have Dr. Forman or somebody respond to it.

MR. WOOLEY: That would be who I would ask. Dr. Forman, would you like to answer that question?

DR. FORMAN: There have been many studies that have been done on whether or not blood transfusions change a person's DNA. You can certainly identify when a person has a fresh transfusion, but their own DNA profile does not get removed. As the days post-transfusion go forward the transfused blood profile does get removed from the blood, so there really would not be an extreme concern about this. You might get a confused answer to begin with. You would see the person's own profile and the transfused profile originally, but that fades fairly quickly.

MR. WOOLEY: I was going to say that, but...

DR. FORMAN: Lucy reminded me except when they die in autopsy. That is true. The time doesn't get to pass quickly enough for their own profile to replace the transfused profile. Being prompted by my colleague, Dr. Harron, you would not get that confused answer if you used buccal swabs because in point of fact you would be using the person's -- the buccal swab would not be affected by the transfusion.

MR. WOOLEY: This is unrelated to what was just said, but I'm going to say it anyway. We talked about how this is a different world because of this theoretical possibility of things that could be done with DNA other than match it, use it for crime solving purposes. I want to make sure everybody understands that that's very theoretical, but I want you to know when you have these debates in your local legislatures and in your local settings, the argument that I know to be true and solid at this point is no cop in his right mind is going to give a rat's ass about a disease gene and nobody is going to be motivated to do anything with that capability, and it is purely a theoretical thing.

I agree with that. I can't imagine why anybody would have any interest in that thing. What I'm telling you is just having been involved in these debates now is that won't end that. You will still hear loud voices from people who will talk about -- loud credible voices from people who will talk about the state now possesses this item about me, the state now has the ability to do these things, and that voice will be heard and is not dismissed in these debates by the argument about the truism of today, which is we don't do anything with disease genes in crime solving and we have no motive to do anything with disease genes in crime solving, but I raise it just to make sure

that you understand that you will be need to be discussing that argument or addressing it, and you won't be able to dismiss it easily by saying those types of things.

MR. ASPLEN: If I could just take a second to highlight something that Jim talked about in his presentation, one issue that is becoming a bigger issue all the time that, quite frankly, there just isn't a lot of legislation on is the elimination sample issue, and I do want to highlight it for you because I think it's one of those areas like intelligence screens that if we don't do it thoughtfully, you will get legislation that says specifically you can't do it.

By elimination samples again what we mean are those opportunities that you have to -- let's say you've got an investigation and you need to eliminate the husband, the boyfriend, or whatever, something like that, from suspicion, and in doing so you take that sample and you have it tested and you eliminate them. What do you do with that sample afterwards? Do you keep it around? Do you destroy it? Is there an investigative value to it? How long do you keep it if you keep it at all? People who voluntarily enter into the process for one reason, because, you know, they volunteer, they consent to have their blood or their DNA used for one purpose, to what extent can you deviate from that purpose to which they've consented?

It's a huge issue, and it's one of those I think hot button issues that you really, really have to think about and you have to approach very thoughtfully. Any other questions?

UNIDENTIFIED PARTICIPANT: You've stated that there is some case law on this. Is there any case law specifically that addresses consent to this, and why can't Chris write up like a card or a form for collecting DNA similar to like what we have for Miranda warnings? We have a card that says will you consent to this. Just write up a Miranda warning card or a sample for us to utilize in law enforcement to get that consent.

MR. ASPLEN: There are consent forms for that purpose out there. If there is anybody here who has some of those, I would ask that they let people know that. But those informed consent forms -- they're not cards; they're forms -- do exist. Again, it's very akin to -- really the way the law works, a lot of times if the law has never addressed a particular issue, what the law then does is just look at similar issues. What is informed consent for a statement? You know, can I use a statement against me in this case or that case or whatever. So we have other examples of that.

Jim, do you know if there is any specific case law on this particular issue?

MR. WOOLEY: I'm not aware of it, but I'm sure that there is specific case law and informed consent to get a blood sample from a guy to use to do an enzyme testing. I just don't have that at my fingertips, just informed consent to say we would like to search your house. That legal framework, that model I think will just be transposed over onto this thing and someone is going to be whispering something in the left ear, that argument about now you're getting something different; you have to say something a little extra, and that's where I think it will be, but the model of what you have to say as law enforcement officers to get anybody's consent to allow you to invade an area regarding which they have an expectation of privacy, which is again the lynchpin, that's out there. There is a ton of it. I'm unaware of a specific case about informed consent to get a DNA test and that playing out in any way different than usual.

That shouldn't give you a lot of comfort that I'm unaware of it, but I think maybe we would have heard about it. I think Chris would have heard about it for sure, if there had been a case where they threw out DNA testing because they didn't tell the guy enough about why they were taking it. I think Chris probably would have heard about that, and he would probably be able to tell you.

MR. ASPLEN: Any other questions? Seeing none, we will move directly into the next panel discussion. Jim, thank you very much.



## POLICE AND PROSECUTORS: MAXIMIZING THE VALUE OF DNA

While the participants in the next panel are approaching the podium let me first introduce Superintendent Hillard and then he will introduce the rest of the folks.

Superintendent Hillard is a 32-year veteran of the Chicago Police Department. He was appointed chief of the detective division in '95. He was appointed superintendent to the Chicago Police Department by Mayor Richard Daley in February of 1998. As superintendent, he leads the second largest municipal law enforcement agency in the United States, over 13,000 officers, 3,500 civilian employees, and a budget of nearly a billion dollars.

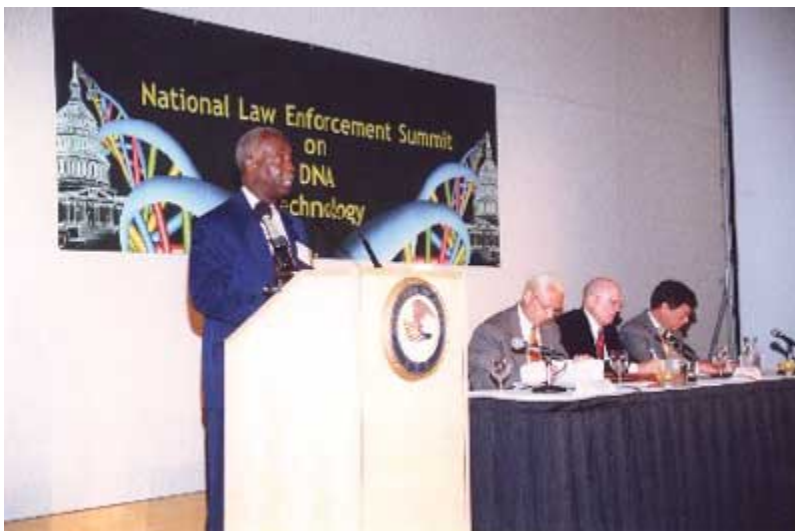
It is probably Superintendent Hillard who brought home the importance of this stuff to the Commission, in particular I think the working group members more than anybody. You can well imagine he's a pretty busy guy. I can't tell you the number of times that as busy as he is, his commitment to this technology is such that not only does he come to all the Commission meetings, but also came to darn near every working group meeting that we had. That's not because he has got to time to throw away. It's because he recognizes that technology is the key to dealing with a lot of these resource issues, that it's time well spent, that learning this stuff and getting it out to cops is really that important that it demands or warrants that much of his time.

So again both personally and on behalf of the Commission I can't thank you enough for the attention you've paid to this endeavor. Thank you.

MR. HILLARD: Good morning. What Chris didn't tell you is every time we have a Commission meeting and we go out to dinner, we have to pass the check around to see who can figure it out. We almost wound up getting locked up last night because we shorted the folks about \$15 apiece.

The person who really did a lot of work because sometimes I couldn't come to the working group is -- he was my commander of my forensic science division and then he left. He deserted us and went to Coreur d'Alane, Idaho. His name is now Chief Tom Cronin from Coreur d'Alane, Idaho Police Department.

One of the things and then we'll move on because today is Friday, and if you have ever been to Washington on D.C. on a Friday when the weather is coming in, you all might be here this time tomorrow. I'm going to get mine done so we can get out of here.



We owe a round of applause really to the NIJ staff, to people like Robin, to Dr. Lisa Forman, to Chris. This is you guys' first time here, but we have been coming to this for almost three years, and they do a tremendous job I'm telling you, and we really owe them a round of applause for the job that they've done.

They gave me a speech to read, and I'm not going to read it. I have been a policeman for 32 years, and I figure when I get in front of policemen, I don't have to read a speech. I'm going to tell you a couple of things, and then I'm going to sit my butt down because there is no way in the world I can compete with these prosecutors. I'm not supposed to call them lawyers. I'm supposed to call them prosecutors.

How many of you out here are married? Got a significant other? Well, I guess I'm beating a horse, but one of the things that I'm getting ready to say is that as chiefs, as superintendents, as commissioners, as prosecutors, state's attorneys, district attorneys, in the very near future I believe that we're getting ready to get our butts kicked, our butts really kicked. Kathryn Turman that's on the Commission who represents the victims, we've had a long conversation about this. You heard them talk about the 180,000 sexual assault kits that are sitting somewhere on a shelf in a storeroom, and we as an organization, not only police, prosecutors, and the lab have an unfunded mandate. We aren't testing nonsuspected criminal sexual assault kits.

I've got a daughter that's 22 years old and I've got four sisters. I used to have five. If one of these ladies was the victim of a criminal sexual assault in the City of Chicago and not even being the superintendent I found out that we went out and the people in the hospital took it and we take it and put it on a shelf, I would be outraged. I would be incensed.

We as law enforcement personnel, it used to be we want to become a profession. Now we are a profession. Now we're professionals. Don't forget the victims, and somewhere down the line we're forgetting the victims. Somehow or another we have to respond to the lobbyists, to the politicians, to our mayors, to our city councilmen and tell them you've got to find us some money. They can find money for anything and everything else; find us some money for this. It's good that crime has gone down for seven, almost eight years in a row, but we've got victims out there that we really aren't addressing their needs. They need some closure, too.

Yes, we talk about a few success stories up here, but there are a lot more success stories that are sitting on those shelves in those evidence recovered crime labs and those sections.

Our first responders, we've got to get them this information, and we've got to go back and let them know that this is a hell of a tool that we've got when it comes down to DNA. I guess with the pamphlet and with the CD ROM, it's not everything, but it's a beginning. It's something that we have that we didn't have two, three years ago. We as managers and as leaders and as chiefs and commissioners and superintendents, it's up to us.

The saying that I have is when police officers -- and I know police officers; they're going to make legitimate, honest mistakes. When they make legitimate, honest mistakes, it's up to us to get them training, supervision, counseling, direction, and at times discipline, but, on the other hand, if they get out there and they willfully and they intentionally get involved in inappropriate

activity by not doing their job the way they're supposed to, we're supposed to come after them. We have to teach and train and educate our folks when it comes down to what DNA is about.

It was strange sitting there on that Commission and listening to all the different scientists and the lab technicians and the lab directors, and especially the lawyers, especially when Barry and Darryl Sanders would get into it, and sometimes I would go there after the lawyers and the scientists got through speaking and we would go out to dinner and I'm looking out in space and saying, hell, all that went by me today because I'm just a regular old street policeman, but then as we got into it, come to find out that this is a tool. This is a tool that we can use, and it shouldn't just rest with us folks here in this room. You've got to get it back and you've got to go to roll call and let your folks know about it. We've got to address this issue now, immediately, and we have to be proactive.

The last thing is unfunded mandates, and you know what I'm talking about, your mayors, your city councilmen, your state senators, and your state legislatures, the sun will come out and the first thing is the police can do it. They give you no funding whatsoever. Well, I don't take unfunded mandates and I let them know. You are looking at an individual that come August 11 will be 57 years old. I spent 13 months in Vietnam, survived colon cancer, was shot on this job in 1975. I've got over 30 years on the job, so I can leave when I get good and ready.

So I'll tell you I do not accept unfunded mandates, and one of the unfunded mandates is one of the reasons that when they said bring three people here with you and make it not just everybody from your respective area, the first person I reached out to was the Illinois State Police Director, Sam Nolen, because we go to him for our lab work. He handles our lab work. I went to Tom Epach, who is my chief of criminal prosecution over at the State's Attorney's Office, and then I called Richard Pennington down in New Orleans and said Richard, you belong to the major city chiefs. You have been there longer than I have. We need to be represented at this function, at this summit.

So I guess in essence what I'm saying is don't just leave here with a number of pamphlets and books that they gave us. Go back to your respective agencies and try and educate and try and teach these young folks because this is the smartest crop of young police officers I have ever seen. All we have to do is just teach them and train them, and we'll be on the right foot and we can move ahead.

That's enough, and I'm glad I didn't read this speech they gave me to bring all this way. The first person I want to bring up to you is a person that's from Austin, Texas, Clay Strange. Clay is an Assistant District Attorney down there. We have had a lot of conversations during these almost three years that this Commission has been in being, and he's doing some great things down in Austin. I'll let him tell you about it because I'm not going to stand up here and read his bio or anything like that. You've heard enough about that.

Clay, why don't you come up and give the people a taste of what is going on down in Austin.

MR. STRANGE: When Chris Asplen asked me to make a presentation here this morning, he mentioned who else would be making a presentation here this morning, and that didn't give me a great deal of comfort. A couple of weeks ago I went on a weekend trip with my son for his 15th birthday hiking and told him I was a little bit nervous about this presentation. He said, "Well, let's talk about it. Who else is speaking?"

I said, "Well, the Attorney General of the United States." I said, "Gee, Jeff, I guess maybe I could try to be as eloquent as she."

He said, "No, Dad. I don't think you're going to get that done." I told him that Jim Wooley was going to be speaking right before me, and I told him a little bit about Jim Wooley, and he didn't seem to think that I was going to be as amusing and interesting as Jim Wooley either. I told him about Norm Gahn, who I think probably knows as much about DNA and is as innovative in DNA as any lawyer I know, and Jeff didn't think that I could get that done either. Now, the superintendent not only brings Tom in, who is probably going to outdo me, but he also gives a really terrific speech about why DNA is so important.



It is an honor to be here today. It's an honor to be a member of the crime scene working group for the National Commission. I seriously did decide that I would talk just briefly about why I like DNA. I have been involved in it since 1993. I think one of the things that I bring to the table here today is that I have had a fairly varied exposure to the facets, many facets of DNA. There is no question but of those facets the thing that is best for me and, quite frankly, the most fun is working with the various people who have a part in this process because, quite frankly, it is a lot of fun. It is a lot of fun to solve crimes and to successfully prosecute crimes using DNA.

One of the speakers earlier talked about how valuable it is to victims of crime to know that there is DNA. There is nothing more difficult I don't think than sending a witness to the stand, to the witness stand particularly in a sexual assault case where it's one on one; it's a swearing match, and after all the humiliation that generally the female victim has gone through to have to tell her that she is just going to have to go up there and be believed more than the suspect.

Equally I can't tell you how nice it is to be able to tell that same victim that she will not be going up there alone; that rather there is also going to be a forensic scientist that's going to be going with her on that stand and talk about not just evidence, but what I believe is the truth, and that's what DNA does so well. It's the truth. When properly collected, when properly analyzed, it's the truth.

In 1985 in Austin, Texas, in downtown a secretary in a law firm was abducted, kidnapped, raped, and murdered. Her body was dumped. As you can imagine, it decomposed a little bit. There were very few suspects in this case, only one real suspect of any magnitude, any real connection. That suspect was an ex-con. That suspect had come into the law office that this woman worked in and asked directions and had been a little bit inappropriate with this woman, and this had been witnessed. The ex-con had been seeing his lawyer in a different office there in the same complex, and, lastly, he was seen outside the office building presumably about the time she disappeared.

Accordingly, this guy was the suspect. So what about forensic science? What about forensic evidence? What can we find that might help in this situation? Remember it's 1985. Serology for one reason or another was not successful. There weren't any fingerprints. The perpetrator didn't leave anything behind that had might link the crime to him. So it was determined that there simply wasn't enough evidence to charge this suspect. I'm not naming names because this is still a pending case.

Well, the police, of course, a young homicide detective named David Parkinson who I will name because he should be named interviewed this guy and interviewed him many times. Parkinson knew that he had the guy, but the guy was pretty clever. He had been through the system, and he knew how the confession game was played.

Over the next year or two they sort of toyed with each other. Well, in 1989 RFLP came along, and there was some seminal fluid left behind at the scene, albeit a small amount and what was left was somewhat degraded. That seminal fluid was sent to the FBI for testing compared to the suspect, and as those of you who remember those days, it won't surprise you there was no result. The reason for that, of course, is RFLP required a fair amount of reasonably pristine DNA in order for an analysis to be done. So no help.

The case continues. Parkinson keeps contact with this guy, but more important the guy keeps contact with Parkinson. The guy was enjoying himself a good deal. He would call Parkinson at home and play the little game of well, I didn't do it, but the guy that did do it probably did such and such. I imagine you have been exposed to that. It's sickening, but the guy enjoyed it.

The nice thing, though, is it kept Parkinson's attention on the case. In 1993 when PCR became fairly widely available in Texas, Parkinson submitted that evidence to the Texas lab for PCR analysis. This time DQ alpha comes up, but unfortunately the guy had a couple of alleles that were fairly frequent, and I think it lowered the possibilities to like one in three or one in four, which given the sparsity of the evidence wasn't good enough. So other PCR techniques that were available at that time were tried with no result.

Again this relationship between Parkinson and the suspect continued, and along comes STRs. The STRs, as you know, are the best that we have so far. STR analysis was done on the seminal fluid, and this time it was successful, and this time the numbers were satisfactory to get a probable cause affidavit and indict this man for capital murder.

At that time it came to our office. At that time we looked at this case and unfortunately what numbers are now available, about one in 7,000. Because of the passage of time most of the



witnesses about whom I just spoke about placing him in the building and that sort of thing are dead. So it becomes incredibly important at that point that our numbers improve from 1 in 7,000 or 1 in 10,000. I can't remember the exact number, but fairly low.

My point is the report that we had gotten from the Texas Department of Public Safety left the impression -- the analyst that issued that report didn't really mean to leave that impression, but she left it nonetheless that this was as good as could be done, 1 in 10,000.

The police officer and I meet with this analyst, and, quite frankly, because of the experience that I have had with DNA and in no small part because of the experience that I have had with the Future of DNA Commission, I said what had been done in this case was a nine probe or nine loci STR profiler plus, 9 loci. So I said why don't we try cofil, which raises it up to 13. Maybe we will get lucky and have another because she explained to me that the reason the result was so poor was because of the degraded DNA, and during the amplification process some of these STRs, some of these short tandem repeats don't amplify very well because they're a little bit too long and the ends fall off and all of this stuff I don't understand.

So I said why don't we try some others? Well, that's not validated yet. So I said, why don't we take it to a lab where it is validated? Now, we did that. To make a long story short, we did that. We took it to another lab that used an entirely different set -- not an entirely different set, but additional STR loci, three of which came up and took our numbers up to in excess of a million, well in excess of million, enough so that we are now seeking the death penalty in that case.

I tell this story because I think it's a very good illustration of the fact that the various people that are involved in this process unfortunately tend to have a fairly small piece of the puzzle in front of them. Generally speaking I think you're going to find that the criminalist that comes to the scene, the crime scene technician that comes to that scene, the first responding officer is going to have certain things that he or she is supposed to do, and it boils down generally to don't mess up the crime scene and make sure that nobody else does.

The crime scene technician is going to have a relatively limited role. He or she is going to know what to look for. The detective that is going to come to that scene is going to have some knowledge of DNA, but probably not as much as he or she should have, although we're hoping that that will improve. The DNA lab supervisor that the stuff is submitted to is going to have some idea about this case, but not an awful lot. They are overworked beyond belief. The analyst to whom this case ultimately gets sent is extremely overworked, and unfortunately many times has to work in almost an assembly line fashion: Take this, analyze it, compare it to this, give a result, send out a report, next case. It's not quite that bad, but it's pretty bad. Finally, the prosecutor enters that case, and many times the prosecutor isn't going to know what was at that crime scene unless he or she is very diligent and really gets into the portions of the police report that may not necessarily make it to the prosecutor's office, evidence that was at the crime scene that wasn't considered important at the time.

The point is that if these various players are brought together, a better product has always been had in my experience. Obviously you don't always need to do this. In those cases where you've got an eyewitness to the sexual assault, you're doing the DNA testing only because if you don't,

the defense is going to want to know why didn't you. You don't need to do that. Most of the time you're not going to need to do that when you've got a witness to the case, but when you have a circumstantial evidence homicide, a circumstantial evidence aggravated sexual assault -- and as we'll see in a minute there are those for sure -- or in those instances where your eyewitness testimony is not that terribly great.

I've never met a prosecutor that was bored by having too much evidence in a case. The more the better. In those instances where you really need DNA these are the kinds of situations that I'm talking about. You as a prosecutor, you as a police officer need to go to that lab. When the first result that you get from that lab gives you a result, okay, but, quite frankly, that result is not good enough or maybe you don't even know whether it's good enough, that's one of the things that needs to be discussed.

It has been my experience time and time again that when all of those parties go to that lab and meet with that analyst and maybe with the lab supervisor and tell them about this case, it takes that lab analyst from the realm of a person essentially doing piecework into a person that now has an interest in the particulars of your case. Many times the analyst is not going to know that it's a death penalty capital murder case or they are not going to know that there is an incredible sparsity of other evidence in the case and just how important these numbers may be.

Quite frankly, in many cases 1 in 1,000 or 1 in 3,000 power of discrimination is fine. It's this guy or it could be 1 in 3,000 other people, but coupled with the eyewitness testimony that's pretty good. He or she may not know that this is a case in which the numbers couldn't just simply be more important.

What happens from that is other techniques, other ideas, other procedures, other items can be talked about. Equally as a part of that process every participant in that meeting comes away smarter with regard to DNA. The police officer comes away from there knowing what it is generally that DNA can and cannot do. He or she comes away from there realizing why it is that the prosecutor doesn't think that the original number was correct. The analyst comes away from there not only with having met these people, but understanding a little better about what is going on. The prosecutor comes away from there knowing other things about the case that he or she may not have known as well as learning about DNA.

When I do these things, I try to take along not just the police officer, but the actual prosecutor that may be handling the case if it's not me. It is very much an educational process. There is no question then when I taught DNA and most of the rest of us that have tried to do that, when we go teach DNA to people that are attending a continuing legal education seminar and they're there because they're trying to get their CLE hours and, frankly, they would rather be playing golf, your chances of teaching that person DNA are just about nil. On the other hand, if the police officer is in a situation where this may be a DNA case, but he or she has got another DNA case that's either for sure coming down the line or probably coming down the line very soon or in the case of the prosecutor is going to have to prosecute this particular case in the next two or three months or next week or so, it's that old hanging thing. It focuses the attention quite well and you can learn a tremendous amount about DNA, and that analyst is very much the person that can teach that.



I believe it's extremely important -- and, by the way, I meant to say when I began that if I am talking down to any of you, I'm sorry, but every time I make a presentation on this stuff and the evaluations come back, there is always somebody that says that was way too simple. Talk about stuff that's more complicated. There is always somebody that says that was way over my head. Don't waste my time with this stuff. I don't understand it. You've got to be more rudimentary. What can I say?

The fact is that some of you may have DNA programs that are up and running so well that I am insulting you when I say these things, but my experience is that most of you don't. I know we don't in Texas. These things that I'm talking about occur all the time. I think it's very important at your jurisdiction that you have someone at the police level, someone at the prosecutor level that has a good understanding of DNA, has a good understanding that DNA is not a stagnant thing.

Norm is going to talk here in a minute about the differences between the way it was when he started and the way it is now. It is very much an evolving process, and, quite frankly, one that has not stopped by any means. It will continue to evolve.

I want to tell you just briefly about another case that I think has some interest. In Waco, Texas, just up the road from Austin, there was a woman who was attacked in her apartment at night. She didn't see the attacker. The attacker was dressed in black. He had on a mask. He had on gloves. He manages to get behind her in such a way that she never really sees his physique particularly. He has kind of a harness ligature with him. He manages to get that around her neck. He manages to get behind her so that she can't see him and is in the process of attempting to rape her using some other kind of ligature that he had brought with him.

She kept telling him that he cannot do this because she has friends that are coming soon, and he unfortunately does not believe that. It turns out she was right. These people come. They see that something is happening in there. They call the police. Actually the police officer was right down the street oddly enough. The police chase the guy, they catch him, and it's great.

They were talking about this at the Waco Police Department the next morning when a Texas ranger who is from Austin, works the Austin area, but also works some of the Waco area happens to be in the sex crimes area at the Waco Police Department. They say we caught one of your Austin guys last night. Really? So they tell him about the case a little bit.

The Texas ranger goes back to Austin to sex crimes and says they caught a caught a guy up in Waco doing the following thing, and he describes it. Does that sound similar to anything that might have happened here? The ranger thought that he had heard about a similar assault. The victim was a Baylor University coed in Waco. He thought he had heard about a similar assault in Austin on a University of Texas coed, a similar first floor apartment, some indication that the person might have been in there before.

Again, to make a long story short, it turned out that there was such a person. The DNA that was taken from the suspect in that case was compared to -- unfortunately, I forgot to mention one thing. This guy had apparently been to crime scene school. He had on his mask. He had on his gloves. He used a condom. He tried to leave that crime scene as pristine as he could.

In the first case when it was initially investigated in Austin, it was thought that he had done a pretty good job. Fortunately, Clay had been to the National Commission on the Future of DNA Evidence crime scene and had heard about the potential for getting DNA off of ligature and had gone back and given a little speech to the Austin Police Department sex crimes about you might check ligature.

So they had done that. They had swabbed the phone cord that the guy had used for ligature. It turns out that probably the phone cord doesn't leave much behind in the way -- the idea with ligature is you're pulling it taut like that. It doesn't work all that great with a phone cord, but apparently the guy with his little apparatus with the harness around the neck and the various things he was trying to do had to hold one end of the cord with his mouth, and so he left his spit on the cord. Additionally, as he completes the process of sexually assaulting this woman with his mask on he kisses her on the neck.

The crime scene technician on top of things brings that to the attention of the same nurse. They swab her neck, and they give the ligature to the DPS lab. Well, much like in the case I talked about earlier, there were some problems with this DNA. Some of the loci didn't amplify, but some numbers were gotten and numbers good enough to give us a pretty good idea that it's the same guy.

We have a similar kind of meeting. We're going to do other kinds of testing on her neck. She had her DNA, of course, she had her boyfriend's DNA on her neck a little bit, and she had the guy on her neck. But a mixed sample kind of thing and similar amounts makes it kind of hard, so we're thinking about doing Y chromosome, which you may have heard about, which hones in only on the guy and is very helpful in these kinds of cases of mixtures of the woman and of the man. There are all kinds of things we're going to do.

But we have this meeting, and this time in particular the Texas Department of Public Safety analyst gets tremendously interested in this case. The Waco police come. The DA's investigator from Waco comes. The Austin police officer that's extremely good is there. We get this analyst way interested in this case.

Well, the upshot in this case is we don't have to do all that stuff because the gloves and the ski mask that were recovered in Waco have our Austin victim on there. So there you go. It's not always the new improved technology. Sometimes the thought process itself can yield tremendous results.

The upshot of that I believe is that when you get a result that's not good enough, don't give up. Don't give up, and if for no other reason than I believe you've seen here so far today that DNA makes advances every day. If you have a murder case that can't be solved right now, you might solve it in a few years. If you have got a sexual assault case that, as Norm is going to talk about, you might solve in the future, you might want to try to stop your statute if you've got one.

I'll just close by saying that in 1995 when I came to the American Prosecutor Research Institute as the DNA director, it was generally thought by Dr. Rowe and by others that by now, by about 2000, that DNA would be so widely accepted, would be so routine, would be so easy that it

would be like ballistics. It would be like fingerprints. There would be no need to really specialize train police, no need to really specialize train prosecutors, that this would just be something that would sort of blend into the general forensic sciences.

Well, in 1996 I gave a presentation to an NIJ conference wherein I said that we don't ever have conferences about ballistics. We don't ever have conferences about fingerprints, or if we do, they're attended by fingerprint people. DNA is different. Number one, it's little bitty and it's awfully hard for people like me with my B plus in high school biology to understand. Additionally, though, as has been pointed out very well by Jim, it brings to the table things that have never been brought. It doesn't just identify you. It tells things about you. It is something that I believe is without question the most exciting development in criminal justice maybe forever. It is a fact that this has to continue. This process has to continue. People have to do as these other speakers have said. You've got to promote DNA in your states and you've got to continue to train your police and train your prosecutors in the use of this stuff because it is, quite frankly, not the kind of thing that just happens. The fact that there is DNA evidence left at the crime scene does not mean that it's to magically appear and prove a case beyond a reasonable doubt in court. It has to be worked. It has to be recognized. It has to be presented and has to be believed. Those things don't happen. It requires work, but I believe by virtue of your being here today you recognize that and are willing to do it. Thank you.

MR. HILLARD: Next I'm going to bring Norm from Milwaukee, Wisconsin to talk to you about a very innovative program that he has going on up there.

One thing you've got to remember is this is about partnerships. It's about not only the first responders doing their job, but it's about the detectives and the investigators getting together with the prosecutors and getting together with those technicians and those people from the lab and trying to decide on which way and how should a case be investigated and what you need to move toward to the next step. Norm?

MR. GAHN: Thank you, Chief. When Chris called me a few months ago and asked me to come speak to some of the chiefs of police, I was very excited about it, but I was wondering what could I share with you besides what I believe are some of the innovative things we're doing in Milwaukee County. I just finished a jury trial a couple of months ago. I just finished it, and it involved utilizing RFLP evidence as well as PCR evidence in a sexual assault case. Ten years

prior to that case I tried my first case involving RFLP and PCR in Milwaukee County, and I thought it might be interesting to briefly go through these two cases for you, tell you a little bit



about them, and see how this technology itself has changed in ten years and how it has grown and where we have come in the ten-year process. So bear with me for just a few minutes, and then we'll get into some of the programs we have at the sexual assault unit in Milwaukee County.

Back in 1998 we had an individual who was murdering elderly women in their homes. They had no idea who it was. They were coming about every week. These were burglaries, and this is the prosecutor's dream called other acts evidence that you love to bring in at trial. But these burglaries that were in the areas of these homicides, they were almost exactly the same type of entry, the same type of disheveling the home. They were just exact cases, and we are able to get all of those in.

In any event, we have these three women who were murdered and had no idea who the perpetrator was. This is the neck injuries, external neck injuries of one of the victims. They died of asphyxiation. Here is the second victim, neck injuries, and the third victim. We had some very powerful medical examiner testimony. We had three medical examiners look at all the autopsy protocols, and it was the opinion of the three medical examiners that one person was responsible for all three homicides based upon the injuries, the extent. Basically there was a complete avulsion of the voice box in all of the victims. They believed it was probably stomping on the necks of these victims. But it was so unique, the internal and external injuries, that it was their opinion that one person was responsible for the three homicides.

Again, we had no suspects at all in any of these cases; however, at one of the homicide scenes the detective saw this toy donkey sitting on the couch, and when one of the family members got to the house, they said that toy donkey doesn't belong there. The toy donkey actually belonged on a chair right where the body of one of victims was found.

When the detective picked up the toy donkey and turned it over, he observed these very fresh blood smears on the toy donkey. That toy donkey was taken immediately to the Wisconsin State Crime Laboratory just to check to see if the blood on the donkey was foreign to the victim. This is Mrs. Breshnahan, and this is the blood on the toy donkey. You can see that it was foreign blood.

We were quite excited about that, the fact that we knew we had foreign blood, and since it was fresh, in all likelihood this is the assailant. We felt that if we could find the assailant and do enough genetic workup just for one of the victims, that based upon the medical examiner testimony we could get a conviction for all of the homicides when we coupled the medical examiner testimony.

A number of months later Mr. Robert Wirth was caught. He had robbed a taxicab driver. The taxicab driver got into a fight with him and Robert Wirth had a gun, and the taxicab driver fought him and got the gun away from him. When the police ran a check on that gun, they found out that the gun was stolen from a residence next door to one of the victims.

So we started to focus on Mr. Robert Wirth, and after a John Doe proceeding we got permission to get his blood, and we took that immediately out to the crime lab. You can see Robert Wirth matched the blood on the toy donkey. Again, it sends a shiver down my spine when I look at

these ABO enzyme markers today, but I recall doing so many trials. Before the advent of DNA this is what we used, and the numbers were 1 in 500, 1 in 600. If we had 1 in 1,000, we thought it was a terrific case and we really had wonderful evidence.

So besides those markers we did send it out to Ed Blake in California. At that time back in '89 and '90 there was one PCR marker and DQ alpha, and Robert Wirth matched the blood on the toy donkey right there. Again, that was the only PCR marker available at that time. We also then went to Sonar Diagnostics, but before I show you that here are the numbers at that time. We went up to Minneapolis, too, the Memorial Blood Center, and did gamma markers and cappa markers. But with these ABO enzymes the number was 1 in 4,565. When we added in the DQ alpha, the number was I believe 1 in 55,000 with the DQ alpha, again, a comfortable number, but I don't know if that would have been a number one for proof beyond a reasonable doubt for a jury since that was the only evidence that we had.

So we did additional testing. Sonar Diagnostics did a great job for us. After talking to them -- again, everyone was going through their growing pains back then, but here are the markers for Mr. Robert Wirth and here is the toy donkey marker and here is the match. We felt with the number 1 in 800,000 one would find the combination of all these genetic markers.

We went to trial. It was a lengthy trial. It was a six-week sequestered jury trial, and they eventually convicted Mr. Wirth largely because of the DNA evidence, but again there was one marker. There were four RFLP markers, one PCR, and the most conservative number was 1 in 800,000.

Two months ago I tried a sexual assault case that happened on April 21 of 1997, and our victim, Miranda, she was walking down the street when two individuals were following her. She crossed over to the phone booth to call the police, but they ran up to her, grabbed her at gun point, and dragged her to this little walkway. They dragged her down the walkway and dragged her to the back alley here. Back here she was sexually assaulted. One of the individuals assaulted her from behind. He also would take the gun barrel and shove that up her vagina and tell he was going to kill her if she didn't perform oral sex on the other person who was in front of her.

The person behind her then also did penis to vagina sexual intercourse from behind, and he ejaculated on the cement right here at No. 3. The person in front of her ejaculated in her mouth, and after they fled the crime scene Miranda ran by the dumpster and spit the semen out right here.

She then ran up to the local hospital and called the police. The police came and brought her back to the scene, and they gathered up these samples and sent those out to the crime lab. This was our first cold hit in Milwaukee County. April 21 was the incident with Miranda, and it wasn't until over a year later that the profiles -- I'm sorry -- a few months later the profiles were entered into our case index. We were just starting our case index in about June of '97. It wasn't until June of '98 that we really got our convicted offender data bank going. We had about 4,000 samples in our convicted offender.



Finally this was on Shawn Riley. Shawn Riley was the person who was behind Miranda, and he ejaculated on the cement. He wouldn't tell us who his coactor was, the one who ejaculated in her mouth and the semen that Miranda spit out, but the police through terrific investigation looked at all of his friends and did some elimination samples. He came to me, and we issued a warrant for the arrest of Darryl McDowell. We put the warrant out. The police picked him up in March of '99, took his buccal swabs, and then in April of '99 the semen that was spit out by Miranda matched Mr. McDowell.

That's the case I went to trial on just a couple months ago. Again, our first cold hit was for Shawn Riley, and obviously that investigation then led to Mr. Darryl McDowell. This is what I showed to the jury. You probably can't see this in the back, but it was interesting going to trial and how far we have come in ten years is that here was the semen on the corner and here is Darryl McDowell's genetic profile, and it matches perfectly, but mixed in with the semen was another profile, and that profile matched Miranda perfectly, and that was her epithelial cells from the side of her cheeks when she spit out the semen.

That's pretty powerful stuff to put in front of a jury. We also had six RFLP markers. It was so powerful that the defendant took the stand and stated that now he finally remembered what happened that day. He was out there in that back alley with his girlfriend and that he ejaculated out there, and Miranda must have somehow just walked down into the alley and happened to spit into it.

So that was the defense in the case. He was convicted and he's facing a ton of years. Again, look at where we've come, 1 in 9.45 quintillion, quite a difference from the days of 1 in 800,000. But powerful stuff to put in front of the jury.

One thing also that happened during this jury selection -- I remember ten years ago when I tried the case, the Robert Wirth case, I asked the jurors how many were familiar with forensic DNA testing. I think one hand went up. Now two months ago every hand went up of the panel of jurors and every one of the jurors had a favorable impression of DNA. They all knew about it exonerating people who have been convicted of crimes, but there were nine people on that jury panel who felt that DNA alone is proof beyond a reasonable doubt and they could not be moved from that position by the defense attorney.

That's quite a difference from ten years ago when I had one person raise their hand, and that person I asked what do you know about DNA, and he said yes, it had something to do with hunting. I let that go because I was going to strike the guy anyway. Then after I was done with my voir dire I turned to the detective. I said what he is talking about hunting? He thinks you're talking about the DNR, the Department of Natural Resources. But we have just come such a long, long way in the ten years that we have been doing these trials with the DNA.

What I want to talk to you about now is what we have done with the sexual assault unit in Milwaukee County. The detectives over at the City of Milwaukee Police Department, we have a goal, and this goal was set up a couple of years ago. We're going to get all of our old unsolved cases entered into the case index, all our nonsuspect cases immediately taken to the crime lab. In other words, if there was a sexual assault in Milwaukee County last night, the detective either

last night or this morning is at the sexual assault treatment center getting the evidence from the nurse, taking it immediately to the crime lab, and hopefully the crime lab would start working that case, that unknown case, and getting it into the case index immediately.

We're kind of close to this believe it or not, but we use an awful lot of discretion. The detectives use an awful lot of discretion in what they're taking out and asking the crime lab because I know from my experiences that if we were to just tell all the police that we've got these data banks and we can put these old cases in, the police would be more than happy to pack up every bit of evidence and take it out to the crime lab, and the crime isn't going to say give us more work; we don't have enough to do.

If you get together and you talk about this stuff, you come to an agreement. You kind of triage these cases and get into the data bank those cases that you think have a very high solvability rate. This is what the detectives in Milwaukee County do. They work on cases which have a high solvability rate. These are these cases, especially, these nonsuspect cases -- I mean the old unsolved cases because we find, as you've heard, it is unacceptable to us that we are going to have these women swabbed at the sexual assault treatment center and put them in a freezer. That's not acceptable, and we will not do that. Those are going to be taken out and worked and we're going to work them immediately. But we still had all these old unsolved cases as we got going with our data bank.

This I just want to tell you. When the police went through -- I think the City of Milwaukee police detectives went through about 6,000 police inventories, probably over 2,000 cases, and they had this criteria they set up. First of all, is the victim still available? Is the victim around? What is the solvability of this case? They really took a real hard look at them, and they were looking for any serial links and basically looking for stranger dragged off the street sexual assaults.

In June of 1998 was when our Wisconsin data bank got going. It had 4,000 convicted offenders in it, and from June of '98 until December of '98 when the police just prior to this were really going through all the cases, all the old cases going back to 1992 and '93, immediately we had eight hits against the convicted offender data bank from June of '98 to December of 1998. I think you have to realize you can't take every single case that you have out to the crime lab, unsolved case, and feel it's going to be worked. It can't be done. So you've got to look at these cases and look at them hard.

Where we started, and I thought it was just the best place to start, was just asking the police detective using your collective institutional knowledge go back in your mind three or four years ago. What are the most egregious cases, and that's what they did. That's where they started: Gosh, remember her at the beauty salon back in 1993? Those are the ones they went back, dug them out, and took them back to the crime lab. That's a good place to start and then get some orderly way of looking at your cases. As I said, the detectives in Milwaukee have done a terrific job in doing that.

I'm not going to go into all of these issues. We've had so many issues, the person would have been a juvenile had you gotten the hit immediately and taken the swabs and everything examined. I'll talk about statute of limitations in a minute.



ABO enzyme exclusions. Many times you're going to have cases that they did ABO enzyme work on it. Take a look at those. See if anyone is excluded. Take a look at who the suspects are. Victim impact, you've heard enough about that. All of the victims that we've had are just excited about the fact that we've caught the individual.

Confession, we found that going to the prison once you get a kit out of the convicted offender data bank, instead of bringing the prisoner to us in Milwaukee County, they will get into the squad car and head to the prison with the report, and generally they've got a confession every time they've done that, going out to the prison and catching the guy cold. Also have that crime lab report with you stating that here is the match. We also still do a line-up for the victim. We have great success four or five years later of the victim picking out the individual. You have in the handouts court orders for blood samples, search warrants for blood samples, and what I think is probable cause for a criminal complaint based upon a cold hit. That's in the folders that you have that may be helpful to you.

As we were going through, as the police were going through all the old cases and getting these to the crime lab we got caught up a little bit. They brought me a case, and I issued it eight hours before the statute of limitations expired. It was in 1998 that I issued it, and, as I said, it was eight hours before the statute. As time went on, as weeks went on we knew that there were so many cases that we have where we had foreign profiles from vaginal swabs, but the statute was expiring, and we were just very frustrated on what could we do for these victims. Is there any way we could still breathe life into this case and keep it going?

What I want to tell you about is now we have our statute of limitations and six years for a felony and that was for sexual assaults. Although everyone says I did something innovative here with issuing some of the John Doe warrants, I didn't. Every time I go talk I say I did not do anything innovative. This was based upon the police detectives who were at a conference in Albuquerque, New Mexico, a couple of years ago.

In Milwaukee County we have a detective by the name of Lori Galioni. She's just terrific. She's like a pit bull, and I say that with warmth and affection where she latches on to you as a prosecutor and won't let go until you do what she wants. But she's just terrific. She met with other detectives from Albuquerque and I think some detectives in Kansas, and they talked about issuing these cases on genetic codes. She came back to me and just hounded me: Come on, let's do it if you think DNA is so great while these cases start to expire. Let's just issue the warrants for the arrests based upon the genetic code, that foreign profile that we have.

I took a look at that and I looked at our statute on warrants, and this is basically what it says: You can state the name of the person to be arrested if known -- that's what would go on the warrant -- or if not known, designate the person to be arrested by any description by which the person to be arrested can be identified with reasonable certainty.

Well, obviously when this was written, our statute, this was, you know, hoping that the cop on the street can identify the person by those physical characteristics. You would put in their tattoo on the forehead, missing left arm, or whatever it is. Would this statute be robust enough to

encompass the genetic code of a person? It certainly does identify the person with reasonably certainty. I think it identifies a person beyond a reasonable doubt.

So anyway, Lori kept, as I say, hounding me, so eventually I told her you find me a case. I want a stranger case, preferably a serial type case, and I would like about three genetic profiles on vaginal swabs or cervical swabs because the first case that does hit the courts I want it to be a stranger dragged off the street type serial offense when we do eventually pick up our Wisconsin Joe Doe. Sometimes I think I'll be on Oprah someday because everybody talks about the Wisconsin John Doe.

But this was the first case we did, and it was John Doe, unknown male with matching deoxyribonucleic acid profile. This was issued a week before the statute of limitations expired, and this was issued for a serial rapist. Since that time we have the New York Times -- we did this in September. A couple of months later the New York Times picked it up, and then it became cool.

So we continued to do these in Milwaukee County, these felony warrants. Here is another one. This is for another RFLP case, and this is John Doe No. 5. We do them for the PCR markers, too. By the end of the year we should have about 20, 25 John Doe warrants out. I'm hoping that that ends someday because we have our 1999 assembly bill where we're trying to do away with the statute of limitations in Wisconsin, and that eventually I think will come.

So that's what we're doing, and it's really kind of exciting, and the victims that we do call and say what we're doing is we can't make any promises, but we are going to try and keep your case alive. We're going to issue this warrant based on the genetic code, and they're very excited about it. In fact, I think it's something that many of the victims will say you mean you still care? You're still looking at it? I think it's a necessary message that you send to your community, that we're not going to forget these cases. We will pursue them, and we will use aggressively whatever technology we have available to us. As I say, I think it sends a very message to your community.

Before I sit down I want to tell you about one other case. This is probably one of the most intriguing criminal defendants that I ever prosecuted, Mr. Anthony Turner. Mr. Is a serial rapist in Milwaukee County, and we had some really powerful evidence against him, but in one of the rapes he had a coactor with him and there was a partial DNA profile. We had a tremendous DNA from all the victims for Mr. Anthony Turner, and again here are the 13 core loci that we had, and Mr. Turner was found to be the source of the semen.

On this particular sexual assault there was a coactor, and he would not give the coactor to us, but we did have a partial profile. Mr. Turner always maintained throughout the course of the proceedings that there is just no way that he could have done these; that there was somebody else in the City of Milwaukee who had his same genetic code, had the same 13 loci and had the same six RFLP. He maintained this all the way through just before sentencing, but after he was convicted and prior to sentencing Mr. Turner sends a letter to the crime analyst at our state crime lab and says listen, if you want to find out who the person is who was with me in the one rape, you will find out that that person also raped Samantha in March of '99. So he gave a sexual assault victim's name and location and put this all in the letter and said if you go and test the

semen from that case, you will find out that it also matches those markers that you have for my coactor. Then I will tell you his name.

Well, to humor him, when the crime lab called me, I said okay, go ahead and do it, and I asked the police detective, Lori, take that out to the crime lab and test that semen on Samantha. Well, they tested it on Samantha, who reported the rape, and it doesn't match any of those markers of this coactor, but it matches Anthony Turner perfectly. Of course, he has been in prison all this time and could not have done it, but that's, as he always claimed, his theory, that somebody else in Milwaukee has my genetic code.

Then I said, Lori, go find Samantha for me. Well, she had fallen off the face of the earth, but eventually they found her in Almagety County Jail, which is up by Appleton in the Green Bay area. So Lori went up to see Samantha, and as soon as she walked in and asked her do you know what this is about, she says yes.

Anyway Mr. Turner had mailed his semen from the jail to her, gave her \$50 to rub it on her, and to report this rape. He had planned this so meticulously in thinking that we would be foolish enough to think there is someone else in Milwaukee with this code and you can go free, Mr. Turner.

But this is a nice testimonial to the power of DNA evidence when the criminals are trying to use it to their advantage. These are things that you have to look for in the future and be very astute as investigators on the scene. I think you're going to see more of this. I think you're going to see crime scenes being contaminated in the future with other people's DNA, and there could be some very confusing crime scenes. But I have all the faith in the world, and if all of you are as talented as the sexual assault detectives that I have in Milwaukee County, then all your jurisdictions are equally luckily fortunate and we'll all thwart those attempts by the criminals.

Thank you very much for your attention.

MR. HILLARD: Real quick, police departments, police detectives are good at solving those heated cases. You know you are, and with DNA it will get even better. So that's just another reason why you need to get a partnership going with your prosecutors and with your lab technicians and with your different labs.

I'll say it until I sit down. Don't forget the victims. Don't forget the V I C T I M S. Tom, come on up and tell us what they're doing up in Cooke County.

Tom Epach, chief of criminal prosecution for the Cooke County State's Attorney's Office, a good friend of mine. Since Robin said I was the moderator, I got him to be a presenter.

MR. EPACH: Thank you. My name is Tom Epach. I'm the chief criminal prosecutor from Chicago. I'm here to help you. I am honored to be here, but I'm very humbled to be introduced by one of the great law men in America today. Calling Terry Hillard an ordinary policeman like he called himself is like calling Walt Disney a cartoonist. It just isn't so. He's a lot more than that.

This is a great opportunity to listen to what I consider a world series hall of fame all star group of experts talk about what helps victims, but there is one thing that's missing, and defense lawyers do it all the time and the talking heads on television do it all the time. They market their approach better than police do and better than prosecutors do, and so I think we have a duty to do those things and to market those things that we have talked about here for last couple of days. We need to show our fondness for the good work that's being done in this room by coming up with some certain slogans that will soon be appearing on bumper stickers across the country that shows that law enforcement is involved in the DNA game as well.

We can have fun doing that. I know this is serious business, but one thing that I always like to talk about is there are only three jobs in the entire universe where you can protect people and have this much fun doing it, and that is you can be the police, you can be a prosecutor, or you can be a rodeo clown. Those are the only three options where you get a chance to protect people and have fun.

So I thought we need some slogans for this group. I thought that we can start with if you spit, they can't acquit. Leave behind a double helix and your next date will be named Felix. A victim's hair on your socks and you're paroled in a box.

One of the things that the superintendent asked me to speak about was the relationship that a prosecutor should have with his police department and that a police officer should have with his prosecutor or her prosecutor. Prosecution is a team sport. We are partners with the police. We stand shoulder to shoulder. We protect victims together. We protect them in the streets, we protect them in their homes, and we protect them in the courthouse. We are partners in every sense of the word.

As you may have learned from watching the newspapers and television prosecutors across the country and especially in Chicago I suppose have joined the police as targets, and in this time of upheaval and of easy criticism when the whole world thinks that they know more than the people that actually do it for a living it's easy to criticize, but we have been there next to the police department in our jurisdiction as their partners and they have stood by us.

Young assistants often come in and they talk about how the sky is falling on them and they don't appreciate the criticism, and basically my response is always the same. It's well, now you know how the police have felt for the last 40 years. Go back to work, and they do. We are all about the same thing. We are not here about money for labs or resources for analysts or loot for training. We're here to get these things for victims, not for job security, not for sport, not for the ability to run fast and jump high in public. It's for victims so that they can live better lives, so that innocent victims of crime after they come into our lives have benefited from the work that we've done here and they've benefited from being part of our lives. We see them at their worst moment in history. If we can't give them something that they can use to salvage their lives, then shame on us.

That's basically what our mission is here. We talk a lot about the science and the technology and we tell war stories, as all law enforcement people do, but out there is a whole group of people

that are depending upon us to get this right and get it right now and do it better and do it faster, and that's the people that we can never forget about.

The simple message I think from the last two days is we must say this together and we have to say it louder. How do we partner up in a better way? Well, in Chicago it's really not a problem because Chicago has what is called the felony review system, so every felony case coming into the system has to be reviewed by a felony trial assistant or a felony review assistant. In the case of Chicago that's approximately 38,000 felonies a year, so that's 38,000 times that Terry's people and my people get together and put their heads together and solve a caper. But we do it a much more meaningful way as well.

I'm proud of my relationship with the superintendent, and I think that my people get along with his people in an extraordinary fashion on even bigger projects than just the endless treadmill of crime that comes across our desks. Over the course of the last 18 months we were faced with the decision of whether to begin videotaping offender statements on homicides. We decided that this was something that we wanted to take a good look at, and we did that. The superintendent put a team of his top detectives together, we put a team of our top prosecutors together, and we went around the country and we talked to different jurisdictions that had tried it, that were doing it, that had historically had done it for a long, long time.

We got the best of those programs, the worst of those programs. We talked to prosecutors. We talked to police in each of these jurisdictions, and we came back with an idea that well, if you build it, they will come, and we put together a system in our view and it has worked like a charm. In the last basically ten months since the program began we've taken over 200 homicide confessions on videotape. It's one of the great parts of the partnership with the Chicago Police Department.

As I sat there, I haven't been part of any committee and I'm just here because I was nominated by the good graces of the superintendent in Chicago, and so I don't know a lot of people here, but what I find most interesting is not only the dedication of all the people here, but their knowledge about DNA, but then I sense that there are some in the police officers that are here, some sense that the public still doesn't get it and that everyone thinks that this is a very complicated thing.

In listening to the doctor yesterday, Dr. Forman yesterday, DNA is a very simple thing, and I think that's a message that we need to take back to our communities as well, that it's not a magic bullet, but it's not rocket science. It's complicated, but it's simple.

There were a couple of questions yesterday and the world has changed a lot since OJ, but there were a couple of mentions of OJ yesterday. Basically I think the public still sees it as well, DNA can be defeated in court. In my mind as a prosecutor, DNA is better than any eyewitness, and we deal with eyewitnesses and we're comfortable with eyewitnesses because we deal with them all the time. But DNA never shows up late. DNA never shows up hung over. DNA doesn't -- you don't have to send the police out early in the morning to find DNA because they're not where they're supposed to be. DNA doesn't have to be subpoenaed. DNA doesn't have to be put in witness protection quarters. DNA has perfect eyewitnesses. DNA doesn't depend upon lighting.

DNA doesn't flip you when it finally gets on the stand and DNA doesn't have gang banger buddies that sit in the hard seats.

So there are many advantages that we as prosecutors usually don't think about when we're dealing with DNA. So DNA has been I think a real boom to prosecutors. I think it has gotten complicated because of OJ. In Chicago we handle DNA rather simply and I believe correctly, and the evidence in the OJ case would have been presented in about two hours. The jury would have been out about half that time because the DNA would have been presented correctly and the argument would have been that in the official team photo of all the people living on the planet earth DNA excludes everyone except No. 32, and everyone in Chicago would have understood the value of that argument, and OJ would be well into his death penalty appeals.

DNA is a tool that's used best if it's simply used. In Chicago and I'm sure in many other jurisdictions juries are changing, and you see that on television. In Chicago sometimes we get jury pools that look like the audience of the Jerry Springer show. As a matter of fact, Jerry Springer is filmed in Chicago, and on some days honest to God you swear that the bus went right from the television studio to 26th and California without any stops except maybe at the Cooke county jail to pick up a couple of add-ons if they had a couple of seats, and so that is your jury pool.

So when I train younger prosecutors, I teach a couple of things. When they're on trial -- and this is something that's good for old prosecutors and old police. In America in the year 2000 we are never winning. We may have the best evidence in the world, but we are never, ever winning, and that's for a couple of reasons. It's true 17% of America thinks Elvis is still alive, and those people are on your jury listening to this evidence. The other factor remains true; that is, if you take a look at the television shows, the top 50 ranked television shows for the highest viewers, ten of the top 50 shows are still episodes of the Beverly Hillbillies, and those are the people that are listening to this kind of evidence.

There is another rule, a quick Cooke County rule and then we can go to lunch, and that is the Cooke County rule of evidence collection, and that is if you have 20 eyewitnesses, if you've got a videotape machine in the ceiling that's videotaping the entire crime, if you've got fingerprints, if you've got a video confession, if you've got a third party admission, if you've got the proceeds recovered, if you've got the offender's identification left on the counter, one thing is certain. You will find DNA; however, if you have a stranger danger case with no clues, no tips, no witnesses, no confession, and no proceeds, you can submit it, but you will find no DNA, and it's our obligation to change that.

The superintendent asked me to speak about partnerships, and I remembered that when I heard Dr. Forman's talk because the relationship between prosecutors and the police should be as Dr. Forman described, those alphabet letters. You can't find one without the other. So when you see an A, a C, a G, and T, you see a policeman and you see a prosecutor, and that's the bond between the two. If there is not one there, you can do something or you should have something there where there is a mechanism that will trigger so that when the police officer is there, he has got the intellect of the prosecutor. When the prosecutor is there, he has got the intellect of the police officer there.



This is as nature intended. My belief is that God is a prosecutor. He took a couple of weeks off in the last year, but God is a prosecutor, and this is as nature intended it. We make each other better. That is the nature of police officers and prosecutors. This is the food chain in the world of law enforcement. Better training begets better detectives, which begets better cases, which makes better trials, which makes better trial lawyers, which makes better verdicts, which makes better sentences, which makes better communities. That's the way it always will be. With this sharing of responsibilities and talents we can build these safer communities.

Again, when Dr. Forman was talking, I thought if this is this theme as an outsider looking in at what has been said over the last two days here, if DNA is truly a building block of life, then DNA can also be a building block of saving those lives and protecting those lives. I think that is basically what we're doing here over the course of the last couple of days.

The other reason that all of this is necessary is because the other side is doing it, too. Right now at this very moment everybody look at your watch. Someplace not far from here or wherever you choose, the government, the United States Government is paying for another group of people to sit around and talk, and they're eating free, too, but those people are called convicts. Whether they're at Stateville or whether they're at Sing-Sing or whatever your state institution is, there is a group of people that are supported by our tax dollars just like our salaries, and they're sitting around talking the same way we're talking and they're trying to figure this thing out as well. They're very good at it. They're out at the University of Crime getting an education just like we're here at Washington, D.C., getting an education.

I was in one Area 1 at nighttime about a week ago, and an offender in custody, he said, you've got to know where your juices go. Where do you think he got that from? I'm sure it wasn't a seminar that was given here. It must have been at some other local facility where he picked up that ditty.

So anyway we have to be a team. Prosecutors in rebuttal always argue about if it's an accountability case, we describe the team as whatever the defendant's name is. We're the same way. We are accountable for each other's behavior in this endeavor. It is our responsibility to aid and abet each other in this endeavor, but we have to do so with honesty, with integrity, with professionalism, with a great amount of sophisticated thought, with a great amount of expertise, and with devotion to the highest standards of justice and fair play.

I always think that I'm the luckiest man in the world because every day I get up and get to go to work in what I consider a community of heroes. The people that I work with day in and day out are just magnificent human beings, and I consider myself the luckiest man in the world, and then I come here and I see more heroes.

Thanks for having me here. I really appreciate it.

MR. HILLARD: Chris, I think from our part of it that's about it. One of the things that I just want to tell you is we might be the second largest police department in the country with over 13,560 some odd police officers and another 27, 28 hundred civilian employees, but basically we've all got the same problems whether you're from a four-man department, a 200-man department, a

3,000-man department, Chicago, New York, LA, Houston, Austin, Atlanta. We've got the same problems as most of those small communities in the rural areas and some of them in the suburban areas when it comes down to violent crime.

This DNA is a tremendous investigative tool, and we need to make sure and insure that our politicians, that our elected officials know about this. Go back and lobby them. You're not the Attorney General. You don't work for the U.S. Government like Chris and Robin. Most of us in here have got pensions. You know what I'm talking about. So go back and lobby. Get some money for your labs so they can do this job for us.

Thank you and God bless you.

MR. ASPLEN: We have time for a few questions if there are any.

We asked them to set lunch up a little bit early because I want to make sure we're able to start the luncheon presentation by Mr. Dovaston right on time. Trust me on this one. You really want to be ready to go so we can get a full hour's worth of Mr. Dovaston's discussion. He's going to talk to us about what they're doing in the United Kingdom, and I think it will be very interesting. So with that enjoy lunch.

(Luncheon recess.)

## WORKING LUNCH

MR. ASPLEN: I would like to introduce our luncheon speaker. Don Dovaston was contacted two and a half weeks ago, three weeks ago, something like that, if that long, by myself because I had a conversation with Clay Strange, as you just heard, and Clay said to me, hey, we just had this little conference here down here in Texas and we had this guy come in from England, and let me tell you something. He was really fantastic. I said, well, can you tell me fantastic he was? He said, well, he's pretty connected to the law enforcement community and who talks about these things and who talks about the potential of DNA. He's the biggest advocate I've ever heard. This guy is really fantastic.

The greatest advantage of the position that we're in right now in the United States with our DNA technology is that we have something to look to in terms of where we can get to and what we can achieve if we make a commitment. That's, quite frankly, the success that they have in the United Kingdom. Even with the differences in systems, the differences in legal issues, and the differences in jurisdictions, the extent to which they utilize the database as a truly investigative tool is something I think that we should aspire to.

Don Dovaston is one of the reasons and is one of the bigger reasons that that system is so successful. He's the kind of guy if you try to read everything that's in the want page that you have, you wind up spending the whole time talking about his credentials, but let me highlight a couple of things.

He retired from the British police service on millennium night having completed 40 years of police service. During the four years prior to retirement he held the position of Deputy Chief Constable in the Derbyshire Constabulary, having been assistant chief constable of crime and operations for seven years prior to that. He was presented with the Queen's police medal in 1990, and on the eve of his retirement honored with the order of the British empire for services to policing. As I mentioned, he was in Texas not terribly long ago. He spent some time in New York in the beginning of the week, and he's coming back here in another week or two, and so we are accessing his knowledge greatly all across the country.

So I especially want to thank him for his willingness to come and join us on such short notice in the midst of everything else that he's doing. So we look forward to everything you have to say.

MR. DOVASTON: Good afternoon, everybody. Truly it is a privilege for me to be here among so many eminent people. The true thanks really lies in Clay identifying the fact that there was some worth in my perhaps attending in Texas and then Chris realizing that maybe I could



contribute something here, but really I'm representing what is taking place in the UK. So it's not just on those terms; it's what we do in the UK. You'll know I'm from the across the pond. I learned that expression last night when some of your colleagues very kindly took me under their wing and we went out and had a lovely dinner and an enjoyable evening.

What I would like to do is not identify the UK system as the only model that can be adopted anywhere else in the world. What I would just like to do with you is share the experience, and if any of you find that there is anything within that model that you think can be used to advantage here in the U.S., you're more than welcome to take it on, and if there is any way that I can assist in sort of explaining it or progressing it in any way, I would be more than pleased to do so.

I've got to say quite early on in the day that although we're now enjoying some great success, we have had a rough journey, as you will have. It isn't going to be easy, but all the hard work, all the setbacks, all the long days, all the frustrations, not to mention the sleepless nights have been worth it in UK terms. We are now reaping the benefits of our hard work, and we're enjoying the fruits of our labor.

So having said that, you will no doubt identify and hopefully so in my delivery today you will see degrees of enthusiasm and commitment and at times it has been known some aggression, but whatever way you interpret what I'm saying, please don't believe that I'm naive. I'm not. I have been around too long and 40 years in the UK police service. Like any other police service, you become less than naive every day.

So I'll try and explain it. I'll try and explain the enthusiasm, but what I will be saying is I'm finding some concerns in terms of how DNA and the processes there from are being used in your country.

We in the UK, and you will see as I develop, we devote a partnership. We devote the partnership between the demands for a working tool, an investigative tool demanded by the operation of detectives and our scientists. The advocates, the prosecution process in the early days really was not along with us at that time to the degree that they are now. So the drive force came from the police officers, the people wanting to devote ways by which they could identify people who are innocent of a crime very early on, but those who were guilty also.

So what I see is a fundamental difference between what took place in '93 in UK terms and what is taking place here, and unless I've misread it, and if I have, I apologize, but I'm going to say to my colleagues, who are the chief police officers, the senior officers from many, many forces across the United States, if I'm going to be objectionable, it's going to be in this one statement. Get off your butts and go for it. It's got to be that you are demanding from the people that have the power to give you the ability to take advantage of DNA. You've got to be the voice in my view.

Having said that, it's delightful to hear that you've got scientists -- I mean there are many of them in your audience, Lisa and many others, and we've got the likes of Chris and all these colleagues who are from the prosecution. We have a crown prosecution process. They're the same sort of people. They're just given a different name.

So it is to develop a true partnership commitment that we found the way forward. We demanded from the scientists our working tools. We wanted them to develop processes that we could work. In the UK there is a history of chief officers of police like myself being hoodwinked by computer companies, for instance: This is really what you want, Chief. This will do everything that you want, Chief, but in the end the final analysis is they're all stuck in cupboards and they're not being used at all except where the operational officers have devised means by which they identify what is required in the computer system.

The same applied in terms of what we wanted to do with DNA. I think that you will see perhaps that there is a value in that. So you've got to be able to harness, and I'll use that term "harness" because it is an unruly animal, this DNA. You've got to be able to harness it correctly, a term that Chris was alluding to yesterday and again this morning. It's no good just going for a quick run, a quick fix. There is no way to develop that within DNA.

The technology is there. We've got to devise the means by which we seek to achieve all of its advantages. So I will endeavor to identify five of those I hope which are the major qualities of DNA as I perceive it and how it's being addressed in the UK. I listened intently yesterday to everything that was said, and I don't think I once heard the word intelligence.

We rely upon DNA not only to give us evidential value stemming from a crime, but our intelligence databases are enhanced immensely by that shortfall in terms of evidential terms. So, yes, we do need the support of DNA to present cases, of course, and have true evidential value, but intelligence is a big thing.

It leads on to the things that are crucial in identifying to your communities, to your people that hold the purse strings, your movers and shakers, as I would call them, its ability to do two things on the back of intelligence and evidence, and that is to early -- and I underline the statement early -- to identify the innocent, and that truly is a value, and I'll allude to that as I go through, and also those people who are truly guilty of offenses, heinous offenses, those that affect whole households not only in terms of murder scenes, rape scenes, but also in the UK you have heard the term the house is the castle of the UK. We protect our homes. We hope to never have them violated, but increasingly our villains are finding ways in which they do that, and that affects a whole household.

So we're using DNA to do that. We call it bull crime. We see that DNA now is paying off tremendously in that area as well. It affects something which is key to us all, I'm sure, a good quality of life, and if we can better that quality of life by our using the DNA technology, I'm sure that we will reduce the levels of crime -- you will reduce the levels of crime in the U.S. and that you will reduce the fear of crime.

We're doing that. I'm five years down the road on you, but I can tell you it has been a hard time. You're just now going through the process whereby you're hitting the hard time. You had some indication as to what the benefits are. It's now encouraging people now to change your legislation, to get funding, and to move on down the road to get your results.

So bear with me in terms of the way I'm going to present this to you. There is a corporate vision of the Forensic Science Service in the UK, and I won't repeat all of my slides, but I think this is a crucial statement to make the world a safer and more just place by realizing the full potential of forensic evidence or science. Within that, of course, comes DNA. This is not only the science of DNA that we will seek to allude to there. We have in the UK -- and Della here I think has held the role and they still do -- I apologize, Della, if I'm not getting it quite right, that you're being the chairman of your association of police officers in the United States.

We have such a body. We have 43 police forces up and down the United Kingdom, the chiefs of which are autonomous. They all have police authorities. They all have people who supply half of their budgets as well as the home office from government sources.

So we signed up to this statement where the aim of that association and with our FSS colleagues, Forensic Science Service colleagues, a strategy to exploit forensic science more effectively to detect crime and convict criminals thereby contributing to crime reduction, deterrence, and prevention. We think they're worthwhile statements, and each chief constable in the UK has signed up to that.

That's the area we cover. Maureen alluded to the size of the United Kingdom and the size of the United States and said she thought that we would fit into the United States area five times over. I think she was being conservative there. I think the UK will fit into the United States somewhere near to eight to ten times, but it's certainly a much larger continent that you are working in.

So what happened? Before I became a chief officer my whole life has been that of an investigative officer. So all the ranks within police forces starting off in Liverpool, if anyone has ever heard of that place or where the Beatles were born is more likely to strike a bell. I dealt with a lot of inner city crime, a lot of horrendous murders, child abuse, and that sort of thing. When I had the opportunity of being a chief officer, I was then in Derbyshire, which is right in the center of England. I refer to it as being God's country, but that's only my perception. It is a very nice place.

I had the ability to be a member of the crime committee, which is a very influential body in the UK whereby we try to determine a way forward for things criminal in terms of how to detect them, how to reduce the crime, and thereby the fear of crime. I detected that we had no real means of taking advantage of this wonderful piece of scientific achievement known as DNA. I looked upon the six laboratories which were supporting us in all things scientific. It was run by the Forensic Science Service, and they had at that time six laboratories and they had databases in each, none of which was compatible with the other, none of which I could get access to, and I couldn't compare the things that were held in each of those laboratories with crimes that I was investigating on a national basis then.

So what do you do? You have a lot of frustration. You seek to bend the rules, which is the wrong thing to do, and you get yourself into very heated water. I found myself in very heated water by demanding that we wanted to move forward. So loud did I shout that we got the ability to have a study conducted -- it's identified here -- to review what was the state of the current DNA technology, what would we need to do in terms of IT implications if we were going to take



advantage of it in terms of databases, and how it would work, and not least of all, what would be the cost.

To me, and I say this quite often to people and they take offense, cost is not the issue. I think a gentleman who rose to speak yesterday put the finger on the ball. Somebody called him the preacher. That's what it comes down to. The business is not about finance. The business is about quality of life and what we can do to enhance that.

I've got to say I was listening again intently to your Attorney General this morning, a fine lady, and I listened to everything that she was saying. When you have been a detective for 40 years, it's alleged that you no longer have any emotion left within you. Quite often my family tells me that. Anyway I don't show emotion very often, but I sat there, and I must say I felt the heart beating very rapidly. The emotion was coming over me as much as whatever can we do to assist to get to the bottom of what lies in that 180,000 rape kits.

If I'm going to make an objectionable statement, I'll make it now. That's horrendous. I mean for all the reasons that we know and has been explained several times there are 180,000 victims that we're not supporting. I didn't say anything. I thought it was not my place, but I've said it now, so I feel a lot more easy about it. You've got to do something about that position, and you the police chiefs have got to be the people that see it through.

Was the existing DNA technology suitable for the purpose of supporting a national DNA database? I wanted the ability to take samples from people who are arrested in Darbyshire who were committing crime in Scotland, in London, in Wales, anywhere in the United Kingdom -- I wanted the ability that we could take full advantage of a database that could identify them at the crime scene.

The technology was there. I was told that we could with good wind identify to government means by which we could get a national DNA database. It's CODIS by the name. We call it in the UK National DNA Database. How would it work? Very, very simply, and this is how simple it's seen in the UK. It seems to be having a more troubled passage here because it doesn't appear as though every force in your country is supporting CODIS.

We will take the samples of people passing through our process who have been arrested for what we call a recordable crime. That's your fingerprint crime. We take a sample of their DNA. We do it very simply. We do it by buccal swabbing. People believe it's the saliva from the mouth. It's not. It's the scales of the skin from the inside of the mouth. It's as simple as brushing your teeth. I do it with my police officers throughout the country who have all been trained to do it. I don't need medical practitioners and the cost of doing that.

So we've identified that it was available to us. We could have the ability to find the DNA at our crime scenes, and then we could look across our DNA database. It was a scientific analytical tool. They went through the process for me. It isn't that every police officer in the U.S. has to know what a scientist knows about DNA. They only have to know sufficient for them to operate for you, the police chiefs, effectively and not cause you any embarrassment.

What would be the cost if we got this mega change to legislation passed through? Well, I can talk about it now. It was commercially sensitive at one time, but it costs the UK chief of police in any area to take what we say is a criminal justice sample, a buccal swab, it costs us about 43 pounds for the whole process. That's 43 pounds sterling. That's from taking the sample, having it analyzed, being placed on the database, and also a second sample which is taken at the time, which is not processed, which is deep frozen and is kept for the life of the person, the donor from whom we've obtained it.

The reason behind that is that it's thought that sometime in the future technology will take over from the STRs. The LCNs I'll talk to you about shortly, and there might even be some new development whereby we can analyze the frozen samples and thereby not go out and have to find all our villains all over again.

I was looking. I had this task. You can see how I was developing. We have a Royal Commission system. It's a dreadful thing when the Royal Commission has to sit to look to miscarriages of justice in the UK. It was because we had allowed -- I include myself in that -- people to be wrongly convicted, and many of these cases were identified by very eminent defense solicitors and barristers who maybe in terrorism cases found that there was some chink in our armor where we had not followed the process. We identified something that perhaps we shouldn't have identified. We shouldn't have had it within our records, and thereby some of the terrorists and criminals in the UK were identified as having a miscarriage of justice, and they were released.

They mounted this Royal Commission to see what would be necessary to make sure that this didn't happen again. We gave evidence to it, and quite rightly they made some very strong recommendations as to police processes in the future. But I took the opportunity to raise what is now in a position paper in the UK. That's where the chief of police identifies a situation that's created across all our jurisdictions, as you would call them, all across our police forces whereby I identified DNA and we weren't able to take advantage of it.

I put this paper in and it went to the Royal Commission, and nothing was heard for some 12 months or thereabouts until they announced their findings, and as ever after all the volumes there is a small section with the recommendations, and there amongst the 134 recommendations were almost word verbatim the requirement for the UK police to take advantage of DNA, a wonderful turnaround in events for me and for the rest of policing in the UK because the government of the day -- and we have had changes of government so it's not politically sensitive this -- they identified that amongst all the recommendations which would be implemented there would be this element of DNA analysis of suspects and crime scenes.

They passed through a very, very short period of time a piece of legislation which I identify to you there. It's known as the Criminal Justice Administration Act. It was brought into being by signature of the Queen in November of 1994. It allows in simple ways for police officers to take body samples for DNA profiling and to create an operational database and that we could start that process on the 10th of April of the following year, which was 1995.

There is a distinction in terms of intimate and nonintimate samples, and I think it's worthwhile just to explain it to you. An intimate sample in UK terms now under the criminal justice is a

sample of blood, semen, or any other tissue, urine or pubic hair, dental impression and a swab taken from any person's body orifice other than the mouth. That's an intimate sample. It can only be taken in very limited circumstances, and those are when the person is in police detention but not charged. It has to be with that person's written consent, it has to be with the authority of one of our senior officers, a superintendent, it must be for a recordable offense, and it must have implications in terms of that person's guilt for the offense in which he's being arrested or his elimination or her elimination.

Nonintimate samples are quite different, and that is where we are finding the greatest success and the ease by which we can now progress on national database. It can be a sample of hair other than the pubic hair, it can be a sample taken from a nail or from under a nail, but this is the one, a swab taken from any part of a person's body including the mouth, but not any other body orifice. It can be saliva, a footprint, or similar impression of any part of the person's body other than part of his hands because we have that allocated for in terms of the legislation for taking fingerprints.

We want to take advantage of the fact that we can go into somebody's mouth very easy and for want of a better expression we can take a sample of their saliva, and we do that by buccal swabbing, as I've said. The taking of nonintimate samples without consent in a police detention not charged with the authority of superintendent must be for a recordable offense, and again it must be to either implicate or eliminate that person.

The heading tells you without consent. We've often thought about it, but I don't know of any case where we've asked to exercise that because even with our criminals that think they know their way around we show them the legislation, and it's a quite simple operation to say we would like to take it with your consent, without causing you any distress, but if not, we have a means by which we can. We've wrestled with how we do that.

Taking of nonintimate samples with consent is the way in which we now progress. So the person is in custody or not. We can do it on the street if necessary, but normally it's when we bring the person into one of our police stations to be charged or be reported for a recordable offense.

The change now is it doesn't have to be in relation to the offense for which they're now being investigated. We can use what we find in saliva or their buccal swabbing for other offenses, and that's where we get the power. Intimate samples not in police detention, I don't know when we've used that. It's really when everything else fails with the nonintimate sample process, and at the moment we're enjoying such success that we don't need to rely upon this. It's there if we want it. If our previous nonintimate samples have failed, we can go for an intimate sample. As I said, I don't know of any occasion when we have had to implement that process yet.

We can go on a speculative search, and that, as I was alluding to before, can be in addition to the one for which the person has been arrested. We can now look across our crime scene stains to see is this person in any way involved in crimes elsewhere? What we're finding is not only do they commit crime in Darbyshire, but they commit crime in London, in Edinburgh, and places throughout the UK. The myth that people just operate on their home patch has been destroyed now by this national DNA database. What is happening is not only in the UK, but our villains are now traveling across open borders into Europe, and I'll allude to later on we're encouraging our

colleagues in the European commission to adopt processes similar to what we have in terms of crime scene management and the ability to exchange data in relation to DNA material or anything that alludes to crimes being committed by a serial killers or rapists across Europe.

So the buccal mouth swap is the preferred method, but rooted hair should be sufficient. Well, we go for the buccal swab every time. If it is impossible -- and there aren't many cases when it isn't possible -- we'll go for ten shafts of hair with the roots on. The prisoners don't like it; it's quite a painful process, but on occasions they have to go through a bit of pain.

Sample and record retained on the database. What I can't come to grips with in the States is why you're missing the opportunity that lies between arrest and conviction. I do know that there are several states, and particularly in New York whereby hopefully -- I do mean hopefully -- you will have the ability to take the sample at the time of the arrest because when you think about it, the person that's arrested and not sampled -- invariably in the UK they get bail in the early stages. They invariably go on to commit lots more time. We don't need to know of their involvement through DNA processes until they have been bound up in prison and it's too late. They've committed many, many more crimes.

In terms of terrorism, fortunately at the moment we're a position of peace in the UK whereby we're not having any atrocities being committed by people from terrorism, but if we detain them, we can keep the samples and we can keep using it. When a sample is taken during the same investigation and someone is convicted, this is where the illegal dense led screens have been so important to us and so successful.

What happened in terms of the first case in Darbyshire Borough you saw that we had two young girls which were violently sexually abused and murdered, and we had a pitchfork who tried to defeat the system by getting a like of himself to come and give some DNA. Well, we found that if we go into a community whereby they had perhaps some horrendous crime, the murder of children in particular, we will say to them we're not finding our way through this. We may have been investigating it for three and four days. We have no ready-made suspects. We would seek now to have an intelligence led screen in our community.

It isn't that we go and grab every male off the street. We look at it and we go to our profilers and we look to see what can be gained in terms of age limitation, marital status, and whatever, and we build up a profile of what we perceive to be the offender, and we send our officers around and ask the people that fit that profile will they please volunteer their DNA sample.

I know what I keep hearing, that it can never happen in the States. Well, people said that to me in the UK until we started the process, and even the most hardened of criminals who may be in that community will say we want to identify we have had no part in the killing of that child, the rape of that young mother or whatever, and we will give our DNA if you haven't already gotten it, and by that process we're very early on identifying the true person who is responsible.

Now, at this stage I would just like to give you an example of how it works. In a port north of Darbyshire, a beautiful part of the area we had some years ago, not many years ago -- I don't want to identify a particular case -- we had an 84-year-old woman who was blind, partially

infirm, lived in her own flat. At 4 o'clock in the morning her house was broken into by an offender, who rummaged around, stole whatever he could, but then he raped the woman and he battered the woman, and he left her for dead really. Fortunately, she survived, and 8:30, 9 o'clock the following morning she somehow got to the front door and raised the alarm.

The community there was outraged. They were farmers, they were miners, they were hard-working folk, and they were totally outraged. We did our best, and after some five days we had not identified the person responsible, but the community thought they had. They thought they had identified a young man of 22 years of age who lived some five doors away from the victim.

From our intelligence working in the area we heard that that night -- I think it was going to be the sixth night -- he was going to be burned alive in his home by a petro bombing attack with some vigilantes who put themselves together to make sure he got his desserts. We obviously put a stop to that. I authorized that we had an intelligence led screen, and would you believe that we looked at the circumstantial evidence that was identifying this guy as the person who was responsible, and it looked quite credible.

So we went to him first and we took his sample, and we send them in batches to the Forensic Science Service in batches of 27. You only need to know that because that's the way we work and to identify that his sample went down in the first batch. At the time it was taking about seven days to turn around the results, and then we continued the process.

The guy who was the strong suspect who was going to be burned alive was identified as innocent. It was not his semen inside the 84-year-old woman. We told him so, and we told the community. You can imagine what they did for that man. We continued the process, and I think it was the 137th sample we took from a volunteer the Forensic Science Service identified him as the true offender. The match from the semen inside the 84-year-old woman and his was the same. The evidence was so overwhelming that he pleaded guilty, and he is now incarcerated for I think 14 or 18 years.

Can I just show you that that shows the true value of it in a scenario which is very simple. It identifies innocent people and it can identify guilty people, and it can do a lot for community life and the quality of life.

The maintenance of the database, then people will say how long do you keep the profile of the person that has been an arrestee, but not a convicted person? We keep it until he's convicted and there on until he either appeals and is found to be not guilty. So any process by which can identify that person from arrest as being not guilty, not responsible, at that moment we will destroy it. We will destroy the sample and we will destroy the profile on the national database. Otherwise it stays there until that person's death, and we can continually make comparison and perhaps eliminate him or her from any future investigations that ever take place in the United Kingdom.

The better news now comes is that we put all the processes in, we did all the training, we got our offices up to speed, and you can see that it's a very short period that we had to operate in. I was listening yesterday where there was some doubts as how you will train your officers. That CD

ROM I think was a piece of excellent communication across the United States where I'm told there is the ability for every enforcement officer to see that CD ROM. If it has got to be enhanced, I would say perhaps enhance it with something very similar that devises several case studies where they can see the process. They don't need to know as much as Lisa Forman knows or perhaps as much as Don Dovaston knows in terms of what makes DNA tick. They don't need to know all that. What they want to know and what they will demand to know is what is my responsibility, what can I be expected to do, how can I give the best of service.

That CD ROM I think will go a long, long way to doing that in a very short period of time. We did it in a very, very short period of time, and if I can tell you now that we can go to crime scenes -- I could go to a crime scene in the UK tomorrow where the first officer to arrive has been a police constable. He will have the ability to say to me -- well, not me now. I used to be a chief officer; I could do anything in terms of going through a crime scene and the like. He has got the ability to say as we say with respect, look, sir, I don't recommend that you should be going into this crime scene. I have my roles and responsibilities clearly set, and it says you don't go in. I honor that. All the police officers in the UK honor that.

I was in some very deep water once when I was addressing a group of senior police officers in Europe in Rome where I alluded to that. There is no need for the senior investigating officer to now go to the crime scene and pour over things and put his best foot forward in terms of destroying evidence and the like, and I said quite facetiously and I'll say it now, but you know I'm only saying it for effect, we don't want to be like the Americans. We don't want to be portrayed in UK films and films that we see where the investigating lieutenant goes to the scene. He is seen to make his way over to the deceased, puts his foot on the chest of the deceased, and has his photograph taken. That ain't the way to do it.

We used to say that perhaps that was what was portrayed in terms of how the United States lieutenants used to do it. I didn't know, but two FBI colleagues were in the audience, and at a coffee break they came over and said, look, Don, we appreciate everything you said, but we thought that was a bit heavy. I said well, I appreciate that, but I did say it was only a joke sort of thing and I left it at that. We became quite good friends until the following morning when distributed around the hotel rooms was a copy of the UK Times, the newspaper that's relied upon as to be a little bit more reliable than others, and on the front page there was a photograph of a crime scene in the United States.

Do you remember when Versace was killed? I hope there is nobody here that was involved in that case, but the on the front page of the following morning's Times was a photograph of the investigating lieutenant. The body had been removed from the steps to the villa, but quite clearly he stood with his right foot in a pool of blood. I found the two FBI guys and said what do you think about that? It ain't the way to do it, and I think you've moved on light years like we have.

So what was the user requirement? Again, the police determine what the user requirement was. It wasn't the scientists, it wasn't the advocates, it wasn't our crown prosecution service; it was us the police officers.



IT issues and storage, we took on the best advices. It wasn't the police officers that had to wrestle with it. I just employed people. Give me the results. I'll pay you for the best results. We got the best results, and we've sat over a computer system which has the capability of going in excess of 5 million profiles nationally. You will need to develop something larger than that in my view if you're going to follow the same road. We did have plenty of liaison. We did speak with our prosecuting solicitors. We spoke with everybody involved in the UK criminal justice system. We told judges what we would be presenting to them in terms of evidence from DNA and we gave them training packages. It's all part of the process of communication, of people understanding where you need to go.

DNA database contributing factors are endless. These are just some of them. The whole business, the whole success of UK system is being derived at the moment from the DNA database, and we use that for intelligence purposes. We then go on to develop the evidential evidence of a DNA sample.

If we start at the scene of crime for which I've got an ongoing responsibility even though retired now to develop means by which we can identify good practice within Europe to protect the crime scene from contamination and damage. I've taken a document. It's known as crime scene management, good practice model for Europe through to the European Commission, and it's the first time we've ever had anything passed for every force in the European Commission to be united in a way forward in terms of this type of work. That has now been passed, so we are now in an area touching upon the size of the United States right across Europe where we're working to the crime scene management model.

The police training aspect then allows for each of those forces, each of those jurisdictions to have a degree of flexibility. How are they going to do it? The CD ROM, if it goes across the United States, as I believe it's going to be, will be an excellent way of doing it. Everybody will work to the same model.

The recruitment was in terms of what the DAFS have to do to deal with the volume of work. The volume of work I hear is being detrimental to the way you're going to proceed. 186,000 thousand rape kits sitting around with nothing happening to them because the laboratories don't have the ability. Well, somebody has got to change that in my view. Somebody has got to find maybe a means maybe by which you can ship them out somewhere. But my plea to you would be to get that done as rapidly as you possibly can. You're going to say to me we know that, Don, but I need to say it.

Lab equipment is being devised by the Forensic Science Service now. We drove them to say we wanted times of turnaround being reduced from a month. We want the turnaround down to seven days. We want you to use robots. We want you to use automation. Lisa will know more than most people here. That's the way to go. They have to go through a process of building. Yes, they have to find places to take all these samples and do the work. It has to be done.

We as senior police officers, chief police officers, have to have field equipment whereby we can examine crime scenes and look for things that we've never looked for before. We were quite

good at looking for fingerprints. We were quite good at looking for chew marks. We were quite good at looking for fiber traces and things like that, but not for DNA material.

I'm sure you know, but I use this as an example. We could have three villains, three of your scallywags in UK terms, come in here each armed with a sawn off shotgun and wearing a mask and gloves. They could say, Don Dovaston, you're attacking our very business. We have been sent to deal with you so that we don't get detected as readily as we would do in the UK. Whatever the argument is, they come in here. They hold everybody at bay, and they put a couple of shots into me and out they go. What is the prospect of identifying those people if nobody tackles them and brings them down in here? In UK terms we would be saying we don't have the ability to find the fingerprints unless there are some skills over here that I don't about. Identity is highly unlikely because they were wearing gloves and helmets. If you now bring it into the realms of what can DNA do for that situation, the very same scenario, my view is that every contact leaves a trace. There is no way that they could not leave evidence of themselves. They will leave evidence of themselves.

What we have to have is the ability to find that evidence, whether it be from the skin, whether it be their hair, whether in frustration they take a drink out of a glass or whatever. We've got the ability by using DNA technology to find out who they are. Intelligence will perhaps lead us to where they may be, where we can perhaps recover the helmets and the gloves and maybe the firearm and turn it all into evidence, but first of all we would be using it as intelligence.

Ongoing research, yes, we're using STRs in the UK and we're having all of our successes from that. We pay in each of our 43 pounds in terms of our CJ sampling an element for research, and the Forensic Science Services does that on our behalf. They've moved on to the next generation. They're into LCNs low copy number, of DNA. Lisa will know about those things and several of you will.

We're having to put a stop to the use of that because we have not got the ability to protect our crime scenes yet sufficiently to stop contamination because the statement from the scientists in the UK is now the discerning part could be one in a million. It's pretty powerful. We have 67 million inhabitants in the UK. That alone put against the statement it is a person one in a million will have some weight.

The thing that I would quickly say here, though, is that we do not rely upon DNA evidence solely for conviction. We will seek to use it for intelligence. We will seek to go out and find some other evidence as well. I don't know of any cases in the UK now being processed whereby we're relying purely on DNA evidence. We use it, but we use it in conjunction with other things that we've found, other pieces of intelligence, the recovery of property, the identity of the firearm or whatever maybe leading to fingerprint evidence. We don't rely solely on DNA evidence to get a conviction.

So there is a lot of those sorts of things happening. We're saying that, well, until we're up to speed in protecting our crime scenes, unless it is very, very, very difficult, we will not take advantage yet of low copy number. It's there. They can find it just by me breathing over this microphone. It's that powerful.

This in a very simplistic way is how it works, whether it be what we call a CJ buccal swap from our arrestee or from a crime scene mark, the police are the people that go for it. We train our staff either to be a police officer taking the buccal swabbing or what we call SOCO, scene of crime officer. I think you have a similar term, examiner.

They're in the field. So the police box then takes it through to the Forensic Science Service where we have under very clinical conditions the ability for them to handle it for us. They do the extraction, they identify the quality, they do the sequencing until eventually they come up with the simplistic term the bar code, the profile from either the CJ sample or the scene of crime mark, and from there it goes onto the database. On the one hand, the CJ samples of all our arrestees. On the other hand, all our crime scene marks which are outstanding through the United Kingdom.

That's a bit of a scramble, but the thing that I would like to identify to you is that through all this process and all this demand we've not had one penny of government money to assist chief officers to get to this stage we are now in in the United Kingdom. So where I hear deep intakes of breath as to what might be coming in the United States if you don't get central funding, in my view it's got to be from local funding, and if local funding is not forthcoming, you might have to take a couple of cruisers off the road. You might not have to buy an updated helicopter.

I had to do that. I got no government funding and initially I got no local funding. I had to take some of my police cars off the road. I have to wait two years to get a replacement helicopter, but I started the DNA process. It is that important and it will be that impacting. In value for money it outstripped the loss from the two police cars and my outdated helicopter. In value for money and quality of life improvement it was tremendous.

Just to let you know where we are, some figures were quoted yesterday which were a little bit outdated. What did we achieve since the 10th April of '95 by police officers demanding that we must get on with this. We've achieved this. On our national DNA database we now have as close to a million samples as I can estimate at the moment. It's something like 934,000 and some odd figures. We're going to shout with glee when we get to the first million on the database not lying around waiting to go on CODIS. I mean operationally on the data base 1 million profiles.

What are we achieving from that from our crime scene marks? Well, in the five years -- and this is just in little old United Kingdom -- the week that I had these figures drawn were the week ending the 22nd of July, almost the day that I departed to come over here. We detected that week, that week, five murders, one attempted murder, ten serious robberies, five woundings of the most serious nature, and not to count anything to do with burglary because we've stopped counting. We get so many returns on burglary now that we know how high its achievement rate is, we start to leave them off the statistics list. Over the five years we've identified in excess of 250 murders using this process.

In terms of what that does for our communities in the UK it's tremendous. In terms of the rapes of our children and our women, we're into the thousands now. So from your rape kits can you see what the ability is, what ability you have to make impact upon the quality of life of your people? It has been at a cost, and the cost has been recognized as being unfairly left with the chief constables of the United Kingdom because as of April of this year governments have been

convinced that there is truly value in putting money into the enhancement, expansion of DNA process in the UK that they've given us another 34 million pounds of new money.

In UK terms that has never been known before. 34 million pounds in your terms may mean not a lot, but it does in UK. We have had nothing like that given to us before. It is purely for the enhancement and expansion of DNA. What we are going to do now is expand to all our arrestees the sampling of buccal swabbing. Previously what I didn't allude to before was that we have had to limit our activity to three classifications of crime, sexual assault, armed assault, and burglary, and that's what we've achieved it on, all those results I talked about, just on those three categories.

The prospect now is over the next two years that we will increase our 1 million to near on 5 million CJ samples, those of arrestees who have gone on to be convicted, and we will have the ability now to enhance our detection rate because this is a comparison that you will understand. We have 5 million ten prints of people on our national fingerprint database, and from that process we're detecting 10% of crime, 10% across all classifications of crime. Since the introduction of the DNA database five years ago we're now regularly achieving 52% detections.

That is one mega jump, 10% to 52%, and they are involving the most serious of crime. So we're now going to equal the fingerprint collection with the DNA collection, but also we're going to have more activity at the crime scene. We're training our officers to find even more DNA material, so if you can see, it's not so far off where our detection rate across the field is going to be in excess of 50, 60, 70 percent, and what is that going to do in terms of reducing crime, offering the deterrence to people.

Not only that, we have the ability to show our credibility to our inspection process. We have a national inspection process whereby people come into police forces and inspect what we do, that we follow all the protocols, that we don't break the law, that we don't offend civil rights, and through that process two years ago national DNA database came out with 100% success in terms that we had not offended. As a result of that they gave me the power you can now go into in prisons and you can retrospectively sample all the people that are now residents in the UK prison system because many of them, of course, have been in there before the 10th of April 1995 and they were sitting pretty. The government says yes, you demonstrated your credibility. Now go and do it. I did set up a process whereby we did that. All our major penitentiaries, we sent our officers in to buccal swab the inhabitants.

There is a funny side to it. I think I can allow myself to be funny for a moment. We went to one of the biggest and troublesome prisons in the UK and spoke to the governor and he said, yes, I'll bring them down in groups of ten. We'll give you a room. Your officers can be in there. We'll give them additional smoke periods, and that will satisfy everybody. We didn't want to cause any riots in the prisons by our presence there.

On the first morning we're there, ready to go. This is true. The first ten come down in one of the penitentiaries with the wardens, and we see them having their extra cigarettes and all that sort of thing, and just before they're getting called in one at a time we wondered why they were kissing each other. Well, not only were they kissing each other, they were then putting their own saliva

into their fellow inmate's mouth, and they thought that would defeat the process. We identified to the governor that this really wasn't done and could we have some other means by which they could be brought down singly.

So they were all sent back and we didn't take the sample. The next batch of ten were brought down, but they were kept apart in very small holding cells. When they were called forward, the officer said yes, we're going to take a buccal swab now. We're going to open your mouth only to find that they Superglued their mouth. Each of these ten had put Superglue on their mouth and we couldn't get into their mouth.

The officers, not to be defeated said, fair enough. We can take it by taking your hair, which they didn't like, but we achieved it by that process, and the following day -- this is true -- the next ten came down. They had their mouths Superglued and they were shaven.

The officers, not to be defeated, found themselves a little pair of tweezers and said we'll take it from your eyebrows. The fourth batch came down and we had no problem.

But now you see the credibility of the system. We identified that we were working within the protocols. We have now got the samples of every person who is in a UK prison. From the 10th of April onwards we sample them anyway and anyone that was in there before we've been in and taken a sample.

In terms of deterrence, we're hearing from the probation service that the one thing that's now deterring people from committing crime on their release is the fact that we've got their DNA. They're fearful of that. They're fearful that they will leave their mark and we will find it very rapidly.

So in terms of the whole overall picture, just to return to what I said to you early on, yes, we're being successful. You can be equally as successful, if not more successful, because you can perhaps take advantage on what we've done. You can perhaps see roads quicker through the trees than we ever did, and I would invite you -- and Lisa knows because the director of the Forensic Science Service has been over here -- they will share anything. We believe that not one country knows it all, and if we can help each other and certainly law enforcement officers, it's a given, we will assist our colleagues anywhere in the world, and by that process we have a lot of people coming over to see how they work, and I would encourage you all to do it.

So at the moment I would say I'll rest my case other than just saying for goodness sake don't miss the opportunity. I'm speaking to you as a colleague and a friend. I don't want to be objectionable in any way, but the progress in the United States in my view lies within the chief police officers to make, and if you can encourage people to give you the ability like we took in the United Kingdom, you too can enjoy these successes.

MR. ASPLEN: Are there any questions?

MS. MUNDY: Sergeant Mundy with the Seattle Police Department from the International Association of the Women Police.

What I would like to know is during the changeover and beginning to do the DNA process the impact your court systems and your prison systems to the extent that they had to increase your staff in your prosecution part of it or has it been enough of a deterrent that you haven't had to increase in those areas your staff?

MR. DOVASTON: There are several stages of answering that very probing question, and that is in the early stages the prison governors had a fear that they had to live with we would generate more internees, and very early on they suffered from that and they would have to open Army camps and the like to accommodate it.

I've got to say that ain't the police chiefs problem. It's part of the criminal justice problem, but not my problem. If I'm generating more prisoners, if I'm ridding them of committing crime on the streets, it's somebody else's problem to deal with it.

Now, that's a very simple way and aggressive way to deal with it, but we told them what was likely to happen, that we would now develop this process whereby we would be producing more people to come into the criminal justice process, and in fairness to them, they went to great lengths to accommodate that first flood of additional poisoners. Okay. They did have to open Army camps and the like, but they got over that.

What we're finding now is the peak now is falling, and the probation services and social services departments are now telling us that the deterrent value is kicking in and we're not perhaps seeing an ever climb of internees, and also they're finding different ways within the criminal justice system to deal with them. They're offering more community based schemes whereby they're not incarcerating people as readily as they were five years ago.

So there are many things impacting upon it, but the governments have seen even now with the expansion program, particularly now we're concentrating a lot more in terms of the volume of crime we're going to be producing again yet more prisoners, and what they're now embarking upon is a process of further prisons being built, state-of-the-art prisons, modern establishments, and they've undertaken that commitment.

MR. ASPLEN: Any other questions?

MR. CAPOZZI: My name is Frederick Capozzi. I'm the chief of police Seneca Falls, New York.

Could you tell us what 42 pounds sterling equates in American money if that's possible?

MR. DOVASTON: It's far more than you're paying. The simple thing is 1.5 dollars to the pound; you're talking about 70 pounds. That's \$70 give or take a penny.

Again, you've just reminded me about what can be achieved. I mean I'm not going to champion anybody. I don't need to. You know the guy, Howard Safir, and you've heard Maureen Casey here. They in New York have achieved I think great things. They've encouraged their mayor is it or governor to give them maybe 16 million pounds to have a look at all their outstanding 12,000 rape kits. I think that's got to be by police pressure that that's happened, and I'm understanding he



has had something like 110 million pounds awarded him to build a DNA laboratory there in New York. I think that's tremendous, but knowing the guy I can see how it happened in New York.

MR. LATTA: Joe Latta of the International Association for Property and Evidence.

My question is now that we have this technology and you have had it for as long as you have, are you seeing officers going to the crime scene collecting more evidence, and, if so, how is that impacting the long-term storage of the evidence in the local agencies?

MR. DOVASTON: The first answer to that is I don't see that the patrol officer does that. The requirements of the patrol officer are to insure that the crime scene is protected and not contaminated and nobody has access until we have our crime scene examiner, and they're being trained to be very selective.

Years ago they would strip a flap -- I think you may have alluded to that they take the bad and they tape everything else. They're being now very discerning what they take in terms of we don't want to send away things to the Forensic Science Service that will have little intelligence or evidential value. So what we go through is a training process which will allow them to identify that it is only part of that table we want. It is the only the drinking vessel off that table we want. We don't need the contents of the fans anymore.

The packaging now in the UK is such that okay, we've got quite a few of them about, but we can store them quite readily, and that is a requirement in terms of our legal process anyway, so we're not really giving us a greater burden. It's the training of the people you send to be very discerning, identify where the material lies, and only take that.

MR. ASPLEN: That is quite an incredible vision for the success that's possible, and, as I think Don so well always brings home, the ultimate point is it's all about making our community safer, and wouldn't it be great if we could get to that point where we were actually utilizing the technology to that level.

## LEGISLATIVE CONSIDERATIONS FOR PROMOTING FORENSIC DNA

MR. ASPLEN: Let me ask for the next panel to start to come on up at this point. That's a panel on some of the legislative issues. I know that we're getting to the end of the conference here and I know it gets a little bit harder as we go along. People get tired and such, but we're also into some of I think the more important part of the process. The big point that has been made by so many people is the need to talk to our legislators about the funding issues and to be advocates in that regard.

David Boyd is going to be the moderator of this particular panel. Let me tell you a little bit about David. Dr. Boyd is the director of the Office of Science and Technology for the National Institute of Justice. His bio is included in your materials. I think what is most important to know and to understand is David's commitment to these kinds of issues. It's the job of the Office of Science and Technology to look at technology issues and to find ways to get it into the hands of our front line police officers.

The commitment of OST to the Commission goes far beyond the creation of a commission and the opportunity to get together at meetings and to discuss these great things because, quite frankly, if that's all you do, you don't have a whole a lot of effect from that, but rather his commitment has been the further commitment to do things like print a million copies of something.

When I came to David and I suggested the idea of printing a million copies of that pamphlet, I expected that I would get some sort of convulsing response or something. I didn't. I think I might have gotten a raised eyebrow, but it was very clear that David believed that the issue was that important, that the idea of getting this information into every law enforcement officer's hand was that important, and so David committed the money to it. David committed the money for the CD ROM.

So I want you to understand that as we go into this process, that it takes that kind of commitment to make things just like this conference go, but for the further effect that the Commission's work is going to have.

With that, thank you, David.

DR. BOYD: I never like to bite somebody that has given me such a nice introduction, but as much as I love Chris, the fact is that he is an attorney. As you can imagine, being in the justice department we're surrounded by attorneys and, of course, my office is not a legal office. We're primarily scientists, we're researchers of various types,



engineers, technicians, and so, as you can imagine, we have a different view of the world typically than lawyers do.

I'm noted in the department for telling an occasional joke or two about lawyers, so much so that people have suggested to me that I ought to quit telling these made up jokes and that I really ought to be fair and talk about lawyers as they really are. So I've decided to turn over a new leaf and tell stories that come directly from real courthouse testimony.

It seems there was a forensic pathologist who was on the stand testifying about a homicide, and the defense attorney looked at him and he said, "Doctor, I understand that you say that Mr. Davis was dead when you first saw him."

The doctor looked at him said, "Well, yes. I am the forensic pathologist. I perform the autopsy.

"But did you know he was dead when he arrived there?"

He said, "Well, the death certificate said he was dead."

He said, "Well, did you take his pulse?"

The doctor said, "No. I'm the forensic pathologist. I perform the autopsy.

"Did you check his respiration?"

"I was the forensic pathologist. I performed the autopsy.

So you didn't take his pulse and you didn't check his respiration. How can you be certain he was really dead?"

At that point the doctor looked at him kind of quizzically and said, "Well, his brain was in a jar on my desk."

So the lawyer, obviously one of those lawyers who is trying desperately to keep things moving while he thinks of the next question proceeds to ask: "Well, is it possible that he could still have been alive?"

At which point the doctor leaned back and said, "Well, I suppose it is that he could have been out practicing law somewhere."

The way the Commission came about literally came from a discussion in the back seat of a taxicab as we were going somewhere, and we proposed the notion that it might be useful to help attract the kind of public attention to build support for this that was required, and so we came up with the notion that we would suggest to the Attorney General that we should create a national commission.

This is not an easy task. National commissions require certain slots. There are all kinds of legal requirements for the conduct of meetings under a commission, and so we expected this to be a long, drawn-out process as we tried to make the argument for one, only one of the slots that was available for a commission.

To our surprise the Attorney General signed it off immediately, and we so initiated the Commission that you've heard so much about so far. You might ask why is it that we're focusing so much on state and local law enforcement, and I know you have heard a variety of reasons why. I think the most compelling reason is because the reality is that crime and law enforcement are primarily in this country local affairs. 95% of all law enforcement personnel are in state and local agencies. That represents some 19,000 agencies with virtually all of the crimes the public really cares about on an immediate basis is local jurisdiction, not federal. The Federal Government is seldom involved in rapes, robberies, murders, muggings, for that matter, even barroom brawls and domestic disturbances, but the local police routinely are the people that have to handle these things, and for most of these crimes it is the local police who will conduct all of the investigation and all of the evidence collection. In a few cases there may be some federal involvement from one of the federal agencies, but even then you will have conducted the initial investigation and you will have probably collected all of the evidence at the scene and you're the critical cog. You and your officers are the critical cog of this whole operation.

It's for that reason that we find it so important that we work directly with you both at the state and local levels both to improve your capabilities to try to get funding and the rest. As you've heard several times, we can't lobby. As a federal agency, it would be inappropriate for us to do so, and we would never suggest that. It is true, however, that you as private citizens can talk to anybody you darn well please about anything you want, and I want you to understand that while we would never lobby, we certainly don't believe we have any authority to get into your way.

There is legislation pending, and it's legislation that I think is important and that you should be very interested in, and so we're going to turn to Tim Schellberg to tell us about some of that pending legislation. Tim is going to talk about the national picture of legislation for forensic DNA at the state and local levels. He's a partner in governmental affairs at the law firm of Smith Alling Lane. His firm has offices in Takoma, Washington, and Washington, D.C.

What I find most interesting in his biography is that this is somebody who has actually been involved in working as an advocate for police for some time because in 1991 he signed on as both a lobbyist and legal advisor for what strikes me as an interestingly unusual organization. They actually have the sheriffs and the police together in the same organization, which ought to provide remarkable clout.

So he has been focusing on those kinds of issues for them. He also has an interest in this area because he also represents a number of private organizations including PE Biosystems, which is a DNA equipment manufacturer based in Foster City, California.

So I'm very pleased to give you Tim Schellberg and a discussion on the legislative issues.

MR. SCHELLBERG: While the AV people get my Power Point presentation hooked up I would like to say that the Department of Justice has cordially invited me to speak, and I think this is the fourth or fifth time I've given a version of this talk, and every time Dr. Boyd has told a lawyer's joke and I've sat quietly and I've actually ignored Dr. Boyd because I didn't want him to find out that I was also a lobbyist because I feared I would be the subject of one of his next jokes.

Anyway, I appreciate coming here. What I am going to do is basically cover the federal and state legislative scene during the year 2000. Most of my experience is based in the database expansion issue, and I'm going to talk mostly about that and cover the trends, some of the politics, and also get into a little bit towards the end just to give you an update on post-conviction legislation going on throughout the country and the DNA statute of limitations issue where there has been a number of bills introduced.

As Dr. Boyd said, we represent PE Biosystems, and what we do for them is basically we track all the legislation going around throughout the country and we initially provide as a resource to all the legislators such as Senator Bronson that is going to speak and the legislative staff what is going on with this debate throughout the country.

Before I get into the year 2000 I think it's very important to look at where we stood as of 1999. In 1999 we had various crimes statutes on the books, but I think it's important also to look at the evolution of the DNA statutes. In the early 1990s, of course, all the states implemented the sex offender databases. We moved towards all violent crimes. A lot of states are moving toward burglary. A number of states, six as of 1999, had all felons. Some states even crept down into some misdemeanors. One state has the law on the books to do arrestees, although it's not implemented, that being Louisiana, and perhaps the final evolution is what we just heard about, perhaps doing some sweeps.

Looking at the maps of all states sex offenders, here are the states as of the end of 1999 that collected for which crimes. 28 states collect DNA for sex offenses, murder, and all violent offenses, and that's the darker shade there. The lighter shade, ten states require for sex offenses and just murder, and the white shade, of course, are the states that only collect for sex offenses. You will see when I talk about what happened in 2000 most of those white states are now dark as many of those states passed laws this year. Here are the states that collected for burglary, 17 at the end of '99. Here are the states that collected for all felons. In the year 2000 we broke a record on how many expansion bills were introduced. There were 20 introduced, although only eight passed and ten did not pass, and there are a couple still pending as their legislatures are still in action.





Looking at the bills that passed, Arizona added all violent offenses and burglary, Colorado all violent felons and burglary, Florida was just an all violent offense state until Senator Bronson's bill passed, which added burglary. Georgia, which was the most significant bill of the session, was just a sex offender only state, and they have now become all violent convictions or all felony convictions. One of the unique things, clauses that they added to their bill is they were worried a little bit about the money, so they said it has to be somebody that is convicted of a felony that resides in a state penitentiary. If you're convicted of a felony and doing your time in a local jail, you would be tested. New Jersey was a sex offense only state. They are now all violent felonies. South Carolina, South Dakota, and West Virginia were all sex offense only states, and now they have become all violent offenses, burglary, and a couple of them had a few others such as larceny and counterfeiting of all things.

Looking at the bills that did not pass, some of the more significant ones there, California had an all felony conviction, the State of New York had an all felony conviction and misdemeanors, North Carolina and Connecticut tried the all arrest situation, and both of those bills failed. Looking at the pending bills, Pennsylvania moves from an all sex offense to all violent felonies, and Rhode Island is trying to get all violent offenses and burglary.

Later on in the presentation we are going to cover why all of these bills failed and what are the main reasons, but in summary the main reasons are with the exception of Connecticut and New York there was pretty much zero advocacy from law enforcement, prosecutors, victims' groups in those states where these bills failed, and that is the primary reason why they failed. In addition there is a number of states that had significant privacy concerns, and both the advocacy issues and the privacy issues I'm going to cover in a little bit.

I think it's important to go back to this slide because this is the one where I think we all need to get to is to get all the violent offenses people in the database, and if you look at the white shaded, Arizona passed a bill. Now they're a darker shade, as did Colorado, South Dakota, Georgia, South Carolina, West Virginia, New Jersey, which basically leaves us the only big populated states left that are not collecting from all violence is Michigan, Ohio, Pennsylvania, I guess Connecticut, and Kentucky are all 3 million plus states.

So it looks like we're starting to round out the country in collecting all violence. In Michigan we might see some action. Is anybody here left from Michigan today? You should know that there is a bill sponsored by I believe it's Senator Shirley Johnson that is going to Senator VanRorgenmeiter's committee, the chairman of the judiciary committee, and he has said that he's interested in perhaps expanding to all felons. So you have a very unique opportunity. That bill will be in the committee I believe September 15, and you will have an opportunity to test out your advocacy skills that you've learned here to perhaps have an influence on that bill.

I think it's also important to understand what we're doing in Congress. Historically over the last couple of years Congress' action in the DNA area is basically to give some modest appropriations to handle the state's backlog, and in 1999 Congress gave \$15 million to the NIJ, who is in the process of giving that money out to do the convicted offender backlogs; however, the year 2000 Congress significantly increased their activity basically in two areas. One is they're giving quite a bit of money or trying to give a whole bunch of money to the states for both the



convicted offender backlog and for the case work, and we'll talk about the amounts in a moment. In addition they're finally getting around to creating the databases in which they control which do not exist today, which are the D.C., U.S. military, and federal criminals database.

The two bills that are in play right now are sponsored by Senator Oren Hatch from the Senate Judiciary Committee and Congressman Bill McCollum from Florida who chairs the crimes subcommittee. Looking at Senator Hatch's bill, which to date I don't think is formally introduced -- when I checked yesterday, it wasn't -- but looking at the details of his bill, he gives \$50 million over two years for the database expansion for convicted felons and also 70 million for case work. In addition he looks at the three databases and says they're going to be all felons, which differs from McCollum, and we will talk about that in a second. In Hatch's bill, he combines the post-conviction issue. In addition to that he says that if you want to be eligible for the grants, you have to have post-conviction procedures in place in your state.

McCollum's bill beats out Hatch's in the amount of money. The latest draft that passed the committee last week gives 45 million for database convicted offenders and \$125 million for case work over a three- to four-year period. On the databases he's a little more careful, and on the D.C. database the newest draft says that it's going to be determined by the D.C. council. They will decide which crimes to add. On the military and federal database he stops short of all felons obviously. He says it will be most of the violent offenses and burglary.

What is odd about that is he left out robbery, and they did it intentionally. I think to their credit what they're trying to do is they're trying to bring bipartisan support to this bill. They don't want to rock the boat. This is the bipartisan agreement, although I think they are missing an opportunity. If the legislators are buying off on burglary, I think if they convey what this does, I think most of them will not have a problem with adding robbery.

I think it's important to understand who is who in this Congressional DNA debate since it is so significant. Congressional legislations differ from most states in that even though the authorizing legislation may say that they're going to spend \$175 million for DNA and it will be plastered right into the legislation, it doesn't mean anything unless the appropriators put it in the budget. On the authorizing side, of course, it's Senator Hatch and Senator Leahy, who is father of the post-conviction issue and will definitely play a big role on the expansion issue because of his post-conviction issue.

On the appropriator side while the chair is Ted Stephens, the person that really controls the money is Senator Judd Gregg from New Hampshire, and it will be his decision if future year budgets contain that \$175 million. On the House side while Henry Hyde is chair of the committee, he has bowed out from actually sponsoring the expansion bill and Bill McCollum is the one that's taking charge. The three other Congressmen, Gilman, Weiner, and Kennedy, were the original drafters of the expansion legislation, which was merged in McCollum's bill about a month ago, and McCollum's office is working with all three Congressmen to perfect the language.

On the appropriator side the chair is Bill Young, but, as in the Senate, Hal Rogers controls the justice budget there, and he will be the vital decision maker in the House of whether that money

is in there. Is anybody here from Kentucky left today? I know that law enforcement will have a big influence on him. I hear he's a friend of law enforcement, and if those folks can talk to him about DNA, that will be helpful.

What is the outlook for these two bills during the 2000 session? Well, I think that it looks good except we are running up to a time crunch. They've only got a few days left before they recess, and when they come back in September, they will probably only be here four to six weeks, and the McCollum bill hasn't even passed out of the House yet.

So we're looking for a very tight time frame, but there are some other factors that I think might place this bill in jeopardy perhaps, although I think we're looking good at the moment. The post-conviction issue may have a chilling effect because at the moment everybody seems to agree to the expansion issue. It's a bipartisan effort. Everybody is on board, but on the most post-conviction issue, it carries some baggage in that everybody seems to support it, but they support it at different levels and have different ideas of how it would work. If the McCollum bill, for example, gets over to the Senate and the Senate insists on putting the post-conviction language onto the McCollum bill, if they have not worked out their differences by the time that happens, it could put the expansion bill in jeopardy.

Another thing that might get in the way is the arguments between all felons and something less. If Hatch decides to pursue the all felons language, perhaps that might rock the bipartisan agreements. Even if these bills pass, the big question then is well, we talked about perhaps \$60 million starting in this year's budget going for DNA and then 60 more million over the next couple or three years. I believe perhaps we might be out of luck for the year 2001. Senator Gregg and Congressman Rogers have fairly much worked out what their budget is going to look like, so the big money for DNA might not start showing up until the year 2002, although in the 2001 budget that's being worked on there is I believe \$30 million being earmarked for DNA databasing and crime lab expansion, and the statements in both the House and the Senate is that the database backlog shall be the priority for that \$30 million.

Looking at Congress and the state legislators, it's clear there have been primary arguments that have evolved in these legislative debates, and there are three easy ones. They solve more crime, they prevent more crime, and they exonerate the innocent. You hear that in every legislative body which you work in. Solving more crime is basically self-explanatory. The bigger those databases are, the more statistical likelihood you'll have of getting hits against the database from crime scene evidence. With the recent statistics out of Florida and Virginia shows that if you go from an all violent felons database state to an all felony state you pretty much will double your chances of getting hits on the database for violent crimes and therefore solving more crimes.

Preventing more crimes, we've heard throughout the two days here how this works. For example, you have a rape victim that's actually the perpetrator's fourth rape in let's say six months. They finally get their suspect. That individual had a rap sheet for burglary and other nonviolent crimes, and it was in a state which did not take for nonviolent crimes, which meant that if that state did take for nonviolent crimes, perhaps the second, third, and fourth rape would have been convicted, and that's how this stuff prevents crime.

Exonerating the innocent, we all know and we have heard stories of how DNA in general exonerates the innocent. You have a suspect. You have a DNA sample. You take the DNA sample, you compare it against the suspect, and if it's not a match, you've exonerated that person from being guilty. The question we need to ask is how can the bigger database exonerate the innocent, and that's the questions that these legislators will be asking you.

One of the arguments that we've heard is the scenario of having the guilty party in the database. An example I suppose is if you come upon a murder scene let's say in a garage and it's a wife of a gentleman that has been murdered in a garage, there is no DNA evidence around the body that conclusively you can say belongs to the perpetrator, but there are a few things. There is a cigarette butt. Perhaps there are many cigarette butts in a family that smokes, and so all eyes turn to the husband because the husband has a rap sheet for domestic violence. The relatives say they have been quarreling more than ever, so the police are focusing now on that individual because of circumstantial evidence.

Let's say they do run the cigarette butt against the database and they get nothing because the person that that cigarette butt belongs to has a conviction, but it's in a state that doesn't take for nonviolent offenses, but if that state took for all felons, that person's DNA would have been in the database, they would have gotten a hit, they would have been focused on the real perpetrator; therefore exonerating the spouse. Those are examples of how a bigger database will exonerate the innocent.

Looking again at the state legislation and all of the Congressional activity, we start to see a lot of trends. One is that it's clearly more populated states are moving towards all felonies. We've seen big bills out of Texas last year, New York State, Florida, and the list goes on and on. We're seeing these states that didn't have a big database moving in that direction. Burglaries clearly are the baby steps that the states are comfortable with. Senator Bronson is going to mention that in his presentation I'm sure because that's where they can get agreement on.

State funding, I don't have to tell you that your state legislators have failed miserably over the last ten years in supporting DNA funding for the databases; however, things are changing rapidly in this area. California had a record-breaking allocation this year. Just two weeks ago they passed a \$55 million budget to pay for backlogs and case work, New York, \$11 million to pay for their new legislation and the backlog, and Florida \$2.1 million just to pay for Senator Bronson's legislation.

I always point this out when I talk about how perfectly the State of Florida did things. Many times the state legislators will want to introduce one of these bills. They move independently because they think it's a good idea, and they pass the bill, and there is no money to pay for the increase, but in Florida's case what they did was the agency, FDLE, they went to the governor's office, they argued their case of why they wanted to add burglaries, got permission to add the \$2.1 million for the burglaries in the budget. Jeb Bush's budget moved along. They contacted Senator Bronson's office. He introduced the bill. The senator's bill moved in tandem with the budget. Both passed at the same time, and the day that law came into effect they started processing the burglary samples and putting them in the database. That is a perfect way to work the budget with the legislation, and hopefully that will be the poster child for future legislators.

Other trends, of course, is that Congress is having significant funding increases, and another trend is merging of the post-conviction. This can be a good thing or this can be a bad thing. On the good side I think it's good because when the case in Georgia did this, they had that all felons bill, and apparently the ACLU and the defense bar had some problems with it, but loved the post-conviction bill. So when the legislature put the two together, the ACLU really didn't mind the expansion issue that bad. They liked the post-conviction more, so they jumped on board and they had law enforcement with the ACLU and the defense bar all supporting the same bill; however, as we were seeing in the U.S. Senate, that might not be the situation there where you have disagreements over post-conviction, and that might actually be a hindrance to the expansion bills. So it might just kind of depend on the politics of your individual state.

Why are the expansion bills, many of them have passed, but even more of them have failed, and why is that the case? Well, the reason for that is basically two reasons. One is that there are significant privacy issues at stake with database expansion that have gotten in the way; and, secondly, there is a lack of coordinated, organized advocacy throughout the United States on this issue. We'll cover both in detail.

The first slide I'm putting up here is a quote from George Orwell in his book in 1994, and, as you know, George wrote about big brother, he wrote about black helicopters, he wrote about the thought police, and many of you have probably read the book.

What is going on with this issue as it is now determining how many state legislatures feel about law enforcement senior surveillance and intelligence issues. Your request for these activities are no longer in vogue with many state legislatures. They see you as a threat to individual privacy, and there are many reasons why legislatures have the privacy paranoia which they do, but the idea of law enforcement with black helicopters is truly having an impact on how legislators feel.

George Orwell is not alive now, but if he was, this is probably how he would view the debate taking place in Congress right now, and state legislators, many of them, especially from the far right and the far left, view law enforcement's request for expanding databases as a big brother activity, and we need to recognize that and we need to deal with it head on.

There are many bills that fail that were directly impacted by the privacy debate. California, Hawaii, Alaska, Washington State, they all failed because of this privacy issue. So I think it's important to look at some of the questions that we can deal with. One is what is the impact of other nonforensic DNA legislation going to be on the database expansion.

In 1999 there was about 150 pieces of legislation dealing with DNA. This year there is about 300 across the country. Most of those have nothing to do with forensic DNA. They dealt with insurance companies not getting DNA to rate individuals. They dealt with employers not having DNA to discriminate, hospitals staying away from DNA. So in the minds of many legislators, they're very fearful of the power of DNA and how can it intrude upon our lives, and it's having a negative effect on their feelings towards forensic DNA, and we have to recognize that fact.

The next question is will the power of advancing DNA technologies have a negative effect on lawmakers? You heard yesterday about new technologies that might be coming down the pike such as a hand-held device. When legislators start hearing that law enforcement can travel

around without even probable cause; they've got a hunch about some guy that just discarded a cigarette butt. They can take that cigarette butt, run it against the database, and get some hits, while we all think that's a great activity, there are serious privacy ramifications, and we need to recognize that might upset some of our policymakers.

I think one of the big questions here is can privacy concerns be addressed in legislation. I think they can be. I think that if we go to the legislative bodies and put in requests for expansion and you volunteer to accept amendments that say that the database shall be kept secure, it shall not be distributed to anybody, there will be criminal penalties involved if they do, we all know that the crime labs already keep this data secure, but by putting that language in the bill and assuring the state lawmakers that these privacy issues will be protected, perhaps we can move DNA databasing to the same level of security or thought as the fingerprinting technology.

Right now we take fingerprints from everybody arrested, but the reason why the state lawmakers don't see DNA the same way as fingerprinting is because there is so much more information at stake, as we have heard, but if we can make this data secure, if we can take the privacy element out of it, perhaps we can get towards fingerprints.

The second issue that is why all these bills have failed is there is definitely a lack of coordinated advocacy. We all know that many of the state labs, Virginia, Florida, many others have gone to great lengths to advocate for expanding these databases. I know that many of you in this room, perhaps many of you, your sheriffs and chiefs back home have advocated it, but the general rule is that you really haven't done it across the country, and what is lacking is a group to come together to bring all the arguments together, to advocate what the success of DNA databases is, and that's what needed.

As a corporate lobbyist I don't carry the same clout as law enforcement advocates would. As a federal agency, the folks from NIJ, your hands are tied. You all probably want to get out there and tell folks how good it is, but you really can't because of the strict lobbying rules. What you really need is nonprofit interests out there telling state lawmakers how great this is and how much they need it.

The national associations that are out there, ICP, NSA, the victims groups, while they truly support this issue; they've passed resolutions in support of it, it has not elevated to their top level because basically they have had other issues that they have been working on for perhaps five and ten years that are at the top of their list, so if you want to get this to the top of their list, they're going to have to hear it from the folks back in the districts.

What is the outlook for future DNA expansion in the state legislatures? When I first started giving this talk back in January and February, I had only been involved with this issue for less than a year, and I was very fearful that the mushrooming and privacy paranoia that's going on in our country was basically going to overcome the ability to expand our databases.

While I still believe that privacy issues are going to expand and we're going to have to deal with those issues, what I didn't anticipate, which I've noticed in the last couple of months, is the true power of DNA databasing. We track all the articles dealing with this issue, and we see all the hits



that are taking place on a daily basis around the country, and with the proper advocacy and the promotion of these hits and what this does and how it solves crime and prevents crime I think it's going to overcome the privacy issues that many state legislators have. For example, you've got perhaps \$175 million coming from Congress. You've got big appropriations coming from state legislatures.

Just imagine how many hits you're going to start getting in two to three years. You're going to be moving up towards what Great Britain has, which means that let's say that somebody's daughter or somebody's wife has been raped or murdered and they find out that their state legislature did not pass the laws to do all felons and if they did, that rape or murder wouldn't have happened, that argument is going to shift to that legislative body, and I think that there will be enough power there to overcome some of these privacy issues. But right now we're still in this midst of proving ourselves, and it will be some time, but I do think that you're going to start to see every state moving towards all felons. All arrestees is a different issue. I think it has got potential, but it's going to be a more difficult sell.

Real quick on the post-conviction issue, recent events have brought this issue to the nation's forefront. The National Commission has done an outstanding job, the Innocence project, Governor Rhymes' moratorium, Senator Leahy's issue, and extensive media coverage, and because of that you've seen 17 states introduce bills in the last six months to put in place this legislation. The statute of limitations issue and to expand statute of limitations when DNA is at the crime scene, ten states have introduced bills this year to expand the statute, so we're going to start seeing more of this.

Another database issue to keep your eye on is the missing persons database. The FBI is in the process of putting this together, and a number of states are going to start introducing these bills to operate the missing persons database. California's bill, if you can get a hold of it, is a pretty good model. It's sponsored by Senator Spears of California. It's headed for passage. The FBI has been involved working on the language. It's fairly perfected, and so if your state is going to consider that issue, I would recommend taking a look at that bill.

All the information that we have, we conduct weekly searches of all the state legislation, all the government publications dealing with forensic DNA, all the publications in general dealing with forensic DNA, and we put them into a nice three or four page summary and we send it to our clients at PE Biosystems on a weekly basis. A few months ago they agreed to make these reports, these summaries available to the general public free of charge. If you see that web site -- it's also in your booklet -- you can access the web site, register for it, and you can get the three or four page summaries, and it should keep you up to date on many of the things taking place throughout the country.

In addition we have about 500 individuals around the country that want us to e-mail them when the reports are posted and give them a one paragraph explanation to what is contained in the summaries. So if you would like to be on that e-mail distribution and be notified when these reports come out by this one paragraph summary, either e-mail me or if you want to give me your business card after our panel is through, feel free, and we'll put you on the list.



We're saving questions until the senator is done speaking, and I'll look forward to answering some.

DR. BOYD: Our next speaker will talk to you about that model example in Florida. Senator Charles Bronson was elected to the floor of the Senate to serve the 18th district back in 1994, and he is now in his second term. He's the chairman of the natural resources committee and the vice-chairman of the health, aging, and long-term care committees. He also serves -- and I'm not sure where he gets time to do all of this -- but he also serves on the criminal justice budget subcommittee on public safety and judiciary, the joint legislative committee on legislative oversight, and on the board of directors for the astronauts memorial foundation, on the Florida space roundtable, the agriculture and international trade committee, and the agricultural and rural development committee of the southern legislative conference.

He's obviously a very well-regarded legislator in his state. He received Lockheed Martin's award for legislative excellence in 1999, and from our perspective more importantly was recognized by the Florida sheriffs' legislative award in '95, '96, '98, and '99, and he has been recognized as legislator of the year by the Florida Economic Development Commission and as one of the top 40 legislators by the Florida Chamber of Commerce for the last three years in a row. So we would like very much to hear about the Florida example. Senator Bronson.

MR. BRONSON: The one thing that wasn't on there because this was sent out ahead of time and I want to thank him since he's here at this meeting, but Chief Keith Chandler from Melbourne that you heard a question from this morning was the head of the police chiefs' association of Florida, and they recognized me also basically for my work some of the bills that we put through the legislative process in Florida, and I wanted to thank him for that. He was the head of that association.

We within the legislative process -- let me give you a little bit of background. I'm tired of hearing all the stuff. I didn't realize I was doing all that, but I guess I am. I go to enough meetings, but I'm actually in the cattle business in Florida, and I'm on a number of different committees with these various committees that I'm on in the legislature, but when it comes to crime and those types of issues, which I have been the vice-chairman of criminal justice in the Florida Senate. I have been on the criminal justice committee for the six years that I've served in the Florida Senate. My background goes further back. I went through the police academy in Dade County in 1978 and volunteered up to 20 to 30 hours a week as a reserve officer with full certification as a police officer since that time until I was elected in Florida. You cannot have dual office holdings, so I had to quit riding with the agricultural crimes crime division unit in Brevard County to hold my office as a state senator because we have a dual office holding.

We run into some real wild exchanges of information, and DNA testing, while most in the legislature want to help law enforcement do their job and we definitely want to take violent recurring offenders off the streets to protect our citizens, I want to protect my family and friends and neighbors and I'm sure you do, too, and you're working hard to do that, we run into some real donnybrooks when it comes down to talking in committee about some of this legislation. We have at least three attorneys that sit on our criminal justice committee. Myself and one other has

law enforcement background experience, and the rest are members of the Senate that want to serve on the criminal justice committee.

Well, when you start talking about issues, one of the things that has created the most stir is when you want to put in the legislation something that is going to take place starting this year, but you want to retroactively go back and put people who are in prison under crimes they committed under a set of laws with different rules and regulations at the time they were committed, which we know are going to go to the supreme court of the state and be challenged. There are a lot of issues that we have to fight through before we can ever get to the legislation that we know is good legislation. We just have to try to pull it off.

In our case in Florida with the Senate bill that I passed, 838, where burglary was added, it wasn't that big a fight, and I'll tell you why. There were two or three major reasons. Number one, the sheriffs association in the state and all the sheriffs had gotten together and they were for this legislation. The police chiefs of the State of Florida, and believe me being the fourth largest state, we have quite a few police chiefs in the state, they were all behind it. State's attorneys' groups from around the state were all behind this. We had some public defenders that weren't overly behind it, but some felt there was some justification to do this. We did have at least enough push by the defense attorneys to ask some major questions about do we want to do this?

Of course, that's their business. I mean a lot of these defense attorneys used to be -- a lot of them started out their careers with the prosecutor's office. They learned that quite well and went on into their own private business and now they're defense attorneys. Of course, anybody that went through the academy knows one of their favorite questions is have you stopped beating your wife today? And you can't answer that. If you do, you either admit you still beat her or you used to beat her, and, of course, you haven't, but those are the types of things that they use in court.

Well, it became very well known that with DNA becoming more and more the standard for did this person do it or not, were they at the scene or not, it became very evident they were going to have a tough time going to court and trying to beat up on some young prosecutor who is trying to get out there and make a name for themselves, be it male or female, and win cases not because the person was really innocent, but because they were able to out dual them in court.

So this is going to make the job of defense attorneys pretty tough because this is the type of evidence that I think a lot of people were looking for to say I always thought that person was there or involved in this crime.

But it makes it tough on us as legislators to go sell this, and I have had cases where I passed bills in the Senate that the House didn't pick up because they didn't have enough people convinced in the House to pick the bill up and pass it. This one passed both houses, and we happened to have a governor who was on board, as Tim mentioned, from the beginning not only from the advent of making sure we were able to convict these people who were probably repeat offenders to protect the people in the State of Florida, but he was willing to go ahead and put the money up front to help our FDLE, Florida Department of Law Enforcement, increase their database process, and I think I saw on this list that I've got that with the new piece of equipment they're going to purchase -- it took them two and a half days to process and analyze 86 samples. With this new

piece of equipment they're going to be able to do 344 samples every eight hours or ten hours I guess it is.

So we're going to begin to see some connection between some cases. We knew that going in, but how quick we get this done in the legislative process depends on how much negative and positive input we get. You heard me say the police chiefs were behind it and the sheriffs were behind it and the state's attorneys. The ACLU I can guarantee was not behind some of this because they began to see the potential use, the idea they're going to use it for this and they're going to come back and ask for this and they're going to use it for nonviolent crimes. So they're priming the pipe nationwide to try to stop the addition of other crimes and so forth because of potential use for things that have no portent to crime.

The newspapers in our area in the state, by the way, have even indicated one of the things we certainly wouldn't want to see is this DNA information being given to private insurance companies that could deny insurance to people because they have a gene that says that you're 80% possibility through genetic interface of having this particular type of cancer or you have a liver disease problem within your genetic background or those types of things.

The other issue that came up was for God's sake don't give this information to people who want to sell you something or want to use that information for their own private profit-making purposes. At least keep it within the criminal justice element to take these criminals off the street.

So we have all these issues that we have to worry about. We can get our heads laid to us real quick if we jump out there even though we may be doing the right thing in some cases if they think this information is going to leak out to insurance companies or anybody else on the side. It's not a very good feeling to be sitting in an elected office and have these people and organizations swoop down on you saying you may have started out doing good, but you've ended up going in the wrong direction.

So we've got to be very careful about it. We have added in Florida Chapter 943.325 started in 1989, so it's not -- I mean we didn't just start all of this. It included sexual battery and lewd and indecent exposure to juveniles. The database began in 1990. By '93 we had started collecting from homicide and attempted homicide individuals. By '95, my first year in the Florida legislature, I helped to cosponsor some of this legislation that added carjacking, home invasion, robberies, and aggravated battery to that list that the collections can be made, and then, of course, we brought it down to this year where we added burglary.

When you're talking about these issues, what helped us to sell it was having all of these people for it and then throw in one little percentage, and that was when Florida Department of Law Enforcement said that 56% of all the people who are arrested, convicted, and in prison for burglary had committed sex crimes. That is where we begin to win the battle because when you can start to show tie-ins from starting out as a burglar to eventually getting brave enough when you get away with all that to start committing sex crimes and, of course, we all know in law enforcement sooner or later someone breaking into someone else's home is going to confront somebody in your family in that house and guess what is going to happen? They're either going to be beat beyond comprehension and hurt badly or they're going to be killed because that person

can't afford to walk out of that house and be identified, especially if they're a second or third time offender.

In Florida we have lowered the boom on repeat offenders. Three strikes and you're out. I helped sponsor that. That's in effect right now. You commit three serious crimes, felony crimes in the State of Florida, you're going to spend some serious time in prison. They know that. That makes them a little edgy. We voted in to stop turning out poisoners in the State of Florida. You add all of this to what we've already done, and these people are going to get antsy about being caught, which says in stop turning out prisoners they have to serve 85% of their sentence. Even if they're the best model prisoner that the prison system has, they're going to spend 85% of their sentence in prison.

They get a little antsy about getting caught, which means you're going to have more and more people committing violent crimes because of it; however, the great part about this DNA process in my opinion is you are taking the worst of the worst, and it's only probably 15, 20 percent of the real bad guys who are committing hundreds of crimes in many states or you're going to take those people off the street for a long time and protect citizens.

So it's the opinion of most within the legislative process it's worth getting beat on by ACLU and some of these more liberal groups as to why you should do this to protect your families, your friends, your neighbors from these repeat offenders.

So getting bills done in the legislative process -- and I don't imagine any of you here from any state in this country, your legislature is much different than ours in Florida. It's the same train with the same type of engine driving the train, and it's usually public comment. It's usually groups like the sheriffs, the police chiefs, various organizations that get together that want to take care of a problem that drive that train, but there has to be some confidence when you get done first of all that you're -- we have to be ever mindful that we're not violating the Fourth and Fifth Amendments to the Constitution.

I was telling Chief Chandler back there one of the issues I'm waiting to come to the Supreme Court is whether or not now that DNA is such a sure bet by most jurists' opinion as to whether you're guilty or not, whether the taking of the DNA since it's almost a sure thing can be challenged under the Fifth Amendment now.

It was brought up, well, we take fingerprints and we've managed to get by that, but in my opinion DNA is a little bit sharper than fingerprints when it comes to matching up and showing the convictions. I would be willing to bet you it's going to go to court at some point in time depending on how many convictions and how many people are going to make that challenge, but it will be challenged. So we have to be ever mindful that we don't include so many things from the legislative arena that people feel the Orwellian society has finally gotten here because that scares people.

We've seen in Florida and I guess it's this way around the country that people still distrust government. I don't care if it's local, state, or federal government. When these types of issues with police forces as big as we have in this country are organized to fight crime, it's not just the

criminals -- I mean they certainly don't want to protect criminals, but they get so afraid of being watched by government, and we have to be ever mindful that there is still that group of people out there, a large group of people who are a little bit standoffish when it comes to big government.

So those are some of the issues that we have to face when we pass a bill, but when you show 50% of those who burglarize homes commit sex crimes, I can guarantee you there are a lot of women in the State of Florida who want to see this bill go through. So you've got to get the right forces behind you to get these passed, and that's what it takes. If you have your sheriffs and your police chiefs that don't work together that well, this may be a chance because most of them want to put those people behind bars that need to be there. Maybe this is their chance to pull together and work together to get their legislators to stick their necks out and fight for those types of bills to protect the public.

So I appreciate the opportunity to come here and speak with you today.

DR. BOYD: Do we have any questions? There don't appear to be any, so I want to thank you for two interesting presentations, and I'll turn it back over to your attorney and I'll save the next lawyer joke for the next meeting.

MR. ASPLEN: Thank you, folks. We appreciate that. That's kind of the whole point right there. We've talked what about the goal is and the solution to the problems that we've identified, and this is important information as we kind of work towards solving those problems. Let's take a short break and then we will set up for our last push for the day.

(Whereupon a brief break was taken.)

## LAW ENFORCEMENT AND THE CRIME LABORATORY: WORKING TOGETHER TO SOLVE CRIMES

MR. ASPLEN: While all the issues that we've discussed are very important, the issue that we're going to talk about now is perhaps one of the most critical in that we've talked a tremendous amount about how to educate your law enforcement officers to do more and to collect more samples, and then the next big question, necessarily what if they do collect all of that stuff that we're asking them to collect? The laboratories are going to be obviously in worse shape than we are right now. So a premium is necessarily going to be placed on law enforcement and the laboratories. So we're going to have Chief Cronin and Lucy Davis talk about those things.

Let me just say a little bit about Chief Cronin, and it is with great pride and pleasure that I call him Chief Cronin. As the Chicago department pointed out, Tom was his point person in the crime scene working group both when the superintendent could be there and when he couldn't be there. He offered top services early on, and we have used his services quite extensively ever since then.

Tom has been in law enforcement 31 years, and we were very pleased about a month or two ago to learn that Tom had been selected as the chief of police of Coeur d'Alene, which he refers to as God's country, and a debt of gratitude to Tom for all of his work and help.

MR. CRONIN: Chris asked me to speak about partnership between law enforcement and the crime lab. I started thinking back when I was a young detective many, many years ago, actually before I had gray hair. I was on the north side of Chicago, and we had a homicide in one of those homes where it would have been a nicer homicide if it was committed at the city dump. We had a newfangled machine on a mobile crime lab, one of those vacuum cleaners. So my partner and I walked around the body. They were talking yesterday. We circled the body, circled the wagons, and looked around and said hairs and fibers. We will solve this case. So we asked the crime lab guy to vacuum around the body here. Then, well, the offender probably came in from that way, so just vacuum this part of the room. Well, then the offender had to have come through the dining room, so we vacuumed the dining room and the kitchen. We vacuumed three whole rooms.

We sent it to the lab. You know it took months and months of flowers, pizzas, gifts to get anybody in the lab to talk to us anymore. Mary Capruso, who now works for Sam Nolen, the director of the State Police, wouldn't even take our calls. The case never got solved. I haven't figured out how that happened.





Anyway we wanted to talk a little bit -- I'm not going to spend a lot of time because Lucy and I were told when we're finished, we're supposed to turn the rest of the lights off because I guess the rest of the building is also gone. One of the things that I'm very proud of being part of the working group, the crime scene working group was this little pamphlet that we put out, What Every Law Enforcement Officer Should Know About DNA Evidence. A million copies have been distributed, and as you heard the Attorney General this morning, they've asked for 500,000 more copies.

What I just found out a couple of weeks ago at the DNA, the full commission meeting, was not just an important piece of information for law enforcement. Other sections of the criminal justice system and victim advocate groups have found this so very concise. It took a very complicated subject matter and put it very simplified. So that's some of the reasons it's so popular.

We were talking about that CD ROM that you saw this morning, the beginning one for our first responders, and next month we're finishing up on the second CD ROM, which will take those same scenarios and go from the first responders, and basically if you kind of paid attention to it it was don't touch. We used to tell people when you come to crime scenes, the best thing to do is put your hands in your pocket. Don't touch anything. The second CD ROM, however, will cover a little little bit more for the crime scenes and evidence techs.

Along with the combination of more police, we've seen with all the cops, more cops, the grant monies and everything anywhere from 40,000 to 100,000 more police officers on the street. Well, they're doing stuff. They're going to crime scenes and they're picking stuff up. That's what we do, we pick stuff up. They're sending it to the labs. We never funded the labs. We have 100,000 more police officers sending stuff in, but we didn't fund any more. Coupled with the more information -- I'm not just talking about the information from the DNA Commission, the pamphlet, the CD ROMs, but if you look at and you see magazine articles, news articles, the Internet, TV movies, how many times have you seen a police officer go right to a movie and see one of these brand new futuristic movies and then the next month it's you guys in the lab, can you do this thing? They want it done immediately. We're overwhelming the police officers with more information.

Couple that with the backlog. I think that most states -- I think Paul Ferrara and David Kaufman from Florida -- Paul Ferrara from Virginia are probably one of the few states that don't have a backlog. Everybody else has got a backlog.

I've got to tell a quick story. A couple of months ago I was still with the Chicago Police Department. I was commander of the forensic services division, and Superintendent Hillard asked me to go to Springfield to help our friend director Sam Nolen with the Illinois State Police. The superintendent called me up and said said you've got to go down to Springfield and try to talk to the house appropriations committee and get some more money for the State Police because they have \$4.3 million I think it was they needed to clear up their backlog. The backlog was caused by the Chicago Police Department. About 85% of it was caused by us.

So I went down there and I did my part and left there, and I felt really good. The next day I got a call saying, yes, the house appropriations committee listened to what you said and they gave the

State Police \$4.3 million. I was really pretty proud of myself. I'm thinking while I was down there I should have got some for money for us, but I didn't.

About a month later I meet Director Nolen at another conference, and he walks up to me and he says thank you very much for the DNA money. I shook his hand, and he says, but now you owe me 100 squad cars. See, the legislation gave \$4.3 million; they just took it out of another part of his budget. So I'm still working on trying to get him some cars for the Illinois State Police.

What this all equals is massive overload to the labs. What we need to talk to the legislation about is the previous panel talked about new monies, separate monies. What I want to talk about very briefly is partnerships. We talk about true partnerships between the first responders and the crime scene techs, a dialogue of what they heard, what they saw, what they learned when they got there to talk to the crime scene techs., to narrow or expand the search. Then we also talk about the partnership between the detectives and the crime scene techs.

Many times as the commander of the forensic services division in Chicago I was in charge of all the crime scenes in the city, and the detectives would say, I want this, take that, take this, and my guys, the forensic guys would say why? They weren't questioning. They weren't throwing the gauntlet down to the detective. They really wanted to know where you want to direct it at the lab. We're trying to get it directed to the right place so there weren't so many problems. More importantly we need the detectives and the crime lab personnel talking.

Somebody sent up this morning a very valid point. Instead of the lab technicians just doing almost factory kind of work when you go in there -- it was Clay Strange -- when you go in and talk to the lab techs. and set up some system where your detectives can talk to the lab techs., it becomes not just root work for them; they get an ownership of that case. They're much more inclined to do a better job because they understand the case. It's not just a piece of physical evidence in front of them. That's very important.

A couple of weeks ago at the DNA Commission Darrell Sanders -- I think he has already left, but his favorite friend, Barry Scheck, had brought up the point about the neutrality of the lab, so I promised that I would say something about that.

This system that we want, this partnership of talking from the detectives talking to the crime lab people, is not to infringe on that neutrality, but it's actually going to help them manage their resources better. See, physical evidence doesn't care what side it's on. Physical evidence is an inanimate object. It tells a story. Our job is to find the evidence, to collect it, to have it properly analyzed and tell our side of the story, the more compelling side of the story, as several people have talked about this morning, which I love, the truth, the good side of the story.

Have you ever wondered how -- and I know my former superintendent talked about it this morning -- how quick things can get done in the lab when a heater case comes along, when the real pressure is on? I know I have had to call the state lab several times when it was one of those cases that the superintendent when he gets out of his car in the morning, the press is already there asking him questions about something that just happened within the last two hours, and so miraculously the lab has got to get the results done, and they do, but they do that at an expense,

and the expense is all the other cases that you've got sitting in the lab. Something has got to stop. Something has got to be put on the back burner.

What we kind of hope to do is once the backlog gets erased, once adequate funding is done for the lab, and once the law enforcement, the police officers, detectives start communicating better with the lab people that the time frame for heater cases will be our regular cases, that we won't be waiting six, nine, ten, 12 months, that in a couple of weeks our normal cases will be done. That's kind of the hope of many of us who have been doing this for a long time.

You don't have to be a rocket scientist, you don't have to be a brain surgeon to realize that if we don't start working better, we're only going to benefit the bad guys. It's our chance to work together, these partnerships that they talk about.

I said to Lucy I was going to cut it down as quickly as possible because I think we have to pay if we're here any longer, so I'm going to introduce Lucy Davis. Lucy Davis is the DNA section supervisor from the Kentucky State Police forensic laboratory in Frankford, Kentucky. She holds a bachelor's degree from the University of Kentucky. She's trained in conventional serology, hair analysis, blood splatter, and DNA analysis.

MS. DAVIS: I will say for all of those meetings that I have gone to and I left an hour or two early, I apologize to those people. I now realize that I will stay until the very end from here on out, bottom line.

When Chris called me the other day and asked me if I would give this presentation, I said, Okay. Who told you about my soap box? Who has listened to me before talk about this particular issue as it relates to the forensic DNA laboratories? The reason why I think I was picked is because I'm known perhaps lovingly in the State of Kentucky as the evidence Nazi. I'm the head of the DNA section. I'm the one who sits there and says what evidence gets looked at for DNA testing and what evidence doesn't.



The other day I had one of my analysts come to me, and she was fairly upset. She goes, Lucy, I have this murder case that I did six exhibits on for DNA. Eddie has a burglary case and he did eight. I don't think that's right than he got to do more evidence on a burglary case over my homicide. I said, Okay. We're going to have to go over this and look at this again.

Basically I am going to go through and explain to you all some of the issues as it relates to us down on the bench in the forensic laboratories and especially in the DNA section. You all are the

law enforcement officers, so I'm going to start out with the crime scene. I will also tell you that when I talked to the officer and asked him for the pictures of a homicide scene and told him I was going to give a presentation at a national convention, he was so excited. I'll drive 45 minutes to bring the pictures to you and let you go over them and pick out what you want to use. Then when he got there, and when I told him I was going to use him as a bad example, he really wasn't that pleased with me.

Basically what we have is a homicide. You go in and there is a female found dead on her couch. First of all, the cause of death in this particular case, if you haven't figured it out very quickly, the scissors protruding from the victim's neck is usually a good hint as to what caused this victim's death. We started looking at this and looking at this whole evidence. What evidence do you really need to analyze in this particular case? Well, those scissors, that's a clue. Let's look at those. Well, when we looked at the scissors, we managed to find a fingerprint.

One of my biggest complaints about databases is that this is the second case where AFIS made the database bit before the DNA section did. AFIS got the hit off the fingerprint off the scissors and was able to identify a suspect. We have the name of the suspect due to his fingerprints on the weapon again sticking in her neck.

We also go and look, a sexual assault kit. Apparently there may be some sexual indications on this case. A sexual assault kit was taken at autopsy. There was no indication of any type of sexual assault, So we have no semen in the victim's vaginal cavity.

So looking at this as a law enforcement officer, what evidence do you need to collect? Those little yellow placards around the room kind of give you a hint to what was collected. We've collected or not we, the officer, the washcloth, the blue cup, a white T shirt on the top. There is a blue pillow laying over top the victim's face. There was a blood stain on the coffee table. There was another blue pillow laying next to the victim's legs. There is blood on the lampshade. There is a hair laying on the couch. There is a blood stain also on the couch armrest. There is on Exhibit 17 a blood stain on the victim's arm. I'll go to where that gets to be important in a little bit. There is another blood stain on the end table, Exhibit 18, and there are three bloody cushions from the couch that all are considered part of the evidence and collected by the law enforcement officer.

All of this is important evidence and it does need to be collected, and looking at the scene and seeing what we can prove by looking at it all, you look at the blood, you do the blood typing. Now, the cushions and that type of stuff seeing if we can find semen to see if there was a sexual assault or something along those lines. We take those and we look for those particular items.

What I was going to say and Dr. Ferrara talked about this earlier in one of their cases where he talked about and the analyst found a second type going through the back of that taxicab. Analysts and evidence technicians are trained to start to look for blood stains that may be different. In this particular case you will notice this particular blood stain on the victim's arm, smear, that type of stuff, is pretty consistent looking like the victim's blood possibly from she moved her arm across. We have this other blood stain here. That blood stain, you can look at it. You're trained

investigators. It looks different, and fortunately the people in the evidence collection noticed this on the body and collected it, and it is a different blood type.

The blood stain on the victim's arm, the DNA profile does match our suspect's DNA profile. So apparently when he was sawing on her neck with the scissors trying to kill her, he cut himself in the same manner and he managed to bleed on her. So now we have a blood stain on the victim's arm that matches the suspect's DNA profile.

Looking at the case and what you're trying to do and what you're trying to prove, you may want to document your suspect's movements through the house. In this particular case you go to the bathroom. You can see blood there by the sink. Apparently he has gone there to clean up. It's easy to show that he moved around. We know our dead victim apparently died on that couch. She's not going to get up, walk off the couch, go to the bathroom, clean up, and go back to the couch more than likely. So this is going to be documenting him.

You look at those types of stuff. Also, though, when you look at the bathroom, you have this blood stain on the bathroom floor. We've already got his blood by the sink. Do you really need to type the blood that's on the floor in the bathroom also?

So go through, look at all that. What about the other evidence? What other evidence do you need to look at and collect? In Exhibit 13 that hair on the couch, hair comparisons, I have done my share of them. Let me ask you, what is the implication to your case of a foreign hair on that couch? I'm not going to be able to say when this hair was put there. I'm not going to be able to say what relationship it had to the crime or not. I will guarantee you there will be foreign hair on that couch that I will never be able to account for. So if I have the other evidence that I have, do I really need to spend time and effort doing hair comparisons on something that may not ever help prove your case or not prove your case?

The semen stains, in this particular case we did find a semen stain on Exhibit 7 on the pillow. That semen stain ended up matching the victim and her husband's DNA profile from her husband, not in any way connected with the suspect at all. That's the only semen stain present anywhere near that particular crime scene. So we've analyzed that piece of exhibit.

More blood typing. How much blood do you want me to type in this particular room to prove your case? This is what I try to tell my officers. What is reasonable doubt? What scientifically can I have you realize is reasonable doubt? The suspect's fingerprints on the scissors. You have got the suspect's blood on the victim's arm with frequency of occurrence of one person in 1.9 quadrillion. You have a semen stain that matches the victim and the husband. If you want to sit there and say, well, maybe the husband had something to do with this since his semen stain was on the couch, on a side note when you go and you look at the rest of the investigative thing and you realize that usually a lot of our crimes we don't deal with the cream of society -- this victim's husband was killed three days earlier in a drive-by drug shooting. He recently had gotten out of jail, and the suspect apparently was one of her husband's friends, and when he found out that she was inconsolable in her grief over her dead husband, he came to console her. Apparently she didn't want to be consoled by him, and he decided to kill her, along those lines.



So the husband's semen being on the couch has absolutely nothing to do with the case. So how much do you need to prove your case? How much do you need from me to prove your case? This is the garbage can in the bathroom. There are Kleenex in this garbage can that have blood on them. Do you really need me to type that blood in that garbage can? If I find a third blood type in that garbage can for whatever reason, how is that going to change your defendant's story? He's going to have to explain -- if he explains that I was there at the house, I picked up the scissors, that's how my fingerprints got on the scissors, and then I left, he might be able to explain that. When you ask him how did your blood get on her arm? When I picked up the scissors, I cut myself, and I bled on her, and then I left, but I guess she didn't wash my blood off her body before somebody else came in and killed her. You've got to be reasonable in some of this type of evidence and what we really look at.

So coming from somebody in the laboratory, what all do you want and what can we do for you? Before you start to tar and feather me and before you pull out your guns and start to shoot me over all of this, I am not telling you not to collect the evidence. If you want to go ahead and collect every piece of exhibit out there, go ahead and collect it. Please do. It's better to collect it and have it than not collect it and lose it is the bottom line. You can collect it, but just because you've collected all those exhibits, that does not mean that the laboratory has to do the analysis on all of them. You can take them and you can keep them.

The next thing the law enforcement officers say to me, they will come back and say okay. You know what is going to happen if I have this blood stain at the scene and you haven't done DNA testing on it? The defense attorney is going to come back to me and say that blood spot is going to exonerate my client. You need to test that blood spot.

We have had that happen to us before. I've politely turned around to the defense attorney and looked at him said, Mr. Defense Attorney, if that blood spot is going to exonerate your client, I'm sure this judge sitting here, who has already given you \$5,000 for that expert that's sitting beside you feeding you questions to ask me -- if he has a given you \$5,000 for this expert witness to help you, I am sure he is willing to give you money to take that one blood stain and examine it and exonerate your client. I will be more than happy to let you have that stain and do it. So far I've gotten away with that in Kentucky, and they usually don't push it after that. So you look at and try to work it that type of way and show them we do not have the resources to do it.

On this particular case, like I said, the detective was a little upset with me. He brought in 41 exhibits for us to do DNA testing on. We did DNA testing on three unknowns and three known standards and that's it. Our laboratory does still use some conventional serology to do our screening, so we know what we're looking for, but that's it, and he feels confident that we have proven his case enough for him that he can go to court with it.

Another thing about going to court, I will tell you in Kentucky we have been doing DNA testing since 1990. Kentucky, believe it or not, has one of the most liberal Supreme Courts. It took seven years to get a blanket Supreme Court ruling accepting DNA testing, but since we got that blanket ruling, which was a year and a half ago, we have only gone to court twice.



People ask me what the biggest impact is on DNA on my laboratory. The biggest impact apparently is it jogs a lot of suspects' memories. By the time we come back they know the DNA testing is going to be admitted. They were saying first of all I have no idea who she was. I have no idea why she would say that. The next thing they're saying is oh, yeah, that girl. She fell in love with me. She was all over me. That's how come I did it, like the case earlier where he was walking down the street, there was a semen stain there, and the victim went by and spit on top of his semen stain. They come up with some good stories along those lines.

So you need to look at this type of evidence and what they are going to say to disprove it. Why am I a DNA Nazi? Why do I not let that much evidence in? This is a partial list of the consumable items I use in my laboratory to do DNA testing. This is a list of what I have to use to do a three exhibit rape case, a vaginal swab, a victim, and a suspect. From the extraction tubes, from the amplification tubes, if you will notice, down here the profiler and cofiler reagents cost me almost \$350 for a three exhibit case. You see I have to do ten amplifications. The reason why I do ten of those is because out of the three to four exhibits I end up getting I have to run six different controls to prove that I'm doing it right. This is to prove it to the defense bar. So a lot of the stuff starts to add up in cost along those lines.

So what is the cost of the laboratory to do this? For a basic three exhibit rape case in consumable reagents alone it's \$165 per sample. That's approximately \$500 a case. That's how come I'm so neurotic about not doing that many exhibits on a case.

The first time I presented some of these figures to my commander in my laboratory my commander I thought was going to pull out his gun and shoot me, and then once he got over this he looked at me said, well, this just goes to show you we are going to have to start charging the local PDs to do their DNA testing. The Kentucky State Police Forensic Laboratory is the only laboratory in the State of Kentucky. We are run by the State Police, but 65% of the work we do comes from the local PDs, and we provide it to them at no charge. So he looks at me and says, well, this kind of money we're going to have to start charging them, and I started laughing. I said you tell them that you're going to charge them to do DNA testing; I'm not going to tell them that. So finally the State Police decided they were going to swallow it and start to pay what they need to pay.

With a basic cost like this -- and I'm saying that's basic cost. That does not include my start-up cost, purchasing equipment, all of those fundings. We have basically set up our DNA laboratory by grant funding. Between NIJ and Burn Grant Money we've set up a full STR typing laboratory. So that money is not included in that cost. That does not include my stellar salary that the State pays me, which trust me is not that big, any of the benefits, any of the physical plants that come along.

I will admit different cases, different numbers will make that number fluctuate. I can get that number down by batching cases. The one thing when it comes to case work, you don't want to batch too many cases because then you come into the possibility of switching samples, and always the bottom line as I tell my analysts is you've got to cover your butt for going into the courtroom, and if I don't cover it and make sure that there is no possible way we could have switched -- we do not allow our analysts to work simultaneously on more than three cases, and I

feel like I'm pushing it by letting them work on three cases at the same time. So those issues make it difficult to make that number smaller.

Also there are some other considerations that we've already talked about, analysts' time. There is a time out for the courtroom system, but there are also other issues. The amount of time it takes to run these tests is decreasing. When I first started this back in 1988, it took me literally three months to get the final results off. Grant you now with the PCR and STR technologies I can do nine genetic markers simultaneously. I can pretty much analytically get those answers in three to four days. That's true. But if I have to batch my cases to get my numbers down, that's going to slow down the analysis time.

I will also tell you most of our case jackets are between 45 and 50 pages in length, and putting those case jackets together, getting all that documentation to cover what we do are required for when the defense experts come in and want to re-examine our case jackets to make sure we do it correctly. That takes time. It takes the analyst time to do it. It takes the analyst time to go back and make sure the reviews are done.

Also another thing that we've talked about and mentioned here today is backlogs, backlogs of cases and prioritizing of cases. Like you said earlier, yeah, I can spit out that hot case in a turnaround time of five to six days, but everything else in my laboratory shuts down. No other cases get put out, and that makes the backlog go higher and higher. Also I fully believe in the analysis of cold cases. I think looking at old evidence is very important, and I've got a few cold cases that are near and dear to my heart we pulled out, but if I'm examining your cold case, his case that he's got a suspect out on the street is not getting examined at that point in time.

So we have to make choices about what the priority of the cases are that we run, and as long as we look at all these issues until we have additional personnel and additional funding to cover these particular costs of these cases I can't change that. I've got to look at what is going to be the most benefit to the community at this particular point in time. If I can take an active suspect off the street first, that's going to be my priority over the other cases.

I will also tell you I cringe when I hear discussions of DNA testing off honeybuns, picking up toothpicks at a crime scene, vomit, feces, all that type of stuff. Yes, there is evidence there and there is maybe some good evidence there, and if you come in and convince me that there is good evidence there, we'll work it, but I'll tell you that type of stuff still takes more analyst time and slows us down on getting the rest of those cases out.

So what can we do now to make the system work for everybody? What can we do? That has already been discussed. The one way to do it is to start talking to each other. As I was explaining to them earlier, we had a detective in the State of Kentucky that knew how to work his laboratory. Whenever he had a major homicide, he would collect all of his evidence, bring it in, and he would also bring in a loaf of homemade bread. When he showed up at that door, we came running. We would sit down with him, talk about his case, go over the case with him, eat the bread. We were happy. We were happy to work on it. So now I tell my law enforcement officers what is the best way to get the most out of your laboratory? Bring chocolate. Chocolate works wonders in our laboratory. We are very happy.

About two months ago we got a package from one of the local PDs. It was wrapped as evidence. It was addressed to the DNA section. One of the analysts received it as evidence, signed it all in, opened it up, and it was a five pound box of Godiva chocolate. That PD gets anything from us any more. We'll do any of their evidence.

Basically the bottom line of that is you need to discuss with the laboratory what you need in your case scientifically. What is going to be probative to your case? I know a lot of jurisdictions use evidence techs. The officers do it, they take it into the laboratory, and what you're going to say is that's going to take a whole lot more time. If I take my time to go to the laboratory, sit down and talk to the laboratory analyst, that's going to slow me down. I've got better things to do.

Well, it's better to spend the time at the front end of the case than to wait until the end of the case and maybe miss something. If you come in and talk to us then, we can then sit down and work and find out what is going to be the most probative to your case.

Along this line you may want to go ahead at the beginning and discuss and consult with the attorneys in the case, what are they going to need. The bottom line is what we're going to do is can we keep the word "reasonable" in this equation and how do we keep the word "reasonable"? I give credit to the law enforcement community of having intelligent people out there. I know you all know what is reasonable, what is excessive. So if we get the law enforcement officer, we get the laboratory analyst, we get the attorneys -- and if you notice, I said pleural attorneys. I'm not just talking the prosecuting attorney. I would rather deal with the defense attorney up front in the beginning than to wait until the end and have to deal with him. Get the attorneys involved and also the judge.

I am seeing more and more the bottom line of the person to try to make this a reasonable thing is the judge. He's the one who makes the determinations of what is in, what is out, what is going to be reasonable, what I give to the defense, what I don't give to the defense. So even if in the beginning we need to get the judges into this, let's go ahead and get them into it and let them figure out what we're going to do.

Also I get these times, I've got a case, a little bit of sample, the defense called, they want us to hold the exhibits. The defense calls and says I want my defense expert in the laboratory watching you do the examination from here on out. It is our standard policy now at this point in time when they start doing that I say, here is the stain that everybody is so worried about. Prosecutor, here are the names of three private companies that can do DNA testing. Defense attorney, you pick three companies that you want to have. Mr. Judge, you make the determination. I have absolutely no problem with not working the evidence. If they have doubts over whether or not I can do it, let the two attorneys pick a neutral lab, choose their lab, and let somebody else do it and do the work.

The bottom line is, like we said earlier, I don't have a dog in this fight. I don't care whether the suspect is guilty or innocent. The only bottom line of what I'm looking at is what the scientific truth is, and that's all I do. That's all I care about. So if they don't trust me and they want somebody else to do the examination, here. That's one less case I have to work.

But we need to get the lawyers and the judges and law enforcement working with the laboratory so we can settle these things down and maybe end up getting more of the evidence through, freeing up more of the analysts' time, and then we can go back and look at some of these cold cases, take in these unsolved cases because I know that's where the big impact in law enforcement really is going to be.

So thank you.

MR. CRONIN: I was interested to note that Lucy is the DNA Nazi. I think that's the only Nazi I don't have in Northern Idaho. I've got the rest of them. I don't have the DNA Nazis. I'll hear about that I'm sure.

The next segment is I have a case from the Alexandria Police Department. I'm going to introduce Mr. David Baker. He's the deputy chief of the police department since February of 1991. He completed more than 20 years of service with the Washington, D.C., Metropolitan Police Department prior to his appointment to Alexandria and retired at the rank of captain at the special operations division.

He has completed extensive professional training, including the 139th session of the FBI National Academy, U.S. Secret Service Dignity Protection School, and at the Police Executive Leadership Program at the University of Richmond's Chespin School of Leadership. He holds an associate's degree in administration of justice, a bachelor's degree in leadership, criminal justice management from George Mason University.

Also with him is Charles Bailey, who has served as the Alexandria Police Department's identification section commander since 1996. He has completed 23 years of service. When he was with the Metropolitan Police Department, he retired from the criminal investigation division at the rank of lieutenant. During his career at the D.C. Police Department he served nine years as a crime scene evidence technician, and as lieutenant he served five years in the department's homicide branch. Before retiring in 1995 he served four years as the commander of the forensic services section. In 1990 he graduated from the FBI Academy. He holds a bachelor's degree in the administration of justice from George Mason. He's a member of the International Association of Identification. Please welcome the two gentlemen from the Alexandria Police Department.

MR. BAKER: With all his introductions and all, I guess it's time to leave.

I'm really glad to be here. I know that it's 4 o'clock and it's Friday and there are just a few of you diehards left, and I know you want to get out of here. I have been there and done that. You've gone through two days of fairly technical stuff, so I'm going to try to be short and simple, but I'm going to try to give you some stuff that will tell you practically how this stuff works in the police department. So bear with me. I promise you're going to get out in time to go to happy hour. I can't vouch for Charlie, though.

They've asked me to talk about a case or any case where DNA might have been significant, and let me start by saying that some of you might know that the Alexandria police are currently investigating the murder of an 8-year-old child in Alexandria, Kevin Shiflett. If you have been

reading the papers and following this case in the papers, and my good friend -- I can't see him because of the lights -- John White from The Post came in, so I know he's here. If you have been following the accounts in the paper, you know that the analysis of DNA may well prove to be one of the most significant factors in our ability to close this case.

I think when the case is concluded and you have another session like this, this would be a good case to talk about for two reasons, one, the conduct of the investigation because it's very complex, and then, of course, the DNA component, but I'm not going to talk about it. I can't because many of you know that it's ongoing. We've got a lot of material. Lucy talked about this. We've got a lot of material at the lab that still has to be analyzed. We have not yet named a suspect in that case even though the papers have. I don't mean that, Josh, badly, wherever you are. So I don't want to talk about it right now, but I hope we do get a chance to talk about it.

I do want to talk about another case where DNA was a significant factor in our ability to close the case. That's the June 1998 murder of Mary Jean Wilcox. When I go over this case, I hope that my review kind of provides you with kind of a practical -- I give you a practical view of the importance of DNA, but more importantly, the important relationship in communication needs to take place between police evidence technicians, investigators, and people at the lab that are processing the evidence. Charlie will go into a little bit more detail about that.

I'm going to first give you the facts of the case, and then I'm going to talk about very briefly why the case was initially difficult, and then I'll conclude with talking about what was the significance of DNA in our ability to solve the case. Then I'll ask Charlie to talk more about this new thinking in evidence collection because of DNA and then again how important this coordination in communication relationship is between the lab and evidence technicians, and I hope you get something out of it.

Let me give you the facts of the case. This will sound like a police blotter, so if I get too Drag Netty, raise your hand and I will try to make it more interesting. But listen to the facts because they're interesting.

On the morning of June 29, 1998, Mary Jean Wilcox, she's 44 years old, lives in Alexandria, reported for work at her place of employment, the 2800 block of Duke Street in Alexandria. She was almost always the first person to arrive, and she was again this morning. She entered the office complex and placed her purse and other belongings on her desk, and then she punched in on the office time clock at 7:19 a.m.

At 7:35, not very much later, a courier arrived to pick up bank deposits from the previous day, and he entered the business and he found Miss Wilcox lying on the floor covered with blood in an area where there was also a large amount of blood on the floor and walls. Nobody else was in the office. No other employees were in the office. When the courier came in and saw what he saw, he ran out and use his cell phone and called the police.

The investigators determined that the office was accessible by entry through a door that was alarmed and that employees of the business had keys to enter the business and they also all had knowledge of the alarm code. There were no signs of forced entry, and there was nothing

disturbed. The only thing that was disturbed was there was a small cash box and a set of keys on the floor in an office adjacent to where the cash box was usually kept.

On July 8, 1998, an autopsy was conducted, which revealed that Miss Wilcox had sustained 101 stab wounds to her head, face, neck, chest, and had sustained substantial injury to her brain, heart, and lungs. Think about this. She came in at 7:19. 7:37 is when the courier got there. She sustained substantial injury to her brain, heart, and lungs. In addition she suffered multiple skull fractures, fractures of her right and left fifth fingers, amputation of her left second fingertip, and substantial bruises and abrasions to her face, neck, back, and extremities.

The medical examiner concluded that the cause of death was multiple stab wounds and noted that seven of the 101 stab wounds were individually fatal or could have been individually fatal. The number of wounds observed on the hands and arms of Miss Wilcox were classified as defensive wounds, and this finding was consistent with initial observations at the crime scene where we observed a large amount of blood over a wide area, indicating that Miss Wilcox had a violent struggle with her attacker. Blood stains were also found in the kitchen area adjacent to the room where the victim's body was discovered, and it was determined the attack began in the kitchen. Actually what happened is she got hit on the head with a hammer in the kitchen and fell into the next room where the murder occurred. The violent nature of the struggle was substantiated by the fact that several of the victim's teeth were knocked out and the diamond from her ring was dislodged and found on the floor.

As a routine part of the investigation the detectives interviewed all of the employees of the business, including a coworker of Miss Wilcox named Roy Green. Green had worked at the business for approximately ten years and reportedly had a good working relationship with Miss Wilcox, and in the days immediately following the murder our detectives interviewed Green.

He initially became very emotional to the point where he couldn't continue the interview. He said he was distraught because Miss Wilcox was his friend and coworker, which at the time seemed to be a fairly reasonable and plausible answer. Green eventually told detectives that he was home at the time of the murder and that he didn't learn of the Wilcox death until he came to work in the afternoon of June 29, which was the day of the murder.

Several days later Green disappeared from the area leaving his residence at his sister's home without telling her where he was going and leaving his employment without notice and without claiming his last paycheck. We looked at Green early. We were looking at Green early, but this is pretty significant in the case because he vanished.

He was gone for a year. For the following year, for an entire year we, of course, were interested in questioning Green about the murder, but we couldn't locate him. Members of his family including his parents and his sisters and contacts that we had found out about, nobody knew where this guy was and they had not heard from him. But in seeking to interview Green detectives went to Green's sister's home, which is where he lived at the time of the homicide, and she allowed them to look in the room where Green had stayed and kept his belongings.



When they went in and they looked around, they didn't see anything usual. They were there on a consent without a warrant. Nothing was really discovered and nothing was seized. On September 21, 1998, we received a report of analysis from the Virginia division of forensic science in which a shoe print left in blood at the crime scene was determined to have come from a Reebok athletic shoe. Detectives who had visited the home earlier, actually several months earlier recalled seeing a Reebok shoe among the belongings of Roy Green, so they went out and got a search warrant, and they subsequently obtained and seized a pair of Reebok athletic shoes from Green's sister's home.

An initial analysis of the shoes revealed nothing other than they were the same brand, Reebok. The print -- you all know more than I do about this, but the print didn't match, but the brand characteristic did.

Now, although the detectives and lab technicians had communicated frequently about the analysis of evidence already collected and submitted -- and Charlie will talk about that; we do that a lot -- here we worked closely to reprioritize the sequence and character of the analysis. What I mean by that is they got together and talked about a new theory, talked about something that they knew about in the case, so now the analysis at the lab included the extraction of DNA material from inside the shoes. The DNA was used to render a profile of DNA attributable to the owner of the shoes believed, of course, to be at that time Roy Green.

Detectives subsequently received a report of analysis from the lab indicating that the DNA profile extracted from inside the shoes that were seized from the defendant's bedroom was consistent with previously unidentified DNA material recovered at the scene of the homicide inside the purse belonging to Miss Wilcox.

Following receipt of this report Green was charged with murder, and the FBI in Atlanta, Georgia, arrested him on August 3, 1999, 13 months after the murder -- 14 months after the murder. After his arrest detectives obtained a blood sample from Green, which was sent to the lab for additional DNA analysis, and this analysis confirmed the results of earlier testing. The forensic scientist who conducted this test calculated that the likelihood of finding another individual who had the same DNA profile as the defendant Green, which again matched the DNA sample found in the victim's purse, was one in greater than 5.5 billion, which is approximately the world's population. Green pleaded guilty to murder and received a life sentence.

So that's kind of the facts of the case. Why was the case initially difficult for us? First, Green, the suspect, worked in the office for ten years and occupied a desk adjacent to the crime scene, right next to where the murder occurred, and this at least initially limited the value of some of the forensic evidence, including the discovery of Green's fingerprints in various parts of the office, creepy parts of the office where it would have caught him in the old days. There was a shocking level of violence with no apparent motive. This was a huge overkill. There were no witnesses to the crime or the perpetrator's departure from the crime scene, nothing. No murder weapon was ever recovered.

Initially there was an absence of physical evidence at the murder scene that specifically and conclusively linked the suspect to the crime. I mean we zeroed in on Green and a couple of other

people early and we had a ton of stuff, but we couldn't get him there. That's where the pivotal role in my view, and I'm not an analyst at the lab, but that's where the pivotal role of DNA surfaced in this case.

Lucy talked a little bit about this, this relationship. A shoe print made in the victim's blood was properly documented by trained evidence technicians and identified by forensic scientists as being of a certain brand. The reason I put that in there is that there is this whole new thing about training and this collaboration with the lab and the cops on how these scenes are going to be processed particularly since DNA is so prevalent. So that's a big thing.

Secondly, a pair of shoes matching the description was recognized as evidence and seized by detectives investigating the case way after the suspect had left the scene. By the way, he wore another pair of shoes. Most importantly, extensive communication and case coordination between the lab and investigators resulted in the development of a DNA profile from material inside the shoe that conclusively linked the shoe to the suspect. Finally, the previously unidentified DNA material found in the victim's purse matched the owner of the shoe and thusly the suspect of the crime.

So in short the collection and analysis of DNA and in my view how these processes were coordinated and prioritized between those investigating the crime and those processing the evidence at the lab is why we solved this case clearly. I mean if Green shows up ten years later, we might have solved the case, but this is why we solved the case at this point in time.

With that, I promised you I wouldn't talk very long. I would like to introduce Charlie Bailey, who is the commander of our evidence lab, and thank you for listening to me.

MR. BAILEY: Well, at the sake of sounding like a broken record, it looks like from looking at your agenda everybody has already said what I'm about to say in some form or another. I just wanted to add on to what Chief Baker has already said about the importance of coordinating with the lab.

When I started in the forensic science field, my first crime scene was in 1994, so that kind of tells you my age, I guess, but when we started doing crime scenes in '74 here in Washington, there was no such thing as DNA. We really focused on latent fingerprints and we still do, but now DNA can almost be looked at like the fingerprint of the 21st century because now attorneys expect it, juries want it, and now even police agencies are beginning to realize the importance of DNA.

As Chief Baker said, it's so prevalent that those things can't be overlooked, but because DNA analysis is so time consuming, this coordination with the lab and the evidence technician and the detective is absolutely crucial, not only with the Roy Green case, but with the cases that we're currently working on. We're continuously forced to sit down and go over with particularly the DNA analyst each item of evidence and try to prioritize what is going to be examined first and what is going to be examined second.

The reason for that is we're now collecting large volumes of evidence. It's almost getting out of hand because there are so many different types of materials that can contain DNA, the kind of evidence we're looking for, but in the Wilcox case the suspect's DNA, although it was extracted from inside of the lining of his tennis shoes, we didn't submit that to the lab for DNA. We submitted it for comparison with the bloody footprint next to her body, and all they could tell us was that it was a Nike shoe.

It wasn't until we sat down with the lab and talked about this unknown DNA that we found in her purse -- you've got to understand her purse is on her desk, which is about 65 feet from her body, and it just was totally an odd place to have blood. There was blood inside her purse. There was no other blood near her purse for 60 feet.

So we had a theory early on that the killer went through her purse, and we realized from the DNA analyst that the foreign DNA was the killer. So it wasn't until we sat down and talked the case over that the analyst said maybe we can develop a profile from the tennis shoes from the lining, and that's what solved the case. That would never have happened if we didn't sit down and talk about it.

So it's really crucial. Some of the cases we're working on now we have so much evidence that we have to sit down item by item and not only decide what to do the DNA on first, but we also have to decide what test to do first. Should we do it for latent prints first or DNA first because we're finding that either way you go the test can be mutually destructive. So you have to spend time on that.

As Chief Baker said, we found Roy Green's fingerprint on the interior side of the doorknob of the office. As far as I was concerned, I was convinced that he was the last one to open the door. But the fact that his fingerprint was on that doorknob was worthless. We couldn't associate him with the murder because he worked there. That's why DNA was so available in this case.

One of the reasons why this prioritization is so important, as I said before, is that the decision about what to process first has to be a concerted effort on the part of the analyst and the detective and the evidence technician. When you have a piece of evidence where you have to decide, well, what is more valuable to me in this case, the DNA or the fingerprint, and in the last several cases that we've worked we have had to make that decision, but we always made it in conjunction with the other people's opinion. I also ask them what is your opinion? What should we go for, but that communication is always occurring, and I think it should continue to occur.

You may ask who decides which way to go? For us it has always been a collaboration between the analyst -- in our case we also consult with the Commonwealth attorney, the detective, the evidence technician. It really is a cooperative effort, but the way I always look at it is as probability versus possibility. Sometimes they will say, well, it's possible, but it's not very probable, so if you get that kind of response, it kind of leads you to your answer, which way you should go.

The other point I want to make about DNA evidence, while it's obviously beneficial to the prosecution, I think we've also got to keep in mind that absence of DNA in my view can also be

beneficial in the defense. Many times defense attorneys will ask the question after you introduce voluminous evidence defense counsel will have one question: Did you get my client's fingerprint on the crime scene? Your answer is no. He says no further questions.

Now they're asking the same question of DNA. So I think if we don't make an honest effort to recover relevant items of evidence at the crime scene that may contain DNA, then we're missing the point.

With that in mind I think it's advantageous for police agencies to reeducate their staff so they can recognize DNA and understand the importance of DNA. I think the NIJ published a training brochure that we distributed to our officers, and they listed a number of things that were sources of DNA, which included toothpicks, hats, clothing, dirty laundry, eyeglasses, cigarette butts, toothpicks, stamps, envelopes, bed clothing, fingernails, carpet. It just goes on and on. So at some point you've got to look at the reasonableness at what am I going to recover and after you recover it what am I going to submit to the lab? We do that. I tell the guys and the gals, listen, if there is any doubt about what you should recover, you can recover it and we can make a decision later whether or not we're going to analyze it.

I think this reeducation of your staff should include your first responders, those officers that are responsible for protecting the crime scene. They need to be aware of this new way of looking at the crime scene and recovery of DNA evidence. Of course, the evidence technicians that are responsible for recovery of DNA evidence have to be much more vigilant today. They've got to wear booties and gloves and space suits, and they've got to guard against contamination. We do that in Alexandria, and I would recommend any agency that wants to do a good crime search to do the same thing.

I was reading one of the brochures about DNA evidence, and I was shocked to see that it was even suggested that investigators not talk or cough in proximity to physical evidence. That's unbelievable how fragile that evidence must be.

In closing I just want to say that I think with all this new DNA technology that's available, I think that we need to take every precaution necessary to control the chain of custody, to minimize the chain of custody, and we do that in Alexandria. I would also like to see -- I think most people here are attorneys, I believe, aren't you? Are there any police administrators out there? Some police departments have part-time ID techs. or crime scene technicians where their time is devoted to patrol. When they get a crime scene, they respond to it. I would recommend that you fully support a full-time, well-trained evidence collection team because this modern technology I think demands it. Thank you.

MS. WILSON: This is not really a question. I wanted to get some comments from you all and maybe some comments from the audience members that are left, I know from my experience over the past two years I've been able to hear a lot of these discussions about how to process evidence and crime scenes and that sort of thing, and when I was at AAFS earlier this year, I was listening to a lot of presentations about whether -- there is a lot of controversy about whether the laboratories work with the departments in law enforcement about what evidence they're going to process because the argument on one side is we don't want to be biased. We know the law

enforcement officers have been in this crime scene. We want to look at this case from a scientific perspective.

In my opinion I see it the way you do, you need to work together and that sort of thing, but I wanted to hear from other people about what are these issues that other people are defending trying to say no; we want to be scientific about how we approach these cases and unbiased and we want to be able to analyze the evidence that's submitted and make scientific divisions about what could be probative evidence.

MS. DAVIS: I'll start on this particular case. On the homicide that I show you earlier, in that particular case, like I said, the law enforcement officers showed up at the laboratory with over 41 exhibits. 41 was what we ended up taking. At that point in time he didn't select them. What he did was ended up bringing his notebook with his pictures of the crime scene, and he sat down and went through the pictures and went through the pictures and the crime scene with the analyst, and the analyst sat there. Even though he had his prejudged considerations of what was important, the analyst entirely independently though he was sitting there went over it and decided what may be probative looking at that type of stuff.

So even though you may be working with them, you've got to have the information he collected. We may not go to the scene, but there are a lot of ways that we can go back and independently -- and I will tell you there is a good portion of the time when the analyst has other ideas than the law enforcement officer has. At that point in time you gently explain in a very politically correct way that you think maybe he needs to look in this direction and change it around that way.

So I see that it can be independent even though you're working together.

MR. BAILEY: I don't believe there is a problem with compromising the investigation. The amount of evidence that we're collecting now is so voluminous that the sheer volume of evidence demands that the DNA analyst -- they call us. If we don't call them first, they call us and say what do you want us to look at first? There is just so much, and that's the prioritization. That's why we're talking prioritizations because I don't believe the labs can keep up with the evidence.

MR. GREENE: I'm Jimmy Greene. I'm police chief in Knightdale, North Carolina, and I represent the North Carolina Association of Chiefs of Police.

I would just like to say that I think it's important to collect evidence. By the same token, I think we have to respect the laboratories' opinions. You guys are the experts in that field. Many times I think, maybe as the chief pointed out earlier in this case with the Green that's no relation here, but Roy Green, the thing is, though, so many times six months, a year down the road a case can change. The facts in it can change and suspects can arise. If you have it collected, you've always got it collected. Once you leave a crime scene it's gone.

Something else that was pointed out which maybe sort of addresses this young lady's question, I think that the training is essential to the patrol officers or to the first responders, as it has been referred to, because I think cops destroy more evidence than anybody else, and with the transfer

theory when you go in, you're going to take something and when you come out you're going to bring it with you.

We do respect the job that you guys in the laboratory do because I know you have a whole lot of evidence, but I do think it's important to collect it. Thank you.

MR. BAKER: I think that's a real good point because the extent that we may or may not educate our people plays big with the lab because I'm telling you there are some people that think you put the evidence on a table and a scanner goes across it and the DNA is identified. Charlie has educated me, and it's fascinating to me how it's done, but it has also opened my eyes to how that whole process is. So there is a real need to have communication with the lab if for no other reason than to understand the process.

UNIDENTIFIED PARTICIPANT: As a lab director and someone who has heard the criticism about knowledge about the crime scene, I think it's a ridiculous concept that just knowledge of the facts of a crime scene can create bias in someone who is trained to let the science speak for itself, and that's the approach that we always take is tell us what questions you're trying to answer about your crime scene and give us the facts about what you collected, and we'll analyze the evidence in conjunction with what you're trying to answer, but the fact that that creates a bias in the analyst I think is ridiculous.

MR. ASPLEN: I have to say it's a good sign if at the end of the day on the second day of two very long days people are still asking questions, so I appreciate that.

I think that the dynamic that we just talked about is kind of like for two days we have been talking about how to go faster and kind of rolling along and rolling along, and basically it's kind of like we just slammed the brakes on, and to some extent that's kind of what we've just done in offering a dose of reality. This is the kind of the world that we live in absent what we've learned over the last two days that we need to do to help reduce backlogs, to help laboratory infrastructure to get us where we need to go.

It would be great if Lucy didn't have to say things like I'm only going to test this amount or that amount. It would be wonderful if we had the resources both in people and technology to do that, but this is part of the world. This is the reality check here. Again, that's why there is such a premium on that communication between the laboratories and law enforcement and prosecutors also.

Also if I could also say when all you do is live and breathe DNA for three years now as I've done with the Commission, every now and then something comes along that kind of refires you up, and Alexandria Police Department's recent work especially on that Shiflett case is one of those cases when we kind of realize what they had done and how well they had done it. It just brought it all home. I know it fired me up. I know it fired everybody else in our office up, and I just congratulate you folks for that fine work.

I'm going to let you folks get out of here now, but I don't want to do it without a tremendous amount of thanks to the staff of NIJ and of the Commission, if I could have everybody from NIJ



stand up, Dr. Forman and everybody down here at this table. I think this has been an excellent two days because of you folks more than anything, but this doesn't happen absent a tremendous amount of commitment to the idea, to the project, and to the recognition that everything we do on a daily basis ultimately is going to go to help save peoples' lives, and you will not find a more committed group of people in the Federal Government or in public service otherwise than the people at NIJ who helped put this program together.

I also should mention the folks at the justice management division, who many of you folks probably dealt with more by nature of the travel arrangements and things like that.

So I wish you the best of luck in your endeavors. Please realize that this was the easy part. Now the hard part starts because now it's your responsibility to go out and use what you've learned. Please realize that we are a resource for you in the future to any extent that we can be helpful. I have heard a number of comments from a number of people saying I'm going back and I'm going to talk to this person. I'm going back and I'm going to contact this person and we're going to start this coalition.

Anything you need from us at all, please do not hesitate to contact us either in terms of getting a hold of materials or having us talk about some issues with folks. We are more than welcome and more than committed to the project. So have a safe trip home. Again, thank you for your participation.

(Whereupon at 4:30 p.m. the meeting was concluded.)