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

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
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RAPE KIT BACKLOGS: FAILING THE TEST OF PROVIDING JUSTICE TO SEXUAL ASSAULT SURVIVORS

THURSDAY, MAY 20, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:10 a.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Conyers, Nadler, Cohen, Weiner, Quigley, Gohmert, Poe, and Goodlatte.

Staff Present: (Majority) Bobby Vassar, Subcommittee Chief Counsel; Jesselyn McCurdy, Counsel; Veronica Eligan, Professional Staff Member; (Minority) Caroline Lynch, Counsel; Art Baker, FBI Detailee; and Kelsey Whitlock, Staff Assistant.

Mr. SCOTT. The Subcommittee will come to order.

I am pleased to welcome you to today's hearing before the Subcommittee on Crime, Terrorism, and Homeland Security entitled "Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors."

When a person is raped and reports the crime to police or goes to the hospital, he or she will be asked to submit to the collection of a rape kit. A rape kit is a collection of any physical evidence the attacker may have left behind, and the process of collecting the evidence can take anywhere from 4 to 6 hours.

When the police officer takes the rape kit and books it into police evidence, victims may assume that the kit is sent to the crime lab for testing. Actually, many rape kits remain in police evidence storage facilities for years after they are collected and are never tested. Even when kits are submitted to the crime lab for testing, it can take months for the crime lab to get the results back to the requesting police officers. Although most victims who report being raped consent to the very invasive and time-consuming process of having evidence collected for a rape kit, many of these kits are never tested.

Studies have shown that when a rape kit is collected, tested, and contains offender DNA, it is significantly more likely that the case will be prosecuted than cases where no rape kit is collected. Also, research shows that evidence such as a rape kit is important to

prosecutors when deciding whether to bring the charge in the first place. There is growing evidence that juries have come to expect DNA evidence in order to convict a defendant. These findings show how important the rape kit collection and testing is in solving crimes and convicting rapists.

Crime labs across the country are flooded with requests for DNA testing. A recent report found that public crime labs saw their DNA backlog double in 2005. Research also concluded that public crime labs across the country would need to increase their DNA analyst staff by 73 percent to keep up with DNA testing needs and requests.

In some jurisdictions, these staff shortages and increasing numbers of requests for DNA testing have led to backlogs in processing rape kits. The rape kit backlogs originate at two points in the criminal justice process: First is when the rape kit is booked into evidence in storage facilities but detectives do not request a DNA test of the kit. Other backlogs exist in police crime labs where kits are submitted for DNA testing and the testing does not take place in a timely manner.

These massive backlogs of untested rape kits are allowing offenders to perpetrate crimes that would not otherwise having been committed had these rape kits been tested.

In 2004, Congress recognized the problem of rape kit backlogs in crime labs and passed the Debbie Smith Act, named after a sexual assault survivor whose attacker could have been caught 6 years sooner had her rape kit been processed in a timely manner. The Debbie Smith Act provides grant money to States for any type of DNA testing, including testing of rape kits. Although States are receiving Debbie Smith funds to eliminate DNA backlogs, some of the money is going unspent because of State and local laws that prohibit using money to hire crime lab staff.

During today's hearing, Representatives Carolyn Maloney and Anthony Weiner will testify about bills each have introduced to specifically address the rape kit backlog problem. Representatives Adam Schiff and Jerry Nadler will also testify about their work in Los Angeles and New York City, respectively, to address backlogs in those cities. Our other witnesses will discuss why testing rape kits is so important to victims of sexual assault and how public and private labs can use their resources to reduce and avoid backlogs.

It is now my pleasure to recognize the esteemed Ranking Member of this Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott.

And I thank each of our witnesses for appearing here, with my apologies for being late.

And out of deference to them, I would ask that my written statement be submitted for the record so that we can go straight to their testimony.

[The prepared statement of Mr. Gohmert follows:]

Statement of Ranking Member Louie Gohmert
Subcommittee on Crime, Terrorism and Homeland Security
Hearing on Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors
May 20, 2010

Thank you, Chairman Scott.

Not so long ago, DNA collection and analysis was a little known technology that seemed out-of-reach as a common forensic tool in criminal investigation. Today, it is a major aspect of crime scene processing and criminal prosecution.

Just as the Internet revolutionized mass communication, DNA collection and analysis has revolutionized forensic science in a way not seen since the introduction of fingerprint analysis in the twentieth century.

Previously unknown suspects have been identified, convictions obtained, violent offenders put behind bars, and the wrongfully accused exonerated – all through the aid of DNA analysis. Unfortunately, the criminal justice system as a whole has been unable to fully benefit from all that DNA technology has to offer, and from all of the secrets that its analysis has to tell.

We can't achieve the benefit of DNA evidence if the evidence is never analyzed. Some say that the technology has become a victim of its own success. More and more law enforcement agencies have become cognizant of the science and more proficient in the collection of DNA evidence. Additionally, more laws requiring DNA collection from offenders and arrestees have resulted in more samples to analyze.

The backlog of unanalyzed DNA is a critical issue for federal, state and local criminal justice systems. Many crime laboratories do not have the capacity necessary to analyze DNA samples in a timely fashion and often face issues of limited resources, antiquated information systems, and other demands. This holds true particularly in sexual assault cases.

The Justice Department indicates that it is working with state and local partners to support increased collection and testing of DNA rape kits, but unanalyzed DNA in a laboratory is not the only backlog.

Across the country volumes of evidence collected in rape and homicide cases sit in evidence vaults, never having been submitted to a crime laboratory. In a survey of more than 2,000 law enforcement agencies

across the country, 14 percent of all unsolved homicides and 18 percent of unsolved rapes contained evidence that was not submitted by law enforcement agencies to a crime lab for analysis.

Somewhere in these unanalyzed DNA samples may be the match that takes a killer or a rapist off the street and prevents someone else from being victimized.

One solution, among others, to the backlog problem is the use of private laboratories for DNA analysis. There is much to learn about how partnerships between public and private labs can assist with the backlog problem, what their role should be, and within what parameters the private labs would work.

Proponents of enhanced public-private partnerships argue that augmenting the FBI's Quality Assurance Guidelines will result in greater efficiency in the processing and uploading DNA samples. This will also eliminate the "secondary backlog" that exists due to the requirement that public labs validate the work performed by private labs.

Others argue that the current validation protocol must be kept in place to maintain the integrity of DNA samples and DNA databases. They

claim that anything other than a strict review protocol could jeopardize this integrity.

Additionally, some argue that reliance on private labs inhibits the ability to increase the capacity and efficiency of public labs. Likewise, reliance on private labs raises evidentiary concerns if a private lab goes out of business or cuts corners to maintain its "bottom line" as a for-profit company.

The FBI is engaged in a dialogue with various groups to obtain a broader perspective of these issues. The FBI is re-evaluating requirements for outsourcing DNA analysis to private labs.

Whatever the solution, we must remember that the ultimate goal is to use this technology to solve crimes; to take violent offenders off the street and provide some peace of mind, some closure to the victims.

I welcome our witnesses and look forward to their testimony.

Mr. SCOTT. Thank you. Without objection.

Does the Chairman of the Committee, Mr. Conyers, have a statement?

Mr. CONYERS. Well, I only wanted to point out that it may be accidental that all of our distinguished Members of Congress are from New York, save one, Adam Schiff, who is from California. And the question is, what does that mean, since we have more than two States in the Union?

And what I am thinking that it means is that New York is doing—and I will be listening to their testimony—they are doing a

good job, but they just need far more resources. But they have a huge backlog. And the question that brings us here today is, how do we get rid of the backlog? Do we give public labs more money? Or do we give them more money to hire people to get rid of the backlog? And I think we are going to hear this come out in the testimony from our Members, three of which are from the Committee itself.

And we are very proud, Chairman Scott, that you have put this focal point on an issue that is really something that can be addressed and remedied. And I also appreciate the bipartisan nature of the work. I particularly praise Judge Louie Gohmert for his work in this effort, as well.

Mr. GOHMERT. Will the gentleman yield?

With regard to the bipartisan nature, we had two witnesses that were scheduled to be here—Representative Peter King, also from New York, but also Senator Shelby—who were both unable to get here this morning. But they were scheduled to make this a very bipartisan panel but were not able to make it.

Mr. CONYERS. Well, thank you, Louie. We will put their statements in the record, if necessary.

Mr. GOHMERT. Thank you.

[The prepared statement of Mr. Shelby follows:]

STATEMENT OF SENATOR RICHARD SHELBY

RANKING MEMBER
COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES
SENATE APPROPRIATIONS SUBCOMMITTEE

HOUSE JUDICIARY COMMITTEE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

"Rape Kit backlogs: failing the Test of Providing Justice to Sexual Assault Survivors"

May 20, 2010

Chairman Scott, Ranking Member Gohmert, and Members of the Subcommittee, I would like to thank everyone for inviting me to testify.

I am pleased that the focus of this hearing is reducing the rape kit backlog, and believe the end result is one we can all agree on. Unfortunately, I'm afraid many here have differing views on the path we take on getting there.

Make no mistake about it -- for some involved in this issue, the end game is profit, under the guise of reducing the DNA backlog. This is evident by press releases sent to stock brokers and media covering the financial industry, shortly after the FBI released its press release praising the FBI for this decision.

The Department of Justice began cultivating the trend of catering to the private DNA industry's sense of entitlement during the previous two Administrations. Because many of these DNA companies are represented by, and employ former DOJ/NIJ staff, they are given carte blanche access to important information which drives a profit driven agenda, rather than one focused on quality and integrity. Some of these same lobbyists were awarded sole source contracts (as cited in the DOJ Inspector General's Audit Reports GR-40-09-006 and 09-38 September 2009). Lobbyists secured contracts while representing DNA companies and entities who would substantially gain from grant solicitations catered to their specific areas of expertise. Some of these DNA lobbyists were also contracted by DOJ to conduct crime laboratory surveys (thereby gaining market-share and inside information

about literally every crime lab in the country), named official speakers at DOJ functions and conferences, and labeled as DNA experts by NIJ (with one firm being mentioned 373 times on NIJ's website) while also on contract lobbying Congress and DOJ for DNA funding.

To date, with much more influence than state and local crime lab directors, private DNA vendors have participated in shaping DNA policy for the Department of Justice and the entire country- while at the same time lobbying Congress for more DNA funding, which obviously benefits their companies.

On March 22, 2010, the FBI issued a press release indicating plans to revisit procedures relating to the technical review of DNA data contained within the National DNA Index System (NDIS). In light of the this decision, there exists correspondence from a private DNA laboratory executive taking credit for this *"project"* his company Orchid Cellmark *"initiated a few months ago to change the FBI rule requiring private labs to review the forensic DNA testing work completed by public labs,"* and also stating, *"We could even have our lobbyists connect you with some of the key players on this issue while you are in DC."*

The same DNA vendor even issued a celebratory press release praising *"FBI Re-Evaluation of Requirements for Outsourcing DNA Forensic Testing to Private Laboratories"* which was sent to financial industry media and executives. Why is a for-profit DNA vendor sales executive who has no law enforcement experience suddenly an expert on the forefront of this matter? How has it come to pass that this industry has the ear of DOJ and Congress and is allowed to use victims groups and select law enforcement for the purpose of making a profit, while nearly every professional this issue would affect is vehemently opposed?

State and local public crime labs are not a billion dollar industry, nor can they hire lobbyists to pressure the White House, the Department of Justice and Congress to change laws and regulations in their favor. While this industry is attempting to privatize law enforcement and influence policy for a profit, the insight and experience of all state and local crime lab directors is being ignored. Ultimately, the welfare of victims and the morale of law enforcement officers could potentially be sacrificed by succumbing to the short term needs of for-profit companies when this is a long term problem that must be addressed in terms of increased capacity for public labs.

As I have stated and will continue to emphasize, we all support reducing the DNA backlog, but the manner in which this issue is currently being pushed is being done

so by for-profit DNA vendors. The professionals and experts who are most affected and gain no profit disagree. Unfortunately, DOJ has opened its doors and welcomed this, creating an air of fear as crime labs now are fearful to speak out against this. State and local crime lab directors who oppose private labs having access to the DNA database are fearful to speak out against this because NIJ has become so cozy with lab vendors, creating an air of hostility.

NIJ was created to provide assistance to state and local law enforcement – not to bail out profit DNA companies with stock listings on Wall Street. I am opposed to NIJ's efforts of bailing out their DNA company friends with taxpayer dollars to cheapen the quality of evidence by outsourcing DNA analyses, as I believe we need to build our crime labs up and increase their capacity so that they can respond to the ongoing increase of cases. I find it unfortunate that many politicians have put unrealistic mandates on the crime labs, yet they have not provided them the tools to meet those mandates and as a result they are forced to outsource. I am very concerned with DOJ's clear leaning toward private contractors on this matter, particularly NIJ, and what is also appearing to be the FBI and some members of Congress. DOJ and NIJ continue to put together panels with handpicked agencies and members so it can present outcomes that support an outsourcing position. And blatantly ignores real experts.

On Thursday, April 15, FBI Director Robert Mueller sternly told the Senate CJS Appropriations Subcommittee, "We have not, are not, and will not consider giving nongovernmental entities access to CODIS."

In the short period of time since Director Mueller's testimony, representatives of private vendor DNA laboratories again approached Congress and continued to lobby for the changing of the current FBI regulations regarding DNA data residing in the National DNA Database. One DNA vendor sales representative even went so far as to shop around a letter to law enforcement and victim groups that would be addressed to the House and Senate Judiciary Committees demanding that Congress remove the technical review standards and even alluded to allowing private labs having access to the DNA database. In conducting themselves in this manner, it is my opinion that they are only emphasizing my previous points and concerns and demonstrating their perceived ability to influence Congress and the Justice Department into changing the rules solely for their benefit.

The bottom line is that private laboratories clearly recognize that if all government laboratories were allowed to continue to focus on building their capacity and infrastructure, as ours in Alabama so effectively have done, the need for

outsourcing DNA analyses to private labs would effectively be eliminated in due time. The forensic community has spoken and stated in a collective and unified manner that the priority to effectively eliminate backlogs is in building government capacity, as this approach ensures quality and ensures backlogs do not recur.

Contrary to the testimony of one of the witnesses here today, outsourcing to vendor laboratories has proven problematic for so many government laboratories and I feel it is important to note that the reality of the issue which is the subject of this hearing before the sub-committee today is that the forensic community's stance is unified. Essentially every forensics group in the country has communicated that the key to effectively eliminating the backlog of rape kits and forensic testing without compromising the quality of the work, is to build the capacity in government laboratories. How could something so simple be so blatantly scoffed at by Congress and DOJ?

DNA vendors also say it would be more cost effective, yet I have seen a bill from a DNA vendor to a public crime lab for $2,000 per day for testimony.

In relation to the threat to the privacy of American citizens' genetic information, it is important to note that private DNA labs are not bound by the FBI or federal statute to keep sensitive the information they generate. Strict penalties for misuse of DNA profiles are in place and pertain only to government labs. Private lab analysts and employees do not have to undergo the extensive FBI background check that every government lab analyst with access to CODIS has to pass, and these labs do not have to submit their audit documents to the FBI for review, as is required for all state and local public crime laboratories participating in NDIS.

These private DNA vendors are for-profit companies and have no federal restrictions on whom they employ or what profit-driven activities in which they engage. Other private industries would savor having access to raw DNA data for research purposes. This information could potentially be sold among private entities, and the FBI and the individuals whose genetic information was sold would have no way of knowing or preventing this type of behavior.

On March 6 of this year, President Obama appeared on the 1,000th episode of America's Most Wanted and told John Walsh he wanted to provide support to state and local officials for DNA testing because they are strapped for some of the basic resources. Saying, "that we're going to get support, bipartisan support from Congress on this issue, because it's so important to every family across America

and there are just too many horror stories reminding us that we're not doing enough."

Our government forensic labs need to continue to build their capacity to adequately serve the justice system, and they have used NIJ funding to make great strides in decreasing backlogs. In my home state, the Alabama Department of Forensic Sciences has continued to make it a focus of theirs to build capacity in an effort to ensure backlogs don't recur once they're addressed - and they have been very successful. They have erased the backlogs in drug chemistry and toxicology analyses, and consistently reduced the DNA backlog, even as they have expanded their services. By building their capacity, government labs can process cases efficiently, expand their services, and start to test evidence from unsolved petty and property crimes, as ours has in Alabama.

Recently in my hometown of Tuscaloosa, a cold case violent sexual predator was identified almost 20 years later as a rapist of a University of Alabama graduate student. This case would never have been solved without DNA and a dedicated lab which focused on building their capacity to efficiently analyze unsolved cold cases.

Instead of putting a band-aid on a wound that will continue to fester by outsourcing, Congress and the Department of Justice should focus on the long-term solution of building capacity and mending the wound once and for all. As long as there is crime, a backlog will continue to exist, but we should put forth every effort in a long-term solution that allows state and local crime labs to sustain themselves and produce quality evidence.

The American people had a problem with pharmaceutical and insurance companies heavily influencing the writing of the Healthcare Bill. The American people and most members of Congress also have an issue with using tax dollars to bail out private companies. **Having a DNA company that could gain billions of dollars, influencing and pushing legislation and DNA policy this broad and impacting is the equivalent of having a pharmaceutical or medical insurance company author the Healthcare Bill and inserting their own billion-dollar bailout.**

Mr. Chairman, I ask that you and the esteemed members of this Committee please communicate with crime lab directors from your districts and ask them for their side of this issue. Again, I thank you for this opportunity.

Mr. CONYERS. As well as Sheila Jackson Lee, who has worked on this extensively and, because of her mother's passing, will not, of course, be here. I ask unanimous consent that she be able to insert her statement into the record, if necessary.

And I yield back my time, Chairman Scott.

Mr. SCOTT. Thank you.

And, without objection, in view of the time constraints we are under, other Members will be asked to include opening statements for the record at this point.

[The prepared statement of Mr. Conyers follows:]

Statement of Chairman John Conyers, Jr.
for the Hearing on Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors before the Subcommittee on Crime, Terrorism, and Homeland Security

Thursday, May 20, 2010, at 9:00 a.m.
2141 Rayburn House Office Building

Today's hearing focuses on the harmful impact of rape kit processing backlogs on the ability of our criminal law enforcement system to provide justice to sexual assault victims.

This issue is of particular interest to me, because last September Wayne County Prosecutor Kym Worthy asked Detroit Police Chief Warren Evans for an independent investigation into thousands of rape kits that had been discovered sitting in the Detroit Police Department evidence storage facility.

To provide some perspective on this issue, I want to draw attention to several aspects about the situation in Detroit and the initial steps the city is taking to deal with the rape kit processing backlog.

First, federal funding can play an important role in addressing this problem.

When it was learned that thousands of untested rape kits had been discovered in the police evidence storage facility, the Detroit Police Department said it was conducting an internal investigation, and that there was no need for an independent investigation until after that was completed.

The police department later acknowledged that there were about 7,000 kits in storage, of which 5,800 were untested.

Most of these untested rape kits pertained to cases where there was a known

suspect. And there were a variety of reasons given for why they hadn't been tested.

In some, no charges were pressed. In others, a guilty plea was obtained. And in others, the prosecutor declined to proceed with the case.

In response to this large backlog of untested kits, the Michigan Domestic Violence and Treatment Board designated the Michigan State Police to receive a federal grant to process some of the rape kits from Detroit.

The federal funding comes from the Violence Against Women Act's Service, Training, Officers and Prosecutors grants, also known as "STOP" grants.

I am an original sponsor and long-time supporter of the Violence Against Women Act, and I am pleased that this federal legislation is able to help Detroit begin to address its rape kit backlog problem.

Although only about 400 of the more than 7,000 kits will be analyzed with the grant money, this is a step in the right direction.

And this will help assure sexual assault victims that the City of Detroit takes this problem seriously, and that officials are working to resolve this backlog.

Second, I believe Detroit should seriously consider following the lead of New York City, and test all rape kits collected by the police department.

Testing a rape kit can identify the attacker, confirm that a suspect had sexual contact with a victim, or corroborate the victim's account of the sexual assault.

And it can help exonerate innocent people.

The New York City DNA lab has developed procedures to test every rape kit booked into evidence by the New York City Police Department. This DNA

laboratory is equipped to test evidence 30 to 60 days from the time it receives the kit from the police.

Testing every rape kit gives sexual assault survivors the peace of mind that their case is being pursued by law enforcement, and that there is a chance their attacker will be taken off the streets.

Finally, as we discuss ways to prevent these backlogs from occurring in Detroit and other cities around the country, I'd would like to hear how private labs can work with public labs to reduce the backlogs.

Some private labs say they can process DNA for almost $200 less per sample than a public lab.

We should consider how we might responsibly remove some of the barriers for private labs to analyze DNA, so that these evidence backlogs can be cleared up and cases can be solved.

I look forward to hearing more about how other cities are dealing with their ra kit processing backlogs, and hope today's witnesses will provide some meaningful solutions that I can take back to Detroit.

3

Mr. SCOTT. We have two panels of distinguished witnesses today to help us consider this important issue. Our first panel consists of four Members of Congress.

The first witness is Congresswoman Carolyn Maloney, who represents the 14th District of New York. She is recognized as a national leader in financial services, national security, the economy, and women's issues. As a senior Member of the Financial Services Committee and Oversight and Government Reform Committee,

Representative Maloney is known as a champion for domestic and international women's issues. She is the original sponsor of H.R. 4114, the "Justice for Survivors of Sexual Assault Act of 2009," which she will testify about today.

Our second witness will be Congressman Anthony Weiner, who represents the Ninth District of New York. He currently sits on the Energy and Commerce Committee, Judiciary Committee, and is a member of the Democratic leadership team. He is the original sponsor of H.R. 2157, the "DNA Expansion and Improvement Act of 2009."

The third witness is Congressman Adam Schiff, who represents California's 29th Congressional District. He is a Member of the Appropriations and Judiciary Committees and the Permanent Select Committee on Intelligence. As a former prosecutor, he brings expertise to the Judiciary Committee on issues such as intellectual property theft and piracy of copyrighted materials.

And our final witness on the panel is Congressman Jerry Nadler, who represents New York's Eighth District. Representative Nadler is Chair of the Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties. He is also a Member of the Transportation and Infrastructure Committee and is an assistant Democratic whip.

As has been pointed out, other Members wanted to be here but couldn't, particularly Sheila Jackson Lee, who was instrumental in calling this hearing today.

Our Members are familiar with the lighting system, so we would ask you to begin your testimony now, with Congresswoman Maloney.

TESTIMONY OF THE HONORABLE CAROLYN B. MALONEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. MALONEY. Thank you so much, Chairman Scott and Ranking Member Gohmert, for holding this hearing on a critically important issue, the DNA rape kit backlog.

Rape kits, if they are processed in a timely manner, can protect innocent victims and get rapists off the streets.

I have been working on this issue since 2001 when I organized a hearing on the use of DNA to both convict and exonerate. And coming out of that hearing was the Debbie Smith Act, a block grant program funding SANE nurses. Over $550 million has gone into this program to process the backlog; $150 million is in this year's budget. And it goes into the CODIS, the centralized national database of the FBI.

Although many localities have received these moneys, not all of them are processing it. And I wanted to say one brief New York story that tells why it is so important.

A woman named Catherine Ham was raped in New York City in roughly 1975. Her rapist was apprehended by the police. They thought they had a cut-and-dry case. She went to court. They turned her into someone mad at her pimp. He got free. Thirty years later, because of this bill and the attention of the New York City Police Department and prosecutors, they processed her cloth-

ing, they made a connection. The man was now in jail, and he had raped 27 additional women.

Most rapists are serial. And each rape kit that is not processed represents a life of a victim and the possibility that this criminal will rape many more. So, by just processing that kit and making the connection, you not only relieve the victim's fear of an additional assault from the rapist, but also prevent rape with many other people.

The problem is that there is no accountability. And the bill that I have put forward, the "Survivors of Sexual Assault Act," H.R. 4114, will build more accountability into the system. It will require a reporting system so that we can really track what the backlog is. No one really knows what it is now.

And it will require the jurisdictions applying for Debbie Smith funds to send all rape kits to crime labs and implement plans to have the rape kit backlogs handled in a 2-year period. It also provides incentives, monetary incentives, for jurisdictions to reduce their rape kit backlog and promptly process them.

And it requires the States to be responsible for the full up-front cost of rape kit examinations. Victims should not have to pay for their rape kits.

And it also, very importantly, funds the sexual assault nurse examiners, the so-called SANE nurses. The police tell me that if they have a rape kit that is processed by a SANE nurse, they can always get a conviction. It is important to have this professional attention to it.

My bill has a companion bill, S. 2736, introduced by Franken and Grassley, and we hope that we will be able to pass it this year. And this bill aims to help build that capacity, tackling only rape kits and, importantly, requiring the reporting and the backlog information.

I want to thank the Subcommittee for inviting me to testify. The Debbie Smith Act has helped save lives. And I just want to conclude by saying that DNA evidence from rape cases not only helps police identify rapists in existing unsolved cases, but also prevents future assaults and spares potential new victims by bringing a rapist to justice early in their criminal careers. And, undeniably, prosecuting rapists early on is the single most effective rape prevention tool that we have available.

The Debbie Smith bill has been called by many advocates as the most effective anti-rape legislation ever enacted into law. The bill that we have authored this year would make that bill stronger, would bring accountability into the system, and put the rapists behind bars, where they belong. It is really unconscionable that so many hundreds of thousands of rape kits are on the shelves, unprocessed. Each one represents a life destroyed and the ability to prevent future rapes.

So I just want to thank all of you for being here today, and I hope we will be able to move this bill forward. Thank you.

[The prepared statement of Mrs. Maloney follows:]

PREPARED STATEMENT OF THE HONORABLE CAROLYN B. MALONEY,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors
Subcommittee on Crime, Terrorism, and Homeland Security
2141 Rayburn HOB, 9:00 a.m.
Statement of Representative Carolyn B. Maloney (NY-14)
May 20, 2010

Thank you Chairman Scott and Ranking Member Gohmert for holding today's hearing about the DNA rape kit backlog; rape kits that, if processed in a timely manner, can protect innocent victims and get rapists off the streets.

I have been working on the issue of DNA technology since 2001 when I, along with former Representative Steve Horn, held a hearing in the Government Reform Committee where we heard from a courageous rape survivor, Debbie Smith.

This legislation, which has been called the most important anti-rape legislation in history, authorized the necessary funding to start processing the backlog through the creation of the Debbie Smith DNA Backlog Grant Program. Since 2004, millions of dollars in funding have been appropriated under the program, and as a result, police have been able to identify a suspect in thousands of violent crimes.

Despite this progress, the national backlog persists. While I believe that the funding provided by the "Debbie Smith Act" is making a significant difference, the grant program will be most effective by ensuring that grant recipients are processing DNA kits as quickly, efficiently, and accurately as possible. And while the law was named for a rape survivor, it provides funding for all types of DNA testing – not just rape kit backlogs.

In my district, in New York City, the City police and prosecutors instituted procedures to eliminate their rape kit backlog and prevent it from occurring again. And by keeping that backlog from happening again, the arrest rate for reported rape cases has increased from 30% to 70%-- along with an increase in prosecutions and convictions.

In New York, the tested kits have yielded over 2,000 new matches and resulted in 200 active investigations, arrests or prosecutions as of January 2009, according to Human Rights Watch. New York is a real success story that demonstrates what is possible when a local jurisdiction has a plan to eliminate the backlog and is matched with the resources to get it done.

I introduced the bipartisan bill, with my colleague Rep. Dean Heller, the Justice for Survivors of Sexual Assault Act, HR 4114, which addresses the continuing rape kit backlog and several other problems that work to deny justice to victims of sexual assault—including the denial of free rape kits to survivors of sexual assault and the shortage of trained health professionals capable of administering rape kit exams. The Senate's companion bill, S.2736, has been introduced by Senators Franken and Grassley.

Despite the availability of funds, it appears that some jurisdictions are unable to account for or process their backlogs – whether or not in evidence storage facilities or in crime

labs. One of the real problems is that the demand for more DNA testing has outpaced the available capacity for analysis. My new bill, H.R. 4114, aims to help build that capacity, tackling only rape kits, and importantly, requiring jurisdictions to report rape kit backlog numbers -- because we currently just don't have the data.

By creating incentives for jurisdictions to eliminate their rape kit backlogs, process their incoming rape kits in a timely manner, and publicly report their backlog numbers, this legislation would go a long way to ensuring that the purpose and intent of the Debbie Smith Act is fully realized.

Every two minutes someone is sexually assaulted somewhere in the United States. DNA evidence doesn't forget and it cannot be intimidated. By processing this evidence, we can prevent rapists from attacking more innocent victims and ensure that the survivors and their families receive justice.

I want to thank the Subcommittee for inviting me to testify today, and I look forward to working with you to move "The Justice for Survivors of Sexual Assault Act" forward.

Thank you.

Mr. SCOTT. Thank you.
Mr. Weiner?

TESTIMONY OF THE HONORABLE ANTHONY D. WEINER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WEINER. Thank you, Chairman Scott and Ranking Member Gohmert, for the opportunity to testify on the importance of reducing the rape kit backlog and the progress that has been made on this issue.

I look forward to hearing the testimony of the witnesses, including that of Valerie Neumann, who will share her very powerful story, and Mariska Hargitay at the Joyful Heart Foundation, who has used her considerable fame to bring light to this problem and also to try to find solutions.

I have been an advocate for promptly testing DNA kits for some time. The significance of testing all rape kits can't be overstated. Every untested rape kit is a victim waiting for justice, a sexual predator unpunished, and perhaps more crimes waiting to happen.

In 1999, in my first year in Congress, as a Member of this Committee, I authored the "DNA Backlog Elimination Act" that required the Department of Justice to establish a program to assist State and local governments with their DNA backlog.

In 2000, I worked with our former colleague Bill McCollum to pass the "DNA Analysis Backlog Elimination Act of 2000," which provided Federal funding to State and local governments to test DNA samples. That was the first time that Federal resources had been brought to bear on that problem.

Then, in 2004, my "DNA Sexual Assault Justice Act" was included in part of the "Justice for All Act." This legislation did a number of things, including increasing grants to State and local governments for DNA testing, requiring State and local government crime labs to undergo accreditation for the first time and auditing every 2 years, and also providing grants for law enforcement and medical personnel to be trained on the collection and preservation of DNA.

Since then, I was honored to work with my colleagues to help pass the "Debbie Smith Reauthorization Act of 2008." And I want to take a moment to highlight the work of Carolyn Maloney on that issue. As a Member of this Judiciary Committee, she never let me forget for a moment how important this issue was. That law would not be a law were it not for Carolyn Maloney, and no one should forget that.

Since 1999, there has been considerable progress across the country in understanding the power of DNA testing. Simply put, DNA evidence breathes life into old cases, solving hundreds in New York City alone, and can be a lifesaver for the wrongly accused. Testing rape kits provides much-needed information and peace of mind for rape victims, brings rapists to justice, and frees the wrongly convicted.

And I want to stress that final point. You know, this is seen by many, myself included, as a very important criminal justice tool to get the people who did crimes in jail. But it is also a tool to make sure that we don't make mistakes. And more and more often, we read in newspapers that DNA evidence has been used to free the wrongly convicted. No matter what lens you look at this issue

through, whether it is a criminal justice issue or a civil rights issue or a civil justice issue, DNA rape kit testing is very important.

In addition to requiring all convicted felons to provide DNA samples, during our consideration of the Debbie Smith Act I testified about a woman being raped in 1998. For 7 years, that case went unsolved until the State of Pennsylvania passed its own law requiring anyone convicted of a felony to submit their DNA to the State database. It turns out there was a DNA hit from a man who had been convicted of forgery. This is just one of a number of cases where DNA is bringing criminals to justice for previously unsolved cold cases.

My hometown of New York City has been one of the success stories. New York City, at one time, had a backlog of 17,000 rape kits. However, through a significant infusion of funding and a commitment to justice by the Federal Government and local leaders, New York City processed all of these rape kits, tested each rape kit, and now does not have a backlog, Mr. Conyers.

The result of this has been at least 2,000 cold hits on rape kits, and the arrest rate for reported cases of rape in New York City rose from 40 percent to 70 percent, according to Human Rights Watch. Additionally, New York City tests kits quickly. In fact, the average for all DNA cases in New York City's Office of Medical Examiners is 75 days. Even better is the average turnaround for sexual assault cases, which stands at 40 days.

However, there have been longstanding challenges in other parts of the country. A disturbing trend has been the difficulty for labs, the Department of Justice, and policymakers to get a true picture of how many untested rape kits are sitting in police storage facilities. Understandably, local law enforcement has been reluctant to say, "We've got thousands of kits sitting around," so they are simply not sharing the information.

In 2003, a National Institute of Justice study found that there were over 542,000 criminal cases with possible biological evidence sitting in local police storage facilities or forensic labs. Additionally, this study found that the average turnaround in the United States is—get this—between 24 and 30 weeks, compared to 30 days in England.

More troubling was that over 50 percent of local law enforcement agencies said that forensic DNA was not considered a tool for criminal investigations. Let me say that again: More than 50 percent of enforcement agencies said that forensic DNA was not considered a tool for criminal investigations.

A similar study published last year found that State and local law enforcement agencies did not submit thousands of unsolved homicide cases, 3,975, and rape cases, 27,595, to a criminal laboratory at all. Over 12,000, or 40 percent, of these unsolved homicides and rape cases contained DNA evidence. Even more troubling was that, despite the great awareness of the power of DNA, nearly half the law enforcement officials in the study, as I said, said they did not even use it as evidence in a case.

Lastly, approximately 60 percent of enforcement agencies reported not having a computerized information system in place capable of tracking forensic evidence. That means basically these were boxes, rape kits on walls, with pads of paper, that even if you

had a sense that someone might have had evidence that could solve another crime, they were unable to match those two things together.

Finally, for these reasons, I have introduced the "DNA Expansion Improvement Act of 2009." This legislation would increase funding to State and local governments for testing rape kits and DNA samples; establish two new $50 million grant programs, one for public labs to purchase or upgrade technology and a second for testing of property crimes.

Additionally, the bill would require that all States collect DNA from felons in prison and for all felony crimes in the future or lose the opportunity for funding. This is critical for States that still do not require all felons to submit their DNA. And those two States that remain are Idaho and New Hampshire.

As the Committee moves forward on this important issue, I believe one of the most important aspects we need to focus on is to get a true picture of the national backlog. And I hope Dr. Hassell with the FBI will be able to shed some light on this subject. Recent studies that I mentioned vary greatly, and we need to ensure that, no matter in what city or State a crime is committed, the rape kits are tested in a timely manner and rapist are taken off the streets.

And I thank you, Ranking Member Gohmert and Chairman Scott.

[The prepared statement of Mr. Weiner follows:]

PREPARED STATEMENT OF THE HONORABLE ANTHONY D. WEINER,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Testimony of
The Honorable Anthony D. Weiner
Before the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security
On the
Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors

May 20, 2010

Thank you Chairman Scott and Ranking member Gohmert for the opportunity to testify on the importance of reducing the rape kit backlog and the progress that has been made on this issue. I look forward to hearing from our witnesses including Valerie Neumann, who will share her powerful personal story. I have been a longtime advocate of promptly testing all rape kits for DNA evidence. The significance of testing all rape kits cannot be underscored. Every untested rape kit is a victim waiting for justice, and a sexual predator unpunished and perhaps a crime waiting to happen.

In 1999, as a member of this committee I authored the DNA Backlog Elimination Act that required the Department of Justice to establish a program to assist state and local governments with their DNA backlog. In 2000, I then worked with our former colleague Rep. Bill McCollum to pass the DNA Analysis Backlog Elimination Act of 2000, which provided federal funding to state and local governments to test DNA samples. The first time such an investment was made. Then in 2004, my DNA Sexual Assault Justice Act, was included as part of the Justice for All Act. This legislation did a number of things including increasing grants to state and local governments for DNA testing, requiring state and local government crime labs to undergo accreditation and auditing every 2 years and providing grants for law enforcement and medical personnel to be trained on collection and preservation of DNA. Since then I worked with my colleagues to pass the Debbie Smith Reauthorization Act in 2008, including Carolyn Maloney.

Since 1999, there has been considerable progress across the country in understanding the power of DNA testing. Simply put, DNA evidence breathes new life into cold cases, solving hundreds in New York City alone, and can be a life saver for the wrongly accused. Testing rape kits provides much needed piece of mind to rape victims, brings rapists to justice and frees the wrongly convicted. In addition, requiring all convicted felons to provide DNA samples works. During our consideration of the Debbie Smith Reauthorization bill in 2008, I brought up an article to the committee about a woman being raped in 1998. For seven years that case went unsolved until the State of Pennsylvania passed a law requiring anyone convicted of a felony to submit their DNA to the state database. It turned out that there was a DNA hit from a man who had recently been convicted of forgery. This is just one of a number of cases like that where DNA is bringing criminals to justice for previously unsolved cold cases.

My hometown of New York City has been one of the success stories. New York City had at one time a backlog of 17,000 rape kits. However, through a significant infusion of funding and a commitment to justice by the federal government and local leaders, New York City processed all of these rape kits, tests each rape kit and now does not have a backlog. The result has been at least 2,000 cold hits in rape cases, and the arrest rate for reported cases of rape in New York City rose from 40 percent to 70 percent, according to Human Rights Watch. Additionally, New York

City tests kits quickly. In fact, the average for all DNA cases for New York City's Office of Chief Medical Examiner is 75 days. Even better is the average turn around time for sexual assault cases, which stands at 40 days.

However, there have been longstanding challenges in other parts of the country. A disturbing trend has been the difficulty for labs, the Department of Justice and policy makers to get a true picture of how many untested rape kits are sitting in police storage facilities. In 2003, a National Institute of Justice funded study found that there were over 542,000 criminal cases with possible biological evidence sitting in local police storage or forensic labs. Additionally, this study found that the average turn-around time in the United States is between 24-30 weeks, versus 33 days in England. Even more troubling was that over 50 percent of local law enforcement agencies said that forensic DNA was not considered a tool for criminal investigations.

A similar study published last year found that state and local law enforcement agencies did not submit thousands of unsolved homicide (3,975) and rape cases (27,595) to a crime laboratory. Over 12,000 or 40 percent of these unsolved homicide and rape cases contained DNA evidence. Even more troubling was that despite the greater awareness of the power of DNA, nearly half of the law enforcement officials in the study said that they may not submit evidence if a suspect had not yet been identified. Lastly, approximately 60% of law enforcement agencies reported not having a computerized information system in place capable of tracking forensic evidence.

For these reasons, I have introduced the DNA Expansion and Improvement Act of 2009. This legislation would increase funding to state and local governments for testing rape kits and other DNA samples, establish two new $50 million grant programs – one for public labs to purchase or upgrade technology and a second for testing of property crimes. Additionally, the bill would require that all States collect DNA from felons in prison and for all felony crimes in the future or lose the opportunity for funding. This is critical for the states that still do not require all felons to submit their DNA – Idaho and New Hampshire.

As the committee moves forward on this important issue, I believe one of the most important aspects we need to focus on is a true picture of the national backlog and I hope that Dr. Hassell with the FBI will be able to shed some light on this subject. The recent studies that I mentioned greatly vary and we need to ensure that no matter what city or state a crime is committed that rape kits are tested in a timely manner and rapists are taken off the street.

In closing, I would like to thank you Chairman Scott and Ranking Member Gohmert for holding this important hearing and inviting me to testify on this important topic.

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Mr. SCOTT. Thank you.
Mr. Schiff?

TESTIMONY OF THE HONORABLE ADAM B. SCHIFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SCHIFF. Mr. Chairman, Ranking Member, Mr. Chairman, and Members of the Committee, thank you for calling this important hearing and inviting me to participate.

As my colleague Mr. Weiner pointed out, there is no reliable accounting for the number of sexual assault kits that are backlogged around the country or even a consensus as to what constitutes a backlogged kit. But we do know that sexual assault kits are sitting on shelves for months and years and that crime labs around the Nation are struggling to do more with less. And we know that, as a result, rapists are walking the streets and justice for their victims is being denied.

I am sorry to say that Los Angeles knows only too well about rape kit backlogs. In 2008, a full accounting of rape kits sitting in storage for more than 30 days revealed that the backlog stood at over 13,000 kits between the city and county labs. A breakdown of that backlog revealed that over 200 kits in the county alone were older than 10 years and, therefore, beyond the statute of limitations for a rape case even if a positive hit was discovered.

Los Angeles is far from alone. Many other cities have these backlogs, whether their citizens know it or not.

When I started working to address the Los Angeles backlog, I found that it was not as simple as putting more money into the crime lab. New forensic scientists have to be hired, trained, and then they have to have the lab space and resources to do their jobs. The process from hiring and training a scientist to the point where he or she can process a rape kit can take years to accomplish.

To make an immediate dent in the backlog, the city and county both employed the capacity of private labs that had the manpower and expertise to process these kits immediately. Both the city and county have outsourced thousands of kits. Were it not for that option, closing the backlog would have taken years longer, if it was possible at all.

There is a simple step that could immediately take action to speed the processing of sexual assault evidence and improve the efficiency of public labs. The National DNA Index System rules govern what can be uploaded into the national database. The rules require that any crime scene evidence outsourced by a private lab must undergo a technical review by the public lab, which is a manual rechecking of the private lab's work.

The technical review of each kit is a time-intensive process. In fact, the Federal Government assisted the city of Los Angeles with half a million dollars this year that will go entirely toward paying the overtime for forensic scientists who are conducting the technical reviews. For several years now, I have been calling on the FBI to evaluate this rule in light of the evidence that it is an unnecessary and burdensome requirement on overstretched public labs.

There have been some suggestions that the call to look at the technical review standards are being driven by private labs. It is simply not the case. If you don't believe me, go to Los Angeles and talk to Mayor Villaraigosa or Chief Charlie Beck or Sheriff Lee

Baca and ask them about the impact of technical review on their budgets and the turnaround time for backlogged rape kits.

Let me be clear: This is not about private labs versus public labs. I come from a law enforcement background as a former Federal prosecutor and have no desire to remove law enforcement functions from public crime labs. I strongly support building the capacity and efficiency of public labs so they can quickly process DNA. I am opposed to opening up CODIS to any private entity, but an overbroad and cumbersome technical review requirement is hampering law enforcement's ability to take dangerous people off the street.

I am pleased that, in March of this year, the FBI announced that they were looking at a technical review rule change and studying possible alterations. There are a range of options on the table for the 100 percent manual review that preserve the integrity of CODIS. Among these are expert systems that can automate the technical review process. We can also require a high degree of accreditation for private labs and require them to undergo regular audits.

I believe, though, the best option would be to require the technical review after a hit in CODIS. What we should not do is continue to hamstring public labs that need immediate capacity or law enforcement that needs to know whether a profile that has been gathered from a rape kit matches a suspect already in CODIS.

As eager as I am to hear more about the intention of the FBI and the NDIS board to modify the existing rules, I am concerned that the timing will do little to relieve the immediate problem faced by Los Angeles. The LAPD has over 2,000 evidence kits that have been returned from the private labs that are still waiting to be uploaded into CODIS because of the several hours it takes the lab technician to perform the technical review. This is despite the fact that, in the thousands of kits in which the technical review has already been performed, they haven't located a single error that impacted the integrity of the database or would have resulted in a false match.

For that reason, last week I sent a letter to FBI Director Robert Mueller and Attorney General Holder asking them to consider immediate steps to ease the technical review burden on the LAPD. The FBI is considering options for pilot programs to test the efficacy of alternatives to the 100 percent manual technical review requirement, and I believe that L.A. Is a perfect venue for a pilot project. Nine other members of the Los Angeles congressional delegation have joined me in writing. In requesting this pilot, we believe that Los Angeles can prove the concept of a new technical review regime while speeding the day that the L.A. Backlog is truly closed.

[The information referred to follows:]

Congress of the United States
Washington, DC 20515

May 11, 2010

The Honorable Robert S. Mueller; Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Director Mueller:

We write as Members of Congress from the Los Angeles area with a commitment to law enforcement and the rights of sexual assault victims. As you know, Los Angeles has been struggling to eliminate a backlog of thousands of sexual assault kits that have waited years for processing. Through a joint federal and local effort, the end is finally in sight for the rape kit backlog, in large part because the City has dedicated substantial resources to outsourcing the extraction of suspect DNA profiles to accredited private laboratories.

However, due to burdensome and unnecessary technical review requirements required by the *Quality Assurance Standards for Forensic DNA Laboratories* there is a second backlog of cases developing. These are kits that have been returned to the public lab, but due to a lack of resources and manpower they wait months to be uploaded into CODIS. In the evidence that awaits review, there are doubtless profiles of offenders who will continue to walk the streets and assault additional victims while this evidence awaits entry to CODIS. In the City of Los Angeles alone there were 1700 kits awaiting technical review on March 1st, and the number is only growing.

We appreciate that the FBI announced in March a review of the technical review rules with an eye towards revising them later this year. We eagerly await further details as to what the review will entail. However, in the meantime, the problem in Los Angeles is more pressing than the months or years this review could take. The LAPD has performed thousands of technical reviews on rape kits already, and they have not found a single error by a private lab that would impact the integrity of CODIS or allowed a suspect to escape scrutiny. The Los Angeles Sheriff's Department has a similar experience.

We are concerned that even the most aggressive timeline will result in months of delays in the closing of the rape kit backlog in Los Angeles and cost millions of scarce budget funds. For that reason, we ask that you work with the City of Los Angeles to develop immediate alternatives to 100 percent technical review. The thousands of sexual assault evidence kits currently awaiting technical review could serve as the proof of concept for a reformed technical review process. We believe that Los Angeles can serve as a pilot to demonstrate the feasibility of alternatives, thereby speeding justice for victims of assault, saving scarce resources, and improving our use of DNA technologies. We are eager to work with you to make this vision a reality, along with Mayor Villaraigosa and the leadership of Los Angeles.

PRINTED ON RECYCLED PAPER

Your timely consideration of this matter is appreciated.

Sincerely,

Adam B. Schiff
Member of Congress

Howard Berman
Member of Congress

Henry Waxman
Member of Congress

Lucille Roybal-Allard
Member of Congress

Linda Sanchez
Member of Congress

Laura Richardson
Member of Congress

Diane Watson
Member of Congress

Dana Rohrabacher
Member of Congress

Judy Chu
Member of Congress

Jane Harman
Member of Congress

Mr. SCHIFF. In closing, Mr. Chairman, if we are able to accelerate the uploading of these samples that have already been reviewed in Los Angeles, these thousands of kits, statistically we know we will take people off the street that, if we wait, may go on to commit other rapes and murders. That is the cost of delay.

And I want to thank you again for holding this hearing. I hope it is the beginning of powerful action to modify the technical review requirement and accelerate the processing of DNA rape kits.

And I yield back.

[The prepared statement of Mr. Schiff follows:]

PREPARED STATEMENT OF THE HONORABLE ADAM B. SCHIFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

TESTIMONY
Congressman Adam B. Schiff
May 20, 2010
House Judiciary Subcommittee on Crime

Mr. Chairman, Ranking Member, thank you for calling this important hearing and inviting me to participate.

There is no reliable accounting for what the sexual assault kit backlog stands at around the country, or even a consensus as to what constitutes a backlogged kit. However, we know that sexual assault kits are sitting on the shelves for months and years and that crime labs around the nation are struggling to do more with less. And we know that, as a result, rapists are walking the streets and justice for their victims is being denied.

I'm sorry to say Los Angeles knows all too well about the rape kit backlog. In 2008, a full accounting of the rape kits sitting in storage for more than 30 days revealed that the backlog stood at over 13,000 kits between the City and County labs. A breakdown of the backlog revealed that over 200 kits in the County alone were older than 10 years, and therefore beyond the statute of limitations for a rape case, even if a positive hit was discovered. Los Angeles is far from alone. Many other cities have these backlogs, whether their citizens know it or not.

When I started working to address the Los Angeles backlog, I found that it is not as simple as putting more money into the crime lab. New forensic scientists have to be hired, trained, and then they have to have the lab space and resources to do their jobs. The process from hiring to training a scientist to the point he or she can process a rape kit start to finish takes years. To make an immediate dent in the backlog, the City and County both employed the capacity of private labs that had the manpower and expertise to process these kits immediately. Both the City and County have outsourced thousands of kits. Were it not for that option, closing the backlog would have taken years longer, if it happened at all.

There is a simple step that we could take immediately to speed the processing of sexual assault evidence and to improve the efficiency of public labs. The National DNA Index System rules govern what can be uploaded into the national database. The rules require that any crime scene evidence outsourced by a private lab must undergo a technical review by the public lab, which is a manual rechecking of the private labs work. The technical review of each kit is a time intensive process. In fact, I obtained $500,000 for the City of Los Angeles this year that will go entirely towards paying the overtime for forensic scientists who are conducting the technical review. For several years now, I have been

calling on the FBI to evaluate this rule in light of the evidence that it is unnecessary and burdensome on overstretched public labs.

There have been some suggestions that the calls to look at the technical review standards are being driven by the private labs. It's simply not the case. If you don't believe me, go to Los Angeles and talk to Mayor Villaraigosa or Chief Charlie Beck or Sheriff Lee Baca, and ask them about the impact of technical review on their budgets and the turnaround time for backlogged rape kits.

Let me be clear – this is not about private labs versus public labs. I come from a law enforcement background as a federal prosecutor, and I have no desire to remove law enforcement functions from public crime labs. I strongly support building the capacity and efficiency of public labs so that they can quickly process DNA. I am opposed to opening CODIS to any private entity.

I was very pleased when, in March of this year, the announced that they FBI are taking a look at the technical review rules and studying possible changes. There are a range of options on the table short of the 100 percent manual review that preserve the integrity of CODIS. Among them are expert systems that can automate technical review process. We can also require a higher degree of accreditation for private labs, and

require them to undergo regular audits. We could also require a review after a hit in CODIS. What we should not do is continue to hamstring public labs that need immediate capacity.

As eager as I am to hear more about the intention of the FBI and the NDIS board to modify the existing rules, I am concerned that the timing will do little to relieve the immediate problem faced by LA. The LAPD has over 2000 evidence kits that have returned from a private lab, but are still awaiting upload into CODIS because of the several hours it takes a lab technician to perform the technical review. This despite the fact that in the thousands of kits they have already done the technical review for, they haven't located a single error that impacted the integrity of the database or would have resulted in a false match.

For that reason, last week I sent a letter to FBI Director Robert Mueller and Attorney General Holder asking them to consider immediate steps to ease the technical review burden for the LAPD. The FBI is considering options for pilot programs to test the efficacy of alternatives to manual technical review, and I believe that LA is a perfect venue for that project. Nine other members of the Los Angeles area delegation joined me in writing. We believe that LA can prove the concept of a new technical review regime, while speeding the day that the LA backlog is truly closed.

In closing, Mr. Chairman, I hope this hearing is just the beginning of this Committee's work on DNA and the rape kit backlog in the time we have remaining this Congress. It is time we take the lessons learned in the years since the passage of the Debbie Smith Act and turn them into new policies to speed the processing of rape kits. DNA is the most powerful law enforcement innovation, but only if we use it to its fullest potential. I thank you for calling this hearing, and I look forward to working with you on these issues.

Mr. SCOTT. Thank you.

Before we get to Mr. Nadler, I just want to recognize the gentleman from Virginia, Mr. Goodlatte, and the gentleman from Illinois, Mr. Quigley, who are with us today.

Mr. Nadler?

TESTIMONY OF THE HONORABLE JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. NADLER. Thank you, Mr. Chairman.

I thank you, Mr. Chairman, for holding this hearing. And good morning, Chairman Scott. I see now Ranking Member Goodlatte and Mr. Chairman Conyers and fellow Members of the Subcommittee. Thank you will for allowing me to testify today on this critical issue of the continuing rape kit backlog.

248,288 is the number of rapes and sexual assaults that occurred in 2007, as reported by the Department of Justice. That is more than 679 rapes and sexual assaults every day; 28 every hour of every day. That is an unconscionable number of people, almost all of them women and girls, victimized in the United States on a daily basis in the most horrible way.

Rape and sexual assault are horrible crimes which can destroy the lives of the victims and their families. They are terrors which no one should have suffer and which it is our duty to make sure that as few as possible suffer from.

Modern science has thankfully provided a way for us to combat this scourge: DNA testing. By testing the DNA evidence left at the scene of a rape or sexual assault, we can with near certainty identify the perpetrator or perpetrators involved. Such evidence makes it much more likely these individuals will be captured and punished. This, in turn, allows victims to obtain justice and society to take violent criminals off the streets. It also allows us definitively to exonerate the often falsely accused innocent.

Every part of this sequence is important. Tragically, however, we continue to fail at a key step in the process: the collection and testing of evidence. Compounding the terrible crime itself is the crime that tens of thousands of rape kits which hold the key to justice and to prevention are not being analyzed in a timely manner. That there is any rape kit backlog at all is simply wrong and intolerable, and that we have known about it for as long as we have and have not done that much about it is also wrong and intolerable.

For many years, this Committee has worked to end the rape kit backlog. Back in 2002, I introduced the "Rape Kit DNA Analysis Backlog Elimination Act," which authorized $250 million to help police departments finance testing rape kits, thereby reducing their backlog. Working with my colleagues and with outside organizations, we kept up the pressure to deal with the problem.

Finally, in 2004, I was an original cosponsor of the "Justice for All Act," introduced by the then-chairman of this Committee, Representative Jim Sensenbrenner. That bill included many of the provisions of my 2002 bill and of Congressman Weiner's earlier bill.

Title II of that bill, known as the Debbie Smith Act, which was Congresswoman Maloney's title, authorized hundreds of millions of dollars for DNA testing and strengthened the ability of State and local law enforcement specifically to test rape kits.

Last year, the Appropriations Committee proposed a fiscal year 2010 appropriation for this program of $146 million, less than authorized and less even than the prior year, for fiscal year 2010. This was unacceptable. The lives and wellbeing of too many women across the country was at stake. So I moved an amendment to the

budget last year, joined in that effort by Representatives Maloney and Mike Michaud of Maine, to increase funding to the fully authorized amount. The amendment was adopted by a vote of 411 to 1, which shows the feeling in this House on this subject when properly mobilized. So we got the full funding.

Despite this, the rape kit backlog continues to be a major problem, and progress is extremely uneven across the country. As already mentioned, we don't even know a lot of the data. For example, we know that there remain 5,000 untested rape kits in Illinois and 4,000 in the city of Houston alone. At the same time, New York City has eliminated its backlog, as Congressman Weiner mentioned. Because of this unevenness and the lack even of adequate data at to the scope of the problem nationwide and as to the nature of the problem in many areas, we really need a nationwide solution.

I am grateful the Committee is holding this hearing on this continuing crisis, because a crisis it is. The Committee has assembled an excellent group of witnesses. I wish to thank my colleagues on this panel for their hard work on this issue.

I look forward to the testimony of the witnesses on the next panel, in particular, to help us determine what changes to the current law are necessary—there are a number of bills already in; there may be more—and how much more in the way of resources we need, as well as changes in law, to ends the rape kit backlog once and for all and to bring finality and justice to this issue.

Thank you again for allowing me the opportunity to testify. And I expect to go to the other side of the table soon to listen to the testimony of our next panel. I thank you again.

[The prepared statement of Mr. Nadler follows:]

PREPARED STATEMENT OF THE HONORABLE JERROLD NADLER,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

CONGRESSMAN

JERROLD NADLER

8th Congressional District of New York

TESTIMONY OF U.S. REPRESENTATIVE JERROLD NADLER (D-NY 08)

Before the House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security

Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors

May 20, 2010

Good morning Chairman Scott, Ranking Member Gohmert, and fellow Members of the Subcommittee. Thank you for allowing me to testify today on this critical issue of the rape kit backlog.

Two hundred and forty-eight thousand, two hundred and eighty (248,280) – that is the number of rapes and sexual assaults that occurred in 2007, as reported by the Department of Justice. That is more than 679 rapes and sexual assaults *every day*; 28 such crimes *every hour*. That is an unconscionable number of people, almost all of them women and girls, victimized in the United States on a daily basis in the most horrible way.

Rape and sexual assault are horrible crimes which can destroy the lives of the victims and their families. They are terrors which no one should have to suffer.

Modern science thankfully has provided a way for us to combat this scourge – DNA testing. By testing the DNA evidence left at the scene of a rape or sexual assault, we can, with near certainty, identify the perpetrator or perpetrators involved. Such evidence makes it much more likely these individuals will be captured and punished. This, in turn, allows victims to obtain justice and society to take violent criminals off the streets.

Every part of the sequence I just described is important. Tragically, however, we continue to fail at a key step in the process – the collection and testing of evidence. Compounding the terrible crime itself is the fact that tens of thousands of rape kits, which hold the key to justice, are not being analyzed in a timely manner. That there is any rape kit backlog at all is simply wrong and intolerable.

For many years I have fought to end the rape kit backlog. Back in 2002, I introduced the *Rape Kit DNA Analysis Backlog Elimination Act*, which would have authorized $250 million to help police departments finance testing rape kits,

thereby reducing the backlog. Working with my colleagues and with outside organizations such as Lifetime Television and the Rape, Abuse and Incest National Network, or RAINN, we kept up the pressure to deal with the problem.

Finally, in 2004, we enacted the *Justice For All Act*, introduced by Representative Jim Sensenbrenner and of which I was an original cosponsor. Title II of that bill, known as the *Debbie Smith Act*, authorized hundreds of millions of dollars for DNA testing and strengthened the ability of State and local law enforcement to test rape kits.

Last year the Appropriations Committee proposed a fiscal year 2010 appropriation for the Debbie Smith program of $146 million, $5 million less than authorized and less than the prior year, for fiscal year 2010. This was unacceptable. The lives and well-being of too many women across the country were at stake.

So, joined by Representatives Maloney and Mike Michaud, I moved an amendment to increase funding to the fully authorized amount of $151 million. The amendment was adopted by a vote of 411 to 1. So, we got full funding.

Despite this, the rape kit backlog continues to be a major problem and progress is uneven across the country. For example, there remain 5,000 untested rape kits in Illinois and 4,000 in Houston. At the same time, New York City no longer has virtually any backlog. Because of this unevenness, and the scope of the problem, we really need a nationwide solution.

I am grateful the Committee is holding this hearing on this continuing crisis. The Committee has assembled an excellent group of witnesses on both panels. I want to thank my colleagues on this panel for their hard work on this issue, and I look forward to the testimony of the witnesses to help us determine whether changes to the current law are necessary or whether we simply need more resources to end the rape kit backlog once and for all.

Thank you again for allowing me the opportunity to testify today.

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Mr. SCOTT. Thank you.

I don't have questions; the Ranking Member doesn't have questions. I recognize the Chairman of the full Committee.

Mr. CONYERS. Mr. Chairman, I just wanted to thank these four Members of Congress for their incredible tenacity and understanding and evaluation of the problem.

I think, with Eric Holder over there at DOJ, we are going to get some movement on this in the 111th Congress. And I thank you for holding the hearing.

Mr. SCOTT. Thank you.

And I thank our witnesses.

If our next panel will come forward?

As the next panel is coming forward, I will begin the introductions.

Our first witness is Kym Worthy, the Wayne County, Michigan, prosecutor. She began her legal career at the Wayne County Prosecutor's Office and, in 1994, was elected to the Detroit Recorder's Court. Her career came full circle in 2004 when she returned to the Prosecutor's Office as the Wayne County prosecutor, the first African American and the first female to hold that position.

Our second witness is Valerie Neumann. She was sexually assaulted by a man she met while celebrating her 21st birthday. Over the next year, she followed up with the police to see if her rape kit had been tested and later found out that her rape kit had not been sent to the crime lab for testing. Eventually, the prosecutor in her case declined to prosecute, and her rape kit was never tested. Valerie is currently in school in Wilmington College in Cincinnati, Ohio, working on her master's degree in business management.

Our third witness is Mariska Hargitay. She founded the Joyful Heart Foundation after hearing stories of sexual assault survivors who contacted her about their cases after seeing her in her role as Detective Olivia Benson in "Law and Order: Special Victims Unit." The foundation's mission is to heal and educate and empower survivors of sexual assault, domestic violence, and child abuse and to shed light on the darkness that surrounds these issues. And, as Representative Weiner indicated, she is using her considerable fame and a lot of time to help victims of sexual assault.

Our next witness is Christian Hassell, assistant director of the FBI Lab Division. He came to the FBI from Oklahoma State University Multispectral Laboratories, where he led research, development, testing, and evaluation. He earned his Bachelor of Science degree in chemistry from Brigham Young University and Ph.D. in analytical chemistry from the University of Texas at Austin.

Our fifth witness is Jeffrey Boschwitz, vice president of Orchid Cellmark, Incorporated. Orchid Cellmark invented some of the technology used for forensic DNA testing today and is one of the largest private labs providing forensic human identity testing. He earned a Ph.D. In immunology from Cornell and completed his post-doctoral work at Stanford.

And today's last witness is Peter Marone, director of the Virginia Department of Forensic Science. He began his forensic career at the Allegheny County Crime Lab in Pittsburgh until he accepted a position at the Virginia Bureau of Forensic Science. For many years, the Virginia Bureau has been in the forefront of DNA testing. The bureau was responsible for some of the earliest DNA convictions and is, in fact, an inspiration of Patricia Cornwell's book

series featuring Dr. Kay Scarpetta and her detective sidekick, Pete Marino. In 2007, Mr. Marone was appointed director of the Virginia Department of Forensic Science. He has a bachelor of science and a master of science in chemistry from the University of Pittsburgh.

Now, each of our witnesses' written statements will be entered into the record in its entirety, and I ask each witness to summarize your testimony in 5 minutes or less. And to help you stay within that time, there is a timing device at the table that will begin with green, turn orange when there is 1 minute remaining and red when the 5 minutes have expired.

We will begin with Ms. Worthy.

TESTIMONY OF KYM L. WORTHY, ESQ.,
WAYNE COUNTY PROSECUTOR, DETROIT, MI

Ms. WORTHY. Thank you. Thank you to all of you for having me in to talk about this issue.

In 2008, there were almost 15,000 murders in the United States, according to FBI statistics. Contrast that with, in September of 2009, last year, 12,000 untested rape kits were discovered in the Detroit Police Department property room annex. We now believe the real number is 15,000 and climbing. This is one city in one county in one State.

This represents 15,000 rape victims whose lives are now sitting on a shelf, abandoned, forgotten, and ignored. How old some of these tests are I do not know. Victims who thought their cases were being investigated and paid attention to.

I want to just take you through very briefly, although I cannot describe the horror, of what a victim goes through in going through a rape kit test. They can last for hours and hours. And it is done under an ultraviolet light, and every crack and crevice of their bodies are literally examined, prodded, poked. Every orifice is scrutinized for semen, hair, fibers, anything that can lead to evidence and a prosecution. Again, I cannot adequately describe how horrific this exam is.

Then, to have all of this packaged up and transferred to a local police department, only to sit on the shelf for years. We believe that some of these rape kits in the city of Detroit are over 10 years old. So they are victimized again.

Rape cases are among the hardest to prosecute, short only probably of child molesting cases. As you have indicated, I am the elected prosecutor for the county of Wayne. Some of your jurisdictions call us district attorneys. Wayne County is in Michigan, the largest county in the State. I am responsible for 43 cities, townships, and municipalities. Detroit, obviously, is the largest city, and Wayne County is the 13th largest county in the Nation.

As you stated, I was a previous assistant prosecutor, where I personally prosecuted thousands and thousands of cases. I was also a sitting judge on the circuit court, where I personally presided over 5,000 cases. My office, the Wayne County Prosecutor's Office, prosecutes 80,000 cases a year; 30,000 of those are felonies. And we do it with only 150 assistant prosecuting attorneys.

And I am saying this for a reason. Three thousand cases, on average, of rape are reported in Wayne County. And it is important

to note that these are the people that come forward and report it. As we know, in this crime, most people do not report it. Approximately 2,500 of those are in the city of Detroit, and 500 of those are in my other 42 cities.

Now, this is astounding. That means that our closure rate is under 30 percent. Over 70 percent of the rapists in Wayne County go unprosecuted and they do not get arrested. And that means those rapists are free to rape again. Fifteen thousand untested rape kits means 15,000 cases that are not in CODIS, the DNA database, as you know. And can you imagine if those cases were in the database? Our closure rate wouldn't be under 30 percent.

I can give you case after case after case and much anecdotal evidence about cases that we have found that were not in CODIS before. I want to give you two quick examples.

One is we had an East side rapist in the city of Detroit that had raped nine women. When finally we got the hit, we found out that this was a person that had raped four or five other women previous to that. And if those rape kits had been tested, the nine following women would not have been raped.

We have one more case I want to fell you about because this involved a child. We had a CODIS hit that was not put in properly. The rape kit wasn't done until it was found later. We got the CODIS hit, and we found out there had been a woman that had been raped previous under that test. And there were two 13-year-old girls that were then raped after that that would not have been raped if that rape kit had been properly processed.

Detroit's problem is a little unique. It is not really a backlog; it is really even worse. These are cases that were just thrown into an annex property room, in a corner, some in barrels, some out, some not properly preserved, in a corner doing nothing. A backlog presumes that you are actually working on the case and you are just behind. But what we had in the city of Detroit is, on these boxes and barrels, they were not even touched and tested.

Let me tell you why that is problem. As I indicated, I was an assistant prosecutor for almost 12 years and on the bench for 9, the trial court, the circuit court in Wayne County. I am used to that work; I am used to the pace. We do 80,000 a year. Our judges are constantly telling us to push, push, push, get cases done.

And that means oftentimes when I was an assistant I had to prosecute many rape cases without the rape kit. We were told by the police department that often they were lost, they couldn't find them, they were denigrated—all kinds of things. And now we find out where they are and where they were after all these years.

So the horror of that is, though, as a prosecutor, I could possibly have prosecuted people that the rape kit would clear them and exonerate them. And, as a prosecutor, one person wrongfully convicted is one too many. So it is not only that we have victims that are being ignored and their rape kits aren't being tested, we could possibly have defendants serving long periods of time that could be exonerated by the rape kit.

When you are a busy urban courtroom, I cannot tell you the madness of trying to get these cases done. And, again, you have to rush everything through, and certainly if we don't have all the available evidence, then sometimes justice is not done. That is im-

portant because prosecutors have dual responsibility. Our role is not only to prosecute zealously, but it is also to protect due process rights of each and every defendant.

Now, I don't know how much time I have, so I wouldn't detail the audit process that we have to go through right now. But we have picked 400 cases. This has been done through Michigan State University, who has given us a statistical analysis of how many cases we have to look at and test to determine what we have in this 15,000. We don't know how many defendants are dead. We don't know how many victims are dead. We don't know how much the evidence has been compromised. We don't know how many cases want to go forward. And that is what this audit is going to tell us, and I will send you some written evidence about that.

This bill is extremely important. What I am most interested in as a prosecutor, besides what I have described, is accountability. The police departments in my area and across this country have gotten millions and millions of dollars' worth of stimulus funds and other funds as well. And cops on the street are very important, to be sure, especially in a city like I have to deal with, where we have monumental issues besides just our crime problem.

But, at some point in time, police officers have to be told that they have to be accountable for these rape kits, as well, a problem that they caused. And some of these funds need to be used, as well, to straighten out the problem in our overburdened crime lab and getting these rape kits tested. We are told that, to test these 15,000 rape kits, it is going to cost us between $40 million and $50 million.

So, again, just to summarize, the most significant items of this bill: the backlog reduction; prompt, new universal testing; backlog measurement; and, certainly, rape kit billing fix. No victim should ever have to pay for their rape kit to be done.

I thank you so much.

Mr. SCOTT. Thank you.

Ms. Neumann?

TESTIMONY OF VALERIE NEUMANN,
SEXUAL ASSAULT SURVIVOR, CINCINNATI, OH

Ms. NEUMANN. Good morning, and thank you for giving me the opportunity to speak in front of you today. It means a lot to me that you have invited me to tell my story.

I would like to start by telling you a little bit about myself. My name is Valerie Neumann. I live in Cincinnati, Ohio. I am currently getting my bachelor's degree in business management, and I also work full-time for Procter & Gamble.

This past December was my birthday and the 3-year anniversary of when I was raped. For my birthday in 2006, a friend of mine took me out to dinner. After dinner, she asked if I wanted to join her boyfriend and his friends, most of which I had never met, for drinks at a bar nearby.

When we arrived, one particular man, an acquaintance of my coworker's boyfriend, immediately started buying me drinks. The drinks made me very sick. The nurse at the hospital would later

describe what I began to feel similar to what a date-rape drug feels like. And so my friend took me to her home. Some people from the bar decided to go over to her house, too.

When we got there, my friend helped me upstairs and made me comfortable in the bathroom. Later that evening, my friend was yelling at her boyfriend to make sure all the guests were out of the house before she went to bed. The two of them went to bed.

Everyone but the man who bought me drinks at the bar had left. He had other plans. At some point later that night, he came into the bathroom and laid down behind me. He kept asking me if I wanted to go down to the couch with him. I was so sick, but I was able to tell him "no." When I refused, he tried sliding his hands down my pants and up my shirt. I remember telling him over and over again, "No, no, I don't feel good."

I thought I had eventually gotten him to leave me alone. I was wrong. When I woke up the next morning, my pants and underwear were around my ankles and my bra was unfastened. I knew something was very wrong, but at the time I was so sick, confused, and scared that the pieces weren't coming together.

It wasn't until I got home and undressed to take a shower that the reality really sank in. I found a large friction burn on the back of my neck, bruises of finger indentations around each of my wrists, and scratches on my back.

I went to show a good friend of mine the marks and asked her opinion. She told me I needed to go to the hospital. I realize it is silly now, but at the time I just wanted to forget anything that happened that night. I was scared to face reality. I had just started a great job. I had plans to go back to school. I had so many things to look forward to. The last thing I needed was this.

Although I wanted to pretend nothing had happened, I knew what I needed to do. I called my parents, and they met me outside of our house. I told them that I thought I had been raped. We immediately headed for the hospital.

The police officers and social workers at the hospital said I needed to have a rape kit taken. I gave a statement to the police officers while waiting for a SANE nurse to arrive at hospital.

The collection of a rape kit is a 4- to 6-hour process of pulling hairs, swabbing, and taking pictures. It took longer than I expected, and it was really hard to go through. My only consolation was that the exam could be used to put my rapist behind bars.

The SANE nurse put in her report that she found evidence of forced sexual penetration. I had lots of redness and a tear around my vaginal area.

The police officers took my statement at the hospital and asked me about the person who had raped me. I didn't know his name, only his nickname. But when I gave them a physical description of him, they told me and my father that they knew the guy I was talking about. He had done this sort of thing before. The police officers called their detective, and he went to my friend's house that night with a warrant to collect evidence.

The next morning, I had to go to the police station to give an official statement to the detective. Unfortunately, after I gave my statement, I didn't hear from the police again for a very long time. I had to fight to get any information. I started calling every other

day, then once a week, every other week, once a month, et cetera. Many phone calls were never returned. It was exhausting to be my own advocate.

It took a year for the detective to send my case to the prosecuting attorney's office. And then 6 months later, the prosecuting attorney told me they wouldn't be trying my case because they decided it was unwinnable given the fact I had been drinking the night of my rape and it was an acquaintance rape. I tried to explain that I had not even known the man's name until the police told it to me, but the prosecutor had seemed to make up his mind: Case closed.

What was perhaps the hardest was that my case was closed without my rape kit being tested. Right after I went to the police, the suspect had gotten a lawyer. He issued a statement through his lawyer that he had no sexual contact with me that night.

The same nurse told me she had found semen in numerous places on my body. If they had tested my rape kit, the semen they found could have matched back to the suspect. It would have validated my claim that I was raped and discredited his claim that he had no contact with me at all.

When I later called the prosecutor's office to ask why my rape kit hadn't been tested, a representative from the Kentucky's prosecuting attorney's office left a voicemail on my cell phone stating they didn't have the funds to test a kit in a case like mine. It has now been 3 years, 5 months, and 4 days since the night I was raped, and my kit remains untested.

In recent months, with the help of news networks and nonprofit organizations, such as CBS Evening News, RAINN, and Human Rights Watch, a spotlight has been put on the rape kit backlog. The fact is, many States have no idea how many untested rape kits they have in their procession.

Testing a rape kit is so important because it can identify an assailant; confirm a suspect's contact with a victim; corroborate a victim's account of the crime, especially useful on acquaintance rapes; and connect apparently unrelated crimes and exonerate innocent suspects.

A law enforcement decision to test a rape kit is an indication of commitment to build a strong investigation. National studies have shown that cases in which a rape kit was collected, tested, and found to contain DNA evidence are more likely to move forward in the criminal justice system. Conversely, untested rape kits typically represent lost justice for victims, and it often means a rape investigation was cut short before the offender could be brought to justice.

The unfortunate truth is our justice system doesn't work as smoothly as it appears on TV shows like "CSI." I used to believe in our justice system, but after my experience, I have lost faith. I can honestly say that if I were raped again, I don't know that I would choose to go to the hospital and be put through a rape kit again. We ask so much of victims right after they have been raped but don't follow through in the end.

The hearing on the rape kit backlog means so much to me for many different reasons. I believe we need Federal leadership on the rape kit backlog, and I am so inspired that you are here to provide that leadership.

I personally have made peace that my assailant will never be brought to justice, as the prosecuting attorney has made it very clear they will not go back and test my rape kit. I am now turning my energy toward advocating for every rape victim whose kit remains sitting on a shelf untested.

This has been a liberating experience for me. I have been able to confront my fears about speaking out as a rape victim through the opportunities I have been given as a RAINN Speakers Bureau member and have grown stronger in the process. Although I feel justice wasn't served for me, I am comforted by the fact that I am part of making change for the future. It is my hope that rape victims won't have to experience the frustrations and disappointments that victims like myself and so many others have. Rape is traumatic enough; the rape kit exam and stuff thereafter shouldn't add to that trauma.

Thank you for your time today. I am so grateful for you listening to my sorry. I want to especially thank Congresswoman Jackson Lee for submitting a letter to Chairman Scott on my behalf requesting the hearing and to Chairman Scott for asking me to testify.

[The prepared statement of Ms. Neumann follows:]

PREPARED STATEMENT OF VALERIE NEUMANN

Testimony of Valerie Neumann
Rape Survivor

US House of Representatives Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"

May 20, 2010

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"

May 20, 2010
Valerie Neumann

Good morning, and thank you very much for giving me the opportunity to speak in front of you today. It means a lot to me that you have invited me to tell my story.

I would like to start by telling you a little about myself. My name is Valerie Neumann. I live in Cincinnati, OH. I am in school getting my master's in Business Management; and I also work full time for Procter and Gamble.

This past December was my birthday--and the three year anniversary of when I was raped. For my birthday in 2006, a friend of mine took me out to dinner. After dinner, she asked me if I wanted to join her boyfriend and his friends, most of whom I had never met, for drinks at a bar nearby. When we arrived one particular man, an acquaintance of my co-worker's boyfriend, immediately started buying me drinks. The drinks made me very sick (the nurse at the hospital would later describe what I began to feel as similar to what a date rape drug feels like), and so my friend took me to her home. Some people from the bar decided to go over to her house, too.

When we got there my friend helped me upstairs and made me comfortable in the bathroom. Later that evening I remember my friend yelling at her boyfriend to make sure all the guests were out of the house before she went to bed. The two of them then went to bed. Everyone but the man who bought me the drinks at the bar had left. He had other plans. At some point later that night he came into the bathroom and lay down behind me. He kept asking me if I wanted to go down to the couch with him. I was so sick, but I was able to tell him no. When I refused he tried sliding his hands down my pants and up my shirt. I remember telling him over and over again.... "No! No! I don't feel good."

I had thought that I eventually got him to leave me alone. I was wrong. When I woke up the next morning my pants and underwear were around my ankles and my bra was unfastened. I knew something was very wrong; but at the time I was so sick, confused, and scared the pieces weren't coming together. It wasn't until I got home and undressed to take a shower that reality really sank in. I found a large friction burn on the back of my neck, bruises of finger indentations around each of my wrist, and scratches on my back. I went to show a good friend of mine the marks and ask her opinion. She told me I needed to go to the hospital. I realize it is silly now but at the time I just wanted to forget anything had happened that night. I was scared to face reality. I had just started a great job, I had plans to go back to school, I had so many things to look forward to. The last thing I needed was this. Although I wanted to just pretend nothing happened; I knew what I needed to do. I called my parents and they met me outside my house. I told them that I thought I had been raped. We immediately headed for the hospital.

The police officers and social workers at the hospital said I needed to have a rape kit taken. I gave a statement to the police officers while waiting for the SANE nurse to arrive at the hospital. The collection of the Rape Kit is a 4 to 6 hour process of pulling hairs, swabbing, and taking pictures. It took longer than I had expected, and it was very hard to go through. My only consolation was that this exam could be used to put my rapists behind bars. The SANE Nurse put in her report that she had found evidence of forced sexual penetration. I had lots of redness and a tear around my vaginal area. The police officers who took my statement at the hospital asked me about the person who raped me. I didn't know his name, only his nickname. But when I gave

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"
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Valerie Neumann

them a physical description of him, they told me and my father that they knew the guy I was talking about—he had done this sort of thing before. The police officers called their detective and he went to my friend's house that night with a warrant to collect evidence.

The next morning I had to go to the police station to give an official statement to the detective. Unfortunately, after I gave my statement, I didn't hear from the police again for a very long time. I had to fight to get any information. I started by calling every other day, then once a week, every other week, once a month, etc. Many phone calls were never returned. It was exhausting to be my own advocate. It took a year for the Detective to send the case to the Prosecuting attorney's office; 6 months after that the prosecuting attorney told me they wouldn't be trying my case, because they had decided it was unwinnable, given that I had been drinking the night of my rape and it was an acquaintance rape. I tried to explain that I had not even known the man's name until the police told it to me, but the prosecutor had seemed to make up his mind. Case closed.

What was perhaps hardest is that my case was closed without my rape kit being tested. Right after I went to the police, the suspect had gotten a lawyer. He issued a statement through his lawyer that he had had no sexual contact with me that night. The SANE nurse told me that she had found semen in numerous places on my body. If they had tested my rape kit, the semen they found could have been matched to that of the suspect. It would have validated my claim that I was raped, and discredited his claim that he never had contact with me at all.

When I later called the prosecutor's office to ask why my Rape Kit hadn't been tested a representative from the Kentucky Prosecuting Attorney's office left a voicemail on my cell phone stating they didn't have the funds to test kits in a case like mine.

It has now been three years, five months, and four days since the night I was raped and my kit remains untested.

In recent months with the help of news networks and non-profit organizations; such as CBS Evening News, RAINN, and Human Rights Watch, a spotlight has been put on the Rape Kit Backlog. The fact is many states have no idea how many untested Rape Kits they have in their possession!

Testing a Rape Kit is so important because it can identify an assailant, confirm a suspect's contact with a victim, corroborate a victim's account of the crime—especially useful in "acquaintance rapes"—connect apparently unrelated crimes, and exonerate innocent suspects. While reported rapes have gone down nationally, according to comprehensive academic studies the arrest rate for rape remains anemic at only 22 percent of reported cases. In 2003, when New York City began to test every booked rape kit, the arrest rate for rape skyrocketed, from 40 percent to 70 percent of reported cases. A law enforcement decision to test a rape kit is an indication of a commitment to build a strong investigation. National studies have shown that cases in which a rape kit was collected, tested and found to contain DNA evidence are more likely to move forward in the criminal justice system. Conversely, untested rape kits typically represent lost justice for rape victims, as it often means a rape investigation was cut short before the offender could be brought to justice.

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"
May 20, 2010
Valerie Neumann

The unfortunate truth is that our Justice System doesn't work as smoothly as it appears to on TV shows like CSI. I used to believe in our Justice System, but after my experience I have lost faith. I can honestly say that if I were raped again I don't know that I would chose to go to the hospital and be put through a Rape Kit again. We ask so much of victims right after they have been raped…but don't follow through in the end.

This hearing on the rape kit backlog means so much to me for many different reasons. I believe we need continued federal leadership on the rape kit backlog, and I am so inspired that you are here to provide that leadership. I personally have made peace that my assailant will never be brought to justice; as the Prosecuting Attorney's office has made it very clear they will not go back and test my Rape Kit. I am now turning my energy towards advocating for every rape victim whose kit remains sitting on a shelf untested!

This has been a liberating experience for me. I have been able to confront my fears about speaking out as a rape victim through the opportunities I have been given as a RAINNs Speakers Bureau Member, and have grown stronger in the process. Although I feel justice wasn't served for me, I am comforted by the fact that I am a part of making change for the future. It is my hope that rape victims won't have to experience the frustrations and disappointments that victims like myself and so many others have. Rape is traumatic enough; the rape kit exam and steps thereafter shouldn't add to that trauma.

Thank You for your time to today. I am so grateful to you for listening to my story. I wanted to specially thank Congresswoman Jackson Lee for submitting a letter to Chairman Scott on my behalf requesting the hearing; and to Chairman Scott for asking me to testify.

Mr. SCOTT. Thank you.
Ms. Hargitay?

TESTIMONY OF MARISKA HARGITAY,
JOYFUL HEART FOUNDATION, NEW YORK, NY

Ms. HARGITAY. Chairman Conyers, Chairman Scott, Ranking Member Goodlatte, and distinguished Members of the Subcommittee, you have honored me deeply by inviting me to stand with you and among you in our common cause.

I am especially honored to be here in the year of the 15th anniversary of the "Violence Against Women Act." I honor the stand you have taken, because you have the power to help survivors heal and reclaim their lives.

For the past 11 years, I have played a sex crimes detective on "Law and Order: Special Victims Unit." The show is indeed fiction, but the fiction is based on horrific facts—like the fact that, in the time it will take us to conduct this hearing this morning, 60 individuals in the United States will be sexually assaulted.

But it wasn't only the statistics that pressed the tragedy and the pervasiveness of these acts into my consciousness. It was also the letters and e-mails I began receiving from victims of abuse, sharing their stories, and many for the very first time. I remember—I am sorry. I remember my breath going out of me for the very first time when the first letter came, and I have gotten thousands like it since.

I responded by starting the Joyful Heart Foundation in 2004. Our mission is to heal, educate, and empower survivors of sexual assault, domestic violence, and child abuse and to shed light into the darkness that surrounds these issues. I am proud to be part of this movement that will change the way we respond to these epidemics.

I have been invited here today to talk to you about the crucial piece of that response, eliminating the backlog of untested kits in the United States. While I am not an expert, I am indeed an advocate in the literal sense of the word, one who calls out to you, on behalf of the thousands of survivors whose voices, courage, and hope for justice I am honored to bring with me into this room.

Every year in the United States, more than 200,000 individuals take the courageous step of reporting their rape to police. And because of what those individuals have suffered, their bodies are crime scenes—living, breathing, feeling crime scenes—from which we collect a rape kit.

Experts estimate that there are hundreds of thousands—hundreds of thousands—of untested rape kits in police and crime lab storage throughout the country, as Ms. Worthy said.

The benefit of testing rape kits goes beyond introducing the clarity of DNA evidence in the arena of rape and sexual assault, the crimes with the lowest reported arrest and prosecution rates in the United States. These kits represent human beings who have suffered greatly. Testing their rape kits sends a fundamental and crucial message to victims that they and their cases matter. Not testing the rape kits sends the opposite message.

Take the example of a survivor that we worked with at Joyful Heart, a woman named Helena from Los Angeles. When Helena was 17, she was abducted at knifepoint from a car wash and raped repeatedly. Afterwards at the hospital she submitted a rape kit,

and for the next 13 years was unable to ascertain the status of her kit.

Helena lived every day of those 13 years in fear of the rapist, who had vowed to kill her family if she reported the crime, who had vowed to return and take her as his own.

When the rape kit was finally tested, the results revealed that her rapist was serving a 25-year sentence in Ohio. He was known to have raped two other women while Helena's kit sat untested. The statute of limitations of her rape had run out, but prosecutors are currently pursuing a life sentence for the abduction charge.

Helena said, "Finally, my nightmares have stopped almost altogether. I have a sense of security that I haven't felt in over a decade. My home is my own. My family is safe."

We must urge law enforcement, after a victim has given her consent, to send in the rape kits for testing. We must provide law enforcement and prosecutors with training and tools to investigate and prosecute sexual assault cases. We must provide our inundated crime labs with funding to build their capacity.

We need better technology to document the number of rape kits in storage facilities. We need public awareness to address bias against rape victims. And, most importantly, we must keep the victim at the center of the reforms. And that means ensuring the victims can receive information about the status of their cases, creating protocols for victim notification with rape kit results and testing decisions, and providing short-term and long-term supportive services.

At Joyful Heart, we envision a community that says to a survivor, "We are not impervious to your suffering. We will give you our ears if you wish to speak your anguish. We will lends you our voices if you cannot find yours. You have suffered enough, and your healing is our priority."

You here today are all a shining example of a community that can strengthen the possibility of healing survivors, because you are acknowledging, responding to, and taking action to end suffering. You have my fierce commitment to use my voice, to commit my resources, and do whatever it takes to bring safety, compassion, healing, and justice to victims and survivors of sexual assault.

Thank you for this honor to be here today.

[The prepared statement of Ms. Hargitay follows:]

PREPARED STATEMENT OF MARISHKA HARGITAY

Testimony of Mariska Hargitay

Advocate & Actress, *Law & Order: Special Victims Unit*

Founder & President, Joyful Heart Foundation

US House of Representatives Committee on the Judiciary

Subcommittee on Crime, Terrorism, and Homeland Security

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"

May 20, 2010

Chairman Conyers, Chairman Scott, Ranking Member Gohmert, and distinguished Members of the Subcommittee, you have honored me deeply by inviting me to stand with you and among you in our common cause of bringing attention to the issue of sexual violence and developing a more compassionate and just community and criminal-justice response to rape and sexual assault.

Your dedication and commitment to this issue inspire me. I hope not only to honor the strength and significance of the stand you have taken, but also to shine a light on the power you have to help survivors heal and reclaim their lives.

I am especially honored to be here in the year of the15th anniversary of the Violence Against Women Act, the legislation that revolutionized the way violent crimes against women are prosecuted and prevented, and the way communities respond to survivors.

When I started on Law & Order: SVU eleven years ago, violence had never played a significant role in my life, certainly not on a daily basis, and certainly not the kinds of issues that the show addresses. And then there I was, immersed every day in some of the worst that people can do to each other.

The show is fiction, but the show's fictions are based on horrific facts.

Like the fact that in the time it will take for us to conduct this hearing, 60 individuals in the United States will be sexually assaulted.

But it wasn't statistics that pressed these issues into my consciousness.

When I started working on television in 1986, I quickly learned that fan mail came with the territory. I would read letters like: "Hi, my name is Sarah. I really like your show. Can I please have an autographed picture?" But when I started working on

SVU, I got a different kind of mail: "Hi, my name is Sarah. I'm 16 years old. My father has been raping me since I was 12, and I have never told anyone." I remember my breath going out of me when the first letter came, and I've gotten thousands like it since then.

That these individuals would reveal something so intensely personal—often for the first time—to someone they knew only as a character on television demonstrated to me how desperate they were to be heard, believed, understood, comforted and healed.

Three things stood out in the survivors' stories I was reading.

The first and most obvious was PAIN. I was struck again and again by the depth of the betrayal these women had suffered, by how devastating, perverse, wrong, and brutal sexual violence is. Though I encountered a broad spectrum among the responses survivors had to what happened to them, taken together, the letters created a landscape of intense suffering.

The second theme in the letters was ISOLATION. The word "alone" appeared again and again. Whether a survivor was writing from a farm community in Virginia or from Midtown Manhattan, whether a survivor lived in a single-parent household off the coast of Maine or she was surrounded by three generations of her extended family on a reservation in South Dakota, she was alone. She could have no one around her or everyone around her; it didn't matter. She was isolated in the shame of what had happened to her and in the fear of the consequences of speaking out.

And lastly, I read about COURAGE. Actually, I was holding it in my hands, because the act of reaching out for help and breaking the silence that imprisons so many survivors is an act of utmost courage.

I obviously had my role to play on television, but I knew I wanted to play a role in healing survivors' PAIN, ending their ISOLATION, and honoring their COURAGE.

I started the Joyful Heart Foundation in 2004. Our mission is to heal, educate and empower survivors of sexual assault, domestic violence, and child abuse, and to shed light into the darkness that surrounds these issues.

More than 4000 survivors have participated in our retreat and wellness programs, we have reached thousands more through life saving referrals on our website, and our participation in national educational and media awareness campaigns has planted the seeds of a changed awareness in the lives of millions.

I have seen survivors find their way back to lives of possibility, hope, and joy, and I am proud to be part of a movement that will change the way we respond to these epidemics.

I have been invited here today to talk about a crucial piece of that response—eliminating the backlog of untested rape kits in the United States. While I am not an expert, I am an advocate—in the literal sense of the word, one who calls out to you, on behalf of the thousands of survivors whose voices and whose stories, whose courage and hope for justice I am honored to bring with me into this room.

Every year in the United States, more than 200,000 individuals take the courageous step of reporting their rape to the police.

Because of what those individuals have suffered, their bodies are crime scenes—living, breathing, feeling crime scenes.

They are asked to participate in a process of evidence collection from those crime scenes that will produce a "Sexual Assault Evidence Collection Kit", more commonly known as a "rape kit".

A victim is typically asked to undress over a large sheet of white paper to collect hairs or fibers, then her—or his—body is examined with an ultraviolet light, photographed and thoroughly swabbed for the rapist's DNA. The process can last four to six hours.

The rape kit now holds the potential to solve the crime that has been perpetrated against a victim. Testing a rape kit can identify the assailant, confirm a suspect's contact with a victim, corroborate the victim's account of the sexual assault, and exonerate innocent defendants.

However, in too many instances, a rape kit collected by law enforcement never reaches the crime lab for testing. Or once it does, is not processed in a timely manner.

Last year, newspapers reported that Los Angeles had 12,000 untested rape kits in crime labs and law enforcement storage facilities. Houston has 4,000. 10,000 in Detroit. 5,000 in Illinois. 2,500 in San Diego. And these are just the backlogs we know about. Experts estimate that there are hundreds of thousands—*hundreds of thousands*—of untested rape kits in police and crime lab storage facilities throughout the country.

We have real-world examples that testing all rape kits brings results. More than a decade ago, New York City tested sixteen thousand kits and eliminated its backlog. The City implemented a new policy of testing every booked rape kit. The arrest rate for rape skyrocketed from 40% to 70% of reported cases—the highest rate in the nation.

Yet the benefit of testing rape kits goes beyond providing prosecutors with investigative tools to bring offenders to justice. It goes beyond introducing the

clarity of DNA evidence into the arena of rape and sexual assault, the crimes with the lowest reporting, arrest, and prosecution rates in the United States.

These kits represent human beings who have suffered greatly. Testing their rape kits sends victims the fundamental and crucial message that they and their cases matter.

Nicholas Kristof quoted Polly Poskin, Executive Director of the Illinois Coalition Against Sexual Assault, in a 2009 New York Times editorial about the rape kit backlog:

"If you've got stacks of physical evidence of a crime, and you're not doing everything you can with the evidence, then you must be making a decision that this isn't a very serious crime."

That decision has the power to traumatize rape victims further as they are seeking recovery and healing.

Take the example of a survivor we have worked with at Joyful Heart, a woman named Helena from Los Angeles.

When Helena was seventeen, she was abducted at knifepoint from a car wash and raped repeatedly. Afterwards, at a hospital, she submitted a rape kit. It was not tested for thirteen years. Helena lived every day of those thirteen years in fear of a rapist who had vowed to kill her family if she reported the crime, who had vowed to return and take her as his own. When the kit was finally tested, as a result of advocacy by a number of organizations, including Joyful Heart, the results revealed that her rapist was serving a twenty-five year sentence in Ohio. He was known to have raped two other women while Helena's kit sat untested. The statute of limitations on Helena's rape had run out, but prosecutors are currently pursuing a life-sentence for the abduction charge.

In response to the testing of the kit, Helena said: "Finally, my nightmares have stopped almost altogether. I have a sense of security that I haven't felt in over a decade. My home is my own. My family is safe."

In another example, an advocate we work with tells of a rape victim who found out from police that her rape kit would not be tested. Her response? "It was so stupid of me to hope for justice, wasn't it?"

In addition to the spectrum of ways a rape survivor may feel—afraid, ashamed, betrayed—"stupid" shouldn't be one of them.

We must urge law enforcement, after a victim has given her consent, to send in rape kits for testing. Findings in a 2007 study by the National Institute of Justice revealed that one in five unsolved rape cases involved forensic evidence that had never been sent to a forensic laboratory for processing.

We must provide law enforcement and prosecutors with the training, tools and resources they need to investigate and prosecute sexual assault cases.

We must provide our inundated crime labs with funding to build the capacity that will enable them to prevent backlogs.

We need better technology to document the number of rape kits police and crime lab storage facilities across the country. The same 2007 study revealed that less than half of law enforcement agencies have information systems capable of tracking forensic evidence.

We need strong oversight of our grant programs meant to eliminate the rape kit backlog.

We need to engage in public awareness and education efforts to address attitudes and bias about rape victims.

And, most importantly, we need to keep the victim at the center of any reforms.

That means creating systems whereby victims can receive information about the status of their case; creating programs to help with victim notification of rape kit results and testing decisions; providing short-term and long-term supportive services to victims at the local level; and ensuring that policy decisions incorporate the needs and concerns of culturally specific community groups.

I would also like to use my time with you today to address broader aspects of the response to victims of rape and sexual assault that represent a significant barrier to justice and healing.

We hear constantly from sexual assault survivors that they are met with a dismayingly uneven response in hospital emergency rooms across this country.

Linda Fairstein, one of America's foremost legal experts on sexual assault and domestic violence, led the Sex Crimes Unit of the District Attorney's Office in Manhattan for twenty-five years. She is also the Vice Chair of the Joyful Heart Foundation Board.

When she handled her first rape case in 1973, evidence collection kits did not exist and DNA had never been applied to forensic investigative use. A victim was “lucky” if she was treated in a hospital that took steps to preserve samples and swabs, and even more fortunate if those findings made their way to a police laboratory for analysis, usually in a shoebox or a makeshift package carried by a creative detective.

It is shocking that, more than 30 years later, we still hear stories like this, especially in rural areas, Indian Country and the territories.

One of the reason these stories still abound is the lack of specially trained Sexual Assault Nurse Examiners (SANE's) in communities nationwide.

Extreme care is required in the collection of rape kit DNA, both because the victim desperately needs compassion and expertise and because the role the evidence can play in prosecuting the crime. Although emergency room physicians and nurses are asked to fulfill both clinical and legal responsibilities in responding to a sexual assault, they typically have little or no training on the medical treatment of rape victims, or on how to conduct a forensic rape kit exam. It is noteworthy that national studies have shown that rape kits collected by Sexual Assault Nurse Examiners were not only more thorough and contained fewer errors, but that the corresponding rape cases were more likely to be prosecuted successfully.

Only 500 SANE programs exist across the country. Continued funding to those training programs is essential, as well as a commitment to create new programs. Hospitals need the opportunity and encouragement to send their medical professionals for SANE training, and trainees need the logistical and financial support to become SANE nurses.

While SANE funding has been authorized as part of the landmark Debbie Smith Act, I strongly support efforts to allocate these funds in the appropriations process as well.

I am also working in partnership with the New York State Division of Criminal Justice Services and sexual assault advocates to educate medical professionals to ensure that they are trained and prepared before a sexual assault victim comes through the emergency room doors. We have heard too many stories

about doctors reading rape-kit collection instructions—out loud and for the first time—when the victim is lying on the table.

Rape Crisis Centers represent yet another aspect of the frontline response to rape victims, ensuring they get the legal, medical, and psychological support they need. These centers are used to working on shoestring budgets, but this most recent financial crisis has significantly reduced their ability to operate. In a recent survey of 644 rape crisis centers, 72% of the centers reported experiencing funding losses in the past year; 56% have been forced to reduce staff; and 66% have had to reduce their outreach, prevention education and public awareness efforts.

Perhaps most significantly, 25% of rape crisis centers have a waiting list for services. That means one in four victims is waiting for basic crisis services. We know that the words "crisis" and "wait" cannot co-exist. We also know that without services, victims are more likely to end up homeless, jobless, abusing substances, suffering from mental health issues—and attempting suicide.

The President's budget includes a request to increase the Sexual Assault Services Program funding in the Department of Justice's budget for their Office on Violence Against Women from $15 million to $30 million. These funds can help significantly in addressing the urgent need for services—and seizing the opportunity to change lives, in many cases even to save them.

At Joyful Heart, we envision a community that says to a survivor:

"We are not impervious to your suffering. We will give you our ears if you wish to speak of your anguish, we will lend you our voices if you cannot find yours, we will give you our most courageous and informed action to advocate on your behalf before those who have the ability to bring about an end to your plight. We

will hold you within our hearts and our minds. You have suffered enough, and your healing is our priority."

You are all a shining example of the community that can embrace and sustain survivors as they find their way back to lives of hope, possibility and joy—elected officials, medical professionals, members of law enforcement, crime lab personnel, government leaders, staffers and the media.

For all those communities represented in this room, and for all the others around the country, you strengthen the possibility of healing for a survivor because you are acknowledging, responding to, and taking action to end the suffering.

I also especially want to acknowledge the leadership of the Obama Administration, Vice President Biden and White House Advisor on Violence Against Women Lynn Rosenthal, as well as Attorney General Eric Holder and the Justice Department. I look forward to my ongoing work with them and with Congress.

You have my fierce commitment to use my voice, commit my resources, and do whatever it takes to bring safety, compassion, healing, and justice to victims and survivors of sexual violence.

Thank you for the opportunity to be here with you and among you. I am honored, nourished, and best of all, greatly encouraged.

Mr. SCOTT. Thank you.

Dr. Hassell?

TESTIMONY OF CHRISTIAN HASSELL, Ph.D., ASSISTANT DIRECTOR, LABORATORY DIVISION, FBI, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. HASSELL. Thank you.

Chairman Scott, Ranking Member Goodlatte, Chairman Conyers, and Members of the Subcommittee, I thank you for inviting the FBI to provide an update on our activities that are related to the Combined DNA Index System, or CODIS, which supports our national DNA database.

While I will be discussing several issues today, I will not be addressing the activities of other components within the Department of Justice, which have included the administration of hundreds of millions of dollars in grant funding. The Department will be submitting a statement for the record that fully details those activities.

[The information referred to follows:]

Department of Justice

STATEMENT FOR THE RECORD FROM

OFFICE OF JUSTICE PROGRAMS

BEFORE THE

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

ENTITLED

"RAPE KIT BACKLOGS: FAILING THE TEST OF PROVIDING JUSTICE TO SEXUAL ASSAULT SURVIVORS"

MAY 20, 2010

Statement for the Record
Office of Justice Programs
Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"
May 20, 2010

Chairman Scott, Ranking Member Gohmert, and Members of the Subcommittee: The Department of Justice appreciates the opportunity to submit this statement to the Committee regarding the backlog of rape kits and untested forensic evidence and how it impacts effectively investigating and prosecuting rape and sexual assault cases.

Please be assured that the Department shares the Subcommittee's concerns about untested forensic evidence, including rape kits, and DNA in particular. The Department's Office of Justice Programs (OJP) and Office on Violence Against Women (OVW) have made this issue a key priority. A recent study funded by the OJP's National Institute of Justice (NIJ), *The 2007 Survey of Law Enforcement Forensic Evidence Processing*, showed that 14 percent of all unsolved homicides and 18 percent of unsolved rapes contained forensic evidence that was not submitted by law enforcement agencies to a crime laboratory for analysis.

As reported in the media, thousands of rape kits are untested and DNA backlogs in crime labs are causing delays in the criminal justice system and undoubtedly affecting the lives of victims. In order to truly address this problem, we must first try to better understand what the backlog entails. For example, there is no industry-wide agreement defining what a backlogged forensic case is. NIJ defines a backlogged case as one that has not been tested 30 days after submission to the crime lab. However, many labs refer to any case in which the final report hasn't been submitted as a backlogged case. Using that definition, the moment a new case was logged into the laboratory it would become a part of the backlog.

Another key point is that the DNA backlog is not static, but is constantly changing. DNA evidence, including evidence from rape kits, is being submitted to crime labs and tested, but very often new DNA evidence is being submitted at a much faster rate. In other words, the laboratories are receiving new evidence to be tested at a faster rate than they are able to process. However, the reason for the increased submission of evidence is good news. Law enforcement officers are more aware of the power of DNA technology than in the past and are making more requests for testing than ever before. In addition, DNA testing requests have risen due to the retesting of older "cold cases" with DNA technologies, increased requests for post-conviction cases, and increasing submissions from property crime cases.

According to the research, there has been tremendous growth in DNA testing between 2005 and 2008. The capacity of laboratories to complete cases grew at approximately the same rate as new cases were submitted. However, the number of new cases submitted grew a bit

faster. Hence, the backlog continues to grow in proportion to the increase in demand for services.

The Department has worked diligently with our state and local partners to support increased collection and testing of DNA evidence in rape kits. We are eager to work with Congress to determine the best ways to address issues raised by the backlog. In doing so, there are certain facts to keep in mind. Some kits have no evidentiary value, while others include evidence collected from victims who no longer wish to pursue their cases. In those circumstances, submitting the rape kit to the crime lab for processing would not result in criminal charges being filed and the results would not be eligible for upload to the FBI's Combined DNA Index System (CODIS). Also, if law enforcement agencies were to submit all untested rape kits immediately to their laboratories, it would likely result in a bottleneck that would cause severe delays, making the problems worse, not better. Rather, the Department supports working with law enforcement and crime laboratories to help them identify and distinguish kits with evidentiary value that should be tested from those where testing will further no case-related purpose. In order to give victims the justice they deserve, we must use crime laboratories in the smartest way possible as we continue to work to build the capacity of the laboratories.

Before submitting evidence in sexual assault cases to crime laboratories, law enforcement officials should carefully review cases to see that they have all necessary information and elimination samples so that any profiles obtained from the evidence can be entered into the FBI's CODIS, where male profiles from these cases can be searched against profiles of convicted offenders and/or arrestees to determine if any matches occur.

Of note, while the DNA backlogs exist and are of concern, thousands of new cases are addressed and solved each year by the nation's crime laboratories, including the use of the newly expanded capacity of the CODIS system. The latest FBI reports are that over eight million offender profiles and 300,000 forensic profiles have been uploaded to CODIS since its inception, resulting in over 93,000 hits and more than 91,000 investigations aided nationwide. The use of CODIS as an investigative tool not only provides investigators with leads to perpetrators, but also eliminates many suspects of crimes, allowing law enforcement officers to re-direct their investigations elsewhere. Faster identification of perpetrators using CODIS means they can be apprehended earlier, and ultimately victimization can be reduced.

Also, given the complex nature of sexual assault cases, there may be other physical evidence, including DNA evidence, that in some cases may be more valuable than evidence from a rape kit. For example, there may be victim's clothing, bedding, and other objects which may also provide DNA evidence, or evidence other than DNA (hairs, fibers, soil, latent prints, etc.). Additionally, other direct and circumstantial evidence often is crucial in determining whether a case will be prosecuted. As such, the rape kit is not always the best means to identify a perpetrator. Each one needs to be appropriately evaluated to determine the best approach to not only identify and prosecute the perpetrator, but to exonerate the innocent as well.

As previously noted, OJP and OVW are working with our federal, state, local, and tribal partners to improve DNA testing capacity and the effective use of DNA in rape and sexual assault cases. Through the DNA Initiative from 2004 to 2009, NIJ has provided over $322

million for capacity enhancement and backlog reduction purposes. Funding has been used for purposes such as new personnel, overtime for existing staff, supplies, and materials needed to process cases beyond what their existing budgets will provide. Our long-term approach is to build the capacity of crime labs by providing funds to purchase high-speed instruments capable of processing multiple samples at the same time, automated robotic systems, and lab information management systems to manage the data generated more efficiently. Funds may also be used for hiring additional personnel and for validating newer, more efficient lab procedures and equipment. Our short-term approach has been to provide overtime and supplies needed to work backlogged cases, as well as to outsource cases to private laboratories.

The Department's efforts to help states, local and tribal governments improve how the investigation of rape and sexual assault cases is not limited to DNA. OVW, OJP, and OJP's Office for Victims' of Crime (OVC) have long supported improved forensic evidence collection as part of a comprehensive approach to investigating and prosecuting rape and sexual assault cases, while also serving the victims of these horrible crimes. Since 1997, OVC has worked to further the development of sexual assault nurse examiner programs (SANE) and multi-disciplinary sexual assault response teams (SART) programs with its training and technical assistance, including the SANE Development and Operation Guide in 1999 and its National SART Training Conference, conducted every two years since 2001. The conference, and other OVC supported training and technical assistance, focuses on a victim-centered response to all victims of sexual assault – including males, females and children. This training and technical assistance offers a holistic approach to victims' needs.

In 2004, the Attorney General released *A National Protocol for Sexual Assault Medical Forensic Examinations (Adults/Adolescents)* (the SAFE Protocol), which provides detailed guidelines for criminal justice and health care practitioners in responding to the immediate needs of sexual assault victims. OVW developed the SAFE Protocol after extensive consultation with national, State, tribal, and local experts in the field.

Since 2006, OVW has issued national training standards for sexual assault forensic examiners, started a project providing training and technical assistance to support communities implementing the SAFE Protocol, and, working with NIJ, developed guidance for health care professionals who work with sexual assault victims. OVW is now adapting the Protocol for Indian Country and developing new training and technical assistance for professionals who work with tribal sexual assault victims.

The years of effort are paying off: NIJ recently released the results from an SANE evaluation it funded. The evaluation revealed that guilty pleas and trial convictions in sexual assault cases increased when SANEs were involved with the case. Since SANEs are specifically trained on gathering evidence effectively, their collection of both DNA and non-DNA forensic evidence likely led to the improved results.

Additionally, rape kit backlogs, the subject of this hearing, has been a particular focus at the Department. This month, OVW, in collaboration with OJP, held a roundtable discussion on rape kit backlogs and the impact of these backlogs on victims of sexual assault. The roundtable included victim advocates, prosecutors, law enforcement officials, crime lab analysts, and survivors of sexual assault. The day and a half discussion focused on the current state of

backlogs in the country, the obstacles to eliminating backlogs, how and when victims should be notified when their rape kit is sent to the crime lab, and promising approaches to reducing backlogs in this country. The information gleaned from this multidisciplinary discussion will help inform OVW and OJP's research agenda, as well as inform plans for training and technical assistance for backlog reduction.

In June, NIJ plans to release a new report entitled, *Making Sense of the DNA Backlogs—Myths vs. Reality*. This report provides an in-depth account of the backlog issues facing the country and how the Federal government is responding. It also clearly defines what constitutes a backlog and what factors are contributing to the growth in the number of backlogged cases. In addition, the report delves into the recent research findings on untested forensic evidence in police departments and why this evidence is not submitted by law enforcement agencies to crime labs. We hope this new publication will help enhance the understanding of backlog issues and serve as a resource for practitioners and policymakers alike.

All of our efforts are consistent with and stem from the Attorney General's and the Department's commitment to combat violence against women. As the Attorney General recently testified, the Department stands ready to work with Congress to improve the investigation and prosecution of rape and sexual assault cases nationwide, including addressing the rape kit backlog. We hope that together we can build on some of the efforts outlined in this testimony.

This concludes the statement, Mr. Chairman. Thank you for the opportunity to submit this statement on behalf of the U.S. Department of Justice.

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Mr. HASSELL. CODIS refers to the entire program of DNA indices that includes both the offender index and the forensic casework index. It integrates this information at three levels; that is the national, State, and local level.

The acronym "NDIS" stands for the National DNA Index System. And for our general discussions today, we can just consider that CODIS and NDIS are going to be used synonymously.

One of the underlying concepts behind the development of CODIS was to create a database of a State's offender profiles and use it to solve crimes for which there are no suspects. For example, a DNA profile may be developed from a sexual assault evidence kit.

If there is no suspect to match that profile with, then NDIS can be then utilized in two ways.

First the profiles can be searched against the offender daily index to possibly link that kit to a particular offender already in the database. Second, if there is no match in the offender index, the DNA profile is searched against other crime-scene DNA profiles contained in the forensic index. If there is a match here, that means that two or more crimes can be linked, and the law enforcement agencies involved in the separate cases were able to exchange information to help identify the perpetrator.

There are currently over 8 million offender DNA profiles and 300,000 forensic profiles contained within NDIS. Since its inception in 1990, the system has assisted in over 112,000 investigations at the national, State, local and tribal levels by either identifying the perpetrator or by linking crimes.

Let me state clearly, we recognize there is a real person behind each of these numbers. And we further recognize that we have an obligation to serve those victims by ensuring that the system is as efficient as possible, while maintaining the integrity that is associated with forensic DNA analysis.

Because of limited capacity, Federal, State and local laboratories are often forced to prioritize their cases based on court dates and whether or not a suspect has been identified. This often leaves those cases in which there is no suspect—that is, those cases for which CODIS was specifically designed—they remained unanalyzed in evidence storage.

To help relieve this backlog, some Federal, State, and local crime labs utilize private commercial labs to analyze DNA samples, and thus these vendors play an important role in the overall NDIS process.

Approximately half of the DNA offender records in NDIS were analyzed by private laboratories operating under contract to government agencies. The FBI laboratory is currently performing a review to determine what improvements can be made to facilitate more timely uploading of DNA records into NDIS. This includes reevaluation of existing policies, standards, and protocols that guide the use of private laboratories in law enforcement DNA analysis.

This review was only initiated recently and no changes have yet been made to any procedures or standards that are associated with NDIS. The review includes the FBI's engagement with many stakeholders, including State and local law enforcement, their associated laboratories, and various scientific and accrediting organization.

As the administrator of NDIS, the FBI has an obligation to perform this review to ensure that law enforcement agencies are not hindered by excessive procedural requirements, thus limiting the quantity of samples that are added to NDIS. At the same time, we

have an obligation to ensure that the quality of the data is not endangered by lack of oversight and procedural integrity.

NDIS has proven to be invaluable for the law enforcement community and ultimately to crime victims and their families. Since more crimes are solved, as more records are placed in the database, enhancing the operational procedures is imperative for optimal efficiency.

Since its inception, the field forensic DNA analysis has relied on scientific validation as the basis for decisions. And indeed the 2009 National Academy of Sciences Report on the Current State of Forensic Science notes a need for scientific validation and for data-driven conclusions for all disciplines citing DNA as a model. This evaluation, as I described, is no different and it will be validated and data-driven. At the same time, the FBI is committing considerable resources to ensure that it is carried out as quickly as possible.

Thank you again for allowing the FBI to explain its position on this important issue.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Hassell follows:]

PREPARED STATEMENT OF CHRISTIAN HASSELL

Department of Justice

STATEMENT OF

DR. CHRISTIAN HASSELL
ASSISTANT DIRECTOR
LABORATORY DIVISION
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

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

ENTITLED

"RAPE KIT BACKLOGS: FAILING THE TEST OF PROVIDING JUSTICE TO SEXUAL ASSAULT SURVIVORS"

PRESENTED

MAY 20, 2010

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

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"
May 20, 2010

Introduction

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

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

The Combined DNA Index System (CODIS)

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

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

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

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

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

Legislation Leading to Backlog

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

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

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

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

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

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

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

Enhancing NDIS Efficiency

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

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

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

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

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

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

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

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

Mr. SCOTT. Mr. Boschwitz.

TESTIMONY OF JEFFREY S. BOSCHWITZ, Ph.D., VICE PRESIDENT, NORTH AMERICAN SALES AND MARKETING, ORCHID CELLMARK, INC., PRINCETON, NJ

Mr. BOSCHWITZ. My name is Dr. Jeff Boschwitz. I am vice president and executive officer of Orchid Cellmark, one the largest worldwide providers of forensic DNA testing. On behalf of the company, I would like to thank the Committee and Chairman Scott for the opportunity to provide testimony on this important subject.

Cellmark was one of the originators of the technology used today for forensic DNA testing. And as the only private lab with significant presence in both the U.S. and the U.K., it is uniquely positioned to share insights on the rape kit testing backlog issue with the Committee.

The NIJ's most recent estimate of the Nation's DNA testing backlog shows that it actually tripled between 2005 and 2008 to 70,000 cases, despite the hundreds of millions of dollars invested to eliminate it. This does not even count the hundreds of thousands of rape kits that are in police storage and have never been submitted to the crime lab for testing.

One of the concerns raised about testing these rape cases is there is not sufficient financial resources to meet this incremental testing demand. While incremental funding would certainly be of benefit.

We also want to make the Committee aware, as Congressman Schiff has, that specific regulatory changes can be made to increase the available testing resources without incremental spending by eliminating some of the obstacles with more effective public-private partnerships, as Dr. Hassell just referred to.

Under the current quality assurance standards developed by the FBI, public and private labs must meet the exact same accreditation and quality standards for day-to-day generate to be eligible for upload in the CODIS. As part of these standards, both public and private labs must perform two technical reviews of data. When the public lab has completed that second review, standard 17 of the quality assurance standards dictates—I'm sorry. When the public lab concluded that second review, the data can then be uploaded in the CODIS.

When the private labs completed that second review, standard 17 dictates that the data must be sent to a public lab for a third review of each case by a public lab employee before the result can be uploaded in the CODIS, as Congressman Schiff alluded to. The direct impact of this rule is an additional 90 minutes to 4 hours of public lab labor per case, which can add as much as 25 percent to the cost of testing; more, if overtime is used, which is often the case. And Congressman Schiff referred to use of overtime in L.A.

On top of this cost, standard 17 also requires that public labs perform at least one site visit to each private lab it utilizes, even though these labs are audited by the accrediting agencies. These rules exist today despite an absence of any published empirical evidence that we are aware of by a third party showing differences in public and private lab data quality. And in the face of statements from Marsh private lab users like LAPD, as Congressman Schiff

mentioned, do not find errors in these reviews. It is not to say the private labs have not made mistakes in the past.

There are also, of course, numerous examples of public lab errors, as the Committee is aware. And new evidence that the incremental burden being placed on public labs for this review is benefiting victims in law enforcement.

On the other hand, the negative impact of these rules on victims and law enforcement is significant. As Congressman Schiff mentioned, because the analysts must perform these reviews on top of their existing caseload, it can take months for the reviews to be completed and the data to be uploaded in the CODIS. The time it takes to clear the second backlog results in an even greater period of time for a serial criminal to remain free and commit additional crimes.

Finally, because the public labs don't have the extra resources to perform these reviews, many don't consider public-private partnerships to be a viable option at all, even when the alternative approach may take longer and ultimately cost more money.

As an example, the recent CBS news report, "The Rape Kit Backlog," there was a 500-case stranger rape backlog identified in Oakland which they said would take at least 2 years to complete, even though working with a private lab would lead to backlog completion less than 6 months. That is up to 18 more months that rapists could have been caught, that they will be free to commit additional crimes.

The impact of the rules on the efficient use of existing funding to test rape kits for DNA is also significant. Private labs, because they compete for contracts on costs and quality, and have dedicated IT and R&D resources focused on innovation and continuous improvement can be at much as 25 or 50 percent more cost-efficient than public labs. In fact, cost differences are greater when you consider Federal grants, since Federal grant money can only be used for overtime when not used for private labs or equipment.

The negative impact on the regulations is also great when you consider how they are actually preventing law enforcement from funding DNA testing out of their discretionary budgets.

There are several examples, particularly in States like Texas, where local law enforcement has been told by their local lab that they cannot contract out for testing, specifically because of the incremental burden placed on the lab by standard 17. So even when there is money to complete additional DNA testing, the testing is not performed in crimes, including rapes, which otherwise could have been prevented can be committed.

The case study for the benefits of modifying standard 17 is well-established in the U.K., where public labs and private labs have had to meet the exact same quality of standards and accreditation requirements for several years. This has enabled the U.K. To take advantage of the power of competition to increase service and quality and decrease costs. Results have been compelling. Not only has the backlog in the U.K. Been eliminated, but the cost of testing has dropped significantly at the same time, and contract turnaround time for testing has been greatly shortened. In fact, in some cases contract turnaround time for no suspect rape cases is just 10 days.

For property crime it is just 3 days. For convicted offenders' samples, it is just 2 days.

So why not modify standard 17? We have spoken with over 20 public labs for input on this matter and I have identified several important concerns and some misperceptions that we believe can be mitigated, addressed, or clarified. In the interest of time, we have left the detail addressing these concerns in our written testimony.

Thank you, Chairman Scott, and the Committee, for your attention.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Boschwitz follows:]

PREPARED STATEMENT OF JEFFREY S. BOSCHWITZ

STATEMENT OF

JEFFREY S. BOSCHWITZ, Ph.D.
VICE PRESIDENT ORCHID CELLMARK, INC.

BEFORE THE
UNITED STATES CONGRESS
HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY

HEARING ON "RAPE KIT BACKLOGS: FAILING THE TEST OF PROVIDING JUSTICE TO SEXUAL ASSAULT SURVIVORS"

MAY 20, 2010

INTRODUCTION

My name is Dr. Jeff Boschwitz. I am a Vice President and executive officer of Orchid Cellmark Inc., one of the largest worldwide providers of human DNA testing. On behalf of Orchid Cellmark, we would like to thank you for the opportunity to provide testimony on this important subject. Orchid Cellmark was one of the originators of the DNA technology used today for human identity testing and has a reputation for delivering the highest quality testing. In addition, we are the only private lab with a significant presence in both the US and the UK. As a result, we believe we are uniquely positioned to share insights on the rape kit backlog issue with the Committee.

Before we begin, we want to first commend the Committee for its leadership in issues involving the use of DNA testing on crime scene evidence as a means of aiding in establishing the guilt or innocence of the accused. It is particularly to be commended for scheduling this hearing on "Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors".

The DNA testing backlog continues to grow despite the hundreds of millions of dollars invested to eliminate it. The most recent data shows that the backlog of cases submitted to a crime lab for testing reached over 70,000 cases in 2008, up from 24,000 in 2005 http://dna.gov/backlog-reduction/. This does not count the estimated hundreds of thousands of rape kits that have never been submitted to the crime lab for testing. One of the concerns raised about testing these rape kits sitting in police storage as well as the cases submitted to the crime lab is that there are not

sufficient financial resources to meet this incremental testing demand and that these resources are not likely to be available in the current economic climate. While incremental funding would certainly be of benefit, we would like to focus our testimony on specific regulatory changes that can be made to increase the available resources without incremental spending.

OBSTACLES TO MORE EFFECTIVE PUBLIC-PRIVATE PARTNERSHIPS FOR DNA TESTING

Although public-private partnerships for DNA testing exist today and have been successful in addressing many of the nation's backlogs (including the backlog in Los Angeles), there are current guidelines (the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories: Effective July 1, 2009) that create significant obstacles to these partnerships and, at best, make them very inefficient for the public lab and the taxpayer. The FBI, recognizing the concerns of law enforcement on these guidelines, announced on March 23 that it is currently re-evaluating these policies. We would like to discuss these policies and the potential impact of changes to these policies.

Under the current regulations developed by the FBI (Quality Assurance Standards for Forensic DNA Testing Laboratories: Effective July 1, 2009), public labs and private labs must meet the exact same accreditation and quality assurance standards for the data they generate from forensic DNA testing to be eligible for upload into the Combined DNA Index System, or "CODIS". As part of these standards, both public labs and private labs must perform two technical reviews of the data. When the public lab has completed that second review, the data is uploaded into CODIS. However, when the private lab has completed that second review, the data is sent to a public lab which is then required to complete a third review of each case before the results can be uploaded into CODIS. No such independent third review of public lab data is required before data they generate is uploaded into CODIS. In addition, public labs must perform at least one site visit to each private lab it utilizes even though these labs are visited annually by the accrediting agency for its audit.

To date, we are not aware of any study performed by an independent body of a representative sample of public and private lab case files to determine if there is a significant difference in error rates between the two lab types. At Orchid Cellmark, we reviewed the last several thousand case files checked by a public lab and found just four reports that had any technical changes made to it, none of which were significant enough to change the result interpretation. Other agencies such as LAPD, which is perhaps the largest public lab user of private labs, have already come to Washington to let legislators know that they do not find meaningful errors upon performing these reviews (LAPD officials want FBI requirement removed to cut backlog of rape kits, Contra Costa Times, April 26, 2010).

The impact of the requirements for 100% technical review and site visit in terms of addressing the rape kit testing backlog are significant. Because public labs do not have extra resources to perform these reviews, they are most often performed using overtime, which makes the cost of doing them significantly more expensive. In addition, because analysts must manage performing these reviews on top of their existing caseload, it can take weeks to months for the reviews to be completed and the data to be uploaded into CODIS. The time it takes to clear this "second

backlog" results in an even greater period of time for a serial criminal to remain free and commit additional crimes. Finally, because public labs often do not have the extra resources to perform these reviews, they do not consider public-private partnerships to be a viable option at all and do the best they can to address their backlogs with the resources available even though it may take longer and ultimately cost more money to do so. As an example, the recent 489 case stranger rape backlog in Oakland, CA will not be completed for at least two years (Rape Kit Data, By the Numbers, CBS News, November 9, 2009), even though working with a private lab could lead to backlog completion in less than six months.

In terms of the substance of potential changes to Standard 17, we believe there are four critical elements:

1) The requirements for public labs to perform 100% technical review of private lab work and a site visit/audit of each private lab hired should be eliminated.

2) If private labs are to be held to a higher standard than public labs, these standards should not place any incremental burden on the public labs. There are many ways to accomplish this, including more stringent proficiency testing, minimum lab experience requirements, and minimum accreditation audit scores.

3) Private lab data should be entered into CODIS as it is today (i.e., by the public lab) or through a data clearinghouse managed by the FBI. There is no benefit to the victims or law enforcement to give private labs access to CODIS.

4) The requirement for public labs to be responsible for private lab quality and "own the private lab data" should be changed. Private labs should be held accountable for meeting quality standards and suffer appropriate penalties if they fail to meet them.

In discussing potential changes to Standard 17 with over twenty different public labs, we have identified several important concerns (and misperceptions) about modifying Standard 17 that we believe can be mitigated, addressed, or clarified and have included them as an addendum to this testimony.

USE OF PRIVATE LABS CAN STRETCH EXISTING RESOURCES FARTHER

As with most other industries where private industry is capable of delivering the service, private industry is a less expensive option for forensic DNA testing.

One study that supports this assertion is the recently completed NIJ study on property crime (NCJ 222318, April 2008). In that study, the variable costs (direct labor and materials only) were measured and estimated to be $460 per sample (assuming 50% of analyst time was on production-related activities). Orchid Cellmark's published pricing for property crime testing (since the NIJ study) has dropped to as low as $245 per sample, almost half the cost of public lab variable costs. When considering that the cost of overhead typically adds up to 50% to the cost per sample, this cost difference is exacerbated further.

Orchid Cellmark believes these lower costs will be realized for rape kit testing as well and, for example, can deliver rape kit testing services up to 40% lower than the rape kit testing services charged to the Dallas Police Department by the public lab that services its forensics's needs (which in this unusual instance, charges the Dallas Police Department for the testing services). Other public labs such as LAPD have had third parties perform internal cost audits and shown that private labs are a less expensive alternative.

The cost savings in public-private partnerships are even greater when the cost of overtime is included. Federal funding through the Debbie Smith Act can only be used by the public sector for overtime (if it is not used for equipment or private labs). Use of federal money for overtime pay is perhaps an option for public labs in these challenging financial times, but it ultimately may not be an optimal utilization of the money for backlog reduction purposes.

In addition, private labs can be significantly less expensive in comparison to public labs that are highly automated. For example, the Texas Department of Public Safety ("DPS") DPS has implemented complete automation of its DNA databasing laboratory (to put convicted offender DNA profiles into CODIS) and reduced their costs to $34 per sample (Texas SB00727). However, recent contracts awarded to private labs for the same testing service have been 15% to 35% lower (depending on contract requirements and factoring in the cost of collection kits). These differences exist because private labs can leverage greater economics of scale and because of private lab R&D efforts to decrease cost in order to remain competitive.

Finally, it is important to point out the extent to which existing federal spending could impact the backlog were it used more for public-private partnerships. For example, if 100% of the FY09 Debbie Smith Act casework backlog reduction money allocation of $62MM was applied towards private labs, 60,000-70,000 cases could be completed, effectively eliminating the backlog of cases submitted to public labs.

The UK is the ultimate case example of how leveraging the private sector can decrease testing costs while maintaining or improving quality and service. The UK not only holds private and public labs to the exact same quality standards, but also has created a system where the public lab must compete for contracts (based on cost, quality, and service) against private labs. The result has been elimination of the testing backlog, a decrease in testing costs, and contract turn-around time requirements as little as three days for DNA testing of property crime testing and ten days for DNA testing of rape kits.

TESTIMONY COSTS DO NOT ADD SIGNIFICANTLY TO TOTAL PUBLIC-PRIVATE PARTNERSHIP COSTS

Private labs do charge for expert testimony which, in turn, does add to the cost of service. However, as it stands today, many defense attorneys see little benefit in putting DNA analysts on the stand and infrequently ask for DNA testing-related testimony. In fact, Orchid Cellmark estimates that it is asked to testify, on average, in 2% of the cases it analyzes (even in the months since the Melendez-Diaz ruling). When testimony costs are amortized over all cases analyzed, it only adds about 5% to the total cost of public-private partnerships.

PRIVATE LAB CAPACITY

Another concern about public-private partnerships is that private labs do not have the capacity to handle significant volume inflow. While it is true that private labs do not have large amounts of capacity that sits idle today, large private labs have a key structural advantage that enables them to more rapidly expand capacity than public labs. Private labs have the economics of scale and process engineers needed to break the testing process into its individual components such that less experienced people can be focused on areas of the testing process where extensive experience is not required to achieve high quality (e.g., accessioning, inventory) and thus be productive sooner. Orchid Cellmark estimates it could add the capacity to do several thousands more cases a year fairly quickly and that private industry in total could increase its annual capacity by tens of thousands of cases within 12 months. The rapid absorption by private labs of the over 10,000+ cases from the Los Angeles County rape kits backlog is evidence of these advantages.

PUBLIC-PRIVATE PARTNERSHIPS CAN PREVENT FUTURE RAPE KIT BACKLOGS FROM OCCURRING

Facilitating cost-effective public-private partnerships also will help ensure that future backlogs will not occur.

In order for a small public lab to prevent future backlogs from occurring (and most public labs are small, even in high population states, because of the presence of multiple state labs), it must staff to excess capacity to counter the inevitable productivity delays caused by employee turnover, equipment/contamination problems, the unexpected complex, high profile cases with hundreds of samples, and the inherent unevenness of forensic DNA testing demand. Otherwise, backlogs/delays in testing will inevitably occur as these issues arise. The cost to the taxpayer to maintain excess capacity to deal with the lumpiness in productivity and testing demand is often difficult to justify.

Alternatively, in an effective public-private partnership, the public lab can staff to ensure that all high-profile cases and other cases not amenable to high-throughput processes or remote processing can be done locally, and use private labs for cases amenable to high-throughput such as no-suspect rape cases and property crime. When high-profile crime is down, the public lab can take back some of the work it sends to the private lab to fill its capacity. Alternatively, when there are unexpected surges in crimes or turnover in the public lab or other local issues that cause productivity in the public lab to decline below optimal levels for a time (e.g., as reported by the Delaware State lab; Delaware Online, October 18, 2009), private labs can rapidly expand capacity on a temporary basis to deal with this demand without the need for the investment in costly incremental infrastructure

The importance of having this capacity flexibility is reinforced by the recent report showing that law enforcement does not submit a significant amount of evidence for DNA testing that might otherwise be submitted if capacity was there (NCJ 2228415, October 2009). In fact, in 2007 alone, it was estimated that 1.4 million property crimes had forensic evidence that was not submitted. This "holding back" of forensic testing is one reason why many public labs that start

to catch up on their backlog quickly get behind again as demand for testing unexpectedly increases as service levels improve. Maintaining a cost-effective public-private partnership for these high volume, no-suspect cases (even when the backlog is reduced), gives states the ability to more rapidly adjust to changing demand and prevent the violent crime backlog from building. It also can prevent rapes and homicides from occurring as many burglars progress to violent crimes.

SUMMARY

In summary, it is well understood that there is a lack of public lab resources to adequately address the rape kit testing backlog. While there are many avenues to address this issue, including more widespread implementation of automation and additional funding, Orchid Cellmark believes that private laboratories are an underutilized cost-effective resource and creating guidelines that facilitate public-private partnerships is an inexpensive solution to backlog reduction that can play a major role in this endeavor.

Very truly yours,

Jeff Boschwitz

Jeffrey S. Boschwitz, Ph.D.
Vice President, North America Marketing and Sales

Addendum: Addressing Concerns with Changes to Standard 17

Concern 1) Preserving the integrity of CODIS is of primary concern and modifying Standard 17 puts the integrity of CODIS at risk.
Changing Standard 17 does **not** require that private labs have direct access to CODIS. DNA data can be uploaded into CODIS as it is today (by a public lab) or through a clearinghouse maintained by the FBI. Since there is no direct benefit to victims and law enforcement in giving private labs direct CODIS access, it is not necessary to consider options to achieve this end.

Concern 2) Private labs will directly profit from the modification of Standard 17.
The cost for private labs to perform DNA testing will be unchanged if Standard 17 is modified so private lab profit per case will also be unchanged. The only impact on cost will be to reduce the public lab costs to work with private labs.

Concern 3) Private labs, because of their profit motive, are motivated to cut corners and, as such, make mistakes. As a result, all of their work should be checked by a public lab.
Despite a lack of profit motive, public labs have made many mistakes and several have been shut down as a result (e.g. Houston, Detroit, San Francisco, and Baltimore). This is not to say that private labs have been perfect, but there is no objective third party study comparing public and private lab error rates and that lack of a profit motive means corners will not be cut and/or mistakes made.

In addition, the combination of profit motive and competition with other private labs encourages private labs to go the extra mile to ensure quality and maximize their testing success rates as quality is a key mechanism by which they can differentiate themselves from other private labs. Capitalism pushes the private lab to innovate (both in terms of cost reduction and quality improvement).

Also, there is nothing in the proposed modifications that would prohibit a public lab from checking some or all of a private lab's work if the public lab believed it necessary. The proposed modifications only eliminate the federal requirement to do so. The public lab would still have complete control and latitude to perform whatever quality checking it thought was necessary

Concern 4) Private labs will take over forensic DNA testing if Standard 17 is modified.
If Standard 17 is modified, public labs will still retain control over the testing process. Under the current guidelines, all private lab work must be pre-approved by a public lab before it can be entered into CODIS.

It is true that this change could have the impact of stimulating competition between public labs and private labs similar to what has occurred in the UK. However, as long as it is in the best interest of law enforcement, the victims, and the taxpayer to do the majority of the work in the public sector (i.e., public labs deliver testing at a lower cost, more quickly, and at a higher quality than private labs), then it is unlikely the workload distribution will change significantly.

Concern 5) The federal government should spend more money on expanding the capacity of public labs to solve the backlog problem.
There is nothing within the proposal to change Standard 17 that would prevent the Federal government from allocating more money to public labs. The request only serves to eliminate an unnecessary use of public lab resources to check private lab work and does not siphon any federal dollars away from public labs.

Concern 6) If the private laboratory goes out of business, it will be difficult to prosecute cases they have worked on.
As part of the pre-approval public-private lab relationship process, the public lab can require that the contract signed which governs the relationship with the private lab include a provision that requires the return of all evidence after a designated period of time and that a copy of all data generated be submitted to the approving public lab. This ensures that, if a private laboratory goes out of business, the law enforcement agency will have access to all of the data needed to prosecute a case.

In terms of testimony, former private laboratory employees still must respond to a subpoena to testify the same as former public laboratory employees. If, for some reason, the former private lab employees cannot be found, representatives from the public lab can still testify after reviewing the case file. In fact, in many instances today, the public lab testifies for work the private lab performs even though private lab personnel are available to testify.

Concern 7) By changing this rule, public labs will be required to work with private labs.
Nothing about the proposed rule change would inherently change a public lab's freedom of choice in using a private lab to help meet their law enforcement service goals. That decision should still be based on the same criteria used today to determine if this option makes sense (i.e., what testing option serves the best interest of victims and law enforcement).

Mr. SCOTT. Mr. Marone.

TESTIMONY OF PETER MARONE, DIRECTOR, VIRGINIA DEPARTMENT OF FORENSIC SCIENCE, RICHMOND, VA

Mr. MARONE. Thank you, Chairman Scott, Ranking Member Poe, Chairman Conyers. I thank you for inviting me to testify today. I am testifying as the director of the Virginia Department of Forensic Science. Today we have heard about the horrible crimes that were inflicted upon innocent victims. Like you, I struggle to understand the victim's fear, anguish and anger, but we can't really possibly understand the suffering endured by sexual assault victims. All we can do is work tirelessly to bring the justice they serve.

And, by the way, thank you, Chairman, for not mentioning that I started this work career, if you will, in 1971. The idea that sexual assault evidence can sit stagnant is difficult to comprehend and even harder to explain. It is the result of capacity not keeping up with demand.

Mr. Chairman, in the past you have asked me before what it would take to fix things; and just as I answered before, I give you the same answer. It is not a—just a simple answer. It is not only about getting rid of backlogs. Backlogs are not the disease, they are the symptom.

The cure comes from increasing capacity of crime labs to handle the number of cases coming in the door. According to the Department of Justice, over the period covering the funding over the Debbie Smith Act, the capacity to process DNA cases has increased nationally by threefold. During that same time, however, the demand for testing has also increased threefold. Ironically, the increase in backlogs does not come from an increase in crime; rather, it comes from an increase in knowledge, an increase in the types of cases to analyze that are available, and the sensitivity of the methodologies that we have been using.

Crime laboratories as a whole don't treat cases on the basis of bulk numbers but, rather, by crime type and the circumstances of a particular case. Each case is evaluated separately. Each case is different.

We understand the value of analyzing sexual assault evidence. Investigation of sexual assaults and the prosecution of sexual predators is very complex, involving many parties in the criminal justice system, and a lot of collaboration.

Through the testing of physical evidence associated with sexual assault, the Nation's crime labs brought out a critical investigative tool for the prosecutorial tool and defense tool. Though DNA has received the most attention when discussing the investigation of physical evidence associated with sexual assault, several other forensic sciences provide invaluable investigative information.

In Virginia I know, for example, that 25 percent of the cases that we worked that come in with a named suspect, that individual is eliminated as being the perpetrator in DNA. Latent prints are collected and can be used to identify suspects. Trace evidence such as fibers and shoe prints, can be used to associate a suspect or crime to a scene or a victim, and toxicology tests of the victim's blood or urine can be used to identify drugs that may have been used to subdue the victim.

My point is, the issue at hand is much more than just rape kits. And all morning we have been speaking about rape kits. There is a significant amount of more evidence than just a kit. Many of those cases come in with clothing and bedding and all sorts of other types of evidence. In Virginia, I know for example, that 15 to 20 percent of the sexual assault cases involve forensic examinations other than DNA. These additional examinations are not necessarily requestedat the time of the submission. Many of them occur during the examination process, since the examiners are specifically and constantly looking for that next piece of evidence that might help solve the case.

For some labs the pressure has caused them to outsource the analysis of rape kits as part of their prioritization in deadlines to process kits. This has caused some issues in States with timeliness of work. Private labs state they have the capacity to work a significant number of cases relatively inexpensively and much more quickly than public labs. The figures often given often do not include the issues of the initial analysis that I spoke of; that is, the preparatory work before you get to perform the DNA.

When a laboratory outsources a case, they must identify the samples to be tested and forward it for outsourcing. If not, that contract has to include, with a private lab, that type of analysis. And the cost of those figures are not the same as just working DNA. The process is often more time-consuming. That initial analysis is more time-consuming for the analysis.

Performing DNA testing on a specific set of selective samples requires much fewer resources. Individuals who were performing initial screening of cases for the purpose of identifying those cases that are to be outsourced are consequently not available for actually working the cases. They are just inventorying them and getting them ready to go out the door. Yet the value of the research often isn't figured into the projected cost of the outsourcing analysis.

The other issue of what actually occurs when outsourced cases eventually go to trial has really not been adequately addressed. I know of instances where outsourcing has resulted in logistical problems in scheduling expert witnesses when it comes time for the court docket and the schedulers. Additionally, there are questions regarding who pays for the expert testimony and travel costs.

I know if you look at it from a broad picture, there is probably only 5 or so percent of those cases that go to court; but for Virginia, working 300 cases a month as we do, that is 16 cases a month that we go to court on. And that could be $32,000 that somebody has to cough up to pay for that testimony, not just a simple 5 percent increment.

So how do we resolve the problem? We need to increase the capacity of labs to meet the workload that is coming into them. Meeting the needs for the analysis of sexual assault cases is primarily accomplished through effective resource allocation.

During that time period that I spoke of before, funding from the Debbie Smith Act, laboratories have acquired and validated new, more efficient equipment, added personnel, begun utilizing robotics for some operations, and continue to add more automated applica-

tions. They have also started using SmartSystems for some of the data reviewed.

I am seeing more and more statements by laboratories that they are reducing their backlogs or are on the verge of being current. For Virginia, between 2004 and 2010, because of a number of issues such as turnover and some budget reductions and so forth, as well as difficulty recruiting fully qualified individuals, the DNA staff has actually decreased by 10 percent. During that same time period, because of the addition of more equipment and automation, the backlog has decreased 50 percent. And if trends continue as they are now, we can reduce that backlog at a rate of about 100 cases per month. So sometime by the end of this year, the beginning of next year, maybe this time next year we will be current. And that figure doesn't include the six additional grant-funded, fully-funded positions. So it is not just done on overtime. You can have restricted grant-funded positions that are full-time working.

Grants should focus on building long-term capacity, not only on eliminating backlogs. To do otherwise will cause a cycle to continue to repeat. Backlog increases, cases are outsourced, and while that is happening more cases build up. The labs will be where they started from and so will the victims. Thank you very much.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Marone follows:]

PREPARED STATEMENT OF PETER MARONE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

"Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors"

May 20, 2010

Testimony from Peter Marone

Director, Virginia Department of Forensic Science

Mr. Chairman and Members of the Committee, thank you for inviting me to testify before you today. I am testifying today as the Director of the Virginia Department of Forensic Science.

Today we will hear about horrible crimes that were inflicted upon innocent victims. As a husband and a father, I grieve for the suffering of the victims and, like you, I struggle to understand the victims' fear, anguish and anger. We cannot possibly grasp the pain and suffering endured by sexual assault victims. All we can do is work tirelessly to bring the justice they deserve.

The idea that sexual assault evidence can sit stagnant, like morning traffic on the beltway, is difficult to comprehend and even harder to explain. Unfortunately, it is not a problem that we can argue our way out of. It is the result of capacity not keeping up with demand. Mr. Chairman, you have asked me before what it would take to fix things. Andjust as I have answered before, it's not a simple answer. It is not only about getting rid of the backlogs. Backlogs are not the disease. They are the symptom. The cure comes from increasing the capacity of crime labs to handle the number of cases coming in. According to the Department of Justice, over the period covering the funding under

the Debbie Smith Act, the capacity to process DNA cases has increased by three-fold nationwide. During that same time, however, the demand for testing has also increased three-fold.

Ironically, the increase in backlogs has not come from an increase in crime. Rather, it has come from an increase in knowledge, an increase in the types of analyses that are available and the sensitivity of the methodology that has been reached. Crime laboratories, as a whole, do not treat these cases on the basis of numbers, but rather by the crime type and circumstances of the particular case. We have to prioritize. Each case is evaluated separately and each case is different. We understand the value of analyzing sexual assault evidence. The investigation of sexual assaults and the prosecution of sexual predators are complex, involving many parties in the criminal justice system and a lot of collaboration. Through the testing of physical evidence associated with a sexual assault, the nation's crime laboratories provide a critical investigative and prosecutorial tool. The utilization of DNA technology makes it possible for crime laboratories to identify the source of biological material collected from sexual assault victims and associated crime scenes. Though DNA has received the most attention when discussing the investigation of physical evidence associated with sexual assaults, several other forensic science disciplines provide invaluable investigative and prosecutorial assistance. At the scene of an assault, crime scene personnel collect the evidence. Photographers document the condition of the scene, the evidence, and the victim. Latent prints are collected and can be used to identify suspects. Trace evidence such as fibers, and shoe prints can be used to associate a suspect to a scene or a victim, and toxicology testing of the victim's blood or urine can

be used to identify drugs that may have been used to subdue the victim. My point is that the issue at hand is much more than rape kits. In Virginia, I know that 15 to 20% of the sexual assault cases involve forensic examinations other than DNA. These additional examinations are not necessarily requested at the time of submission, many of them occur during the examination process since examiners are constantly looking for that next piece of evidence that might help solve the case..

For some labs, the pressure has caused them to outsource the analysis of rape kits as part of their prioritization and deadlines to process kits. This has caused problems in some states with quality and timeliness of the work. Private labs state they have the capacity to work a significant number of cases relatively inexpensively and much more quickly than the public labs. But the figures given do not include the issues of the initial analysis that I indicated earlier. When a laboratory outsources a case, it must identify the samples to be tested and forwarded for outsourcing. That process often is the more time consuming part of the analysis. Performing DNA testing on a specific set of selected samples requires fewer resources. Individuals who are performing the initial screening of cases for the purpose of identifying those cases that are to be outsourced are consequently not available for actually "working cases". Yet the value of their resources are not figured into the projected cost of outsourcing the analysis.

The other issue of what actually occurs when outsourced cases eventually go to trial has not been addressed. I know of several instances where outsourcing has resulted in logistical problems with scheduling an expert's testimony in a time frame that meets the court docket. Additionally, there are questions regarding who pays for

the expert testimony and travel costs, as well as for the pretrial consultation and document preparation for subpoenas and discovery motions.

So how do we resolve this problem? We need to increase the capacity of the labs to meet the workload that is coming into them. Meeting the need for analysis of sexual assault cases is primarily accomplished through effective resource allocatiou. During that same time period that I mentioned earlier, laboratories have acquired and validated new, more efficient equipment, added personnel, begun utilizing robotics for some operations and continue to add more automated applications. They have also started using smart systems for some of the data review. I am seeing more and more statements by laboratories that they are reducing their backlogs or on the verge of being current. For Virginia, between 2004 and 2010, because of a number of issues such as turnover and some budget reductions as well as the difficulty in recruiting fully qualified individuals, the DNA staff has decreased approximately 10%. During that same time period, because of the addition of more equipment and automation, the backlog has decreased by 50% and if trends continue as they are now, we can reduce the backlog at a rate of approximately 100 cases per month. With the assistance of federal grants we are hiring an additional 6 examiners who I did not count in the staffing I mentioned above. Grants should focus on building long term capacity and not only on eliminating backlogs. To do otherwise will cause the cycle to continue to repeat. Backlogs increase, cases will be outsourced, and while that is happening, more cases will build up. The labs will be right back where they started. We need to focus on the following in any legislation that you write.

Case selection for Analysis/investigation

- Develop matrices to determine prioritization of evidence analysis based impact to the criminal justice system.

- Provide analysis of evidence only for cases where forensic science can provide probative information
- Provide training for law enforcement who handle sexual assault investigations.
- Provide grants for expansion of units investigating sexual assaults

Analysis

- Grants for increased capacity not just for backlog reduction (facility, staff, equipment, supplies)
- Establish acceptable, realistic turnaround time guidelines with future grant enhancement to expand other forensic services if DNA guidelines are accomplished.

Prosecution

- Provide grants to increase training for prosecutors of sexual assault cases.

Mr. Chairman and members of the Committee I thank you for this opportunity and will be pleased to answer any questions you may have regarding this critical issue.

Mr. SCOTT. We will begin questions on the 5-minute rule. The Chairman of the full Committee Mr. Conyers.

Mr. CONYERS. Thanks, Chairman Scott. This is an incredibly important panel of witnesses that follow up with our colleagues that

testified earlier. I am grateful to you all, especially Prosecutor Kym Worthy who went way out of her way and off her schedule to be with us here today. All of you are doing a great job.

There has been a lot of description about the problem, especially from the last three witnesses. But what do you mean, Marone, there are no solutions? You sound like the typical bureaucrats that come into government and start giving us a one-on-one lecture about how difficult this all is.

Look, the police don't even recognize that this is evidentiary work that we are on. That is the first thing. So what I think, Kym Worthy, we ought to do—and I have been talking with Chairman Scott about it—is that we ought to get some recommendations from all of you, including Maloney and Weiner and Nadler, and go over to Eric Holder and let's get this on with. I mean, we are talking about lives being wrecked in huge numbers.

And there may be a problem with the DOJ burdens, Boschwitz, but, look, they are the ones that prosecute these things. I don't know whether they are burdensome as you suggest or imply, or not. But I would like to take Worthy over there with us when we meet.

And the next thing, Chairman, I would like us to consider—these are all considerations—what about the Association of Police Chiefs? Half the cops don't even treat the kits seriously. What do you think, Kym?

Ms. WORTHY. They don't treat it seriously because, as you know, when this problem happened we discovered the problem. Last September I wrote a letter to the chief of police. He ignored me. It wasn't until someone from his office leaked the letter. I would admit if I leaked it, but I didn't. It is not that I wouldn't, but I didn't. And it was in the paper, and then the journalists started getting upset about it, and finally they started to listen. But that was 6 months later. And I can't tell you the outrage that we feel.

It is incredibly hard to get your hands around those issues. It is incredibly difficult to get the funds you need to do it. It is more difficult to tell our rape victims that these tests haven't been completed. We have had people call our office and I have had to tell them, I don't know if your rape kit is among those because of the way that they were labeled and the way it was done.

We are trying to fix that now. And we have obtained some funding from the State to have this audit, to get a snapshot of what we have.

Mr. CONYERS. Well, if it hadn't been for you, we wouldn't even have known what our situation was, and it never would have been brought up. There are plenty of counties and jurisdictions where they don't know what the rape kit situation is, because there is no Kym Worthy or someone like her demanding that we make a stab at this; that we go looking for them and find them in closets and basements and so forth.

Ms. Hargitay, we are so happy that you are here. What kind of recommendations would you meet the Judiciary Committee with?

Ms. HARGITAY. Well, first, if I can just add something to what Ms. Worthy said, Nicholas Kristoff quoted Polly Poskin, the executive director of the Illinois Coalition Against Sexual Assault, 2009 New York Times editorial about the rape kit backlog. If you have

got stacks of physical evidence of a crime and you are not doing anything—everything you can with the evidence, then you must be making the decision that this isn't a very serious crime. So that decision has the power to traumatize rape victims further, because they are seeking recovery and healing. So I think that by not testing the rape kits that is what we are saying, is that it is not a serious crime. That is what I understand from the quote.

As I said in my testimony, I feel that my role here is to use my voice to bring many voices forward, advocates in the field and survivors. So I would like to consult them in answering your question. I want to make sure that I am representing their needs and their concerns best. I am an advocate, but certainly not an expert, and I am sitting among experts.

Mr. CONYERS. Well, Ms. Neumann, the thing that you said that really leads me to have to talk with our colleagues more is that you said, I don't think—I don't know if I would really go through that rape kit business again. I just hope that we can find some way that it is less intrusive and painful and traumatic. I mean, you have trauma and then you have got another, and that leaves me not feeling so good about this. I don't know what the medical picture is, if it can be improved or not.

Ms. NEWMANN. I think it would be one thing to go through it and know it gets used; but to go through it, and for it to sit on a shelf is a completely different thing.

Mr. CONYERS. I see your point. Why go through it if the chances are just as high that it will be put in a closet somewhere?

Ms. NEWMANN. Right.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. SCOTT. Thank you. Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. Thank you all for being here.

Before I got to come to Congress I was a judge in Houston and tried felony cases for 22 years. And before that I was a prosecutor, Kym, Ms. Worthy, and those were the best days. I think all prosecutors look back upon the days when they prosecuted as the most rewarding of their careers. I have been around so long I remember when there were no rape kits. If you had to prosecute a case it was the victim and the defendant and a swearing match.

We have come a long way since then. Not far enough, but we have come a long way. We have come so far that juries now expect forensic evidence. Right or wrong, they expect it. Thanks to shows like Law & Order, Special Victims Unit, and all of that and the technology, juries expect it.

So without forensic evidence, still in the real world in jury trials, juries question the case. They question the prosecution, even though it may exist. And juries never understand why a rape kit was performed. A case is tried and that evidence is not in the courtroom. You cannot explain that to a jury.

So we know the problem, but we have to cut to the chase and solve the issue to make rape kits accurate, the results accurate, and we have to get the results. And I think we ought to use government agents in those labs; we ought to use private labs; have a protocol, have it simple but perfect; and that we get the right result and then solve these cases. It will cost money, but so what? I mean,

that is the responsibility of government to protect citizens like Ms. Neumann.

There are a lot of crimes, but when you get to the crime of sexual assault, that is the worst crime in my opinion, because of what the perpetrator tries to do to the victim's spirit. And we as a culture need to recognize that; that those are special victims and they should be treated special in our court system. Their cases need to be heard first.

That is one good thing about the Texas law. Sexual assault cases, you go to the front of the line. You get tried first, as they should be, because victims in the system continue to be victimized by the system. And we have to end that and make sure that the same Constitution that protects defendants, protects victims of crime as well.

So I appreciate all of you being here, but I think we need to solve the problem. Backlogs have to be dealt with. There should be no backlog.

My question to you—any of you can answer this—at about the storage? Do we know how many rape kits are being stored throughout the country, and are they being stored adequately so that that evidence can be used down the road?

Dr. Hassell, you want to give me a short answer to that?

Mr. HASSELL. Most of our focus has been on when it hits the laboratory door.

Mr. POE. So you don't know what happens to it from the time it is taken from the hospital, the police get it, then eventually you see it; you don't know where it is during that gap?

Mr. HASSELL. No, sir. But we do recognize, though, if there are any inefficiencies when it does hit the front door of any laboratory, if there are any operational inefficiencies there, that will slow down the process. That will affect whether or not people will submit.

Mr. POE. Do you have any percentage you can give me about blood rape kits that had been stored, they come to you and because of some problem in the storage, they are not adequate to get a result from?

Mr. HASSELL. I don't have that for you today. I can check back with my colleagues at the Department.

Mr. POE. Ms. Worthy, do you want to comment?

Ms. WORTHY. Yes. I have to give you even more of a horror story, Judge. When this happened, I wrote a letter to all of the hospitals in the tricounty area of Detroit. We found out we had an innumerable number of rape kits that had not even been picked up from the hospital after the rape kits were done. So the answer—short answer is no, we have no idea how many.

Mr. POE. So we need a protocol from when the rape kit is performed by the hospital, what happens to it.

Ms. WORTHY. Now we are making sure we are putting measures in place. It is supposed to be picked from the hospital by the police agency. You have to establish a chain of custody to make sure that there is——

Mr. POE. That is right.

Ms. WORTHY. You know that. And then it goes to—we thought—the property room, and then—that is where it ended up. But it is supposed to go to the testing agency, to the laboratory.

Mr. POE. So technically you think the lab ought to store the rape kits?

Ms. WORTHY. They will kill me for saying that.

Mr. POE. Yeah. Well, I think they should. I will say it, they can try.

Ms. WORTHY. But the director of MSP, Michigan State Police, say all the time they don't have the room. He doesn't like me saying that, but that is where it should be.

Mr. POE. Well, we need to focus finances on that problem. I mean some places still give the rape kit to the victim.

Ms. WORTHY. That is right, and the bottom line is—I call you Judge because you are an ex-judge. At the end of the day, the judges and the prosecutors and the other witnesses and the police go home. But the rape victim or the child molestation victim lives with it for the rest of their lives.

Mr. POE. That is exactly correct.

Ms. WORTHY. We go home at the end of day. And so I think that kind of says it all. So we have to do more of our part collectively.

Mr. POE. Thank you all for being here. Thank you especially, Ms. Neumann, for your story.

Mr. SCOTT. Gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Let me begin by thanking all of our witnesses here for their role in combating the scourge of rape and the problem with rape kits. And let me express my condolences to Ms. Neumann for what you went through.

Let me begin by asking Ms. Hargitay the following question. You testify about the usefulness of the SANE programs and how useful they are, and how only 500 SANE programs exist across the country. We should continue funding for the training programs as well as commitment to create new programs.

Do you think it would be worthwhile if the Federal Government and legislation were to require that every county or every city had a SANE program?

Ms. HARGITAY. I do. I just participated in a video that was made that actually taught medical personnel how to perform the kit, because oftentimes the rape victim is going through her test and she is lying on the table, traumatized, and she has got the nurse or the doctor actually reading the rape kit's directions of how to perform the rape kit while the woman or man is lying on the table.

Mr. NADLER. So obviously the SANE programs are very useful.

Ms. HARGITAY. Yes.

Mr. NADLER. And do you think it would be useful if the Federal Government required that every major locality have them?

Ms. HARGITAY. Again, as I said before, I am not an expert. I would really need to check with my——

Mr. NADLER. We will follow up on that.

Ms. HARGITAY. Thank you.

Mr. NADLER. Ms. Neumann, you said in your case, which was the accused said that he had—that there was no sexual contact. He didn't say that there was sexual contact, but that it was consensual. He said there was no sexual contact, something readily apparent or falsifiable from the rape kit. You had the rape kit; had it been checked it would have shown that he was lying and it would

have destroyed the credibility of what he was saying. The policeman said that this fellow had done the same thing to other victims, and yet the prosecutor told you—the prosecutors, attorneys, made it clear they would not go back and test your rape kit.

Ms. NEWMANN. That is correct.

Mr. NADLER. Ms. Worthy, is that prosecutor doing his job?

Ms. WORTHY. No.

Mr. NADLER. Is he violating his oath?

Ms. WORTHY. I think so. Let me just give a caveat, though. In some cases, not a case like this, as a prosecutor you can't turn away cases because a person may have been drinking, a person may have been using drugs, a person may be a prostitute.

The nine cases—the case I talked about with the serial rapist, all nine of them were prostitutes that were known—I don't like the word "crackheads"——

Mr. NADLER. So the prosecutors didn't think they were important people, in other words.

Ms. WORTHY. Your oath says we represent the people of the State of Michigan. We don't just represent the people of the cases we need to try, we don't just represent the people who——

Mr. NADLER. But in Ms. Neumann's case, it is an open-and-shut case if they——

Ms. WORTHY. No case is ever open and shut.

Mr. NADLER. Of course. But as much as any ever is, it sounds like an open-and-shut case as much as any ever is if they do the kit.

Ms. WORTHY. It sounds like a case that we wouldn't have turned away.

Mr. NADLER. And they shouldn't turn it away.

Do you think it might be useful if we subpoenaed that prosecutor and asked him what his criteria for deciding on cases what might be.

Ms. WORTHY. I can't answer that.

Mr. NADLER. Okay, I will just let the idea hang in the air.

Let me ask you a different question. Does a judge in a rape case in Michigan have the authority to order the police to produce the result of a rape kit testing if it hasn't been tested?

Ms. WORTHY. Yes, the judge has the authority.

Mr. NADLER. The judge has that authority. Does he usually exercise it?

Ms. WORTHY. The reality is in a jurisdiction like ours where we have—that is why I said how many cases we do, we don't have the jail space to keep the defendant in jail. We don't have—what are they going to get tested? In our case we have a Detroit Police Department crime lab shutdown and those are the real issues. So the judge usually won't do it because they realize the defendant would have to be held for a very long time until they get tested, because they don't have the facilities to test them all.

Mr. NADLER. Why would the defendant have to be held if he is out on bail? He is not even accused at this point.

Ms. WORTHY. Well, if he is on bond, that would be a different story.

Mr. NADLER. Or he may not even have been indicted.

Now, should we—if the judges exercise their authority more often, would the prosecutor, knowing that, be more likely to bring the case in the first place?

Ms. WORTHY. I am sorry; I didn't hear the rest of the question.

Mr. NADLER. If it were the case that judges exercised that authority to order these rape kits tested, would prosecutors be more likely to bring these cases that they don't bring now?

Ms. WORTHY. Well, prosecutors are going to do what a judge orders them to do, yes.

Mr. NADLER. That wasn't my—well, who has the rape kit, the prosecutor or the police; the police do?

Ms. WORTHY. Yes.

Mr. NADLER. So if the judge more often ordered the police to test the kits, would the prosecutors be more likely to A, request the judge do so; and B, to bring the case in the first place?

Ms. WORTHY. Yes.

Mr. NADLER. Is there anything the Federal Government can do that we can do by legislation to encourage that.

Ms. WORTHY. I am not sure that is legislatively corrected. I think it is corrected by judges, who are qualified, taking the bench. I mean——

Mr. NADLER. I hear that. But let me ask you one other question on this. We have a lot of victims rights legislation that goes through here from time to time, much of which I don't like because it plays havoc with the civil liberties of accused. But what if we had a bill that said something like the State must test the rape kit within 90 days, at the request of the victim.

Ms. WORTHY. I think that would be great as long as there was companion resources to be done.

Mr. NADLER. As long we provided resources.

Ms. WORTHY. Yes.

Mr. NADLER. In other words, in our next bill if we provide resources we should also give the victim the right to demand and the mandate of that demand be followed.

Ms. WORTHY. I am not sure I like that, because the victim often doesn't know or understand there may be legal reasons we can't go forward.

Mr. NADLER. Okay.

Ms. WORTHY. So we have to make that determination.

Mr. NADLER. Well, what about giving her that right, provided certain conditions that we could put in the legislation, certain basic conditions?

Ms. WORTHY. I would agree with that in theory, yes.

Mr. NADLER. And we could work with you on drafting such.

Ms. WORTHY. Yes, in theory. Yes.

Mr. NADLER. My last question is to Mr. Hassell. Aside from adding funds and some of the ideas we have been talking about, do you have any other specific recommendations of what we can do?

Mr. HASSELL. No, sir, not at this time. But one of the things we are doing in this review, though, is seeing what we can come forward with, and we are engaging many people.

Mr. NADLER. And when do you think that review will be complete so you can make recommendations to us?

Mr. HASSELL. The entire time frame of the review will be no longer than 1 year.

Mr. NADLER. One year from when.

Mr. HASSELL. From when we kicked it up, which was the end of April.

Mr. NADLER. Which was recently.

Mr. HASSELL. The spring of 2011. Along the way, we will be publishing some findings and results of our working group meetings, the first working group meeting that should come out the end of this month. We will make that available on our Web site and we will engage and see if there is anything we can bring forth.

Mr. NADLER. Thank you very much. I yield back. My time has expired.

Mr. SCOTT. Gentleman from New York, Mr. Weiner.

Mr. WEINER. Thank you. I don't think we can solve every injustice here, but we are going to try to solve yours. If you can tell me, Ms. Neumann, just so I understand this and it is crystal clear, the prosecutor has said we have this rape kit and we are refusing to test it because we lack the funds?

Ms. NEUMANN. Two things. Funds—and he also deemed it unwinnable, in his mind, because I had been drinking.

Mr. WEINER. Well, but even if this person's evidence is only taken to see if it hits another rape, it should be taken.

Ms. NEUMANN. Right.

Mr. WEINER. The second part is the cost. Dr. Boschwitz, your company does DNA tests on rape kits?

Mr. BOSCHWITZ. That is right.

Mr. WEINER. Give me the range, whatever it would cost to test a rape kit.

Mr. BOSCHWITZ. Nine hundred to $1,000.

Mr. WEINER. Can I ask you, Dr. Boschwitz—and I don't want to put you in an untenable position, and feel free to answer no—would you test this particular case free of charge?

Okay, if you'd rather not say so, here is what I will say I will do. I will pay for it. I will raise the money to pay for that kit, and I say here to the prosecutor in Kentucky there is no statute of limitations on this case. If the only thing separating that—is it a he or a she?

Ms. NEUMANN. He.

Mr. WEINER [continuing]. That prosecutor is his apparent unwillingness to try, because he thinks he is going to lose, or for want of a thousand bucks. The first thing I think means he should be removed, if he doesn't think he can win the case with a witness, a rape kit, then I don't know how you make yourself a prosecutor. And secondly, if it is for want of a thousand bucks, I think among my colleagues here on this panel, we will raise the money. Maybe Dr. Boschwitz can offer us a deal.

Mr. BOSCHWITZ. Sounds good.

Mr. WEINER. I just—it is beyond—one of the reasons that you deserve an enormous amount of credit is that you are standing here, putting a face on what could potentially be thousands of women who are not as courageous as you, who are not as willing to speak publicly before Congress and before the cameras. And maybe if we take this one case and we shine the bright light on it and we make

it clear that for want of a few dollars and the courage and intestinal fortitude of someone to do his job, you are being denied justice.

Let's see what happens. Maybe prosecutors around this country will say, You know what? I don't want to have this light turned up on me.

Many prosecutors in this country are elected. They have to stand before voters and say, This is what I have done this year and what I have done every 2 years. So I want to thank you for doing that. And that offer stands.

And I don't know if the prosecutor of Kentucky, you know, is at all interested in this subject, but I want to make sure he is aware of your testimony, my offer, and I really do believe that my colleagues here will join me in this. And even if not, I will pay for it personally.

Mr. NADLER. Will the gentleman yield?

Mr. WEINER. I will certainly yield.

Mr. NADLER. I think that is an excellent idea. I think it will be unnecessary after we subpoena him here first.

Mr. WEINER. Look, I think one of the things that we need to understand here is that people like Ms. Neumann are not typical of rape victims. The level of courage that she is showing in keeping the tension on this, it makes her hopefully a spokesperson for many others. And I think that one of the things that we can do here is take this case and shine light on it. And you may think that—how many years and days has it been since this incident took place?

Ms. NEUMANN. Three years, 5 months and 4 days.

Mr. WEINER. Three years, 5 months and 4 days. Three years, 5 months and 4 days since this act took place, but there is no longer, on 3 years, 4 months, and 6 days any excuse for the prosecutor to continue wallowing in his ineptitude.

But I want to just point out—and Judge Poe asked a very good question, and he wasn't here for the opening statements. So let me reiterate it. We don't know how many Valerie Neumanns there are in the country. We don't. Despite the fact that we are now providing millions of dollars of taxpayer funds to help legislatures to pass laws to be able to deal with the backlash, we don't know.

I have got to tell you I bet there are a lot of prosecutors like that in Kentucky, and sheriffs and law enforcement officials who are a little bit embarrassed who—and that's why my legislation would change it. If you want access to these Federal dollars for law enforcement, you have got to tell us. And if it means that you have got to have a story in the newspaper that your local State or county has hundreds of untested rape kits, then so be it. But if you want the help from the Federal Government in order to deal with law enforcement—and just about every law enforcement agency is knocking on our door saying give us help—at the very least, you should come clean about this. And this is not the end.

I think that I can say, without fear of any contradiction from my Republican friends or anyone on this, we are going to make sure that there is no excuse for this prosecutor in Kentucky not following up on this case. Win, lose, or draw, we are going to make sure he does his job. Even if it means we take that kit and we help

you subpoena to get it back from the law enforcement and we test it ourselves with the help of—we are not going to test it; the professionals are going to do it. If we have to every single day hand him the results, then that is what we are going to go do. But I really do want to thank you for testifying today.

Ms. NEWMANN. Thank you.

Mr. SCOTT. Thank you. Gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Dr. Hassell—is it Hassell or Hassell?

Mr. HASSELL. Hassell.

Mr. GOODLATTE. Thank you for joining us today. Can you tell us how you justify the FBI proposed review of procedures, since this review seems to defy the positions of many State and local crime lab directors and CODIS administrators, as well as organizations such as the American Society of Crime Lab Directors and the Scientific Working Group on DNA Analysis Methods.

Mr. HASSELL. One of the things we have done is we brought them into the fold to actually do this review. So that is why these first working groups, we involved those very people. So the American Society for Crime Lab Directors, they sat with us when we had our first working meeting at the end of April. We will be meeting with more groups as we go forward. But everyone is engaged in this that you mentioned there.

Mr. GOODLATTE. Are the majority of backlog samples awaiting review attributed to a small number of public labs?

Mr. HASSELL. Part is—a lot of the answers I am giving are the fact that we just started this review. Part of that was doing a survey. We just got the data back. Just yesterday is when I saw it. So we are in the process of compiling that. And we will make it available, so I will be able to answer your question very shortly.

Mr. GOODLATTE. I guess the question that I would like you follow up with the Committee on as you review that data is, if that is the case, why not focus on helping those labs rather than changing the whole system?

Mr. HASSELL. We could follow up on that once we see the survey results and that sort of thing.

Mr. GOODLATTE. All right. One of the issues that I understood—and I apologize for having to step out to attend another meeting, and perhaps Chairman Scott covered this, because I know he and I were discussing it earlier—but the issue seems to be whether or not a test given by a private lab has to be retested by a public lab in all cases, or does it just have to be retested in a case where there is a positive match?

Mr. HASSELL. It is reviewed, it is not retested. So there is a third review. It is done at the law enforcement agency that does contracting with the private lab. It is a review of the profile, the actual data they get back. It also is looking at the eligibility of that sample for upload.

Mr. GOODLATTE. And am I correct in that a test done by a private lab can go directly into the database?

Mr. HASSELL. No, sir. It has to go through that review.

Mr. GOODLATTE. Why is that? Since it has to be reviewed again anyway to be used as criminal evidence in a case, or perhaps even

retested, why would there not be a desirability to get that information into the database for future use as quickly as possible?

Mr. HASSELL. That is one of the very issues we are looking at in the whole review, is to get our stakeholders together to answer that question.

Mr. GOODLATTE. Do you think it is a good idea?

Mr. HASSELL. It could be done if the private laboratories are held to the same standard of oversight. There is a difference in oversight and monitoring of private and public laboratories. The accreditation is there, but it is matter of oversight. So if that is harmonized, then it could be possible.

Mr. GOODLATTE. Thank you.

Ms. Hargitay, do you hear from victims of sexual assault that their treatment by the criminal justice system has been something less than the care and compassion that is afforded to the victims by the detective you play on television? Is the real world as people see it on television?

Ms. HARGITAY. No, it is not. And I think that is why my character has become so possible. I get a lot of fan mail saying, I wish the detective who handled my case was like you. I think one of the reasons I started the Joyful Heart Foundation was to truly shed a light on something that people for some reason don't want to talk about. Sexual assault is a very scary thing to talk about. People don't—are afraid of it. They don't have the language to talk about it. They are scared of what it will be. It will rip apart families, it ruins lives. And these women have shame on them that they don't know how to relieve themselves of. And so many times the shame is with the victim as opposed to the perpetrator.

And so I think where Joyful Heart is about the courage to heal, as Mr. Weiner said, the courage; it is about the courage. It takes so much for a survivor to come forward and to muster that courage, to come forward. And to then have nothing done about it, what are we saying? What are we telling? Who are we protecting? We are saying, You don't matter.

Lives are ruined because of it. People think nobody cares about me. I don't matter. If this happens to me and people are going, You know what, sweetie, you don't matter.

That is what we are saying. I think that is why—and if New York can do what it has done and get rid of the of the backlog, I feel that we can do it.

There are so many components that obviously we have to take in and this is why we are here today. I am so grateful to have all these minds together to figure out truly what can we do. But I think it is desperate. If we want to create the next generation of respectful, kind people that are not criminals, we need to educate them and shine a light on sexual assault and say what is acceptable, what is not.

If you perform this crime, these are the ramifications. They must be tested. We are letting—we are consciously letting criminals walk again. We are saying it is okay, you can do it again. We are letting criminals go and saying there are no consequences. Do it again, nine times, one time, two times, three times. Thirteen years if a rape victim can't get the status of her DNA, of her rape kit? Thirteen years? Three years? It is unacceptable. It is unacceptable.

Mr. GOODLATTE. Well, thank you and thank you to all of you for the efforts you are making to educate us, educate the public about the nature of this problem and what can be done to solve it. Thank you Mr. Chairman.

Ms. HARGITAY. Thank you. Thank you so much.

Mr. SCOTT. And we are going to have to adjourn the hearing. I think Mr. Cohen wanted to make a very brief statement.

Mr. COHEN. Thank you, Mr. Chairman. I just want to thank you for having this hearing and for the witnesses that are here. This is so important of a subject. My city is, unfortunately, at the bottom of the ladder as far as caring in the past. Under the previous city administration we had in Memphis, the Memphis Sexual Assault Resource Center that had opportunities to care for women and interview them and have them tested had to close down because they had inadequate, incompetent people staffing it. And the rape kits there have been piled up and not tested for years and years and years.

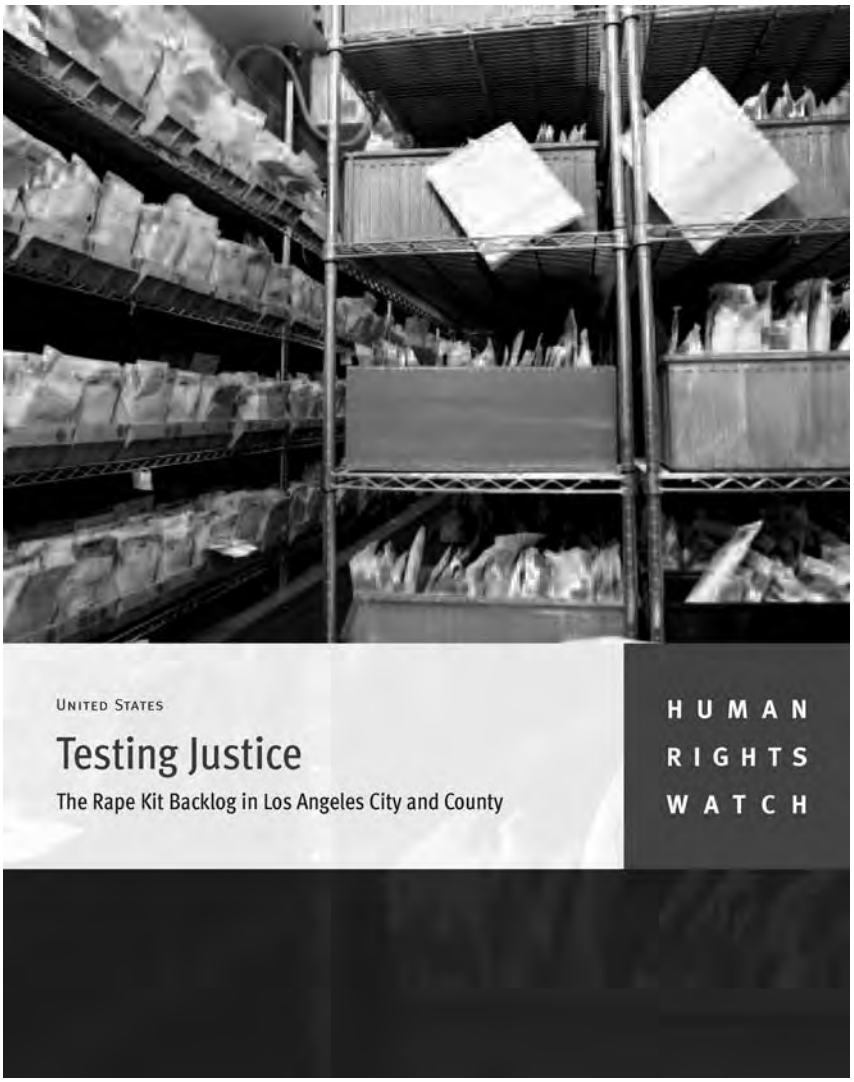
Fortunately, we have a new mayor who took it over when he was county mayor, but it was horrendous. And this should not happen. It is an assault against all women and it is wrong. And I thank you for the hearing and the witnesses for testifying.

I yield back the balance of my time.

Mr. SCOTT. Thank you. I would like to thank all of our witnesses for their testimony today. This has been extremely helpful. And I would ask you to review the bills before us, if you have specific recommendations to make those recommendations. Particularly one question was, who was tested and whether we are overtesting. But if you could review the bill and provide that information to us. Members may have additional written questions which will be forwarded to you, and we ask that you answer them as promptly as you can in order that answers may be made a part of record.

Without objection, I have a report by the Human Rights Watch, entitled "Testing Justice" that I would like entered into the record. Without objection, so ordered.

[The information referred to follows:]


United States
Testing Justice
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Testing Justice

The Rape Kit Backlog in Los Angeles City and County

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I. Summary

> If people in Los Angeles hear about this rape kit backlog, and it makes them not want to work with the police in reporting their rape, then this backlog of ours would be tragic.
> —Marta Miyakawa, detective, Los Angeles Police Department, Cold Case Robbery and Homicide Division[1]

Los Angeles County has the largest known rape kit backlog in the United States. At least 12,669 untested sexual assault kits ("rape kits")—which potentially contain DNA and other evidence collected from rape victims' bodies and clothes immediately after the crime—are sitting in police storage facilities in the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and 47 independent police departments in Los Angeles County. A smaller, but not inconsiderable, backlog resides at police crime labs. Testing a rape kit can identify the assailant, confirm a suspect's contact with a victim, corroborate the victim's account of the sexual assault, and exonerate innocent defendants. The untested rape kits in Los Angeles County represent lost justice for the victims who reported their rape to the police, and consented to the four-to-six hour rape kit collection process.

The Police and Sheriff's Departments are making progress in addressing their rape kit backlogs. But the time it took both agencies to acknowledge that untested rape kits sat in their storage facilities slowed their responses and may have delayed apprehending violent offenders. The Police Department, in particular, has struggled to expeditiously tackle its rape kit backlog, its efforts complicated by city politics, battles over crime lab funding, and changes in internal leadership over the issue. It is essential that county and city leaders, both within and outside of law enforcement, move quickly to test every rape kit in the county. Eliminating delays in rape kit testing is especially crucial to realizing justice for rape victims in California, where the 10-year statute of limitations (the maximum time period after a crime when a defendant may be prosecuted) for rape can be lifted if the rape kit is tested within two years of the date of the crime and a DNA profile is found.

Rape is a crime that can affect its victims in physically and emotionally debilitating ways. The severity of the crime requires a vigilant police response when a rape is reported. As Gail Abarbanel, director of the Rape Treatment Center at Santa Monica-UCLA Medical Center, told

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[1] Human Rights Watch interview with Detective Marta Miyakawa, Los Angeles Police Department (LAPD), Los Angeles, CA, August 11, 2008.

Human Rights Watch, there are "tragic consequences of not opening rape kits in a timely way," and "this is one of the cases that made us aware of [these consequences]" [2]:

> Catherine was in her forties, living with her young son. She was awakened at midnight by a stranger who raped her, sodomized her, and forced her to orally copulate him—repeatedly. Thankfully, her child remained asleep. When it was over, the police brought her to the Rape Treatment Center. Like all rape victims, her body was one of the crime scenes. She consented to the collection of evidence.
>
> The detective was told by the crime lab that it would take at least 8 months to analyze Catherine's rape kit. The detective said he knew from the "MO" in this crime that the rapist was a repeat offender. Eight months was too long to wait. He personally drove the kit to the state lab—where the kit still sat for months. When it was processed, they got a "cold hit." Catherine's rapist was identified. He was in the offender database.
>
> During the months Catherine's kit sat on a shelf, unopened, the same rapist attacked at least two other victims—one was a child.

Sexual Violence in Los Angeles County

At least 1,474 individuals reported being raped in Los Angeles County in 2007, the last year for which Human Rights Watch could obtain complete data—an average of more than four rapes reported to the police every day. This number does not include sex crimes in which children are victims. Although Los Angeles is experiencing historically low crime rates, and reported rapes have decreased significantly in the past decade, arrest rates for rape have also declined from the late-1990s: fewer reported rapes lead to an arrest.

The low arrest rates for rape mean that a person who reports to law enforcement that she was raped has about a one in four chance of seeing someone arrested for the crime. The Los Angeles Police Department, which has law enforcement jurisdiction over the City of Los Angeles, had a rape arrest rate of 25 percent of all reported cases in 2007, down from a high of 30 percent in 1999. The Los Angeles Sheriff's Department, which polices 40 of Los

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[2] Human Rights Watch e-mail correspondence with Gail Abarbanel, director, Santa Monica UCLA Rape Treatment Center, March 12, 2009.

Angeles County's 88 cities, has seen its arrest rate decline from 33 percent of all reported rapes in 1999 to 28 percent in 2007.

Given the low arrest rates for reported rapes, it is imperative that law enforcement uses scientific investigative tools that can help solve these cases. The testing of rape kits can advance this goal. A rape kit contains DNA and other evidence from the rape victim's body and clothing. Test results from the kit can provide a DNA profile that can be compared to a known suspect's profile. Results can also be entered into local, state, and federal DNA databases to compare to individual and crime scene DNA evidence from other unsolved cases.

National studies have shown that cases in which a rape kit was collected, tested, and contained DNA evidence of the offender's contact with a victim were significantly more likely to move forward in the criminal justice system than cases in which there was no rape kit collected.

Untested Rape Kits

The rape kit backlog in Los Angeles County comprises two distinct but related elements. The first exists in police evidence storage facilities, where rape kits are booked into evidence, but DNA analysis is not requested by a detective. The second backlog exists in police crime lab facilities where rape kits are submitted for testing, but are awaiting DNA analysis and have not been tested in a timely manner.

Police storage facilities

As of February 2009 the estimated 12,669 untested rape kits in Los Angeles County's 88 cities comprised at least 5,193 in the Los Angeles Police Department's storage facility, 4,727 in the Los Angeles Sheriff's Department's storage facility, and at least 2,749 in storage facilities in the 47 cities in Los Angeles County that have their own police departments (but rely on the Sheriff's crime lab for rape kit testing).

The issue of untested rape kits in police storage in Los Angeles became public in 2002. Yet it was not until November 2008 that the Sheriff's Department counted the untested rape kits in its storage facilities. As of February 2009, after pressure from Human Rights Watch and other advocacy groups, the Sheriff's Department has counted and catalogued its untested rape kits in more detail than any other police department in the United States of which Human Rights Watch is aware. Having thus far catalogued 70 percent of the 4,727 untested

kits counted, officials were shocked to find that over 800 kits belonged to cases in which the suspect was not known to the victim; over 300 were more than 10 years old and therefore beyond the statute of limitations; and another 100 were within six months of that deadline. The Police Department first disclosed figures for the untested kits it held in 2007. Its latest figures, from an audit announced in February 2009, show 188 kits past the statute of limitations, and over 400 belonging to cases where no suspects were connected to the cases. Police Department Deputy Chief Charlie Beck told Human Rights Watch, "We are sobered by the untested kits in suspect-less cases. There is no excuse for us not to be testing those kits."

The large number of untested rape kits in Los Angeles County, and the delays between when the Police and Sheriff's Departments knew that there may be untested rape kits in their storage facilities and when they took serious steps to address the issue, make it especially important that the Police and Sheriff's Departments' current and ongoing responses to their rape kit backlogs are part of a comprehensive plan that is subject to monitoring and oversight. An important start is to enforce Police and Sheriff's Department policies, adopted in recent months, that require detectives to send every rape kit booked into evidence to their respective crime labs for testing.

Crime labs

A number of untested rape kits are located at the Sheriff's and Police Departments' crime laboratories, where testing delays frustrate investigations and postpone court cases. Through its research, Human Rights Watch has found that the county and city crime labs do not have the capacity to quickly analyze rape kits submitted for testing by detectives, nor do they have the capacity and personnel to test every booked rape kit. According to police and prosecutors who spoke with Human Rights Watch, it can take as long as 12 months from the time rape kit testing is requested until test results are received by the requesting law enforcement officer.

Enhancing the Police and Sheriff's Departments' crime lab capacity will require additional city and county resources. The Police and the Sheriff's Departments must advocate for these resources, and the County Board of Supervisors and City Council should approve the funding necessary to eliminate the rape kit backlog and delays in testing new kits. California is experiencing a significant financial crisis, but public safety policies that will help apprehend violent offenders and prevent future rapes are a necessary investment and a core government responsibility.

Significant resources will certainly be needed to resolve the rape kit backlog in Los Angeles. Achieving this goal will require not just political will to appropriate the necessary funding, but oversight to ensure that all funds and other resources available are used effectively and efficiently toward the testing of rape kits. An October 2008 audit of the Los Angeles city crime lab revealed that the number of untested rape kits continued to grow in the years 2004 to 2008 despite nearly $4 million in federal grant money made available for DNA backlog reduction during the same period. Human Rights Watch's own review of federal DNA funding grant reports revealed that as of December 2007 the Police Department had not yet used all funds it had been awarded in 2004, and had used none of the available money from 2005 to 2007.[3]

Consequences of Untested Kits

Survivors of sexual assault who have reported their rape and consented to the extensive and invasive collection of a rape kit often are not informed by the authorities about the status of their rape kit or of their case. It was difficult for Human Rights Watch to find rape victims who knew that their rape kit was sitting untested in a police storage facility or crime lab in Los Angeles County. One reason may be the lack of information available to victims regarding the status of their rape kits. Under California law, the Police and Sheriff's Departments must notify victims in stranger rape cases if their rape kits were not tested within two years of the crime. It is unclear whether the Sheriff's and Police Departments have a system in place to ensure compliance with this requirement, although the Sheriff's Department has a policy requiring victim notification in accordance with California law. Rape treatment providers and advocates in the Los Angeles area could not recall ever hearing of a victim being informed about the testing status of her rape kit.

Many victims may assume their kit was tested. Gail Abarbanel, director of the Rape Treatment Center at Santa Monica-UCLA Medical Center, told Human Rights Watch, "The last time many rape victims see their rape kit it is in the hands of a police officer. The assumption is that if the police have the kit, it will be tested." A sexual assault nurse examiner told Human Rights Watch, "My clients seem to assume that if they have not heard back from the police, it is not because testing was not done; it was because testing was done but there was no DNA in the kit. Not hearing from the police can contribute to the self-blame and doubt that victims are feeling about the rape."

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[3] Fiscal Year 2004, Fiscal Year 2005, Fiscal Year 2006, and Fiscal Year 2007 Forensic Casework DNA Backlog Reduction Program Grant report overview for National Institute of Justice (NIJ), Los Angeles Police Department, unpublished document on file with Human Rights Watch. See also Memorandum from the Los Angeles Police Department (LAPD) and Los Angeles Sheriff's Department (LASD) to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the LAPD and the LASD.

To understand the dynamics and effects of the rape kit backlog, Human Rights Watch spoke with rape treatment providers, sexual assault nurse examiners, and police officers about cases in which rape kits were not tested in a timely manner, or not tested at all:

- A sexual assault nurse examiner told Human Rights Watch of treating a child who had been abducted and raped near a school bus stop. When the child described the attack, the details struck the provider as nearly identical to the story of another child who was abducted from the same bus stop and raped, and was treated at the same clinic three months prior. The provider wondered if the assailant could be the same man. When she contacted the police officer in charge of the investigation to inquire about the results of the rape kit test from the earlier case, he informed her that it was still waiting for testing at the crime lab, and might not be tested for another six months.
- An investigating officer told Human Rights Watch about a case he was working on in which a college student was raped as she tried to get into her car. The officer requested testing for the rape kit, but eight months after the request still had not received test results. Asked if he had inquired with the lab about the status of the case, he told Human Rights Watch, "You have to be careful about not getting on the lab's bad side by bothering them, because you need them for your next case."
- A rape treatment provider told Human Rights Watch about a victim who was raped at a party: "The police seemed to focus a lot of their attention on the fact the girl was drinking, and not as much on the fact of her physical injuries. She had tears inside her vagina, consistent with forced [penetration]. You could just sense that while they were interviewing the girl about the case, they were not going to be taking this case that far. I called them a few months later, at the girl's request, to see if the kit was tested, and they told me they were going to wait and see whether to test it. I told my client, and she told me she didn't want to be a part of the investigation anymore. She felt like the police didn't believe her anyway."
- A rape treatment provider told Human Rights Watch of seeing four sex workers come to her clinic in a nine-month period, all with similar descriptions of the man who raped them: "I worked for months to get the police to test these kits, to see if they could match the cases together. The same things that made these women vulnerable—their life on the streets—also made them suspect to the officer, and he was convinced these were simply cases where the sex worker didn't get paid by her [customer], and they retaliated by reporting a rape. My response was, 'They retaliated by submitting to the lengthy rape kit collection process?' I think sometimes the officers just don't get rape."

- A rape victims' advocate had a client whose rape kit test results came back more than a year after the rape had occurred. When an investigating officer told the victim that the DNA profile in the kit matched an offender in the DNA database, the victim no longer wanted to participate in the case. The advocate told Human Rights Watch, "She couldn't go back to the nightmare of her rape. I think that if the detective had been able to identify her rapist in the weeks and months after it happened, she would have been able to cooperate. But now she just wants to put it behind her."

In New York City, which eliminated its rape kit backlog in 2003, law enforcement and crime lab officials created a system to ensure the testing of every booked rape kit. City officials created a policy that every booked rape kit would be sent to the laboratory and placed in a queue for DNA testing. The crime lab built up its DNA testing capacity so that every rape kit would be tested within 30-60 days of its collection. The crime lab created a multi-agency cold hit system: every time a DNA profile from a rape kit matches a profile in the DNA database, the crime lab, prosecutor's office, and police department are simultaneously informed of the hit. To deal with the increase of investigative leads in rape cases due to DNA testing of every booked kit, the prosecutors and police created a special team to investigate rape kit DNA matches. Since 2003, New York has seen an increase in arrest and prosecution rates for rape.

International human rights law requires police to investigate reports of sexual violence and take steps to protect individuals from sexual assault. Public officials must move quickly and decisively to eliminate untested rape kits in Los Angeles County. Given the large number of untested kits, the rights of rape victims to access justice, the consequences of delayed or denied justice for rape victims, and the resources necessary to complete the task, resolving the way Los Angeles deals with booked rape kits will require the leadership not just of law enforcement, but of top elected officials in Los Angeles County and its constituent cities.

II. Methodology

For this report, Human Rights Watch conducted 130 telephone or in-person interviews with: eight police officers, six chiefs of police or police executives, twelve crime lab personnel, eight crime lab directors or officials, ten sexual assault forensic nurses, five rape treatment providers, twenty-four elected officials from the cities and County, three victims of rape, one family member of a rape victim who has been affected by the rape kit backlog, thirteen rape victim advocates, nine state or city sexual assault organization directors or senior staff, fifteen national sexual assault or victims' rights organization directors or senior staff, three senior staff at the US Department of Justice Office of Justice Programs, five attorneys, four local newspaper reporters who have covered the issue of rape kit backlogs extensively, eight statisticians from state and city criminal justice statistics offices, and four senior staff at the ACLU of Southern California.

We conducted on-site visits to the Los Angeles Police Department and Los Angeles Sheriff's Department crime labs and evidence storage facilities.

We submitted requests under the California Public Records Act to the Police Department, the Sheriff's Department, and all 47 police departments of the cities in Los Angeles County with independent police departments. We requested rape reporting, arrest, prosecution, conviction, and dismissal rates, and documents pertaining to the collection, processing, and backlog of rape kits.

We read 52 academic studies on the prevalence and incidence of rape in the US, the factors that lead to low reporting, arrest, prosecution, and conviction rates for the crime of rape, and how rape kit evidence affects the likelihood that a case will move forward in the criminal justice system. We also read four studies about the civil liberties and civil rights implications of local, state, and national DNA databanks.

We gave the Los Angeles Police and Sheriff's Departments a copy of the report to review. This report is current as of March 2009.

III. Recommendations

To the Los Angeles Police Department and the Los Angeles Sheriff's Department

- Create a Rape Kit Backlog Oversight Board to address the nature and scope of the rape kit backlog, which will:
  - Include representatives from public and private crime laboratories, criminalists, law enforcement, prosecutor's offices, public defenders and private defense lawyers, victims' and nongovernmental organization representatives, and judges;
  - Identify the nature and scope of current capacity problems, backlogs of unprocessed rape kit evidence, and systems issues that impede the utilization of DNA forensic technology to its full potential in sexual violence cases;
  - Make recommendations for eliminating current backlogs and preventing future backlogs of unprocessed rape kit evidence in local public laboratories;
  - Assess the impact of "cold hits" upon local investigative, prosecution, and defense resources; and
  - Report findings within six months of the board's creation, with updates every month thereafter.
- Enforce policy requiring every booked rape kit to be both sent to the crime lab and tested.
- Identify the crime lab personnel resources necessary to test every booked rape kit—both those in the current backlog and those booked in the future—in a timely manner.
- Identify the police department personnel resources necessary to pursue the investigative leads generated from testing every booked rape kit.
- Prioritize funding for the resources necessary to eliminate the rape kit backlog, test every future rape kit, and pursue investigative leads from rape kit testing.
- Implement a system to inform sexual violence victims of the status of their rape kit test, including:
  - Hiring a victims' advocate with expertise in conveying sensitive information to sexual assault victims; and
  - Creating a policy to require law enforcement to, within six months of collection of their rape kit, notify victims of its testing status.
- Preserve every booked rape kit until it is tested.
- Account for the number of untested rape kits destroyed in the past 10 years, and establish a victim notification system for those whose kits were destroyed before testing.

To the Los Angeles County Sheriff's Department

- For untested rape kits in Los Angeles County's independent police departments' storage facilities, create a formal system to send those kits to the county crime lab for testing.
- Create a law enforcement unit tasked with investigating cold hit leads from the elimination of the rape kit backlog.
- Create a special sexual assault unit to handle all sex crimes investigations.

To the Mayor of Los Angeles

- Prioritize funding for the testing of rape kits in the city budget.
- Require regular reporting from the Police Department on the status of the rape kit backlog.

To the Los Angeles City Council

- Hold full Council hearings on the scope and nature of the rape kit backlog.
- Approve funding in the city budget for the testing of rape kits.
- Require full Council regular reporting from the Police Department on the progress of eliminating the backlog.

To the Los Angeles County Board of Supervisors

- Continue to hold hearings on the nature and scope of the rape kit backlog, and require updates on progress in its elimination.
- Prioritize and approve funding in the county budget for the testing of rape kits.

To the Los Angeles Police Commission

- Continue to hold hearings on the nature and scope of the rape kit backlog, and require updates on progress in its elimination.

To the Los Angeles County and City crime labs

- Create better evidence tracking systems:
  - Convert paper records to electronic records for easier tracking;
  - Establish a bar code tracking system that allows every piece of evidence to be scanned and tracked from the moment it is booked into evidence until testing is complete;

  - Create monthly reports on the number of rape kits tested each month, and the time it took for testing to be completed; and
  - Establish a system for simultaneous electronic notification of the crime lab, law enforcement, and prosecutors when a DNA profile matches a profile in CODIS (a "cold hit").
- Address crime lab capacity concerns, including how to find the funding and space for the DNA analysts required to test every booked rape kit in a timely manner.
- Pursue increasing the use of private crime laboratories for rape kit testing.
- Prioritize federal DNA Casework and Backlog Reduction Grant Program funds for the testing of rape kits.

To the Los Angeles County District Attorney

- Implement a "cold hit" tracking program, which would track the outcomes of rape kit testing on rape investigations, arrests, charges, prosecutions, dismissals, convictions, and exonerations.
- Create a special unit tasked with pursuing prosecutions from investigative leads generated from the testing of the rape kit backlog.

To the California Legislature

- Amend the Sexual Assault Victims' DNA Bill of Rights, Penal Code section 680, so that:
  - It applies to all victims of sexual violence, whether or not the identity of the offender is in issue;
  - Law enforcement is required to inform all victims, within six months of the collection of the rape kit, of the testing status of the kit; and
  - Untested rape kits cannot be destroyed until they are tested.

To Los Angeles Rape Treatment Providers (both hospitals and clinics)

- Provide anyone who is considering or has undergone rape kit collection with a pamphlet about the subsequent steps in the rape kit process, including expected timelines, responsible authorities, and information on how to follow the status of their rape kit, along with numbers of victims' organizations that can help advocate on their behalf.

To the California Department of Justice

- Require law enforcement agencies to report to the Department on the number of untested rape kits booked into police and crime lab storage facilities.
- Create data and technical support systems to assist local and state law enforcement with the tracking of cold hit evidence.

IV. Sexual Violence in Los Angeles County[4]

Rape is a crime with serious consequences, and it demands serious attention. The potential physical, social, and mental health consequences of rape for a survivor include genital and other injuries, sexually transmitted infections, unwanted pregnancy, post-traumatic stress disorder symptoms, anxiety, depression, lasting fears about personal safety, and other immediate and potentially long-term effects on her physical and psychological health and well-being. The experience and consequences of sexual assault are different for every survivor, and for some the consequences are profound and enduring.[5] One survivor told Human Rights Watch, "If you have not been raped, I think it is impossible to understand how traumatic it is. But to give people an idea, I tell them that my rape happened a decade ago, and I still don't feel like myself. I am changed forever."[6]

Reported Rapes

At least 1,474 individuals reported being sexually assaulted in Los Angeles County in 2007, the last year for which Human Rights Watch has data for the entire county—an average of more than four rape reports made to the police every day.[7] These reported rape cases do not include sexual crimes committed against children. The Los Angeles area is currently experiencing an historic low in reported rapes, although it is important to note that rape is traditionally an underreported crime. Comprehensive academic studies estimate that reported rapes represent 10 to 20 percent of all rapes, and that one in every six women in the US will be the victim of a rape or an attempted rape in her lifetime.[8] According to Patricia Giggans, executive director of Peace Over Violence, an anti-violence group based in Los Angeles, "The clear consensus among government, academic, and public health experts on

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[4] Los Angeles County, which is geographically the size of the state of Connecticut and has a population of 10.3 million, includes the city of Los Angeles and 87 other cities.

[5] For a comprehensive list of symptoms, see, for example, Safe Horizon, "After Sexual Assault: A Recovery Guide for Survivors," undated, http://www.safehorizon.org/files/After_Sexual_Assault_Bklt.pdf (accessed February 23, 2008).

[6] Human Rights Watch telephone interview with Jeanne O. (last name withheld), Los Angeles, CA, March 10, 2008.

[7] Los Angeles Police Department, "Crime and Arrest Yearly Statistics 2008," unpublished document on file with Human Rights Watch; Human Rights Watch e-mail correspondence with Captain David Walters, Los Angeles Sheriff's Department, Scientific Services Bureau, January 26, 2009.

[8] See, for example, Patricia Tjaden and Nancy Thoennes, National Institute of Justice & Centers for Disease Control & Prevention, "Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey," January 2006, http://www.ncjrs.gov/pdffiles1/nij/210346.pdf (accessed February 23, 2009).

sexual violence is that the majority of rapes go unreported. And of the small percentage that are reported, most are not likely to go very far in the criminal justice system."[9]

Arrest Rates

While reported rapes have decreased significantly in Los Angeles County in the past decade, arrest rates have also declined. The Los Angeles Sheriff's Department, which contracts its policing services to 40 of Los Angeles County's 88 cities, has seen its arrest rate decline from 33 percent of all reported rapes in 1999 to 28 percent in 2007 (the last year in which data were available to Human Rights Watch).

Reported Forcible Rapes and Rape Arrests for the Los Angeles Sheriff's Department[10]

Year	Reported Forcible Rapes	Arrests for Rape	Arrest Rate
1999	584	194	33%
2000	659	205	31%
2001	685	unavailable	unavailable
2002	728	204	28%
2003	631	213	34%
2004	626	178	28%
2005	619	191	31%
2006	656	170	26%
2007	607	169	28%
2008	unavailable	unavailable	unavailable

The Los Angeles Police Department, which has law enforcement jurisdiction over the city of Los Angeles, has seen reported rapes decline by more than one-third since 1997. The arrest rate for rape was 25 percent of reported cases in 2007, down from a high of 30 percent in 1999. Nonetheless, the 2007 arrest rate represents a marked increase from the previous years, and a hopeful sign that the trend is reversing.

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[9] Human Rights Watch interview with Patricia Giggins, executive director of Peace Over Violence, Los Angeles, CA, November 11, 2008.

[10] The reporting and arrest data include both adults and juveniles. Reporting and arrest data were obtained through public records requests to the Los Angeles Sheriff's Department, and are on file with Human Rights Watch.

Reported Forcible Rapes and Rape Arrests for the Los Angeles Police Department[11]

Year	Reported Forcible Rapes	Arrests for Rape	Arrest Rate
1997	1405	323	23%
1998	1338	378	28%
1999	1168	345	30%
2000	1342	308	23%
2001	1269	265	21%
2002	1218	234	19%
2003	1134	228	20%
2004	1088	197	18%
2005	947	160	17%
2006	920	190	21%
2007	867	221	25%
2008	786	unavailable	unavailable

In sum, over the past decade, the percentage of rapes reported to the Los Angeles County Sheriff and the Los Angeles Police Department that result in an arrest has declined. Currently, a person in the Los Angeles area who reports to law enforcement that she was raped has about a one in four chance of seeing someone arrested for the crime.

Data Limitations

In general, the collection of rape statistics in California is not as rigorous or comprehensive as necessary to understand the problem of sexual violence. Los Angeles County and the City of Los Angeles both collect rape statistics in a way that may inflate the arrest rate.

The California Department of Justice (CDOJ), which collects crime data from every jurisdiction in the state, narrowly defines what constitutes "rape" for reporting purposes, confining it to crimes that fit the FBI Uniform Crime Report's narrow common-law definition of rape (forcible rape which involves vaginal penetration by a penis),[12] and thus excluding a wide range of crimes that the California penal code defines as rape. At the same time, the CDOJ allows

[11] The reporting and arrest data include only data on adult crimes and arrests. Reporting and arrest data were obtained through public records requests to the Los Angeles Police Department and are on file with Human Rights Watch.

[12] See FBI Criminal Justice Information Services Division, "2006 Crime in the United States" webpage, section "Forcible Rape: Data Collection," http://www.fbi.gov/ucr/cius2006/offenses/violent_crime/forcible_rape.html (accessed February 6, 2009). For California Department of Justice crime data collection information, Human Rights Watch e-mail correspondence with chief crime statistician at the California Department of Justice, name not disclosed, Sacramento, CA, July 14, 2008.

police to count under the "rape" category arrests for *all* crimes that would constitute rape under the state penal code.[13] In addition, arrests for rape in a given year include cases in which rapes were reported in previous years, so that the arrest rate for a given year represents arrests in all rape cases, including but not limited to those reported that year. This can have the effect of inflating the arrest rate for rape that the Police and Sheriff's Departments document in their yearly reports to the CDOJ.

It is important to note that while the CDOJ sets minimum standards for crime data collection, the nature and scope of data on rape still vary from jurisdiction to jurisdiction, including the Los Angeles Sheriff's Department and the Los Angeles Police Department. According to a sexual assault data tracking expert who spoke with Human Rights Watch, "The lack of standardization among states or agencies regarding sexual assault data makes it difficult to compare data from jurisdiction to jurisdiction to see what state-based sexual violence policies may be working and what ones are not."[14]

As far as Human Rights Watch can tell, no agency in Los Angeles County tracks the status, progress, and outcome of rape cases from the moment the rape is reported until the resolution of the case—making it very hard to get accurate data on the true rate of reported rapes that lead to an investigation, arrest, or other criminal justice outcome. In fact, numerous experts on sexual violence with whom Human Rights Watch spoke identified the lack of comprehensive case-tracking systems, including the tracking of forensic evidence like rape kits, as a key barrier to understanding what is happening with rape cases in the Los Angeles criminal justice system, and what effect rape kit collection and testing has on case outcomes. As Lance Gima, then-director of the California Bureau of Forensic Services, observed to Human Rights Watch, "The lack of comprehensive data on the criminal justice response to rape makes it appear that figuring out the criminal justice dynamics of rape cases [is] a low priority in California."[15]

During the course of Human Rights Watch's research into the rape kit backlog in Los Angeles, we heard stories of rape cases not leading to investigations, much less arrests. When Human Rights Watch asked a Los Angeles police officer whether all reported rape cases were

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[13] Human Rights Watch e-mail correspondence with chief crime statistician at the California Department of Justice, July 14, 2008.

[14] Human Rights Watch telephone interview with Lisa Walbot Wagner, project manager, Justice Research and Statistics Association, Washington, DC, April 8, 2008.

[15] Human Rights Watch telephone interview with Lance Gima, former director of the California Bureau of Forensic Services, Los Angeles, CA, March 14, 2008.

guaranteed to be investigated, he replied, "Well, if she got herself killed in addition to getting raped, and then it would be like a homicide, and that definitely would get investigated. Otherwise, I don't know."[16] Another officer who spoke about rape investigations to Human Rights Watch said, "Stranger rape cases are a priority. We investigate every reported case, but after a few years on the job, you get a sense of when the story that a crime occurred is credible, and when it isn't worth pursuing."[17]

As Sharon Shelton, a director of the Los Angeles YWCA's rape crisis services, told Human Rights Watch, "We know that the likelihood of a case going to court [is] small, so we often downplay the criminal justice option to our clients. We don't discourage them from pursuing it, but we don't want them to pin their entire hopes on finding justice through the system."[18]

Role of Forensic Evidence in Rape Cases

National studies have shown that cases in which a rape kit was collected and contained DNA evidence of the offender were significantly more likely to move forward in the criminal justice system than cases in which there was no rape kit collected.[19] Studies have also found that forensic or physical evidence, such as the type of evidence stored in a rape kit, are important predictors of prosecutors' decisions to bring charges in a case.[20] There is also emerging evidence that juries have come to expect DNA evidence in order to convict a defendant.[21] These findings point to the importance of rape kit collection—and testing—in moving cases forward through the criminal justice system.

In New York City, a policy of testing every rape kit booked into evidence appears to be having a positive effect on rape arrest, prosecution, and dismissal rates. Since the policy was implemented in 2001, rape arrests have risen to 70 percent of reported cases in 2007, up

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[16] Human Rights Watch telephone interview with Los Angeles Police Department officer, name withheld, Los Angeles, CA, April 21, 2008.

[17] Human Rights Watch telephone interview with Los Angeles Police Department officer, name withheld, Los Angeles, CA, February 3, 2009.

[18] Human Rights Watch interview with Sharon Shelton, project director, Los Angeles YWCA, Los Angeles, CA, May 5, 2008.

[19] See, for example, Megan Ann Alderden, University of Illinois at Chicago, "Processing of Sexual Assault Cases Through the Criminal Justice System," 2008, unpublished dissertation on file with Human Rights Watch.

[20] See Dawn Beichner and Cassia Spohn, "Prosecutorial Charging Decisions in Sexual Assault Cases: Examining the Impact of a Specialized Prosecution Unit," *Criminal Justice Policy Review*, Volume 16, Number 4, 2005, pp. 61-98; Cassia Spohn and David Holleran, "Prosecuting Sexual Assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners," *Justice Quarterly*, Volume 18, 2004, pp. 651-688; and Kristen M. Williams, "Few convictions in rape cases: Empirical evidence concerning some alternative explanations," *Journal of Criminal Justice*, Volume 9, 1981, pp. 29-39.

[21] Richard Willing, "CSI Effect Has Juries Wanting More Evidence," *USA Today*, August 5, 2004.

from 30 percent in 1999.[22] While there are certainly other dynamics contributing to the high arrest rate for rape in New York, as one New York Police Department officer told Human Rights Watch, "Having the DNA [test results] from every rape kit I book has given me investigative leads I never would have expected. I take second looks at cases I would have dismissed, and I pass along more cases to the prosecutors. I used to think I didn't need DNA to develop a case, but it has helped me solve more cases."[23] (How New York eliminated its rape kit backlog is discussed at the end of Chapter VI.)

[22] Crime data obtained through public records requests to the New York Department of Criminal Justice Statistics, unpublished documents on file with Human Rights Watch.

[23] Human Rights Watch interview with New York Police Department officer who investigates sex crimes, name withheld, New York, NY, April 24, 2008.

V. Untested Rape Kits in Crime Laboratories

> We can only do so much with the resources we have.
> —Greg Matheson, Los Angeles Police Department Criminalistics Lab director, City of Los Angeles crime laboratory[24]

> Even in the few cases of mine where the rape kit is tested, I have to prepare my clients to not expect testing results for many months.
> —Rape treatment advocate in Los Angeles County[25]

DNA testing can be a powerful investigative tool in rape cases, given its capacity to connect individuals to rape evidence. Testing rape kit evidence can provide law enforcement with a DNA profile to identify an assailant, confirm the suspect's contact with a victim, corroborate the victim's account of the crime, exonerate innocent suspects, and tie crime scene evidence together. The failure to test rape kits can delay and prevent justice in rape cases. In California, timely rape kit testing is especially crucial to realizing justice for rape victims, as California law removes the 10-year statute of limitations for rape cases in which rape kits are tested within two years of the crime and a DNA profile is obtained from the rape kit's evidence.[26]

The rape kit backlog in Los Angeles County comprises two distinct but related elements. The first part of the backlog exists in police evidence storage facilities, involving rape kits booked into evidence but where testing of the kit is not requested by a detective. The second part of the backlog exists in police crime lab facilities where rape kits are submitted for testing, but are awaiting DNA analysis and are not tested in a timely manner. While both the Los Angeles Police Department and the Los Angeles Sheriff's Department have recently announced (in August and November 2008, respectively) that they have revised their policies to eliminate detective discretion and to require that every booked rape kit be submitted to the crime laboratory for testing, it is still important to examine the dynamics of the rape kit backlog both before and after these new policies were put in place, especially given the transitional status of the policies, which have not been fully implemented due to current Police and Sheriff's Departments resource capacities.

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[24] Human Rights Watch interview with Greg Matheson, director, Los Angeles Police Department Crime Laboratory, Los Angeles, CA, May 5, 2008.

[25] Human Rights Watch interview with rape treatment advocate, name withheld, Los Angeles, CA, April 16, 2008.

[26] Cal. Penal Code section 803 g (1), (A)-(B).

As will be discussed in Chapter VI, the majority of untested rape kits in Los Angeles County reside in police evidence storage facilities. But a number of untested rape kits are located at the Police Department and Sheriff's Department crime laboratories, where testing delays hold up investigations and prosecutions.

Through its research, Human Rights Watch has found that:

- the Los Angeles County and City crime labs do not have the capacity to quickly test rape kits submitted for testing by detectives;
- the labs do not have the capacity or the personnel to test every booked rape kit, as will be required if the Police and the Sheriff's Departments implement new policies; and
- rape kit testing, from the time it is requested until the requesting law enforcement officer receives the test results, can take as long as 12 months.

In order to permanently eliminate the rape kit backlog and test every booked rape kit in a timely manner, both city and county crime labs will require a significant increase in DNA analysts, expanded workspace for DNA testing, more efficient DNA testing methods and equipment, and a DNA evidence tracking system. DNA testing of rape kits is a complicated process,[27] but both the county and city crime labs can be more efficient in the way they process this critical evidence.

The National Problem

There is no doubt that crime labs across the country are inundated with requests for DNA testing. The most recent federal Census of Publicly Funded Crime Laboratories—released in 2008 using data collected in 2005—shows that during 2005 public crime labs saw their DNA backlog double from the beginning to the end of the year, and that public crime labs across the country would need to increase their DNA analyst staff by 73 percent to keep up with DNA testing needs and requests.[28]

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[27] Human Rights Watch observed rape kit testing at both the Los Angeles County and City crime labs. Rape kit testing involves many stages and requires many hours of work over a period of days. The process includes screening the kit to determine whether DNA is present. If DNA is present on an item, technicians will extract the DNA from the sample, isolate the male and female DNA from one another, replicate the male sample, analyze the DNA to create a profile, and compare that profile to another DNA sample (for example, a known suspect's sample or other crime scene evidence).

[28] Matthew R. Durose, Office of Justice Programs, Department of Justice, "Census of Publicly Funded Crime Laboratories, 2005," July 2008, pp. 1-2.

Congress has recognized the problem of rape kit backlogs in crime laboratories. In 2004 Congress passed the Debbie Smith Act as part of the Justice for All Act.[29] The Debbie Smith Act established the Forensic DNA Casework and Backlog Reduction Grant Program, which provides federal funds for state and local law enforcement entities to test DNA evidence.[30] Both the Los Angeles City and County crime labs have been allocated substantial funding from the program, also known as the Forensic DNA Backlog Reduction Program. But it is not clear how much, if any, of the money was used to test rape kits. That the Police and Sheriff's Departments' rape kit backlogs remained constant or grew, despite millions of dollars in Debbie Smith Act funding, illustrates what is wrong with the current structure of the federal grant program to reduce rape kit backlogs in the US.

How Rape Kit DNA Testing Works

DNA testing has improved exponentially since it was first used in 1989 to convict a defendant in a criminal trial.[31] As DNA testing has evolved, so has the way DNA evidence is collected from the body of a rape survivor.[32]

When a person is raped and reports to the police or hospital, she will be asked by the hospital staff or the police to consent to the collection of a rape kit, a process which can last between four and six hours.[33] Rape kit collection can occur in a hospital emergency room or at a designated rape treatment center.[34] Human Rights Watch observed a simulated collection of a rape kit at the Rape Treatment Center at Santa Monica-UCLA Medical Center, which is the largest rape treatment center in Los Angeles County.[35] After intake and counseling, which includes assessing and treating any critical care needs, the patient is

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[29] "The Justice for All Act," P.L. 108-405, Title II, the Debbie Smith Act, signed into law by President George W. Bush, October 30, 2004. Debbie Smith was a rape victim whose rape kit was affected by a DNA testing backlog in her home state of Virginia. Six years after her rape, her kit was tested and placed into the DNA database system, and matched an offender's profile. See, for example, Congresswoman Carolyn Maloney's DNA Legislation page: http://maloney.house.gov/ (accessed January 21, 2009). The Debbie Smith Act was reauthorized by Congress in 2008. "The DNA Backlog Grant Program Debbie Smith Act Reauthorization Act," P.L. 110-360, signed into law by President Bush October 20, 2008.

[30] Ibid.

[31] For an overview of DNA testing technology and the criminal justice system, see, for example, David Lazer, ed., *DNA and the Criminal Justice System: The Technology of Justice* (Cambridge, Massachusetts: MIT Press, 2004).

[32] For an overview of how rape kit evidence collection has changed over the years, see, for example, "The Sexual Assault Nurse Examiner-Sexual Assault Response Team" website, http://www.sane-sart.com (accessed March 3, 2009).

[33] Human Rights Watch telephone interview with Jennifer Pierce-Week, president, International Association of Forensic Nurses, Arnold, MD, March 23, 2008. For more information on the collection of rape kits, see, for example, "The Sexual Assault Nurse Examiner-Sexual Assault Response Team" website, http://www.sane-sart.com.

[34] Ibid.

[35] Human Rights Watch interview and tour with Gail Abarbanel, director, Santa Monica UCLA Rape Treatment Center, Los Angeles, CA, May 6, 2008.

interviewed to obtain a history of the assault. Then, a nurse practitioner conducts the medical and forensic examination. The victim undresses while standing over a large sheet of paper, and anything that falls from the clothing or body that may provide links to a perpetrator or a crime scene (for example, hairs, debris, and carpet or clothing fibers) is collected and placed in the rape kit. A sexual assault nurse examines the victim on a gynecological table with stirrups. The nurse scans the body with an ultraviolet light to find what may be otherwise undetectable semen or saliva that might contain the assailant's DNA. The nurse then swabs every part of the victim's body that the ultraviolet light fluoresces. The victim is examined from "head to toe" to identify any physical injuries sustained during the assault, which can include scratches, bruises, bite marks, ligature marks, and burst blood vessels caused by strangulation. Every visible physical injury is photographed. A magnifying digital camera called a colposcope—which is noninvasive and can photograph inside body cavities without requiring insertion—is placed near the anal, vaginal, and oral cavities to record any lacerations or other injuries inside those areas. The nurse then collects other samples, such as fingernail scrapings, pubic hair combings, and urine and blood, placing each in separate envelopes or tubes. The swabs are labeled and sealed in containers with evidence tape. All of the evidence is then placed in a large white envelope—the rape kit.[36]

In Los Angeles County, a police officer from the Los Angeles Police Department or Los Angeles Sheriff's Department takes the rape kit from the hospital or treatment center and books it into police evidence.[37] Victims may assume or believe the kit is then sent to the crime lab for testing. In reality, many rape kits have remained in police evidence storage facilities years after they were collected and were never tested (see Chapter VI). Even when kits are submitted to the crime lab for testing, it can take many months for the crime lab to get the test results back to the requesting detective. By comparison, the New York City DNA lab, which tests every rape kit booked into evidence by the New York Police Department, generally produces a test result in 30 to 60 days from the time the kit is received at the laboratory.[38] It should also be noted that on the day Human Rights Watch toured the New York City DNA lab, we observed just one rape kit that had been booked into evidence and was waiting to be opened.[39]

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[36] Ibid.

[37] "Los Angeles Sheriff's Department Evidence Collection Protocol," LASD, 2007, unpublished document on file with Human Rights Watch; and "Los Angeles Police Department Evidence Collection Protocol," LAPD, 2007, unpublished document on file with Human Rights Watch.

[38] Human Rights Watch interview with Marie Samples, deputy director, DNA Division, New York City Office of the Medical Examiner's DNA Unit, New York, NY, March 6, 2008.

[39] Human Rights Watch tour of the New York City DNA Crime lab, March 6, 2008.

Los Angeles Regional Crime Laboratory

In 2007 the Police Department and the Sheriff's Department together opened the Los Angeles Regional Crime Lab (formally named the Hertzberg-Davis Forensic Science Center), a new crime laboratory built to house the Police and Sheriff's Departments' crime labs and to accommodate the growing need for forensic services in Los Angeles County.[40] At the time of the lab's opening, the inadequate space of the Police and the Sheriff's Departments' former laboratory spaces was cited as a cause of DNA testing backlogs, including the rape kit backlog. According to the *Los Angeles Times*, "DNA cases submitted by detectives are backlogged because technicians have room to process only 18 cases a week."[41]

The Los Angeles Regional Crime Lab has been nationally recognized for its "innovative" and "collaborative" approach[42] to combining and sharing "as much as possible."[43] Yet according to interviews with crime lab personnel conducted by Human Rights Watch, the regional crime lab is essentially two crime laboratories located in one building: the Police and the Sheriff function separately from one another. This lack of collaboration may hinder the lab's effectiveness. As one crime lab official told Human Rights Watch, "There is basically an invisible tape that runs down the halls of the building, and the criminalists from [the Police Department] and [the Sheriff's Department] make sure to stay on their side of the lines. We don't work together, and we don't always get along."[44] Officially, crime lab officials from both labs point to collaboration in training DNA analysts, the sharing of testing supplies, and joint efforts to create a DNA Academy for research, training, and development.[45] In this report, we discuss the Sheriff's (County) and Police Departments' crime labs separately, in accordance with how they function in practice.

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[40] On the opening of the crime lab, see Stuart Pfeifer and Patrick Mcgreevy, "Case of the empty regional crime lab is no mystery," *Los Angeles Times*, May 12, 2007, http://articles.latimes.com/2007/may/12/local/me-crimelab12 (accessed January 20, 2009). Before the new crime lab facilities opened, the 140 Los Angeles Police Department criminalists employed in 2007 used a workspace built to hold 30 criminalists. Ibid.

[41] Ibid.

[42] See, for example, Ken Mohr, "The Benefits of Partnership: How multiple agencies are coming together by pooling their resources, talents, and issues in order to create a comprehensive solution for the future," *Forensic Magazine*, August/September 2005, http://www.forensicmag.com/articles.asp?pid=55 (accessed January 19, 2009).

[43] Human Rights Watch e-mail correspondence with Captain David Walters, Los Angeles Sheriff's Department, March 1, 2009.

[44] Human Rights Watch interview with a Sheriff's Department crime lab official, name withheld, Los Angeles, CA, May 6, 2008.

[45] Human Rights Watch separate interviews with Director Greg Matheson and Captain David Walters, May 5, 2008.

Los Angeles County

The Los Angeles County crime lab, which is referred to as the Los Angeles Sheriff's Department Scientific Services Bureau, serves the unincorporated areas and cities of Los Angeles County, except for the city of Los Angeles.[46]

Untested rape kits

The Los Angeles Sheriff's Department estimates it has tested 700 rape kits over the past four years,[47] but determining the average length of time it takes the Sheriff's Department to test a rape kit is difficult. Advocates say it may take up to a year to get results on the kits that are tested. As the Los Angeles Sheriff's Department stated in response to a public records request from Human Rights Watch for such data, "[Current evidence tracking systems] are antiquated and are, thus, limited in their ability to track items."[48]

The Sheriff's Department does have plans for "a $3 million project ... to replace aging evidence tracking systems with a modern, state-of-the-art, integrated property and evidence, laboratory information management system ... [that will] use a single, shared database to track evidence from its collection, through testing and/or storage, all the way until its final disposition. It will also have the ability to track specific items such as sexual assault kits. The system will eventually include the results of all testing conducted on individual evidence items."[49] The Sheriff's Department estimates that it will have this system in place in September 2009.[50]

Prior to the Sheriff's Department's new policy of testing every booked rape kit, rape kit evidence was usually only tested when a detective requested testing and a supervisor in the crime lab agreed that the evidence merited testing. According to the Los Angeles Sheriff's Department, "If the investigator chooses to initiate a request for examination, they contact a supervisor in the Scientific Services Bureau's Biology Section. The facts of the case are discussed, and if both the investigator and supervisor agree, the evidence is accepted for analysis ... as a general rule, only those cases in which the evidence is of probative value are

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[46] Ibid. See also public records request response to Human Rights Watch from Los Angeles Sheriff's Department, July 3, 2008, unpublished document on file with Human Rights Watch.

[47] Los Angeles County Board of Supervisors hearing transcript, December 16, 2008, http://file.lacounty.gov/bos/transcripts/12-16-08%20Board%20Meeting%20Transcripts%20(C).pdf (accessed March 13, 2009).

[48] Letter from the Sheriff's Department Headquarters to Human Rights Watch regarding public records request, July 3, 2008.

[49] Ibid.

[50] Letter from the Sheriff's Department Headquarters to the Los Angeles County Board of Supervisors, "Inventory and Tracking of Sexual Assault Kits," November 5, 2008, unpublished document on file with Human Rights Watch.

examined. For example, cases wherein the involved party is not in question are typically not processed."[51]

The previous policy of detective and forensic analyst supervisor discretion was of concern to rape treatment providers and victims' advocates in Los Angeles County. As one sexual assault nurse examiner commented, "While it is true that DNA evidence is most probative in cases where we need to figure out the identity of the perpetrator, it can also have great value in other kinds of cases. For example, if you test rape kits in cases where the identity of the alleged assailant is known, you can potentially match his DNA to rape kit evidence in other cases. Acquaintance rapists can be serial rapists. I have done a number of sexual assault exams on women who were raped by someone they knew, and given the details they described to me, I was pretty sure it was the same guy who committed each rape. But it is hard to get evidence tested in acquaintance rape cases, so their rape kits just sat there and who knows if I will see another victim of his come in for treatment."[52] Another nurse examiner told Human Rights Watch about a case where she believed the crime lab talked a detective out of requesting a rape kit for testing. "It was not a stranger rape case, and, according to the detective, the crime lab felt that testing would not help much. I encouraged the detective to continue to press for testing, but he told me that he didn't want to second-guess the crime lab, and then have it come back to hurt him when he needs the crime lab to test something else for him."[53]

Prospective benefits of cold hit notification in the new evidence tracking system

The Sheriff's Department's planned new evidence tracking system could ensure that cold hit results are passed along from the crime laboratory to multiple law enforcement personnel, including the appropriate investigating officers. Currently, the crime lab only informs the requesting officer of the test result.[54] Human Rights Watch spoke to an investigating officer with the Sheriff's Department who told us of a case in which he was not notified about a cold hit until weeks after it happened: "Part of the problem was that I was on vacation when the lab got the hit, and since the investigating officer on the case is the only one who gets told about the cold hit, well, I was on vacation and so my partner, who was in charge of the case while I was away, didn't know there had been this hit, and we sat on it for about three weeks

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[51] Letter from the Sheriff's Department Headquarters to Human Rights Watch regarding public records request, July 3, 2008.

[52] Human Rights Watch interview with a sexual assault nurse examiner who works in Los Angeles County, name withheld, Los Angeles, CA, May 7, 2008.

[53] Human Rights Watch interview with a sexual assault nurse examiner who works in Los Angeles County, name withheld, Los Angeles, CA, August 11, 2008.

[54] Human Rights Watch interview with Captain David Walters, Los Angeles, CA, May 5, 2008.

before I got back and got the message that we had a hit to a guy in this rape case. It wasn't anybody's fault, it's just we need a better system to make sure cold hits get followed up on as quickly as possible."[55]

New York City eliminated its rape kit backlog. When this was accomplished, New York implemented a simultaneous cold hit notification system. When a DNA profile from a rape kit matches a DNA profile in the offender DNA database, electronic notification is automatically sent to the crime lab, sex crime prosecutors, and sex crime investigators.[56] As an assistant district attorney in Manhattan told Human Rights Watch, "The simultaneous notification gives more than one of us the opportunity to know about and assess the value of the cold hit."[57]

Delayed testing

The Los Angeles Sheriff's Department did not disclose to Human Rights Watch the average time it takes to complete testing on rape kit evidence. Los Angeles County police officers related to Human Rights Watch conversations they have had with the crime lab in which they were told "not to expect any results back for six to nine months."[58]

By contrast, the Rape Treatment Center at Santa Monica-UCLA Medical Center and the California Bureau of Forensic Sciences are partnering in a "Fast Track Forensics" program, with a grant from the California Department of Justice, in which evidence samples in stranger rape cases (specially taken in addition to the usual rape kit collection) are sent to the state crime lab and test results are received in five days.[59] Gail Abarbanel, the director of the center, told Human Rights Watch of the benefits that prompt test results had in one case: "A man broke into a woman's home during the day and raped her. We collected evidence and sent the rape kit to the police crime lab. We also collected additional swabs from the places where we were most likely to find the offender's DNA on the victim. These swabs were 'fast tracked' and sent to the state crime lab for testing. They were analyzed within four days. A

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[55] Human Rights Watch telephone interview with Sheriff's Department investigating officer, name withheld, Los Angeles, CA, August 11, 2008.

[56] Human Rights Watch interview with Lisa Friel, assistant district attorney, Special Victims' Unit, Manhattan District Attorney's Office, New York, NY, July 13, 2008.

[57] Ibid.

[58] Human Rights Watch interview with Sheriff's Department investigators, names withheld, Los Angeles, CA, September 22, 2008.

[59] Human Rights Watch interview with Gail Abarbanel, director, Santa Monica UCLA Rape Treatment Center, Los Angeles, CA, March 12, 2009. The "Fast Track Forensics Program" is a collaboration between rape treatment centers that collect rape kits and the California Department of Justice.

DNA profile was found and uploaded into the offender database. It resulted in a cold hit on a paroled, registered sex offender. The police were notified and, that same day, they arrested him. This kind of turnaround was unheard of before we implemented the Fast Track Forensics grant program. This is a clear example of how rape kit evidence, if utilized, can lead to the arrest of dangerous repeat offenders currently on the street, as well prevent future victimizations. This is what should happen in all sexual assault cases."[60]

According to Los Angeles County crime lab officials, rape kits requested for testing are placed in a queue and tested in the order they are received.[61] In certain cases, rape kits will be rushed for testing, for example, when the test is necessary to identify the perpetrator, or when a prosecutor needs the test results for a pending trial.[62] However, a Los Angeles County prosecutor told us that she has "had to twice delay trial for a girl raped by her stepfather, because the rape kit test results [were] not done yet after eight months at the lab."[63]

As of December 2008 the Los Angeles County crime lab had 475 rape kits awaiting testing or transport for storage (meaning some of them may have been tested and were to be sent back to police storage).[64]

Although Human Rights Watch does not have official data on how long it can take to get a requested test on a rape kit completed, we gathered information on individual cases in interviews with county law enforcement and rape treatment providers. Their experiences with testing delays highlight the effect such delays can have on rape investigations:

- A sexual assault nurse examiner told Human Rights Watch of treating a child who had been abducted and raped near a school bus stop. When the child described the attack, the details struck the provider as nearly identical to the story of another child who was abducted from the same bus stop and raped, and was treated at the same clinic three months prior. The provider wondered if the assailant could be the same man. When she contacted the police officer in charge of the investigation to inquire about the results of the rape kit test from the earlier case, he informed her that it was

[60] Ibid.

[61] Human Rights Watch interview with Robert Taylor, assistant director, Los Angeles Sheriff's Department Scientific Services Bureau, Los Angeles, CA, May 5, 2008.

[62] Human Rights Watch interview with Captain David Walters, May 5, 2008.

[63] Human Rights Watch interview with Los Angeles County prosecutor, name withheld, Los Angeles, CA, January 27, 2009.

[64] Letter from the Sheriff's Department Headquarters to the Los Angeles County Board of Supervisors, "Sexual Assault Kit Audit Status Report," December 16, 2008, unpublished document on file with Human Rights Watch.

still awaiting testing at the crime lab, and might not be tested for another six months.[65]

- A Los Angeles Sheriff's Department investigator told Human Rights Watch of requesting testing in a 2007 case in which a woman was raped by a man she met at a party. She did not know his name, and could not identify him. When the investigating officer consulted with the Sheriff's Department Scientific Sciences Bureau he was told that if he submitted the kit it could take eight months to test. Discouraged by the long wait, he decided not to submit the kit and to try to find other investigative leads instead. As of January 2009 the case was still unsolved and the rape kit has never been submitted for testing.[66]
- A Los Angeles Sheriff's Department investigator told Human Rights Watch of requesting testing in a case in which a sex worker was raped by a customer. The investigator thought he might be able to link the assailant's DNA obtained in the rape kit from this case to rape kit evidence from other cases involving sex workers. When the investigator consulted with crime lab staff, he felt that they discouraged him from pursuing the testing because they did not think it would have probative value as the identity of the perpetrator was not an issue in the original case, and the kit would have to start at the end of the line and could take months to process. "Because sometimes you gotta know when to use your chits [favors] and when to save them for another case," the investigator did not push the crime lab to take the kit for testing. The investigator dropped the case entirely "because prosecutors might worry about the jury's reaction to a prostitute's rape claim."[67]

Present resources

As of February 2009 the Sheriff's Department DNA unit had twenty-one fully trained DNA examiners, eleven partially trained DNA examiners, five supervisors (four fully trained in DNA), three DNA examiners hired but awaiting training, two lab technicians, and one support staff.[68]

The Los Angeles Sheriff's Department Bureau of Forensic Services has publicly stated that it will require more DNA analysts to deal with the number of untested rape kits currently in its

[65] Human Rights Watch interview with rape treatment provider in Los Angeles County, name withheld, Los Angeles, CA, March 16, 2008.

[66] Human Rights Watch interviews with Sheriff's Department investigator, name withheld, Los Angeles, CA, April 11, 2008, and January 26, 2009.

[67] Human Rights Watch interview with Sheriff's Department investigator, name withheld, Los Angeles, CA, June 23, 2008.

[68] Human Rights Watch e-mail correspondence with Robert Taylor, assistant director, Los Angeles Sheriff's Department Scientific Services Bureau, Los Angeles, CA, January 21, 2009.

storage facility and to accommodate the Los Angeles Sheriff's Department's revised policy to send every rape kit booked into evidence to the crime lab for testing.[69]

When Human Rights Watch asked the Scientific Services Bureau how many additional DNA analysts were needed to permanently eliminate the rape kit backlog, we were told that the bureau "is still putting together a backlog elimination plan that addresses that issue."[70] According to a crime lab official, "The problem is not going to be space to house these analysts, but it's going to be tough to find the resources for them. We will ask the county for more money, and the state, and the federal government, but we may not get all that we need to hire the analysts we need."[71]

Debbie Smith grant money

A significant amount of money has already been made available to the Los Angeles County crime lab under the Debbie Smith Act (see above). Between 2004 and 2008 the crime lab was awarded $4.9 million in federal grant funds to test DNA evidence.[72] Members of Congress have framed their support of the Debbie Smith grant program in terms of how it can help reduce rape kit backlogs specifically.[73] But states can use their grants to test any kind of DNA backlog. There is no requirement that any of the money be spent on rape kit testing, and there is no requirement that entities like the Los Angeles Sheriff's Department account for how much, if any, of the grant money was spent on rape kit testing.[74] An employee of the US Department of Justice (USDOJ) responsible for administering the grant program told Human Rights Watch that USDOJ lacks the resources necessary to "oversee the grant program" for "every individual grantee," or "for something as specific as tracking money spent on rape kit testing."[75]

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[69] Letter from the Sheriff's Department Headquarters to the Los Angeles County Board of Supervisors, "Inventory and Tracking of Sexual Assault Kits."

[70] Human Rights Watch e-mail correspondence with Captain David Walters, January 11, 2009.

[71] Human Rights Watch interview with Sheriff's Department crime lab official, name withheld, Los Angeles, CA, November 12, 2008.

[72] Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff's Department, August 21, 2008, unpublished document on file with Human Rights Watch.

[73] See, for example, "The Debbie Smith Act: Congresswoman Maloney Fights to Reform DNA Evidence Collection to Lock Up Sexual Predators," Congresswoman Carolyn Maloney press release, March 4, 2003.

[74] P.L. 108-405, Title II, "The Debbie Smith Act"; for reporting requirements, see President's DNA Initiative, Forensic DNA Backlog Reduction Program, http://www.dna.gov (accessed March 3, 2009).

[75] Human Rights Watch interview with Department of Justice employee, name withheld, Washington, DC, July 23, 2008. See also Ben Protess and Joel Rubin, "As Rape Victims Wait, Money for DNA Testing Goes Unused," *Los Angeles Times*, November 9, 2008, http://www.latimes.com/news/local/la-me-backlog9-2008nov09,0,5306091.story?page=1 (accessed January 22, 2009). A ProPublica investigation determined that of the $474 million Congress provided to the Forensic DNA Backlog

A report from California Congressman Howard Berman indicates that as of August 2008 the Sheriff's Department had used less than half of the Debbie Smith grant money it had received in the prior four years.[76]

Debbie Smith grant reports from the Sheriff's Department to the Office of Justice Programs obtained by Human Rights Watch do not indicate whether the Sheriff's Department used any of the grant money to test rape kits.[77] When Human Rights Watch asked a Sheriff's Department crime lab official about how the Debbie Smith money was used, he stated that "we have all kinds of DNA backlogs. We are starting to explore DNA testing in property crimes cases. We have many DNA needs beyond rape kit testing."[78]

City of Los Angeles

The City of Los Angeles crime lab serves the Los Angeles Police Department.

Untested rape kits

Determining the number of rape kits that were sent to the Los Angeles Scientific Services Bureau for DNA testing before the new policy to test every booked rape kit was announced is difficult. Like the Sheriff's Department, the Police Department does not yet have a comprehensive evidence data tracking system that would record such activity.[79]

While the number of booked rape kits that the Police Department received before detective discretion was eliminated is not known to Human Rights Watch, the crime lab currently has testing pending in about 520 sexual assault cases in which detectives had requested DNA analysis.[80]

Reduction Program from 2004 to 2008, about $55 million is unaccounted for. Ibid., and Human Rights Watch telephone interview with Ben Protess, ProPublica reporter, Washington, DC, November 7, 2008.

[76] Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff's Department.

[77] Fiscal Year 2004, Fiscal Year 2005, Fiscal Year 2006, Fiscal Year 2007 Forensic Casework DNA Backlog Reduction Program Grant report overview for NIJ, Los Angeles Sheriff's Department, unpublished document on file with Human Rights Watch.

[78] Human Rights Watch interview with Sheriff's Department crime lab official, name withheld, Los Angeles, CA, October 13, 2008.

[79] Human Rights Watch interview with Director Greg Matheson, May 5, 2008.

[80] Joel Rubin and Richard Winton, "Plan to Cut Crime Lab Backlog Unveiled," *Los Angeles Times*, October 29, 2008; Human Rights Watch interview with Assistant Chief Sharon Papa, Los Angeles Police Department, September 21, 2008.

Delayed testing

As far as Human Rights Watch can tell, the Police Department crime lab does not track the average time from receipt of a kit to completion of testing. According to one crime lab official, "This kind of information would require us to go back and look at every piece of paperwork for every kit requested for testing, and then go find the paperwork for when we got the results out to detectives. This is one reason why we need an electronic tracking system, so we could pull that kind of information up easily."[81] Crime lab officials told Human Rights Watch that if a detective requests "a rush" on a rape kit, the lab could have test results within five days, "but that would mean every single DNA analyst dropping everything they are working on to get those test results out."[82] Greg Matheson, Los Angeles Police Criminalistics Lab director, told Human Rights Watch, "Ideally, we want to see a 60-day turnaround on rape kit evidence, but we are not there yet."[83]

Human Rights Watch spoke with Police Department investigating officers and rape treatment providers, and sexual assault nurse examiners who work with the Police Department, to get a sense of the length and nature of testing delays and the effect they have on rape cases:

- An investigating officer told Human Rights Watch about a case he was working on in which a college student was raped as she tried to get into her car. The officer requested testing for the rape kit, but eight months after the request he still had not received test results. Asked whether he had inquired with the lab about the status of the case, he told Human Rights Watch, "You have to be careful about not getting on the lab's bad side by bothering them, because you need them for your next case."[84]
- A rape victims' advocate had a client whose rape kit test results came back more than a year after the rape had occurred. When an investigating officer told the rape victim that the DNA profile in the kit matched an offender in the DNA database, the victim no longer wanted to participate in the case. The advocate told Human Rights Watch, "She couldn't go back to the nightmare of her rape. I think that if the detective had been able to identify her rapist in the weeks and months after it

[81] Human Rights Watch interview with Police Department crime lab official, name withheld, Los Angeles, CA, September 4, 2008.

[82] Ibid.

[83] Human Rights Watch interview with Director Greg Matheson, May 5, 2008.

[84] Human Rights Watch interview with Police Department officer, name withheld, Los Angeles, CA, September 5, 2008.

happened, she would have been able to cooperate. But now she just wants to put it behind her."[85]

- A sexual assault nurse examiner told Human Rights Watch that she has made calls to crime lab personnel to check on the status of a submitted rape kit. "When I inquire about stranger rape cases, they can usually give me a testing timeframe of a few months, but if I am inquiring about an acquaintance rape case, it is a very low priority even if it's someone we think may be a serial acquaintance rapist, and there have been times when they can't even estimate when the kit will be tested because they can't give it priority."[86]

Present resources

According to one crime lab official, "We simply don't have the resources to meet the testing demands of our police department."[87] Another remarked, "We are helpless to test this backlog on our own. We cannot do it without more positions, and without outsourcing."[88]

The crime lab currently has funding for 47 DNA analysts; of those, 31 are fully trained and 10 are in the process of being hired.[89] The Police Department's Scientific Investigation Division estimates that it will need at least 22 additional DNA analysts[90] to deal with the number of untested rape kits in storage and to accommodate the Police Department's revised policy to send every rape kit booked into police evidence storage to the crime lab for testing.[91] Police Crime Lab Commander Yvette Sanchez-Owens told Human Rights Watch that a fully trained criminalist can screen (check for the presence of DNA in) 72 rape kits a year, or perform a full DNA profiling on 60 cases per year.[92]

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[85] Human Rights Watch interview with a rape victim advocate who works in Los Angeles, name withheld, Los Angeles, CA, September 10, 2008.

[86] Human Rights Watch interview with a sexual assault nurse examiner who performs rape kit collection examinations for rape victims in Los Angeles, name withheld, Los Angeles, CA, May 7, 2008.

[87] Human Rights Watch interview with Police Department crime lab official, name withheld, Los Angeles, CA, August 16, 2008.

[88] Human Rights Watch interview with Police Department crime lab official, name withheld, Los Angeles, CA, July 11, 2008.

[89] Human Rights Watch e-mail correspondence with Charlie Beck, deputy chief, Los Angeles Police Department, January 22, 2009.

[90] Human Rights Watch e-mail correspondence with Deputy Chief Charlie Beck, March 12, 2009.

[91] Internal memorandum, Los Angeles Police Department, "Revised Evidence Collection Policy in Sexual Assault Cases," August 1, 2008, unpublished document on file with Human Rights Watch.

[92] Human Rights Watch interview with Yvette Sanchez-Owens, LAPD crime lab commander, Los Angeles, CA, September 19, 2008.

Hiring an extra 26 DNA crime lab personnel will require additional funding of nearly $1.6 million a year.[93] While the City Council recently provided funding for hiring 18 DNA crime lab staff,[94] there is uncertainty as to whether it will be able or willing to provide additional funding in its 2009-2010 budget. Laura Chick, the city controller of Los Angeles and a former city councilmember, spoke to Human Rights Watch about the City Council's hesitation to provide more funding to the Police: "[The Police] already receive more than 50 percent of the entire city's budget. The City Council may say, 'If you want this funding so badly, find it in your $1.5 billion budget. Don't ask us for more money. We already give you enough.'"[95]

For the Los Angeles Police Department, finding the money necessary to fund these crime lab positions would require, in the words of Assistant Chief Sharon Papa, "difficult choices.... It could be a choice between giving our officers adequate radio equipment or adding more crime lab personnel. Both are important, and we need money for both things, and we don't have money for both things in our budget, which is why we need more support from City Council for these crime lab positions." [96]

Nevertheless, in addition to seeking additional City Council funding for crime lab positions the Los Angeles Police Department has pursued two other funding avenues—raising private money to outsource rape kits not previously requested for testing, and applying for Debbie Smith Act money.

Private donations for outsourcing

In the summer of 2008 the Los Angeles Police Foundation, a non-profit fundraising arm of the Los Angeles Police Department, announced an ongoing fundraising initiative to raise private money to outsource rape kits to private laboratories for testing.[97] To date, the Foundation has raised almost $1.7 million. As of January 2009, $254,000 of the money has been used to outsource untested rape kits.[98] Los Angeles City Councilmember Jack Weiss donated $350,000 from his city council office fund to the Police Department for DNA testing;

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[93] Ibid.

[94] Human Rights Watch interview with Los Angeles City Council staff member, name withheld, Los Angeles, CA, October 11, 2008.

[95] Human Rights Watch interview with Laura Chick, city controller of Los Angeles, Los Angeles, CA, October 9, 2008.

[96] Human Rights Watch interview with Assistant Chief Sharon Papa, Los Angeles Police Department, Los Angeles, CA, May 5, 2008.

[97] See the Los Angeles Police Foundation DNA Backlog Project, http://ladnahelp.org/index.html (accessed January 23, 2009).

[98] Human Rights Watch e-mail correspondence with Deputy Chief Charlie Beck, January 26, 2009.

as of January 2009, 99 kits have been outsourced to private crime labs for testing using Councilmember Weiss's donation.[99]

These private donations allow only for rape kit testing to be outsourced. One limitation to the use of private donations is that, under city regulations, the Los Angeles crime lab cannot use a non-permanent funding stream to hire government staff.[100]

Debbie Smith grant money

An October 2008 audit of the Los Angeles city crime lab's use of federal Debbie Smith grant money revealed that the number of untested rape kits continued to grow in the years 2004 to 2008 despite nearly $4 million in federal grant money made available for DNA backlog reduction during the same period.[101] The audit also found that as a penalty for the Police Department's "poor planning and oversight" of the grant awards, the federal government reduced the fiscal year 2008 grant to Los Angeles by more than half, from an anticipated $1 million to $500,000.[102] The report also found that the Police Department has never made a formal budget request to the City Council to deal with the rape kit backlog.[103]

Human Rights Watch requested this audit report from Controller Chick after we found inconsistencies in the Police Department's public comments on its use of the backlog reduction funds and in the reports it submitted to the federal government on the use of the funds.[104] In April 2008, in response to a public records request, Human Rights Watch received federal DNA funding grant reports revealing that as of December 2007 the Police Department had not yet used all funds it had been awarded in 2004, and had used none of the available money from 2005 to 2007.[105] During this time, the backlog of untested rape kits with the Police Department continued to grow. (Despite this, the US Department of Justice

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[99] Human Rights Watch telephone interview with Los Angeles City Council staff member, name withheld, Los Angeles, CA, January 26, 2009.

[100] Human Rights Watch interview with Councilmember Jack Weiss, Los Angeles City Council, Los Angeles, CA, May 5, 2008; Human Rights Watch interview with Councilmember Eric Garcetti, Los Angeles City Council, Los Angeles, CA, May 5, 2008; and Human Rights Watch Interview with Director Greg Matheson, May 5, 2008.

[101] City of Los Angeles Office of the Controller, "Audit of Forensic DNA Backlog Reduction Grant Program Awards," October 20, 2008, http://www.lacity.org/ctr/audits/DNA_FinalReport_102008.pdf (accessed January 25, 2009).

[102] Ibid., p. 7.

[103] Ibid.

[104] Human Rights Watch telephone request to Controller Laura Chick, July 9, 2008.

[105] Fiscal Year 2004, Fiscal Year 2005, Fiscal Year 2006, and Fiscal Year 2007 Forensic Casework DNA Backlog Reduction Program Grant report overview for NIJ, Los Angeles Police Department, unpublished document on file with Human Rights Watch. See also Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff's Department.

continued to award the Police Department the full funding it was eligible for under the grant program until 2008, when, as noted, it reduced its award by half.)[106]

When Human Rights Watch presented the grant reports to Police Department officials, they told us that "an accounting error" made it appear that the federal grant money had not been spent by the end of the reporting period, when in fact it had.[107] After the release of Controller's Chick's audit report, the Police Department acknowledged that as of October 2008 it still had $2 million in unspent Debbie Smith funds.[108]

For its part, the US Department of Justice has said that it is aware of the Police Department's problem and is "going to do what we can to assist them directly."[109]

Limitations to outsourcing

In a meeting with Human Rights Watch in May 2008, when asked why the Police Department had not yet outsourced all of its untested rape kits in police storage facilities, Assistant Chief Sharon Papa, then in charge of overseeing the department's response to the backlog, told us, "We would like to outsource more kits, but private crime labs have told us they are at capacity to test kits."[110] In August 2008, after an op-ed by Human Rights Watch on the rape kit backlog appeared in the *Los Angeles Times*, we were contacted by a principal at a private crime laboratory asking how that lab could offer its services to the Police Department.[111] Human Rights Watch gave the individual the contact information of the Police Department crime lab officials. In October 2008 Controller Laura Chick, in conducting her audit of the Police Department's use of federal funds to test rape kits, was told by the Police Department that it was not outsourcing more rape kits because it could not find a private crime lab that had the capacity to test the number of kits in the backlog.[112] Human Rights Watch then e-mailed the private lab that had contacted us in August to find out whether it had been able to connect with the Police Department with its offer to test the kits in the backlog. The private lab informed Human Rights Watch that three phone calls placed to Police

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[106] Ibid.

[107] Human Rights Watch interview with Assistant Chief Sharon Papa, May 5, 2008.

[108] Protess and Rubin, "As Rape Victims Wait, Money for DNA Testing Goes Unused," *Los Angeles Times*.

[109] Ibid.

[110] Human Rights Watch interview with Assistant Chief Sharon Papa, May 5, 2008.

[111] Human Rights Watch e-mail correspondence with business manager of private crime laboratory in Los Angeles, name withheld, Los Angeles, CA, August 2, 2008.

[112] Human Rights Watch interview with Controller Laura Chick, November 12, 2008.

Department crime lab officials since August regarding the offer had gone unreturned.[113] In December 2008 the private lab official contacted Human Rights Watch to inform us that the Police Department had contacted him and told him that the Police Department "currently has no need for additional private lab contractors."[114]

[113] Human Rights Watch e-mail correspondence with business manager of private crime laboratory in Los Angeles, name withheld, Los Angeles, CA, November 12, 2008.

[114] E-mail correspondence between private crime lab official and Los Angeles Police Department crime lab official, December 4, 2008, unpublished document on file with Human Rights Watch.

VI. Untested Rape Kits in Police Storage

> It wasn't until we started to ask how many are in police storage that never made it to the crime lab in the first place, that we realized how many kits never got tested.
> —Sexual assault nurse examiner who serves Los Angeles County[115]

> I guess I would not be surprised if my rape kit was still not tested. The police officer who took my statement didn't seem to take my story that seriously. He waited hours to take me to a hospital to get a rape kit taken, and along the way he stopped to run personal errands. If it was up to this police officer to decide whether my kit is worth testing, I am betting that he decided my kit wasn't worth his time.
> —Rape survivor in Los Angeles[116]

For years rape treatment advocates in Los Angeles County sensed that many rape kits law enforcement agents were collecting from victims were not being tested. And we now know that nearly 1,000 kits are currently in the Police and Sheriff's Departments' crime labs awaiting testing (as Chapter V describes). While this number is significant, it was not until rape kit advocates prevailed upon the Police and Sheriff's Departments to count the number of untested kits in police storage facilities—kits that had never been submitted for testing—that the enormous scope of the rape kit backlog in Los Angeles was disclosed.

Los Angeles County has the largest known rape kit backlog in the United States. As of January-February 2009 there were at least 12,669 untested rape kits in Los Angeles County's 88 cities: at least 5,193 in the Los Angeles Police Department storage facility, 4,727 in the Los Angeles Sheriff's Department storage facility, and at least 2,749 in storage facilities in the 47 cities in Los Angeles County that have their own police departments (but rely on the Sheriff's Department's crime lab for rape kit testing).

The Police Department first released to the public a count of untested rape kits in police storage in 2007,[117] and the figure of 5,193 is from a detailed audit in February 2009. Until

[115] Human Rights Watch telephone interview with sexual assault nurse examiner, name withheld, Los Angeles, CA, May 7, 2008.

[116] Human Rights Watch interview with rape survivor, name withheld, Los Angeles, CA, February 11, 2009.

[117] Human Rights Watch interview with Councilmember Jack Weiss, May 6, 2008.

November 2008 the Sheriff's Department had not counted the untested rape kits in its storage facilities. As of March 2009, due to pressure from Human Rights Watch and other advocacy groups, it has counted and catalogued its untested rape kits in more detail (to Human Rights Watch's knowledge) than any other police department in the US.

Still, the large number of untested rape kits in Los Angeles County, and the delays between when the Police and the Sheriff's Departments were aware that there may be untested rape kits in their storage facilities and when they took serious steps to address the issue, make it especially important that the Police and the Sheriff's Departments' current responses to their rape kit backlog are part of a comprehensive, specific plan that is made known to the public and subject to monitoring and oversight.

History

Rape treatment advocates and providers have long asked the Sheriff's and the Police Departments to count the number of untested kits in their storage facilities.[118] As one rape treatment provider in Los Angeles told Human Rights Watch, "We would tell [the police] that, based on the fact that most of us—the victims, the nurses who administered the rape kit collection, the advocates—never heard back from the police about test results, we thought there were a lot of rape kits that were never submitted for testing at the crime lab. But when we would ask them to go into the police storage to count the kits, the Police and the Sheriff would keep sending our queries to the crime lab, that would give us the number of untested kits in the crime lab."[119]

Los Angeles Police Department

Although the untested rape kits in the Los Angeles Police Department storage facilities date back to at least the early 1990s,[120] the problem of untested rape kits did not become public until 2002, when the *Los Angeles Times* reported that the Police Department had destroyed 1,100 untested rape kits.[121] The story explained that the Police Department had destroyed the

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[118] Human Rights Watch telephone interviews with various sexual violence experts in Los Angeles put the date they first inquired about counting untested kits in police storage at around 2002, when news broke that the Los Angeles Police Department had destroyed untested rape kits. See also Tina Daunt and Steve Berry, "LAPD says evidence destroyed," *Los Angeles Times*, July 30, 2002, http://articles.latimes.com/2002/jul/30/local/me-dna30 (accessed January 25, 2009).

[119] Human Rights Watch interview with rape treatment provider, name withheld, Los Angeles, CA, May 16, 2008.

[120] City of Los Angeles Office of the Controller, "Audit of Forensic DNA Backlog Reduction Grant Program Awards," http://www.lacity.org/ctr/audits/DNA_FinalReport_102008.pdf (accessed March 13, 2009), p. 8.

[121] Daunt and Berry, "LAPD Says Evidence Destroyed," *Los Angeles Times*. Assistant Chief Sharon Papa confirmed the details of the *Times* story in a May 5, 2008 interview with Human Rights Watch.

kits that were more than six years old because it mistakenly believed the statute of limitations for rape in California was six rather than ten years.[122]

"It was when we heard that untested rape kits from police storage were destroyed that we realized that untested rape kits had existed in police storage, that not every booked rape kit gets tested," said Los Angeles City Councilmember Jack Weiss, the first and for five years only Councilmember involved in the issue of eliminating the rape kit backlog.[123] As a result of this news Councilmember Weiss proposed and the City Council passed an ordinance that prohibits the Police Department from destroying untested rape kits.[124]

From 2002 to 2008 Councilmember Weiss pushed for higher staffing levels in the DNA unit of the Police Department crime laboratory, with mixed results. Some positions were approved, but, in the words of a city council staffer, "It was slow going: Progress was made in fits and starts, in part because we had trouble getting the Police and the mayor to request more funding for DNA positions in the budget."[125] During this time period, the Police Department received several million dollars in funding from the City Council[126] and (as noted in the previous chapter) $4 million in funding from the federal government to reduce its DNA backlog,[127] but it is unclear how much, if any, of the money was used for rape kit testing. Finally, in May 2008 the City Council authorized the crime lab to hire 16 additional DNA analysts, but those positions were not funded until November 2008.[128]

Although news of the destruction of untested rape kits in 2002 made it clear that, in Councilmember Weiss's words, "the rape kit backlog was not just what was in the crime lab queue waiting for testing, but also what was in police storage," it took pressure from rape treatment providers over the next five years to convince the Police Department to release to the public a count of untested rape kits in police storage.[129] As one rape treatment advocate

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[122] Ibid.

[123] Human Rights Watch interview with Councilmember Jack Weiss, Los Angeles City Council, Los Angeles, CA, May 5, 2008.

[124] Human Rights Watch interview with Los Angeles City Council staff member, January 26, 2009.

[125] Human Rights Watch interview with Los Angeles City Council staff member, name withheld, Los Angeles, CA, May 6, 2008.

[126] Ibid.

[127] Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff's Department.

[128] Human Rights Watch interview with Los Angeles City Council staff member, January 26, 2009.

[129] Human Rights Watch interview with Councilmember Jack Weiss, May 6, 2008.

told Human Rights Watch, "They told us they didn't think there would be much in there, but I felt like they counted those kits to placate us."[130]

The number of untested rape kits that the Police Department has said are in police storage has changed a number of times over the past two years. In its first public disclosure, in January 2007, the Los Angeles Police Department announced that it had found approximately 5,000 untested rape kits in its storage units.[131] That number grew to 7,300 by July of 2008,[132] but with the February 2009 audit putting the number of untested rape kits in the region of 5,193, the Police Department contends that the 7,300 number represented an inaccurate count on its part.[133]

Los Angeles Sheriff's Department

After 2002, rape treatment providers had also persistently requested that the Los Angeles Sheriff's Department count the number of kits in its storage facility. As one rape treatment provider told Human Rights Watch, "They would tell us they were certain there were no untested rape kits in their police storage facility, and would send us to their lab people to talk about any backlog questions we had."[134] In May 2008 Human Rights Watch sent a public records request to the Los Angeles Sheriff's Department requesting information on the number of untested rape kits in both its crime lab and storage facilities. In its July 2008 response to our request the Los Angeles Sheriff's Department indicated that it did not have a count of the untested rape kits in storage, and that to produce such a count would be a "prohibitively time-consuming process to hand search these large evidence storage facilities."[135]

Human Rights Watch contacted the Los Angeles County Board of Supervisors and requested that the Board ask the Sheriff's Department for a count of untested rape kits in storage,[136]

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[130] Human Rights Watch interview with rape treatment advocate, name withheld, Los Angeles, CA, August 4, 2008.

[131] Henry Weinstein, "Slow Pace of DNA Processing Examined," *Los Angeles Times*, January 11, 2007, http://articles.latimes.com/2007/jan/11/local/me-evidence11 (accessed January 26, 2009).

[132] Report from the Los Angeles Police Department to the Los Angeles City Council Public Safety Committee, unpublished document on file with Human Rights Watch, July 2008.

[133] Report from the Los Angeles Police Department to the Los Angeles City Council Public Safety Committee, unpublished document on file with Human Rights Watch, January 2009.

[134] Human Rights Watch interview with rape treatment provider, name withheld, Los Angeles, CA, August 11, 2008.

[135] Letter from Los Angeles Sheriff's Department to Human Rights Watch regarding public records request, July 3, 2008.

[136] Human Rights Watch telephone interview with Joel Sappell, Los Angeles County Board of Supervisors Chief of Policy, Los Angeles, CA, September 18, 2008.

which the Board did at its October 2008 meeting.[137] Supervisor Zev Yaroslavsky noted at that meeting, "The [Los Angeles Police Department] disputed the fact that they had a backlog of kits. They finally came to [their senses]—everybody had the understanding that they had backlogs. I have asked the same question of our Sheriff's Department, and so far you have indicated, the Sheriff's Department indicated that there is a really small number of untested kits."[138] At the meeting, the Sheriff's Department responded to Supervisor Yaroslavsky's remarks by indicating that it had 20 untested kits in storage, but as the supervisor noted, "The way I understand it [according to your public records request response to Human Rights Watch], the way you guys have organized [rape kit] evidence is that the stuff ... is buried ... and it's almost impossible to determine—that you couldn't answer [to Human Rights Watch] the question of how much the backlog was, you would have to go through every case manually. In other correspondence you guys have said you only have a backlog of 20 in one unit and none that you are aware of in the other unit. And those two responses are contradictory."[139] Robert Taylor, assistant director of the Sheriff's crime lab, said at the meeting, "If rape kits are not brought into the lab, we do not know they are out there."[140] Crime lab officials added, "What we call a backlog is the number of cases that have been requested to have DNA evidence or DNA testing done."[141]

Also at the October 2008 meeting, the Sheriff's Department revealed that in 2002 it received a state grant to test rape kits.[142] After "scouring" the Sheriff's Department's storage facility and contacting independent police departments in Los Angeles County for which the Sheriff's Department's crime lab provides rape kit testing services, the Sheriff's Department reported they tested 980 rape kits.[143] This "scouring" led the Sheriff's Department to be "fairly comfortable that as of 2002, we are fairly caught up, so to speak in terms of sexual assault kits."[144] The Sheriff's Department confirmed that since 2002, however, it had not gone through the storage facility to count rape kits.[145]

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[137] Los Angeles County Board of Supervisors hearing transcript, October 7, 2008, http://file.lacounty.gov/bos/transcripts/10-07-08%20Board%20Meeting%20Transcript%20(C).pdf (accessed January 27, 2009), p. 98.

[138] Ibid.

[139] Ibid., p. 101.

[140] Ibid., p. 107.

[141] Ibid.

[142] Ibid., p. 120.

[143] Ibid.

[144] Ibid.

[145] Ibid., p. 127.

By the November 2008 Board of Supervisors meeting, the Sheriff's Department had counted the rape kits in its main storage facility and found 5,635 kits, but said that "many of the kits, we think" had been tested but sent back to the facility for storage.[146] At the meeting, the Sheriff's Department announced a "three phase" plan to determine the nature and scope of the backlog. Phase I was a count of every sexual assault kit in the Sheriff's Department's storage facility, which had already been completed.[147] The Sheriff's Department also announced a new policy to test every rape kit booked into police storage. It said that the policy further required every booked rape kit to be sent to the crime lab.

However, the written document was a memo, not an official policy, and although the memo stated every rape kit should go to the crime lab, it did not explicitly require the crime lab to test every kit it received.[148] It also did not establish a system for prioritizing the processing of the kits sent to the lab. When Human Rights Watch raised concerns about this omission, we were told, "It's implied that we will test the kits. Why else would we have everyone send them to us?"[149]

Phase II was a count of how many rape kits in Sheriff's Department storage have not been tested. [150] At the December Board of Supervisors meeting, the Sheriff's Department revealed that at least 4,727 kits in storage had not been tested.[151] At that meeting the Sheriff's Department announced that Phase III of its plan involved, for each untested rape kit, going through the file of the criminal case connected to the kit to determine the nature and investigative status of the case.[152] By the end of January 2009 it had gathered status information on 70 percent of the cases in question (see below).

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[146] Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, http://file.lacounty.gov/bos/transcripts/11-12-08%20Board%20Meeting%20Transcripts%20(C).pdf (accessed January 27, 2009), p. 76. The Sheriff's Department has a directive requiring officers to notify rape victims of the status of their rape kit testing. See, "Los Angeles Sheriff's Department Field Operations Directive 05-07, Sexual Assault Victims' Bill of Rights" (the "Directive"), unpublished document on file with Human Rights Watch. The Sheriff's Department is currently conducting an audit to determine compliance with the Directive, and is also in the process of revising the Directive to require an annual review of compliance at all the Sheriff's Department's stations. Human Rights Watch e-mail correspondence with Captain David Walters, March 1, 2009.

[147] Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, p. 76.

[148] Ibid.

[149] Human Rights Watch interview with Commander Earl Shields, Los Angeles Sheriff's Department, Los Angeles, CA, November 12, 2008.

[150] Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, p. 88.

[151] Los Angeles County Board of Supervisors meeting transcript, December 16, 2008, p. 112.

[152] Ibid.

Current Nature and Scope of the Rape Kit in Storage Backlog

Since Human Rights Watch began researching the rape kit backlog in Los Angeles County and the City of Los Angeles, the dynamics and reports of the scope of the problem have constantly shifted in both the Sheriff's and Police Departments. In a nine-month period, the Police Department's declared backlog expanded and then contracted, the City Council funded additional crime lab positions, the Police Department replaced the chief deputy in charge of eliminating the backlog,[153] the controller of Los Angeles audited the Police Department's use of federal funds, the federal government penalized the Police Department for not using its allocated federal funds by reducing its fiscal year 2009 grants by $500,000, and Los Angeles Police Chief William Bratton announced the formation of a task force to eliminate the rape kit backlog.[154]

Given these shifting dynamics, Human Rights Watch acknowledges that some information in this section may be outdated by the time this report is published. Still, the information below represents, to the best of our knowledge, the status of the rape kit in storage backlogs in Los Angeles County as of February 2009.

Los Angeles Police Department

In February 2009, the Los Angeles Police Department announced the results of the audit of its untested rape kits in storage facilities.[155] Of the 53,368 items of evidence in Police freezers related to all types of cases, 11,077 were Sexual Assault Evidence Kits.[156] Since a single "case" or victim can have more than one kit, there were 9,911 actual sexual assault cases. Of these 9,911 cases, the associated kits in 4,718 cases had already been tested. This leaves a total of 5,193 cases with untested kits.[157] Of these 5,193, there are 770 sexual assault cases that are ineligible for input into the DNA database, because the investigating detective determined that no crime actually occurred.[158] Subtracting these 770 ineligible cases leaves 4,423 untested cases eligible for the FBI's CODIS (Combined DNA Index System)

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[153] Human Rights Watch interview with Anthony Pacheco, president, Los Angeles Police Commission, Los Angeles, CA, November 11, 2008.

[154] Richard Winton, "200 sex assault cases pass prosecution deadline before LAPD tested DNA kits," Los Angeles Times, October 21, 2008, http://articles.latimes.com/2008/oct/21/local/me-dna21 (accessed March 13, 2009).

[155] "LAPD Progress Report on Sexual Assault Evidence Kit Backlog," Los Angeles Police Department News Release, February 9, 2009. Between October 2008 and February 2009, 50 LAPD detectives dedicated a combined 2,000 hours to counting the kits in police storage facilities. Ibid.

[156] Human Rights Watch attendance, Los Angeles Police Department task force meeting, February 12, 2009.

[157] Ibid.

[158] Ibid.

database;[159] the Police Department has determined this number to be its "true backlog."[160] Human Rights Watch considers any untested rape kit to constitute part of a backlog.

Of the Police Department's untested kits, 403 belonged to cases where no suspects were connected to the cases,[161] while 188 untested kits belonged to rape cases that were older than 10 years, thus past the 10-year statute of limitations. The Police Department has not yet revealed the number of untested kits in its storage that are older than two years (as already noted, testing within two years and obtaining a DNA profile lifts the statute of limitations), or the number of stranger rape kits that are older than 10 years.[162] As Deputy Chief Charlie Beck told Human Rights Watch, "We are sobered by the untested kits in suspect-less cases. There is no excuse for us not to be testing those kits."[163]

The Police Department reports that its next step is to increase its outsource testing of rape kits to private crime labs across the country, for the purpose of reducing the backlog to zero by 2013.[164] This increase in outsourcing started in January 2009, with 490 kits sent to private laboratories.[165]

The Police Department has stated that the 4,423 cases that can be entered into the CODIS database, as well as all future cases, will be tested. A new evidence tracking database will, according to the Police Department, "ensure that all sexual assault victims are notified as required, and that no untested cases are allowed to exceed the statute of limitations."[166]

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[159] The Combined DNA Index System (CODIS), the FBI's national offender database with over 6.5 million entries, allows state and local authorities to electronically share and compare all DNA profiles available at local, state, and national levels for individuals convicted of crimes, unsolved crime scene evidence, and missing persons. Although DNA evidence is inarguably beneficial to criminal investigations, the retention of DNA profiles raises issues about individuals' privacy and rights. DNA evidence can be erroneously matched, and samples can be cross-contaminated, mislabeled, or misinterpreted. With the passing of Proposition 69, the California DNA database now retains samples from all adults and juveniles convicted of a felony, as well as all adults arrested for any felony. Some believe that this undermines the "innocent until proved guilty" presumption of the criminal justice system and violates the privacy rights of individuals not yet convicted of a crime. Civil rights groups have also expressed concerns that the database is likely to disproportionately contain the DNA profiles of young African American and Latino men, who are disproportionately represented in the criminal justice system. Tania Simoncelli and Barry Steinhardt, "California's Proposition 69: A Dangerous Precedent for Criminal DNA Databases," *The Journal of Law, Medicine, and Ethics*, Volume 3, Number 2, Summer 2005, p. 286.

[160] Human Rights Watch attendance, Los Angeles Police Department task force meeting, February 12, 2009.

[161] Ibid.

[162] Ibid.

[163] Human Rights Watch interview with Deputy Chief Charlie Beck, Los Angeles, CA, February 12, 2009.

[164] Ibid.

[165] Ibid.

[166] Ibid.

Los Angeles Sheriff's Department

In January 2009 the Sheriff's Department, as part of Phase III of its assessment of the nature and scope of its rape kit backlog, reported that it had been able to gather case status information on approximately 3,313 of the 4,727 untested kits in its storage facility.[167]

Prior to the cataloging of the untested rape kits a Sheriff's Department official told Human Rights Watch, "There should not be any cases of unidentified suspects that have not been tested. That is what we are hopeful we'll find. We are hopeful there will be zero."[168] In fact, of the 3,313 kits catalogued, 25 percent (815) belonged to cases in which the suspect was not known to the rape victim.[169] In addition, 311 of the 3,313 kits are beyond California's 10-year statute of limitations for rape; 106 are within six months of being 10 years old; and 261 kits are within six months of being two years old.[170]

Of the 311 kits that are more than 10 years old, 51 are from stranger rape cases. Of the 261 kits that are approaching the two-year deadline, 66 are from stranger rape cases.[171]

For crime lab officials interviewed by Human Rights Watch after the release of these numbers, the results seemed sobering. "We wanted to believe—we did believe—that we would not find untested kits involving stranger rapes, and we would not find kits that were past the 10-year mark. We thought we were testing every kit out there that needed to be tested, and we were wrong. Well, this is why we needed to make it the policy to test every booked rape kit."[172]

Cities with independent police departments

Excluding Los Angeles, there are 47 cities in Los Angeles County that operate independent police departments.[173] Human Rights Watch's research reveals that at least 2,749 untested rape kits are sitting in their police storage facilities. This number is certainly an underestimate of the problem, given that of the cities that responded to our public records

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[167] Letter from the Los Angeles Sheriff's Department to the Board of Supervisors regarding sexual assault kits, January 27, 2009, unpublished document on file with Human Rights Watch.

[168] Human Rights Watch interview with crime lab official, Los Angeles Sheriff's Department, name withheld, Los Angeles, CA, November 12, 2008.

[169] Letter from the Los Angeles Sheriff's Department to the Board of Supervisors regarding sexual assault kits, January 27, 2009, unpublished document on file with Human Rights Watch.

[170] Ibid.

[171] Ibid.

[172] Human Rights Watch telephone interview with crime lab official, name withheld, Los Angeles, CA, January 27, 2009.

[173] Human Rights Watch sent public records requests to each city in Los Angeles County with an independent police department. The results of those responses are documented in the chart below.

requests, only 30 provided us with data regarding untested rape kits in police storage. Moreover, most of the rape kit data only go back to 1995, when many police departments upgraded their evidence tracking systems from a paper to an electronic system. In addition to untested rape kits in storage, Human Rights Watch found that at least 1,529 untested rape kits have been destroyed.

Data From Human Rights Watch Public Records Requests[174]

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
Since 1980						
Hermosa Beach[175]	39 (2000)	5 (2000)	65	47	U	U
Sierra Madre[176]	8 (1995)	1 (1995)	3	3	0	U
South Gate[177]	240	165	121	102	U	U
Since 1982						
South Pasadena[178]	33 (1994)	9 (1994)	7	3	0	4
Since 1985						
Palos Verdes[179]	12 (1995)	5 (1995)	12	3	2	7
Since 1986						
Gardena[180]	263 (1995)	80 (1995)	200	27	85	88

[174] For purposes of this chart, the number "0" indicates that the responding city actually searched and found no items responsive to the request; the letter "U" stands for "unknown," and indicates any of the following possible scenarios, or any combination thereof: (1) the city did not provide us with responsive documents for the item in question; (2) the city did not maintain a separate record of the item in question; (3) obtaining the information would require searching each individual rape case file to determine what evidence was collected; (4) obtaining the information would require searching each individual property sheet to determine the disposition of the evidence; (5) the city determined it did not have adequate staff to search for the responsive documents; (6) the city did not maintain a uniform record keeping system and rape kits may be classified or identified in a variety of ways; (7) the city's automated system did not allow for a search of this type; and/or (8) the city provided some information, but we were unable to interpret it in a meaningful way or get clarification from the city. Note, however, that the scenarios described above were also true for a number of the cities that did provide responsive documents.

[175] Letter from Deputy City Clerk Jackie Drasco, Hermosa Beach, to Human Rights Watch regarding public records request, December 5, 2008.

[176] Letter from Records Supervisor H. Hartunian, Sierra Madre Police Department, to Human Rights Watch regarding public records request, January 6, 2009.

[177] Letter from T. Matthew Hansen for City Attorney Raul Salinas, City of South Gate, to Human Rights Watch regarding public records request, December 19, 2008.

[178] Letter from Custodian of Records Sergeant Mike Neff, South Pasadena Police Department, to Human Rights Watch regarding public records request, December 15, 2008, clarified by telephone interviews with Sergeant Neff, January 5 and 6, 2009.

[179] Rape kit information: letter from Jim Menjou, assistant to the chief, Palos Verdes Estates Police Department, to Human Rights Watch regarding public records request, December 23, 2008; rape and arrest information: e-mail from Lead Service Officer Linda Williams, Palos Verdes Estates Police Department, to Human Rights Watch, February 10, 2009.

[180] Letter from Support Services Supervisor Betty King, Gardena Police Department, to Human Rights Watch regarding public records request, August 27, 2008.

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
Since 1987						
Pasadena[181]	281 (1998)	U	229	64	144	21
Manhattan Beach[182]	82 (1995)	21 (1995)	56	10	27	19
Since 1989						
Vernon[183]	21 (1996)	15 (1996)	13	3	6	U
Since 1990						
San Marino[184]	3	1	1	1	1	0
Since 1991						
Claremont[185]	114 (1995)	21 (1995)	55	15	4	39
Since 1995						
Alhambra[186]	174	39	75 (2002)	13 (2002)	0	U
Arcadia[187]	57 (1999)	17 (1999)	40[188]	5	18	16
Baldwin Park[189]	137	58	42	42	0	U
Bell Gardens[190]	154	52	116	84	U	U
Beverly Hills[191]	96	31	U	1	U	34
Glendora[192]	64 (2000)	28 (2000)	51	27	1	23

[181] Letter from Records Administrator Karen Peterson, Pasadena Police Department, to Human Rights Watch regarding public records request, September 4, 2008, clarified by telephone interview with Alicia Patterson, January 5, 2009.

[182] E-mail from Support Services Technician Barbara Rosenberger, Manhattan Beach Police Department, to Human Rights Watch regarding public records request, January 2, clarified by telephone interview with Ms. Rosenberger, January 6, 2009.

[183] Rape kit information: letter from Records Manager Danita Robertson, Vernon Police Department, to Human Rights Watch regarding public records request, August 25, 2009; rape and arrest information: letter from Ms. Robertson to Human Rights Watch regarding public records request, August 11, 2008.

[184] Letter from Police Records Supervising Clerk Angelica Gonzales, San Marino Police Department, to Human Rights Watch regarding public records request, August 26, clarified by telephone interview with Ms. Gonzales, December 29, 2008.

[185] Letter from City Clerk Lynne E. Fryman, City of Claremont, to Human Rights Watch regarding public records request, August 29, 2008; confirmed by e-mail from Captain Stan Van Horn, Claremont Police Department, to Human Rights Watch, January 13, 2009.

[186] Rape kit information: site visit to Alhambra Police Department, January 28, 2008; manual review of evidence logs and property sheets from January 1, 2002, through January 31, 2007; and automated record search from February 1, 2007, through May 31, 2008; rape and arrest information: letter from Records Manager Alexandria Shamlian, Alhambra Police Department, to Human Rights Watch regarding public records request, August 14, 2008.

[187] Letter from Stephen P. Deitsch, Arcadia city attorney, to Human Rights Watch regarding public records request, August 28, 2008.

[188] One kit was "released to the San Bernardino County Sheriff's Department in regards to a courtesy report." Ibid.

[189] Letter from Records Supervisor Vivian Olivas, Baldwin Park Police Department, to Human Rights Watch regarding public records request, August 12, clarified by telephone interview with Ms. Olivas, December 17, 2008.

[190] Letter from Richard Lam, attorney for the Bell Gardens Police Department, to Human Rights Watch regarding public records request, September 10, 2008.

[191] Letter from Geoff Ward, Beverly Hills assistant city attorney, to Human Rights Watch regarding public records request, December 30, 2008. Rape kit information derived from our interpretation of a freezer evidence chart provided by the Beverly Hills Police Department in the letter. Follow-up phone calls to clarify rape kit data were not returned.

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
Hawthorne[193]	95	25	405 (1983)	173 (1996)	U	U
Huntington Park[194]	214	96	U	U	U	U
Inglewood[195]	604	192	U	44 ('01-'09)[196]	U	244 ('01-'09)
Long Beach[197]	1,732	532	1,911 (07/94)	51 (08/17/06)	831 (estimate)	1,072
Monrovia[198]	110	70	70	70	U	0
Pomona[199]	648	47 (2004)	213	37	37 (est.)	139
San Fernando[200]	76	35	U	11 (2001)	0 (2001)	24
San Gabriel[201]	54	5	42	3	9	33
Santa Fe Springs[202]	43	12	U	2	17	16
Santa Monica[203]	508	192	U	U	U	485 (1996)[204]

[192] Letter from Records Supervisor Kandi Tidwell, Glendora Police Department, to Human Rights Watch regarding public records request, December 11, 2008.

[193] Rape kit information: letter from Property Officer Holly Peck, Hawthorne Police Department, to Human Rights Watch regarding public records request, January 14, clarified in a telephone interview with Property Officer Denise Murphy, February 24, 2009; rape and arrest information: letter from Police Records Supervisor Connie Cooper, Hawthorne Police Department, to Human Rights Watch regarding public records request, January 27, 2009.

[194] Letter from Information Management Specialist Deborah J. Barker, Huntington Park Police Department, to Human Rights Watch regarding public records request, August 14, 2008.

[195] Letters from Kenneth Campos, Inglewood senior assistant city attorney, to Human Rights Watch regarding public records request, September 16, 2008, and January 28, 2009.

[196] The data provided by the Inglewood Police Department for "rape kits sent to the crime lab" is an estimate.

[197] Rape kit information: e-mail from Gary Anderson, Long Beach deputy city attorney, to Human Rights Watch regarding public records request, February 24, clarified by Human Rights Watch telephone interview with Lieutenant Alex Avila, Long Beach Police Department, February 24, 2009; rape and arrest information: letter from Belinda R. Mayes, Long Beach principal deputy city attorney, to Human Rights Watch regarding public records request, August 21, 2008.

[198] Letter from Police Services Supervisor Bonnie Flores, Monrovia Police Department, to Human Rights Watch regarding public records request, August 26, 2008, clarified by telephone interview with Ms. Flores, January 7, 2009.

[199] Letter from David King, Pomona deputy city attorney, Alvarez-Glassman & Colvin, to Human Rights Watch regarding public records request, August 28, clarified by telephone interview with Police Records Manager Judy Ramsey, Pomona Police Department, December 29, 2008.

[200] Letter from Lieutenant Robert Jacobs, San Fernando Police Department, to Human Rights Watch regarding public records request, August 18, clarified by telephone interview with Property Officer Maria Quinonez, San Fernando Police Department, December 24, 2008.

[201] Letter from Records Supervisor Marie Sy, San Gabriel Police Department, to Human Rights Watch regarding public records request, August 18, 2008.

[202] Letter from Whittier Police Department and Santa Fe Springs Police Services Custodian of Records Gloria Chavez to Human Rights Watch regarding public records request, January 13, 2009.

[203] Letter from Community Liaison Eugenia Jimenez, Santa Monica city attorney, to Human Rights Watch regarding public records request, September 4, 2008.

[204] Human Rights Watch telephone interview with Lieutenant Daniel Salerno, Santa Monica Police Department (SMPD), Los Angeles, CA, January 27, 2009. The SMPD was unable to determine how many of the stored kits have been tested. To find this

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
Since 1996						
El Monte[205]	402 (1995)	250(1995)	177	21	99	57
Redondo Beach[206]	359 (1980)	45 (1995)	127	18	75	34
Torrance[207]	280	78	U	8	0	48 (1985)
West Covina[208]	421	222	323	12	97	214
Since 1997						
El Segundo[209]	42	20	U	U	U	9
Since 1998						
Covina[210]	168 (1995)	U	38	2	14	24
Since 1999						
La Verne[211]	51	8	27	2	3	22
Since 2001						
Azusa[212]	107	25	U	U	U	U
Whittier[213]	100	32	33	9	22	2
Since 2002						
Downey[214]	290 (1995)	77 (1995)	135	26	5	U
Glendale[215]	230 (1995)	U	U	2	U	38

information would require a hand search of all 485 case reports. The SMPD reported that other rape kit information would be too burdensome to produce.

[205] Letter from Griselda Contreras, legal secretary of the El Monte City Attorney's Office, to Human Rights Watch regarding public records request, December 15, clarified by telephone interview with Vera Latrell, December 17, 2008.

[206] Letter from Records Manager Jackie Bernal, Redondo Beach Police Department, to Human Rights Watch regarding public records request, August 28, 2008.

[207] Letter from Records Administrator Christy Witherspoon, Torrance Police Department, to Human Rights Watch regarding public records request, August 27, 2008.

[208] Letter from Records Supervisor Donna Aggers, West Covina Police Department, to Human Rights Watch regarding public records request, August 18, 2008, clarified by telephone interview with Ms. Aggers, January 5, 2009.

[209] Letter from Captain Max Phipps, El Segundo Police Department, to Human Rights Watch regarding public records request, August 12, 2008.

[210] Rape kit information: Letter from William J. Priest, Covina assistant city attorney, to Human Rights Watch regarding public records request, January 5, 2009; rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, http://bjsdata.ojp.usdoj.gov/dataonline (accessed March 16, 2009).

[211] Letter from Records Supervisor and Custodian of Records Ruth Mahlow, La Verne Police Department, to Human Rights Watch regarding public records request, December 17, confirmed by telephone interview with Ms. Mahlow, December 17, 2008.

[212] Letter from James R. Touchstone, Azusa city attorney, Best Best & Krieger LLP, to Human Rights Watch regarding public records request, September 22, 2008.

[213] Letter from Custodian of Records Gloria Chavez, Whittier Police Department, to Human Rights Watch regarding public records request, August 21, clarified by telephone interview with Ms. Chavez, December 29, 2008.

[214] Letters from William J. Priest, Downy assistant city attorney, to Human Rights Watch regarding public records request, August 29, 2008, and January 30, 2009.

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
Maywood/Cudahy[216]	66	21	39	39	0	11 (returned untested)
Montebello[217] (Nov. '02)	209	58	64	22	16	26
Signal Hill[218]	19	U	16(3/13/02-7/21/08)	0	0	U
Date Unknown						
Bell[219]	19 (12/01)	3 (05/03-12/11/06)	U	U	U	U
Irwindale[220]	17	11	6	6	6	0
Monterey Park[221]	69	30	118	79	10	U
No Information						
Burbank[222]	160 (1995)	--	--	--	--	--
Culver City[223]	74 (1995)	U	U	U	U	U
Total	**8785**	**2634**	**4830**	**1087**	**1529**	**2749**

[215] Rape kit information: letter from Glendale Police Department General Counsel Carmen O. Merino to Human Rights Watch regarding public records request, August 28, 2008, clarified by telephone interview, January 27, 2009; rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, http://bjsdata.ojp.usdoj.gov/dataonline (accessed March 16, 2009).

[216] Facsimile from Senior Records Clerk June Montero, Maywood/Cudahy Police Department, to Human Rights Watch regarding public records request, February 26, clarified by telephone interview with Ms. Montero, February 26, 2009. Maywood and Cudahy are two cities that share a single police department.

[217] Rape kit information: letter from David King, Montebello deputy city attorney, Alvarez-Glassman & Colvin, to Human Rights Watch regarding public records request, January 16, 2009; rape and arrest information: letter from Records Supervisor Dia Cisneros, Montebello Police Department, to Human Rights Watch regarding public records request, August 20, 2008.

[218] Rape kit information: Human Rights Watch telephone interview with Property Clerk Gloria Munoz, Signal Hill Police Department, regarding public records request, February 2, 2009; rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, http://bjsdata.ojp.usdoj.gov/dataonline (accessed March 16, 2009).

[219] Letters from Custodian of Records Esbeyda Pimental, Bell Police Department, to Human Rights Watch regarding public records request, August 13, 2008, and January 22, 2009, the latter stating "the Bell police Department has provided all relevant documents in the August 13, 2008 response and no other documents exist. Also, the law does not require the Bell Police Department to create records to satisfy the request. There are simply no additional records in existence containing the information you seek that have not already been provided."

[220] Letter from Robert Barnes, Irwindale Police Department, to Human Rights Watch regarding public records request, August 11, confirmed by telephone interview with Mr. Barnes, December 18, 2008.

[221] E-mail from Adrian Guerra, Monterey Park assistant city attorney, to Human Rights Watch regarding public records request, September 5, 2008.

[222] E-mails from Lusine Arutyunyan to Human Rights Watch regarding public records request, December 30, 2008, and January 21, 2009; e-mail from Juli Scott, Burbank city attorney, to Human Rights Watch regarding public records request, February 26, 2009. Request is being processed and information will be forthcoming. Rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, http://bjsdata.ojp.usdoj.gov/dataonline (accessed March 16, 2009).

[223] Letter from Document Section Manager Lt. Chris Maddox, Culver City Police Department, to Human Rights Watch regarding public records request, October 3, 2008. Response letter included a chart of rape reports and arrests, but chart is indecipherable. Multiple telephone interview requests were made to clarify, and as of February 26, 2009, we are still awaiting a response. Rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, http://bjsdata.ojp.usdoj.gov/dataonline (accessed March 16, 2009).

While the police departments of these 47 cities do not rely on the Sheriff's Department for policing duties, they do send rape kits to the Sheriff's Department's crime laboratory for testing.[224] Although the Sheriff's Department is developing a plan to test every rape kit booked into evidence through the Sheriff's Department staff, it has not yet determined how to address untested rape kits in police stations outside of the Sheriff's Department. One senior officer remarked to us, "There are going to be sovereignty issues. We can't demand that they send kits to us, but we can strongly encourage them and try to think of incentives for them to send us the kits. We had a state grant a couple years ago to test rape kits and we went to city police departments and told them to send us their untested rape kits, and it was like pulling teeth to get them to respond."[225] The Sheriff's Department is currently soliciting information on untested rape kits from independent police departments in the county.[226]

The failure of some police departments to provide information about rape kits is not limited to Human Rights Watch requests. A Sheriff's Department crime lab official told Human Rights Watch that recent requests from the Sheriff's Department to independent police departments for the number of untested rape kits in their storage facilities have "mostly gone unanswered. They don't respond to our request for information. They won't count the rape kits in their storage facility, even for us."[227]

Consequences of Untested Kits in Police Storage

It was difficult for Human Rights Watch to find rape victims who knew that their rape kit was sitting untested in a police storage facility in Los Angeles County. One reason may be the lack of information available to victims regarding their rape kits.

Under California law the Police Department and the Sheriff's Department must notify victims in stranger rape cases if their rape kits were not tested within two years of collection. It is unclear whether the Police Department has a system in place to comply with this requirement. When Controller Laura Chick conducted an audit of the Police Department's use of federal DNA grant programs, exit interviews with Police Department officials indicated that they were unaware of the law's existence.[228] The Sheriff's Department appears not to

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[224] Human Rights Watch interview with Captain David Walters, Los Angeles, CA, October 29, 2008.

[225] Human Rights Watch telephone interview with Sheriff's Department crime lab official, name withheld, Los Angeles, CA, May 6, 2008.

[226] Human Rights Watch e-mail correspondence with Captain David Walters, March 1, 2009.

[227] Human Rights Watch telephone interview with Sheriff Department crime lab official, name withheld, Los Angeles, CA, January 26, 2009.

[228] Human Rights Watch interview with Controller Laura Chick, October 30, 2008.

have a system for compliance with the law. It has an internal directive dictating in what circumstances officers must notify rape victims,[229] but under questioning from the Los Angeles County Board of Supervisors in November 2008, the Sheriff's Department revealed that it could not determine whether any rape victims whose kits went untested had been notified of that fact.[230]

Rape treatment providers and advocates in the Los Angeles area could not recall ever hearing of a victim being informed about the testing status of her rape kit. The mother of a rape victim in Los Angeles told Human Rights Watch about how difficult it was to get information about the status of her daughter's rape kit: "My daughter was raped by her supervisor, and we also thought he used a date rape drug. After she got the kit collected, after a few weeks, we called the police to get an update, to ask if the blood tests had shown the drug, but they didn't return our phone calls, and then when I got someone on the phone, they told us that they were waiting to decide whether to test the kit. I have called them once a week for eight months, and I still don't know whether her kit was submitted for testing or not. Mostly, I have only succeeded in annoying them."[231]

Many victims may assume their kit was tested. Gail Abarbanel, director of the Rape Treatment Center at Santa Monica-UCLA Medical Center, told Human Rights Watch, "The last time many rape victims see their rape kit it is in the hands of a police officer. The assumption is that if the police have the kit, it will be tested."[232] A sexual assault nurse examiner told Human Rights Watch, "My clients seem to assume that if they have not heard back from the police, it is not because testing was not done; it was because testing was done but there was no DNA in the kit. Not hearing from the police can contribute to the self-blame and doubt that victims are feeling about the rape."[233]

Based on their own reported numbers, the Police and Sheriff's Departments will have hundreds of victims who were raped by strangers and whose kits were not tested within two years of collection. To come into compliance with California law, the Police and the Sheriff's Departments will have to inform the victims of this fact. It will be a delicate task: As the nurse examiner quoted above commented, "Some rape victims may have already tried to move on from the rape. To hear from the police again, out of the blue two years after the rape,

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[229] Los Angeles County Board of Supervisors hearing transcript, October 7, 2008, p. 98.

[230] Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, p. 88.

[231] Human Rights Watch telephone interview with mother of a rape victim, name withheld, Los Angeles, CA, October 13, 2008.

[232] Human Rights Watch interview with Gail Abarbanel, March 1, 2009.

[233] Human Rights Watch interview with sexual assault nurse examiner, name withheld, Los Angeles, CA, May 7, 2008.

may reintroduce the trauma for the victim. However the police decide to do this, they need to make sure they consult with rape victims' advocates on how to best give victims this kind of information."[234]

Conversations with Professionals

To understand the dynamics and effects of the rape kit backlog, Human Rights Watch spoke with rape treatment providers, sexual assault nurse examiners, and police officers about cases in which rape kits were not submitted for testing:

- A police officer in the Los Angeles area described why he often does not submit rape kits for testing: "I am not going to submit a kit when we know who the alleged perpetrator is. I am also not going to submit a kit when I don't think the case is founded, where something about the victim's story just doesn't add up. As you know, some people report a rape to get back at their boyfriend, or to hide from their parents that they were having sex with their boyfriend, or all sorts of reasons. So, you don't just test every rape kit that comes to you."[235]
- A rape treatment provider told Human Rights Watch about a victim who was raped at a party: "The police seemed to focus a lot of their attention on the fact the girl was drinking, and not as much on the fact of her physical injuries. She had tears inside her vagina, consistent with forced [penetration]. You could just sense that while they were interviewing the girl about the case, they were not going to be taking this case that far. I called them a few months later, at the girl's request, to see if the kit was tested, and they told me they were going to wait and see whether to test it. I told my client, and she told me she didn't want to be a part of the investigation anymore. She felt like the police didn't believe her anyway."[236]
- A police officer in the Los Angeles area told Human Rights Watch, "Rape is a tough crime to investigate. And sometimes, you are not going to request the DNA testing unless you feel certain that a rape really did occur, and that testing the kit is going to help you further the investigation. Most rape cases are 'he said/she said,' and a rape kit isn't going to help you figure out who is telling the truth."[237]
- A rape treatment provider told Human Rights Watch of seeing four sex workers come to her clinic in a nine-month period, all with similar descriptions of the man who

[234] Ibid.

[235] Human Rights Watch interview with Los Angeles area police officer, name withheld, Los Angeles, CA, July 13, 2008.

[236] Human Rights Watch interview with Los Angeles area sexual assault nurse examiner, name withheld, Los Angeles, CA, January 14, 2009.

[237] Human Rights Watch interview with Los Angeles area police officer, name withheld, Los Angeles, CA, November 12, 2008.

raped them: "I worked for months to get the police to test these kits, to see if they could match the cases together. The same things that made these women vulnerable—their life on the streets—also made them suspect to the officer, and he was convinced these were simply cases where the sex worker didn't get paid by her [customer], and they retaliated by reporting a rape. My response was, 'They retaliated by submitting to the lengthy rape kit collection process?' I think sometimes the officers just don't get rape."[238]

[238] Human Rights Watch interview with Los Angeles area rape treatment provider, name withheld, Los Angeles, CA, December 22, 2008.

Elimination of the Rape Kit Backlog in New York[239]

In 1999 the New York Police Department (NYPD) discovered that it had a backlog of 16,000 untested rape kits in its storage facilities. Under the direction of then-Mayor Rudolph Giuliani and then-Police Chief Howard Safir, and with budgetary support from the New York City Council, the NYPD sent every untested kit to a private crime lab for testing with a goal of getting test results back from every kit by 2003. While the kits were at the private lab the NYPD, the New York City DNA Lab, and the Manhattan District Attorney's Office implemented policies to ensure that the rape kit backlog would remain eliminated. The NYPD was directed to send every new booked rape kit to the crime lab for testing; the crime lab hired additional DNA criminalists to keep up with the increased number of kits entering the testing queue; and the Manhattan District Attorney's Office established a specialized cold case unit, staffed by two senior attorneys, to investigate any leads from testing the backlogged kits. The crime lab also created a notification system for cold hits; when the DNA profile from a tested rape kit matches a profile in the DNA database an electronic system ensures that the crime lab, Police, and District Attorney's Office are all notified at the same time.

As of January 2009 the tested kits yielded 2,200 cold hits and 400 active investigations, arrests, or prosecutions. Testing the rape kit backlog also exonerated a wrongfully convicted defendant. While the DNA test results identified assailants in stranger rape cases, they also created leads in cases that police and prosecutors were not expecting. For example, prosecutors told Human Rights Watch of tying the same assailant to multiple acquaintance rape cases that might otherwise have been difficult to move through the criminal justice system. "We had an assailant who raped drug addicts coming to him to buy drugs. These are women who may be particularly vulnerable to rape because of their addictions or their socioeconomic status, but whose cases are hard to get a jury to believe. But when we could connect the same guy to a number of rapes, we could get a conviction."[240]

Since the rape kit testing was completed in 2003, the NYPD has seen its arrest rate for rape increase dramatically, from 40 percent to 70 percent of reported cases, and there are increased numbers of prosecutions and convictions for rape. New York City law enforcement officials admit that testing every booked rape kit taken a significant financial commitment, but "we had the political will to do it, and now, the policy is a no-brainer given all the rapes we have been able to solve and prosecute."[241]

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[239] Information in this text box from Human Rights Watch interviews with Marie Samples, assistant director, New York Office of the Medical Examiner DNA Unit, New York, NY, March 14, 2008; and with Lisa Friel, assistant district attorney, Special Victims' Unit, Manhattan District Attorney's Office and Martha Bashford, assistant district attorney, Cold Case Sex Crimes Unit, Manhattan District Attorney's Office, New York, NY, March 18, 2008.

[240] Human Rights Watch interview with Martha Bashford, New York, NY, March 18, 2008.

[241] Human Rights Watch interview with district attorney in sex crimes unit, name withheld, New York, NY, December 22, 2008.

VII. Human Rights Law and Responses to Sexual Violence

> [I]naction can be every bit as abusive of power as action ... oppression can result when a State undertakes a vital duty and then ignores it.[242]
> —US Supreme Court Justice William Brennan

The rape kit backlog in Los Angeles County inhibits investigation of rape cases, bars rape victims from obtaining redress through the criminal justice system, prevents assailants from facing justice, and fails to protect future rape victim by failing, at a minimum, to provide deterrence. Human rights law imposes an obligation on states to take measures to protect all persons against human rights violations, including crimes of rape or other forms of sexual violence perpetrated by private actors, and also to provide a remedy where fundamental protections—such as those relating to the right to life and bodily integrity—have been violated. For this reason, failure to effectively investigate serious crimes such as murder and assault, including sexual violence, means that a state runs afoul of its obligations. In Los Angeles County the number of untested rape kits suggests a failure to systematically investigate reported sexual violence, in violation of human rights obligations.

Unfortunately, US law has not yet incorporated these human rights obligations in a way that offers enforceable protections for rape victims whose cases are reported but not investigated or where available evidence is not tested.[243]

Sexual Violence as a Human Rights Violation

The United States is party to a number of international conventions that unequivocally acknowledge rape as a human rights abuse, and require the US to ensure the protection of its citizens from sexual assault and rape.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[244] obligates states party to combat discrimination against women. The Committee on the

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[242] DeShaney v. Winnebago Cty. DSS, 489 U.S. 189 (1989) at 212, Brennan dissenting opinion.

[243] The US Supreme Court has twice refused to find that law enforcement agencies have a duty to prevent or investigate a specific crime, or to protect individuals from violence by private actors. The California Supreme Court has also held that law enforcement officials are not constitutionally obligated to protect the public from crime. California state laws are not clear regarding whether victims of crime can take action to enforce their rights, and if so, what remedies they can be given. See, Human Rights Watch, *Mixed Results: US Policy and International Standards on the Rights and Interests of Victims of Crime*, September 23, 2008, http://www.hrw.org/en/node/75202/section/5.

Elimination of Discrimination against Women, the treaty body that interprets and monitors compliance with CEDAW, has affirmed that violence against women is a form of discrimination against women, and that states party should have effective legal, preventive, and protective measures in place to provide justice for victims, hold offenders accountable, and protect society from future acts of sexual violence.[245] While the US has not ratified CEDAW and is therefore not a full party to the treaty, as a signatory since 1980 the US does undertake a number of legal obligations including, at a minimum, not to act in a way that would undermine the intent and purpose of the treaty.[246] The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to bodily integrity and security under article 9.[247] Both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture") and article 7 of the ICCPR guarantee the right to be free from torture and cruel, inhuman, or degrading treatment.[248] International tribunals and other bodies have established that rape is covered by these prohibitions on torture.[249]

The Inter-American Court system pays special attention to violence committed against women and children. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women prohibits violence against women and affirms a woman's right to physical integrity and security. It further requires states party to act with "due diligence to prevent, investigate and impose penalties for violence against women."[250] Since rape is a crime that is primarily committed against women, states party to the Convention have a special obligation to respond to and prevent rape and sexual assault. The United States is one of two American nations that have not ratified the Convention.

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[244] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. The US has not ratified CEDAW but became a signatory on July 17, 1980. The Los Angeles City Council, however, unanimously passed a city compliance ordinance in 2006: City Council Ordinance 06-0997, http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=06-0997 (accessed January 27, 2009).

[245] Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation 19, Violence Against Women (Eleventh session, 1992), UN Doc. A/47/38, para. 24 (t). The CEDAW Committee authoritatively interprets and monitors state compliance with CEDAW.

[246] Vienna Convention on the Law of Treaties, adopted May 23, 1969, entered into force January 27, 1980, art. 18.

[247] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976., art. 9.

[248] ICCPR, art. 7; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

[249] See, for example, European Court of Human Rights (ECHR), *Aydin v. Turkey*, judgment of 25 September 1997, 25 EHRR 251, paras. 62-88; and ECHR, *Prosecutor v. Furundija, ICTY*, judgment of 10 December 1998, Case No. IT-95-17/1-T, paras. 163-86.

[250] Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted June 9, 1994, OAS/ser.L/II.2.27, CIM/doc.33/94, entered into force March 5, 1995, art. 7 (b).

State Responsibility to Protect Against Sexual Violence by Private Actors

The United Nations Human Rights Committee (HRC) has made it clear that states party to the ICCPR and other conventions are in violation of their obligation under these treaties not only when state actors are responsible for the action, but also when the state fails to take necessary steps to prevent violations caused by private actors. The HRC's General Recommendation 31 to the ICCPR notes that states party must "take appropriate measures or ... exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."[251] The Committee Against Torture requires states party to prevent and protect victims from gender-based violence and rape by exercising due diligence in investigating, prosecuting, and punishing perpetrators—even private actors—of rape and sexual assault.[252] The Inter-American Court of Human Rights has also made clear that states are "obliged to organize the public authorities to guarantee persons subject to its jurisdiction the free and full exercise of human rights ... whether those responsible for the violations of those rights are members of the public authorities, private individuals, or groups."[253]

Additionally, CEDAW obliges states party to "take all legal and other measures that are necessary to provide effective protection of women against gender-based violence."[254]

These provisions make clear that the United States is bound to take all possible measures to prevent sexual assault and rape even when carried out by private actors.

Duty to Prevent Rape, Investigate Sexual Violence, and Protect Victims

Human rights courts have repeatedly held governments responsible for authorities' inaction or lack of due diligence in response to a violation by private actors.[255]

For example, in *E. and Others v. United Kingdom*, the European Court of Human Rights (ECtHR) held the state responsible for the injury inflicted on six children who were physically

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[251] ICCPR, HRC, General Comment 31, *Nature of the general legal obligation on states parties to the Covenant* (hereinafter "General Comment 31"), ¶ 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

[252] UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008. CAT/C/GC/2.

[253] Inter-American Court of Human Rights, Paniagua Morales et al., Judgment of March 8, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 37 (1998), paras. 173-4.

[254] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992. A/47/38.

[255] See for example, Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988).

and sexually abused by their father for a period of up to 10 years. The court held that a failure to carry out a thorough investigation into what was a suspected situation in the house, which could have minimized the risk to the children, violated the state's obligation to protect them from inhuman and degrading treatment.[256]

The case law of human rights tribunals also affirms that the obligation to prevent violations includes the diligent and thorough investigation of reported rapes and assaults. The ECtHR through a long line of jurisprudence has made clear that the obligation under international law to protect the rights to life and bodily integrity entails the conduct of an effective official investigation when a violation of either occurs, so that the domestic laws that are intended to offer protection are effectively implemented. An effective investigation is one that is capable of leading to the identification and punishment of those responsible. The ECtHR has held that the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including forensic evidence. Any deficiency in the investigation that undermines its ability to establish the person or persons responsible will risk running afoul of the requirement to provide an effective remedy.[257]

Likewise, the Inter-American Court of Human Rights has long upheld the duty of states to take affirmative steps to prevent human rights violations. According to the Court, these steps include the obligation to investigate allegations of violations and to prosecute and punish the perpetrators of those violations.[258] The Court has made clear that responsibility for violations of human rights rests equally with the state as with the perpetrators when the state refrains from taking any measures to investigate crimes or prevent future violations.[259] Additionally, an investigation of alleged violations alone is not enough to clear the state of liability. Instead, it explains, any inquiry "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective ... Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, making the State responsible on the international plane."[260]

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[256] ECtHR, *E. and Others v. the United Kingdom*, no. 33218/96, judgment of 26 November 2002, para. 103.

[257] For the Court's repeated findings on the obligation to investigate, see amongst others, *Kaya v. Turkey*, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 324; *Jordan v. the United Kingdom*, no. 24746/94, judgment of May 4, 2001; *Finucane v. the United Kingdom*, no. 29178/95, judgment of July 1 2003; *Isayeva v. Russia*, 57950/00, judgment of July 27, 2004; *Adali v. Turkey*, 38187/97, judgment March 31, 2005.

[258] Inter-American Court of Human Rights, Velásquez Rodríguez Case, p. 174.

[259] Ibid., p. 173.

[260] Ibid., p. 177.

VIII. Conclusions

The number of untested rape kits in Los Angeles County points to larger concerns with the way the Los Angeles Police Department and Sheriff's Department handle rape kits and rape investigations more generally. For rape victims to have access to justice, policymakers and law enforcement officials in Los Angeles County will need to test every booked rape kit, but their responsibility does not end there. Law enforcement, in collaboration with rape treatment providers and with the support of elected officials, will need to create systems to ensure that every reported rape case is thoroughly investigated and, when appropriate, leads to the arrest of those responsible. As one rape treatment provider told Human Rights Watch, "We go through the motions of collecting the kit, and then it doesn't get tested. Either we stop collecting rape kits, or we test every rape kit. It's now standard procedure to encourage every rape victim to report the crime and get a rape kit collected. If we think it's unconscionable to discourage a rape victim from reporting and getting a rape kit collected, then it's unconscionable to have a rape kit backlog."[261]

The remedy will require a comprehensive plan that is made known to the public, compliance with existing laws, and swift and efficient action. This is a necessary part of core governmental obligations to protect victims of sexual violence and promote public safety.

[261] Human Rights Watch interview with Sharon Shelton, May 5, 2008.

Acknowledgments

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This report would not have been possible without the cooperation of the Los Angeles Police and Sheriff's Departments. Human Rights Watch is especially grateful to Deputy Police Chief Charlie Beck, Police Commissioner Anthony Pacheco, Police Special Counsel Gerry Chaleff, Sheriff Lee Baca, and Sheriff Forensic Services Captain David Walters.

We are especially grateful to the rape victims and their families who trusted us with their stories.

A special thanks to Gail Abarbanel, whose commitment to remedying the rape kit backlog got us to Los Angeles in the first place, and to the Human Rights Watch community in Los Angeles, whose commitment to the issue gave this project momentum.

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Testing Justice

The Rape Kit Backlog in Los Angeles City and County

The DNA evidence in a sexual assault kit ("rape kit"), collected from a victim's body after a rape, can provide critical information to identify assailants, confirm the presence of a suspect, corroborate a victim's account of her rape, and exonerate innocent defendants. Yet at least 12,669 untested rape kits are sitting in storage facilities in the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and 47 independent police departments in Los Angeles County. In some cases testing has been delayed so long that the statute of limitations has expired, meaning that prosecution is impossible even if DNA evidence were to identify the assailant.

The debilitating physical and emotional effects of rape require immediate response—including prompt testing of rape kits—to give victims of sexual assault their best chance at justice, especially with national studies showing that the existence of DNA evidence expedites the progress of a case through the criminal justice system. But city politics, battles over crime lab funding, and changes in internal leadership over the issue have complicated efforts to address the backlog in an effective manner.

International human rights law places an obligation on law enforcement to carry out effective investigations into reports of sexual violence, which includes taking reasonable steps to secure essential forensic evidence, and protecting individuals from sexual assault. Failure to make effective use of rape kit evidence falls foul of this standard.

Testing Justice investigates the dynamics and effects of the rape kit backlog. It also includes the most comprehensive and up-to-date statistics on the extent of the backlog in Los Angeles City and County.

Improving the use of rape kit evidence will require the leadership not just of law enforcement, but of top elected officials in Los Angeles County and its constituent cities.

Untested sexual assault kits at the Los Angeles Police Department storage facility.

All photos © 2009 Patricia Williams

Mr. SCOTT. The hearing record will remain open for 1 week for submission of additional materials.

Without objection, and thanking the witnesses again, the Subcommittee stands adjourned.

[Whereupon, at 11:01 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Statement of Congressman Ted Poe
House Committee on the Judiciary
Subcommittee on Crime, Terrorism, & Homeland Security
May 20, 2010

Mr. Chairman: Thank you for the holding this hearing today to discuss the important issue of rape kit backlogs. As a former prosecutor and a judge in Texas, and now as the co-chair of the Congressional Victims' Rights Caucus, I know all too well how justice delayed can easily become justice denied.

Addressing the rape kit backlogs is a critical to ensuring that sexual predators are prosecuted to the fullest extent of the law. But the testing of a rape kit is also essential to the process of closure for the victim. A kit that takes years to be tested raises difficult issues surrounding when and how to notify the victim, or even if the victim can still be found. Should the victim be notified when the kit is sent, or when the results are returned? What about cases where the rape occurred many years ago, and the victim no longer wants to discuss it?

Furthermore, what victim compensation resources are available to those whose cases have gone cold? Is there any recourse for victims whose cases have passed the statute of limitations for prosecution because their kit was tested too late?

We cannot underestimate the trauma that these victims have suffered at the hands of sexual predators. It is important that any discussion of rape kit backlog takes into account the needs and rights of victims in the process.

Thank you again, Mr. Chairman, for holding this hearing today. I look forward to hearing testimony from the witnesses.

HUMAN RIGHTS WATCH http://www.hrw.org

Detroit's Rape Kits Must be Checked

by Sarah Tofte
Published in:
Detroit Free Press
October 2, 2009

Sarah Tofte

Related Materials:
Testing Justice

Last month, the Detroit Free Press reported on Wayne County Prosecutor Kim Worthy's contention that as many as 10,000 untested sets of physical evidence from rapes, called rape kits, may be in Detroit police storage facilities. In response, Detroit police conceded that they don't normally track rape kit evidence and said they would do a count.

Rape victims expect that when they submit to the lengthy, invasive, and sometimes traumatic process of collecting DNA evidence from their bodies, the information will be used to try to find and prosecute their rapist. So the number of untested rape kits sitting in police storage may have something to do with Detroit's dismal law enforcement response to rape.

Detroit has one of the lowest arrest rates for rape among major cities in the United States. The FBI's Uniform Crime Report shows that 1,523 rapes were reported to the Detroit police from 2005 through 2007. In that same three-year period, Detroit reported only 166 arrests for rape. This means that only about 10.9% of the reported rapes resulted in an arrest.

The number of untested rape kits in police storage facilities can be a concrete indicator of how many rape victims have not received the help they are owed. Testing a rape kit can identify an assailant, confirm a suspect's contact with a victim, corroborate a victim's account of the crime, connect apparently unrelated crimes, and exonerate innocent suspects.

In 2003, when New York City began to test every booked rape kit, the arrest rate for rape skyrocketed, from 40% to 70% of reported cases. A law enforcement decision to test a rape kit is an indication of a commitment to build a strong investigation. National studies have shown that rape cases in which a rape kit was collected, tested and found to contain DNA evidence are more likely to move forward in the criminal justice system.

After the news broke about Detroit, Police Chief Warren Evans played down the importance of the untested rape kits in storage, stating that the kits are connected to cases-already processed for criminal investigations, as well as a large number of kits that never required processing because the cases were resolved without the need for DNA evidence.

Human Rights Watch initially heard the same explanation from Los Angeles Police and Sheriff's Department officials while researching the 12,500 untested kits in their storage facilities. After both departments audited their backlog, they discovered at least 1,500 untested rape kits from unsolved stranger rape cases. They have since made a commitment to test every rape kit in their

backlog, as well as every kit booked in the future.

When we began researching the rape kit backlog in Los Angeles, we heard powerful stories from rape victims whose kits had not been tested. Without hard numbers, however, it was difficult to generate the political will to fix the problem. After an independent audit of the Los Angeles Police Department and the eventual uncovering of statistics for the whole of Los Angeles County, city and county officials promised reform. Leaders made a commitment to find the money to eliminate the backlog, and to provide the oversight required to ensure success.

Detroit needs to conduct a thorough audit to determine the extent of its rape kit backlog and the kinds of cases the untested kits represent. What the audit finds will help the police-and the community-to understand why so few rape victims in Detroit have seen justice in their cases. Then Detroit can move ahead to fix the problem.

http://www.hrw.org/en/news/2009/10/02/detroit-s-rape-kits-must-be-checked

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PoliceOne.com News

09/24/2009

Concern over Detroit police handling of rape kits

BY Joe Swickard and Chris Christoff
Detroit Free Press

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DETROIT — Wayne County Prosecutor Kym Worthy wants an independent investigation into what she says may be thousands of kits holding evidence of possible sexual assaults that were found in a Detroit Police Department evidence storage facility.

In a Sept. 8 letter to Police Chief Warren Evans, Worthy said there may be more than 10,000 so-called rape kits and hundreds of other pieces of evidence warehoused, unanalyzed, in a police "overflow property room." The situation raises fears that cases could be affected if the evidence is challenged in court, Worthy said.

Police spokesman John Roach said Monday that Evans has an internal investigation under way, and that so far, police have found no mishandling of evidence and no cases that have been tainted. Roach also said the evidence is secure.

But Worthy contends in her letter that though the issue predates Evans' administration, the investigation should be handled by an outside agency. Worthy's letter also asks for an immediate meeting, but none has been set.

The police crime lab was shut down a year ago because of an extraordinarily high error rate in firearms cases.

William Winters III, president of the Wayne County Criminal Defense Bar Association, said it may be time for federal authorities to look into the lab and the handling of evidence. "They have the money and resources," he said.

Worthy wants an outsider to conduct police evidence probe

The discredited Detroit Police Department crime lab continues to haunt the criminal justice system a year after it was closed because of errors and mishandled evidence.

Officials have to act decisively to assess thousands of sexual-assault evidence kits found in an evidence facility, and it's going to take an outsider to do it, Worthy told Evans in an urgent letter sent this month.

The problems that closed the police lab "have already raised too many issues within the courts with how evidence has been processed and tested," Worthy wrote in the Sept. 8 letter.

She called the evidence handling "alarming." Worthy's spokesman, Jack Fennessey, said Friday that she was stunned by the reports. He did not return calls Monday.

But Detroit police spokesman John Roach said that, so far, the department's preliminary investigation shows the kits include ones "already processed for criminal investigations, as well as a large number of kits that never required processing because the cases were resolved without the need for DNA evidence."

Those unprocessed kits include cases in which a person didn't want to pursue the charges or the prosecutor declined to issue a warrant, he said. Other cases ended with a plea or involved assaults that would not have left DNA, Roach said.

Boxes of evidence found

Worthy's letter, however, offered a grimmer view, of an evidence room that to her "understanding," was filled with sexual-assault evidence kits, known as rape kits, and other evidence that had not yet been analyzed. The problems have been worsened by the destruction of other, unspecified evidence that needed to be retested because of "the sub par work conducted by the lab," Worthy added in her letter.

Boxes of rape kits were found in an evidence room several weeks ago during a routine inspection of police facilities by Michigan State Police.

The evidence warehouse also had hundreds of other pieces of evidence and case files, some of which, Worthy wrote, is "unmarked and not catalogued in any intelligible way."

If any of the kits are used in court, they are open to challenge "on a number of levels, and my office needs to know the clear gravity of this situation," Worthy wrote.

Roach said the internal probe was under way before Worthy's letter. "Once the internal affairs report is finalized, the chief will determine whether an outside review is necessary, and he will share our findings with the prosecutor," Roach said Monday.

He said judgment should be withheld until the investigation is concluded, and the department "takes sexual assaults very seriously and is committed to making sure all evidence is handled appropriately."

The lab was closed last year after an audit found an error rate of 10% in firearms cases. The entire lab was shut down out of fear the slipshod practices extended to other testing.

Detroit reported 1,264 rapes from 2006 through 2008, according to the latest FBI statistics released last week.

Bigger than just Michigan

Worthy acknowledged that any problems with the rape kits existed before Evans was tapped as police chief, but she said in her letter that an outside agency should lead any investigation. Without independent eyes, the situation "is a huge problem for us, the bench and other parties in the criminal justice system," she wrote.

State Police spokeswoman Shannon Akans said Monday that it's up to the Detroit Police Department to request an audit. No request has been made.

"We don't know how many of the kits were analyzed or not analyzed," Akans said.

Worthy also raised questions in her letter about the department's practices in entering information in rape and other criminal cases into a national DNA databank.

William Winters III, president of the Wayne County Criminal Defense Bar Association, said Worthy's concerns are justified, given the lab's history and the implications for the national databank. "This can affect the whole country," Winters said.

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Featured Resource:

White Paper: Using Groundbreaking Technology to Locate Sex Offenders
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FREE PRESS STAFF WRITER

Wayne County Prosecutor Kym Worthy wants an independent investigation into what she says may be thousands of kits holding evidence of possible sexual assaults that were found in a Detroit Police Department evidence storage facility.

In a Sept. 8 letter to Police Chief Warren Evans, Worthy said there may be more than 10,000 so-called rape kits and hundreds of other pieces of evidence warehoused, unanalyzed, in a police "overflow property room." The situation raises fears that cases could be affected if the evidence is challenged in court, Worthy said.

Police spokesman John Roach said Monday that Evans has an internal investigation under way, and that so far, police have found no mishandling of evidence and no cases that have been tainted. Roach also said the evidence is secure.

But Worthy cautions in her letter that though the issue predates Evans' administration, the investigation should be handled by an outside agency. Worthy's letter also asks for an immediate meeting, but none has been set.

The police crime lab was shut down a year ago because of an extraordinarily high error rate in firearms cases.

William Winters III, president of the Wayne County Criminal Defense Bar Association, said it may be time for federal authorities to look into the lab and the handling of evidence. "They have the money and resources," he said.

Discredited crime lab still haunts police, 2A

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Abstract (Document Summary)

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Michigan domestic violence group gets grant to analyze untested rape kits at Detroit Police Department

Published: Sunday, February 07, 2010, 4:53 PM Updated: Sunday, February 07, 2010, 6:42 PM

AP The Associated Press

A women's support grouphas awarded Michigan State Police a federal grant to begin analyzinghundreds of rape kits sitting untested at the Detroit Police crime lab.

The$650,000 grant through the Michigan Domestic Violence Prevention &Treatment Board will help police process samples of evidence taken fromsexual assault victims and compare those results with the DNA of knownoffenders.

The rape kits contain semen, hair and other evidencetaken from victims that could contain DNA of their attackers, boardexecutive director Debi Cain said.

"Each of these untested kitsrepresents a sexual assault victim who trusted our system to be therefor them," Cain told The Detroit News. "It's no easy thing for a victimto go through testing. But it's devastating for a system you trust toiet you down."

Cain said an additional $150,000 will go toward updating old kits or buying new ones.

MichiganState Police took over the Detroit crime lab in September 2008 after itwas determined that firearms cases had been improperly handled.

DetroitPolice ordered a review last year after 10,500 untested rape kits werediscovered in the crime lab. Most of the rape kits that have beenreviewed were from cases in which DNA evidence was not needed, saidDetroit Police 2nd Deputy Chief John Roach.

Roach said those kitswere either from cases where the perpetrator confessed, the victimrefused to press charges or the perpetrator was known.

He did not know how many of the 10,500 kits had been reviewed.

Assistantprosecutor Maria Miller, a spokeswoman for the Wayne CountyProsecutor's Office, said the final determination on each rape kit willcome from her office.

"It is a legal decision that can only bemade by prosecutors interviewing the complainants, reviewing the factsand the evidence on a case by case basis," she said.

The funding,obtained last month, comes from Services, Training, Officers andProsecutors, STOP, a criminal justice grant designated to combatviolence against women.

But the one-time grant will barely put a dent in the backlog.

StatePolice have estimated that if one technician had nothing else to do, itwould take him or her 58 years to complete the testing of all the kits.

Capt.Michael Thomas, who oversees Michigan's seven State Police labs, saidhe is grateful for the grant, which he estimates will pay for theprocessing of 400 kits to be selected at random.

"It costs about$1,000 a kit," Thomas said. "But tests alone aren't enough. You have tohave fund police to investigate or background the crime and then theprosecutors needed to review and seek."

The success of the sample testing will provide an idea of what it will cost to analyze all 10,500, he said.

Thedomestic violence group's involvement comes amid concerns about theState Police's ability to keep pace with old and new cases.

StateRep. Richard LeBlanc, D-Westland, will hold an information hearing Feb.18 in Lansing on the processing of criminal evidence in Michigan.

"Evidencein murder, rapes and firearms cases, which might have been processed ina few months a few years ago, can take upwards of a year now," LeBlancsaid. "That's too long, and keeps criminals on the street, unpunished,and also free to victimize others."

Information from: The Detroit News, http://www.detnews.com

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Detroit to test 400 of 10,500 rape kits

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DETROIT, Feb. 7 (UPI) -- A federal grant will pay the testing costs of about 400 of the 10,500 rape evidence kits waiting to be tested at the Detroit Police crime lab, officials said.

"Each of these untested kits represents a sexual assault victim who trusted our system to be there for them," said Debi Cain, head of the Michigan Domestic Violence Prevention & Treatment Board.

The board is funneling $650,000 of its federal funding to help Michigan State Police process the kits and then investigate the crimes further, the Detroit News reported Sunday.

The 400 kits, which will cost about $1,000 each to process, are to be chosen at random. Michigan State Police took over the Detroit crime lab in 2008 after it was determined weapons cases had been improperly handled. The backlog of untested rape kits was discovered last year.

Many of the kits were from cases in which the perpetrator had confessed or was known, or from cases in which victims refused to press charges.

It would take millions of dollars to process all of the 10,500 untested kits, the Wayne County Prosecutor's Office said.

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Rape Kit Backlog Legislation

H.R. 4114, the Justice for Survivors of Sexual Assault Act of 2009

Rep. Carolyn Maloney introduced H.R. 4114, the Justice for Survivors of Sexual Assault Act of 2009. This legislation would require applicants for Debbie Smith Act funds to specify what portion of the funds will be used to test untested rape kits. It would further require states receiving Edward Byrne Memorial Justice Assistance grants to certify that all rape kits in the State are sent to crime laboratories for forensic analysis.

Also, the bill provides for incentives for compliance and penalties for noncompliance with rape kit backlog reduction requirements. H.R. 4114 would eliminate rape kit repayment requirements for sexual assault victims and allow sexual assault forensic medical personnel to collect and preserve evidence, provide expert testimony, and provide treatment of trauma relating to sexual assault. In addition, the Justice Survivors Act amends the Debbie Smith Act to authorize funding to eliminate rape kit backlogs and ensure that DNA testing of rape kit evidence is carried out in a timely manner. Finally, the bill requires states and local governments to adopt performance measures for reducing rape kit backlogs.

H.R. 2157, DNA Expansion and Improvement Act of 2009

Representative Anthony Weiner introduced H.R. 2157, DNA Expansion and Improvement Act of 2009 which authorizes grants for states and local governments to purchase or improve forensic DNA technology. The legislation amends the Debbie Smith Act to require state and local government grant applicants to implement a process for the collection of DNA samples from all convicted felons in prisons. Also, the bill reauthorizes grant programs through FY 2014 for DNA identification and for improving forensic DNA technology. Additionally, the legislation authorizes grants to states and local governments to analyze property crimes such as burglary, larceny, theft and arson.

H.R. 5640, National Rape Kit Database

Representative Weiner introduced H.R. 5640 which would require the Department of Justice to create the National Rape Kit Database a database that will track the status of every rape kit awaiting processing. DOJ would establish a database that will store limited information about each rape kit. No personally identifying information or case details will be included, to avoid harming an investigation or revealing the name of a victim. The local law enforcement agency will assign a unique ID number to the kit and enter or upload a record of it into the database within 72 hours of a kit being booked into police evidence.

Chairman Scott and Committee Members,

I wanted to first Thank You for such an incredible opportunity a few weeks ago. I was truly honored to be asked to testify in the Congressional Hearing on the Rape Kit Backlog (HR4114). It is great to see your passion for the issue.

I wanted to offer some clarification/elaboration on my testimony after further reflection and looking back at the case file. The underwear I had been wearing that night did get tested, which is how the semen was found. The remainder of the kit was never tested because it required additional funding (including the DNA sample). The key piece for me is testing the ENTIRE kit could have produced a positive match to the suspect!

Please let me know if I can be of any further help as this moves forward.

Thank You!
Valerie Neumann
Cincinnati, OH
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