

Testimony of Patricia R. Lykos
Before the Senate Committee on the Judiciary
November 10, 2009

Chairman Leahy, Senator Sessions and Members of the Committee

My name is Pat Lykos, I am the elected District Attorney of Harris County, Texas—the third most populous county in the United States, encompassing 1800 square miles.

Thank you for the opportunity to testify in support of the reauthorization of the Innocence Protection Act.

Wrongful convictions are abhorrent to Americans and such miscarriages of justice erode the Rule of Law, the foundation of our Republic.

Equally shocking to the conscience, is the fact that the availability of biological testing is quite limited.

Please permit me to provide the perspective of one who has labored long in the criminal justice system and who has the responsibility of being the top law enforcement officer in my county.

I worked my way through undergraduate and law school as a Houston Police Officer and then practiced law, primarily as a litigator, which included criminal defense. Subsequently, I was elected to the bench and served as an active and assignment criminal court judge for more than 20 years, including presiding over capital cases.

When I took office as District Attorney, one of my first initiatives was to create a post-conviction review section that was separate and apart from our excellent appellate division. This independence emphasized the objectivity necessary to critically and timely examine cases (and to request scientific testing) where evidence suggests that the defendant may be innocent. Concurrently, a new policy was implemented to the effect that when biological evidence exists that bears upon the guilt or innocence of the defendant it will be tested prior to trial.

In Texas, district attorneys represent the state in all criminal matters and are statutorily and morally charged with the solemn duty to see that justice is done.

This mandates a complex multiplicity of imperatives:

The district attorney is responsible to ensure that the rights of defendants are protected and to see that investigating agencies are observant of these rights. Protection of victims and their rights are a vital consideration.

Prosecutors must evaluate cases and determine whether to accept charges; often they have to further investigate. Investigations are also originated by the office. When charges are filed, the lawyers then prepare and vigorously prosecute. Responsibility continues with appeals and post-conviction review. The obligation to disclose exculpatory evidence continues throughout.

To serve and protect the citizenry, the office must prevent, suppress and reduce crime. This involves collaborative efforts with federal, state and local agencies and with the private sector. Initiatives range from disrupting, arresting and prosecuting organized criminal activity--to creating innovative rehabilitative programs, diverting non-violent juveniles, first-offenders and the mentally disabled from detention.

Fundamental principles of law do not change, but systems must, if we are to effectively safeguard our communities. District attorneys have the obligation to improve processes, consistent with due process.

When innocent people are convicted, it is a triple tragedy: injustice for those individuals; denial of justice for the victims; and the lack of justice for society, as the actual criminals are free to continue their depredations.

Equally repugnant, is the fact that technological and scientific tools exist that can prevent many wrongful convictions and just as importantly, lead to the identification, apprehension and successful prosecution of dangerous criminals, but local authorities lack the expertise and laboratories. Felons go undetected and undeterred because reliable forensic capabilities are either scarce or unavailable to the criminal justice system. Focus on post-conviction situations should not obscure the greatest need which is timely and accurate gathering of relevant evidence and DNA testing at the inception of investigations

The travails, some years ago, of the Houston Police Department Crime Laboratory are well publicized. Police Chief Harold Hurtt has done a magnificent job of reconstituting the lab. The fact remains that the HPD crime lab cannot handle the magnitude of serology and DNA testing demands of the fourth largest city in America; there are almost 4,000 rape kits sitting, untested, in the department's property room and another 1,000 in the lab. The department does not collect epithelia in property crimes because it does not have the capacity to test.

The unincorporated area of Harris County, if it were a municipality would be the 5th largest city in the United States. The Harris County Medical Examiner's Officer (MEO), which is located in the Texas Medical Center, provides forensic services to this area, independent of any law enforcement agency. Its Forensic Biology Section is staffed by scientists using the most advanced technology to perform serology and DNA testing. The MEO holds five accreditations, including three specific to the crime laboratory.

The elected officials of Harris County and the City of Houston, Republicans and Democrats, (please see attachment one), are working together to develop a regional, independent crime lab. They recognize that neither the police department nor sheriff's office has the finances, or the expertise to operate a sophisticated laboratory capable of handling the volume of the metropolitan region. The mission of police agencies is to maintain law and order and that requires the presence of officers and deputies to prevent and solve crime. In the best of times it is a strain to provide adequate personnel. Crime labs should not have to compete with law enforcement for the same dollars. An independent lab eliminates any inference of bias.

Harris County has the will, the plan, and the support of the medical/scientific community, (please see attachment two), to create a new paradigm for a 21st Century; a state-of-the-art crime laboratory. What it lacks is money to hire the additional scientists and acquire the necessary technology.

I respectfully suggest to the honorable members of this committee that they consider including the following provisions in the Act; to perhaps create a COPS¹-like program to address the issues.

I. Fund pilot projects that would be models for the nation in the development and maintenance of forensic science laboratories worthy of this great nation. This will protect the innocent and will reduce crime. Harris County, Texas volunteers to be the first project.

When scientific evidence is introduced in our courts, it is sponsored in the name of the district attorney. Each district attorney is vouching for the integrity of the science, the practitioners and witnesses. Justice and our honor are at stake.

Civil order requires that the public have trust and confidence in the system.

II. Fund the National District Attorneys Association to train prosecutors to understand, evaluate and present scientific evidence. Prosecutors can then train law enforcement officers in proper evidence collection and scene preservation. It is imperative that inculpatory and exculpatory evidence be gathered. DNA is an immense crime-fighting tool and properly

gathered and analyzed will not only prevent wrongful convictions, it will greatly reduce violent and property crime and the number of unsolved crimes.

Prosecutors have a myriad of responsibilities; the most important is the duty to ensure justice which in itself involves numerous and diverse obligations and tasks. Also, there is the job of combating crime; science and technology are vital to getting the job done.

III. Provide training to criminal defense attorneys in scientific evidence so they may effectively represent their clients. I want defendants to have competent lawyers at all levels of criminal proceedings; it helps me discharge my duty.

Honor and dealing justly with all, is everything. Leaders see the right thing to do and do it.

I cannot laud this Committee enough for your interest and commitment to the Rule of Law.

¹Community Oriented Policing Services