

TESTIMONY OF STEVE REDDING
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Senate Judiciary Committee
“Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide”
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My name is Steve Redding and I am a Senior Assistant County Attorney in Hennepin County, Minnesota. I supervise the sexual assault unit in our office. Hennepin County encompasses the city of Minneapolis and its 47 surrounding suburbs. Our office serves 1.1 million people.

I want to thank the members of the Judiciary Committee for inviting me here and providing me with a brief respite from the Minnesota winter. I especially want to express my thanks and gratitude to Senator Klobuchar, who was the Hennepin County Attorney for eight years prior to being elected U.S. Senator. From the moment she was elected county attorney, Senator Klobuchar fully understood the power of DNA testing to protect women and children and to assist prosecutors in carrying out our duty to convict the guilty and protect the innocent. Prior to the recent large trend towards using DNA testing to solve property crimes, 90% of the crimes where DNA constituted critical evidence were crimes against women, and the next largest group was children. Her commitment to fully using this incredible technology enabled myself and the other career prosecutors in our office to obtain convictions in cases which previously never would even have been charged. I also want to thank Michael Freeman, the present Hennepin County Attorney, for his unwavering support on DNA issues both now and in the eight years he was county attorney prior to Senator Klobuchar's eight years.

Because I have been a prosecutor for so long – 32 years – I have tried rape cases both before and after the introduction of DNA testing. I can assure you, after is better. Prior to the advent of DNA testing, a probability figure of 1 in 100 from biological evidence was cause for celebration. Now prosecutors that I supervise tell me that something must be wrong with the testing if the number is less than 1 in 1 *billion*. Prosecutors can now tell rape victims not to worry about whether they can identify a perpetrator by sight, because we have the best identifier there is – his DNA. When prosecutors were just starting to get introduced to and familiar with using DNA in court, we had to pick and choose the cases which we would submit for DNA testing. Thankfully, those days are long gone.

While DNA evidence has been a huge help in prosecuting offenders who have been identified by conventional police investigation, it has also had a tremendous impact in solving what we know as “cold cases.” I had the good fortune to prosecute the first two cold hit cases in the U.S. in 1992 and 1993. One was a rape homicide of a recent college graduate, and the other was a sexual assault of a young woman by a repeat serial rapist.

I am happy to report that both of those predators are still behind bars almost twenty years later and will never be released from prison. Neither would be there but for the advent of DNA testing. No amount of conventional police investigation could have solved either of those crimes. That I was able to prosecute the first two cold hit cases in the U.S. was not because of anything special I did, but because of the foresight of the Minnesota State Legislature which began funding the Minnesota Bureau of Criminal Apprehension DNA lab in the late 1980s, allowing it to become then what it still is now: an excellent DNA testing lab and a pioneer in DNA testing practices.

I am fortunate to have been a part of this revolution in DNA evidence. Many victims and families of victims have seen justice done which never would have occurred without DNA

testing. However, my experience has also made me keenly aware that there is much more which could be done to make even greater use of DNA testing. I have several observations and suggestions that I would like to put before this committee.

Before I make these observations, however, I want to state that there is broad agreement on many issues relating to the use of DNA in rape cases: 1) we need to ensure that rape victims never have to pay for their own rape kits to be tested; 2) we need improved infrastructure and lab capabilities so that DNA evidence in rape cases and others can be processed as expeditiously as possible; 3) we need to ensure that our national DNA databases are as up to date, accurate, and comprehensive as they can possibly be; 4) we need to ensure that there is a high level of communication between police departments, DNA labs, and prosecutors to ensure that rape victims – like all crime victims – see justice. This involves consultation when a case is first brought to the attention of police; coordination when lab results are returned; and training of all parties on the best practices and current uses of DNA evidence.

SHOULD ALL UNTESTED KITS BE TESTED?

In terms of improving and ensuring the effective use of DNA evidence to solve rape cases, there has been a spate of publicity recently about thousands of rape kits sitting untested in police warehouses. As a recent CBS Evening News special documented, in a number of jurisdictions, there are large numbers of untested rape kits, and there are still significant disparities between states and localities in their ability to timely process DNA kits.

This begs the question: Should there be a requirement that all of these kits be tested? There are two possible approaches. The first would be to mandate that all untested kits be tested. The second would be to suggest that some type of screening process be implemented to determine if there would be any probative value from testing a particular kit. Before deciding to test all kits, I believe there are two important considerations which must be dealt with.

First, most sexual assault support organizations advise women who have a rape exam performed that the decision to notify police and to have testing done on the evidence taken from them is their decision, not a decision for the police or prosecutor to make. The crime of rape is significantly underreported for a variety of reasons. Many times there is late reporting, by which time any biological evidence is no longer available. Everything possible should be done to encourage all victimized women to participate in the reporting and collection of biological evidence. However, if testing was absolutely mandatory, women would have to be advised that if they participate in the examination, the rape kit would be turned over to police and to a DNA lab. This would lead to a reduction in reporting – perhaps only a slight reduction, but a reduction nevertheless.

Second, the testing of kits and the development of a DNA profile from these kits results in that person's DNA profile being put into a national database. Congress has placed significant restrictions on what DNA profiles can be entered into the database. Even after participating in a rape exam at a hospital, some women inform police that they have no intention of cooperating with a prosecution. Under these or other circumstances, placing that profile into the national database may contravene entry requirements.

The decision to test or not test requires that a number of additional factors be considered. Some of these and the reason they are important are as follows:

1. In at least 80% of reported rapes, the perpetrator is known to the victim. Some studies suggest this figure is as high as 88% to 93%.
2. The primary benefit of DNA testing is its ability to identify predators where identification was previously impossible.
3. This justification for testing is obviously not present when the perpetrator can be identified by the victim as a person she knows. Thus, if there are 10,000 untested raped kits sitting in a warehouse, it is highly likely that a significant majority are from rape victims who knew the perpetrator.
4. This considerably lessens the likelihood that testing any of those kits from acquaintance rapes would yield probative evidence.
5. This does not mean that there is no value to testing at least some of those kits after screening. There is no justification for concluding that a man who would rape an acquaintance would not rape a stranger. If at least some of the kits from acquaintance are screened and tested, this could yield a connection from that acquaintance rape case to an unsolved stranger rape case.
6. While the vast majority of kits obtained in stranger rape cases should be tested, there are also some rare circumstances where testing would not be appropriate in those instances – for example, if the victim has recanted her story.

In the grant program my office is working on, we do two things with acquaintance rape cases: First, we look to see if the named suspect is in the convicted offender database. If he is, there is no point in performing a DNA test in that case. If he is not in the database, we look at his criminal record/history. If he has an extensive record of convictions and/or police contacts, we may ask the lab to test that kit. The justification for doing so is that we know two things: rape is a crime of opportunity, meaning that he may rape an acquaintance or stranger, and active criminals do not confine themselves to one particular type of crime. Testing that kit in which he is a known contributor may result in connecting him to an unsolved sexual assault or other crime.

Is the segment of kits where the victim reports that she did not know her rapist a group of kits where testing should be focused? I think so. Too many of these kits are going untested. Among the reasons were that sometimes the police were not able to find the victim a few days later, or the victim refused to cooperate when contacted, etc.

Approximately two and one half years ago, we were able to obtain a list from our sexual assault resource center of 99 cases over an 18-month period where the victim reported she was raped by a stranger. I reviewed all of those cases and identified 33 where the kit had not been tested and my review of the police reports led me to believe that there would be a significant possibility of prosecution if DNA testing identified a suspect. Those kits were tested and the results are as follows:

No semen/sperm	5
DNA amount too small	2

John Doe	13
Hit-Prior sex history	10
Hit-No Prior sex history	3

Of that group of 13 hits:

Convicted	3
Charges Filed	5
Looking for victim	2
Under investigation	1
Consensual Partner	2

Our review of cases from other years indicated that obtaining hits in 13 of 33 cases was unusually high. This validated my initial opinion that there was value in testing this type of case, as we were able to convict three perpetrators as a result of the new “cold case” testing we are doing – and charges have been filed against five more. After obtaining these results, we applied and received grant money from the National Institute of Justice to review other “cold cases” and do even more DNA testing of old rape kits. We are reviewing rape cases going back to 1991, which is the outer limit of the statute of limitations for rape cases in Minnesota. Once our grant project is completed late 2010, we will have more data about the value of testing a segment of these untested kits. More can be done to ensure that most if not all stranger rape cases are tested. Testing all kits where the victim indicates that the rapist was a stranger became mandatory in Minneapolis one year ago.

As we continue to screen reported sex crimes from Minneapolis year by year, we are identifying, from the yearly average of 500 reported sex related crimes 30-40 cases we believe should be tested. NIJ is funding our efforts. More funds should be allocated for similar grants for additional jurisdictions. The grant funds were not sufficient to fund all applicants.

DISPARITIES IN LAB CAPABILITIES, CAPACITIES, AND TIME TO COMPLETION

Minnesota began funding a top notch DNA testing laboratory – the Minnesota Bureau of Criminal Apprehension (BCA) – in the late 1980s, long before most other states began funding DNA labs. Many other areas of the country have only recently begun to utilize the full capability of DNA testing. Some capability and backlog studies either have been done or are in progress. A focused study on lab capabilities nationwide would help identify those areas most in need of additional resources. I am not aware that such a study has been conducted; perhaps this is an area where the National Institute of Justice could be asked to step in and conduct an evaluation.

TRACKING COLD HITS FROM LAB TO POLICE TO PROSECUTORS

DNA hits in rape cases are increasing exponentially. Does anyone really know what percentage of the hits in rape cases reported by labs result in a prosecution? The answer is no. There is no system for tracking DNA hits from lab to law enforcement to prosecutor. As such it is impossible to assess and determine the number of hits and subsequent investigations which

result in prosecutions. Tracking this data would identify both strengths and weaknesses in the present system and allow for improvements where warranted.

ENCOURAGING COLD CASE COOPERATION BETWEEN POLICE AND PROSECUTORS

If there is anything I have learned in my 32 years as a prosecutor, it is that when police and prosecutors work together on investigations, the outcomes are improved. Unfortunately, cooperation on cold hit cases can be hindered by the fact that most labs treat the law enforcement agency who submits the evidence to them as their only client. As such, the labs only provide reports to the cop who sent the evidence to them. Several years ago, our lab contacted me and asked about the status of 25 hits on rape and murder cases from many years ago. I had never heard about or seen most of those cases. We were able to assist the police department in investigating a number of those cases and were able to successfully prosecute the perpetrators. Following that, I obtained an agreement from the major police departments in our county that the BCA would provide us with contemporaneous notice of all cold hits.

Our lab people tell me that as more labs become accredited under ISO (International Organization for Standardization) protocols, this will become an even more common practice. Apparently, ISO is very restrictive about identifying who the client is and how the lab can treat information generated during the testing. In my opinion, because the district attorney is the chief law enforcement officer of the jurisdiction where the police department is located, and is the ultimate end user of this information, s/he must be notified of cold hits contemporaneously with the police. One possible solution would be a statutory mandate requiring notice to the appropriate prosecutor.

Tragedies can happen when a hit occurs years after the submission of the evidence to the lab. The report will be sent to the police department but the specific officer may have since retired, been transferred, etc. This can and has led to situations where the hit may never be properly investigated. If the perpetrator is left on the street, he is free to commit other crimes. How many hit cases are there out there which should be investigated so that charges can be brought? No one knows.

IMPROVING THE UTILITY OF THE NATIONAL DATABASES

Our national DNA database index system consists of several separate databases. One of these databases contains the DNA profiles of convicted offenders and arrestees submitted by federal, state and local DNA labs. The second database contains DNA profiles from crime scenes and crime victims. These databases are periodically searched against each other. Any matches or hits are then reported to the submitting law enforcement agency.

The ability of this DNA index system to solve crimes is dependent on two factors: the submission of all appropriate DNA profiles from the broadest group of convicted felons (or arrestees) and the submission of DNA profiles from crime scenes and crime victims. I could give many examples of instances where a violent crime was solved as a result of the perpetrator's DNA being put into the convicted offender database for a rather minor crime, but one in particular stands out. In September of 1989, a young woman was stabbed to death in south

Minneapolis. Last year, as part of a cold case homicide project, Minneapolis Police Sergeant Barbara Moe found evidence from that crime and submitted it for DNA testing. A DNA profile was developed and compared to those in the Minnesota convicted offender database. That profile hit to a man whose only felony conviction was for felony drunk driving. Ironically, Senator Klobuchar was largely responsible for a Minnesota law which made drunk driving a felony after 3 convictions. I charged that man and he is now doing 25 years in prison for a crime that would otherwise never have been solved. This is a magnificent example where the law of unintended consequences led to a terrific outcome. Research has shown that a very small segment of the population is responsible for a huge proportion of all crimes. By age 25, half of all crimes, and 2/3 of all violent crimes, are committed by 6% of a given age group. By age 30, 74% of all crimes, 84% of personal injury crimes, and 82% of all property crimes are committed by that same 6% of the given age group. The more of this 6% population segment whose DNA is in the convicted offender or arrestee databases, the more crimes we can solve.

Congress has wisely left it to the states to individually determine what crimes qualify a convicted offender to have his or her DNA profile entered into the database. The natural evolution has been for states to broaden the universe of crimes which qualify for the mandate that a convicted offenders DNA be put into the database. Many states and the federal government have gone beyond conviction and now as far as requiring that DNA samples be taken from arrestees. Experience has proven that larger databases mean more hits.

Recently, however, Wisconsin discovered that due to several factors, there were 12,000 convicted felons who were required by law to submit DNA samples but had not done so. There is no reason to believe that this is a problem unique to Wisconsin. Efforts should be made to determine if there are similar problems elsewhere and to ensure that DNA profiles of all convicted offenders or arrestees are entered into the database.

POLICE, SARS NURSE AND PROSECUTOR TRAINING

For a number of years, prosecutors from around the U.S. who had extensive experience with DNA cases were providing training to prosecutors without DNA experience. Those efforts are no longer funded and are critical to ensure the most productive use of DNA evidence to prosecute all crimes, including rape. Of course, it is not only important to train prosecutors about DNA evidence – it is also critical to provide training to medical professionals and other members of law enforcement.

DNA testing is completely dependent on the proper collection of evidence which may contain biological material from the perpetrator. If the only important piece of biological evidence left by a perpetrator is missed in the evidence collection process, the chance to identify the perpetrator has been lost. Perpetrators know about DNA. As DNA testing has become more prevalent and in the news, rapists are more likely to use condoms and other means to avoid leaving any biological fluids. One such perpetrator carjacked and raped his victim, then ejaculated on her pants, and took her pants with him when he fled. She yelled at him to leave them and he responded, “I’m taking these for DNA purposes.” He thought he had taken the only evidence which could connect him with the crime. However, during her interview of the victim, a specially trained nurse learned that the perpetrator had talked on the victim’s cell phone. The

nurse swabbed the phone receiver and obtained a sample of the perpetrator's DNA, which was tested and a match was found in the convicted offender database. He is charged and awaiting trial.

The same can be said for police training. There is a lack of understanding among police officers that cold hit investigations should be conducted differently than conventional police investigations. Interrogation of a suspect in a cold case is crucial and should be conducted very differently. Better training would enhance police interrogation techniques and result in more prosecutions. Finally, many police officers are not completely aware of what the full capability of DNA testing is. As such, police officers without that knowledge may neglect to have rape kits tested which should be tested. The better practice would be to encourage police officers to consult with a prosecutor knowledgeable in DNA testing decisions about testing are made.

Many prosecutors knowledgeable about DNA testing are more than willing to share their expertise with other prosecutors, SARS nurses and police, both within and without their individual jurisdictions. Training should be encouraged and funded to the extent possible.

UNFINISHED TESTING OF CASES IN DNA LABS

For very good reasons, DNA labs require that whenever possible, known DNA samples from all involved parties be provided to the lab along with the evidence sample to be tested. One of the questions asked of a rape victim is whether or not she has had any consensual sexual relations with anyone within 72 hours from the time she was raped. Often a victim will have had consensual sex with a partner within that time period and thus there may be biological evidence from the consensual partner present. The DNA profile from the consensual partner may complicate the interpretation of the DNA profile from a mixture of DNA from the victim, the perpetrator and the consensual partner.

After DNA labs have done the initial screening, if there is an indication that DNA from a consensual partner may be present, a letter is sent to the police. The letter indicates that testing will begin as soon as a sample from the consensual partner is provided. There appear to be a substantial number of cases where this is not done. Thus, no further testing is ever done on that evidence. This completely negates any possibility that a DNA profile from the perpetrator will be developed. There may be hundreds if not thousands of such samples waiting to be tested. It would be possible to conduct a screening of those cases to determine which of them should be tested to completion and any profiles derived could then be entered into the national database. A better practice from this point forward would be to also send that notice to the district attorney to help ensure that the known sample is indeed provided wherever possible.

Thank you for inviting me to testify before you today and I look forward to continuing to work on maximizing the use of DNA technology.