



NATIONAL DISTRICT ATTORNEYS ASSOCIATION
POLICY POSITION ON DNA TECHNOLOGY
AND
THE CRIMINAL JUSTICE SYSTEM

WHEREAS, the National District Attorneys Association, representing America's local prosecutors, believes in a truth-based justice system; and

WHEREAS, DNA testing is a powerful tool for determining the truth in criminal cases; and

WHEREAS, DNA technology is the most reliable forensic technique for identifying and prosecuting criminals when biological evidence of the crime is available; and

WHEREAS, local prosecutors strongly support DNA testing as a means of identifying and apprehending criminals and proving the guilt or innocence of suspects and defendants;

THEREFORE BE IT RESOLVED, that the National District Attorneys Association adopts the attached *POLICY POSITIONS ON DNA TECHNOLOGY*; and

BE IT FURTHER RESOLVED that the National District Attorneys Association rescinds the *POLICY POSITIONS ON DNA TECHNOLOGY* previously adopted on July 22, 2001 in Boston, Massachusetts (2001.04SUM).

Adopted by the Board of Directors, July 20, 2003 (Snowmass, CO)

**NATIONAL DISTRICT
ATTORNEYS
ASSOCIATION**

**POLICY POSITIONS
ON
DNA TECHNOLOGY**

Adopted: July 20, 2003

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National District Attorneys Association

POLICY POSITIONS ON DNA TECHNOLOGY

INTRODUCTION

The National District Attorneys Association, representing America's local district attorneys, promotes a truth-based justice system. The NDAA recognizes DNA testing as a powerful tool for determining the truth in criminal cases. This technology has emerged as the most reliable forensic technique for identifying criminals when biological evidence of the crime is available. The NDAA strongly supports DNA testing as a means of identifying and apprehending criminals and proving the guilt or innocence of suspects and defendants. The NDAA encourages public investment in this technology to ensure its full development as an instrument of justice.

The prosecutor is the only trial attorney in America whose primary ethical obligation is to seek justice. It is entirely consistent with this duty for the prosecutor to support the use of DNA technology in apprehending criminals, convicting the guilty and identifying the truly innocent.

America's prosecutors consistently have embraced DNA technology as a scientific breakthrough in the search for truth. Starting in the mid-1980s, with the introduction of DNA evidence in America's courtrooms, local prosecutors have fought for its admission in criminal trials. Prosecutors also have advocated vigorously for the expanded use of DNA technology as a highly effective method of solving crimes and identifying criminals before they can commit further offenses.

The accuracy of DNA technology is widely recognized by the scientific community. DNA technologies are used in virtually all areas of science involving molecular biology. DNA profiling has proven its scientific trustworthiness as a forensic tool for identifying the donor of biological evidence left at a crime scene – even years after the crime occurred. Furthermore, forensic DNA testing is no more invasive than fingerprinting, yet produces even more accurate results. These results produce identifying data that are relevant only for evidentiary purposes. The DNA loci used for law enforcement purposes do not code for diseases, birth defects or other private medical information.

Forensic DNA typing has had a broad, positive impact on the criminal justice system. In recent years, convictions have been obtained that previously would have been impossible. Countless suspects have been eliminated prior to the filing of charges. Old, unsolved criminal cases, as well as new cases, have been solved. Mistakenly accused defendants have been freed both before trial and after incarceration. And increasingly, the unidentified remains of crime victims are being identified.

In the years ahead, DNA technology holds enormous promise to enhance our quality of justice even more dramatically. Its potential, however, will not be fully realized unless public policy-makers act boldly in pursuit of this new technology. Significant increases in federal, state and local government resources are needed to enlarge forensic laboratory capacity, to fund the advancement of new DNA technologies, to expand DNA databases, and to provide training for participants in the criminal justice system. No other investment in our criminal justice system will do more to protect the innocent, convict the guilty and reduce human suffering.

THE USE OF DNA IN CRIMINAL INVESTIGATIONS AND PROSECUTIONS

The National District Attorneys Association supports and endorses the use of DNA technology as a highly reliable tool for the identification and apprehension of criminals and the elimination of innocent suspects.

DNA profiling has proven its trustworthiness as a forensic tool for identifying the donor of biological evidence left at a crime scene. Its reliability for evidentiary purposes in criminal trials is likewise beyond question. The prestigious National Academy of Sciences' National Research Council has twice been called upon to judge the reliability of forensic DNA testing. On both occasions the National Research Council endorsed the use of DNA testing in criminal investigations and prosecutions. The National Research Council concluded that "[t]he technology for DNA profiling and the methods for estimating (population) frequencies and related statistics have progressed to the point where the reliability and validity of properly collected and analyzed DNA data should not be in doubt."

With the use of DNA evidence, prosecutors are often able to conclusively establish the guilt of a defendant in cases where the identity of the perpetrator is at issue. Prosecutors and law enforcement agencies also utilize DNA technologies to exonerate the innocent. It is our view that this powerful weapon against the criminal offender is best used when such resources are made fully available in the earliest stages of an investigation and before a conviction.

DATABASE ISSUES

COMBINED DNA INDEX SYSTEM

The National District Attorneys Association supports the further development of a comprehensive, national databank of DNA profiles for criminal justice purposes. Such a databank offers an important investigative and public safety tool and should be fully funded.

In October 1998, the Combined DNA Index System (CODIS) went on line. CODIS is a series of local, state and federal databases which, when combined, creates a national databank of DNA profiles. This system enables state and local law enforcement crime laboratories to exchange and compare DNA information electronically. Through this process, law enforcement agencies have the ability to identify possible suspects when no prior suspect existed. CODIS represents a major advancement in law enforcement. It merits full funding and strong support by policy-makers at all levels.

DATABASE ISSUES

CONVICTED FELONS

The National District Attorneys Association encourages all states to enact legislation, which mandates the collection and analysis of DNA samples from all convicted felons, for the inclusion of each offender's DNA profile in the Combined DNA Index System (CODIS)¹. The National District Attorneys Association also strongly encourages Congress to enact legislation, which would expand the federal government's collection and analysis of DNA samples to include all federally convicted felons for inclusion in CODIS.

Our current understanding of crime and criminology indicates that all convicted felons should be tested. Presently, all states permit genetic profiles of certain felony offenders to be entered into the database. States vary on which convicted offenders may be tested for inclusion in the database. Some states permit testing only of felons convicted of certain violent or sexual offenses. Other states allow all convicted felons to be tested.

It is generally recognized that criminal behavior tends to escalate in seriousness. An offender may begin his or her criminal career by committing certain minor or property crimes. As time goes by, that conduct may intensify to violent crimes against persons. Burglary, for example, frequently leads to acts of violence committed against individuals found inside a building or home. Thus, the DNA profile of a property offender may help

¹ As of May 3, 2003, 26 states have enacted "all felon" statutes and similar legislation is pending in 14 states.

to identify the perpetrator of a violent offense. For that reason, it is important that all convicted felons be tested and that their DNA profiles be included in the CODIS database.

Great Britain employs a national DNA database system that predates, by several years, the National DNA Index System (NDIS) in the United States. (NDIS is the final level of CODIS and serves as a repository for DNA profiles submitted by participating states.) Great Britain's experience supports the testing of all convicted felons. A significant number of the country's database "hits" have involved individuals entered into the system as a result of property crimes. Prior to the implementation of NDIS, a number of states in this country experienced the same success in their statewide databases.

Virginia's experience coincides with Great Britain's. Eight-five percent of the CODIS "hits" in that state would have gone undetected if property crime felons had not been included in the database. This experience from the oldest and one of the largest DNA databases in the United States is instructive.

Due to the success experienced in states like Virginia, the decided trend in state legislatures nationwide has been toward requiring testing of all convicted felons. Currently, federal law (42 USC § 14135a (2003)) only requires the collection and analysis of DNA from persons convicted of "qualifying Federal offenses" and does not mandate the DNA testing of all convicted felons. As a result, only a small category of federal felony offenses require convicted offender testing. Congress must enact legislation promptly to expand such testing to offenders convicted of any federal felony offense. No logical reason exists to suggest that persons convicted of federal felony offenses, including property crimes, are any less likely to re-offend than their state counterparts. Federal convicted felons reside within our states and communities and if they re-offend that offense is just as likely to occur within the jurisdiction of state and local law enforcement agencies.

JUVENILE OFFENDERS

The National District Attorneys Association supports the inclusion of adjudicated juveniles of certain crimes had they been committed by adults would have rendered them eligible for inclusion in the DNA database, for inclusion in CODIS.

Juveniles perpetrate many of the most serious criminal offenses. Oftentimes these offenders are not amenable to rehabilitative programs that might be available through juvenile courts. Too often those juveniles, who have committed offenses classified as felonies in adult court, re-offend. The cost to the community and particularly the victim is no less because the offender is a youth. Further, offender databases are well suited to include juveniles, as the profiles contained within the database are not identified by name or age.

PERSONS FOUND NOT GUILTY BY REASON OF INSANITY

The National District Attorneys Association also supports state legislation authorizing the testing and inclusion of profiles for those individuals excused from criminal liability as a result of mental illness or disease.

Occasionally individuals who commit crime, even the most serious of crimes, are excused from criminal liability because they suffer from serious mental illnesses. These individuals while determined to be not guilty, may be placed in appropriate institutions or under supervision to provide treatment to the individual and to protect the general public. In some instances these individuals may have committed other crimes still undetected besides those for which the criminal act was excused. The inclusion of their profile in the offender database and its subsequent link to another crime, while perhaps not permitting a successful criminal prosecution, would provide information and closure to some victims of crime. Of additional importance, the identification of these individuals as having perpetrated these offenses will provide additional information to those charged with their treatment. Finally, the determination that a crime is attributable to the act of an individual not legally responsible for that act closes the case and frees up law enforcement, and laboratory resources that might otherwise continue to be dedicated to finding a solution to the crime.

ARRESTEES

The National District Attorneys Association encourages all states and the US Congress to enact legislation, which mandates the collection and analysis of DNA samples from all arrestees.

Due to its exquisite ability to identify individuals by the biological material they may leave at a crime scene, DNA is often analogized to fingerprints. It is standard police practice to collect the fingerprints of individuals arrested for certain offenses. DNA testing provides an unequivocal means of identifying an individual and should be utilized in the same manner that fingerprinting is.

Law enforcement should take full advantage of DNA as a powerful and reliable investigative tool. The results of such testing effectively serve to exclude innocent persons and identify individuals who are committing crimes. Taking DNA samples upon arrest serves the public interest and the cause of justice. It makes sense to keep this legitimately obtained information on file and use it to solve cases.

Fingerprint records already are included in a large database. The FBI has created an automated fingerprint identification system, AFIS; police now can record an electronic thumbprint and determine whether it matches one in the database. The results of DNA testing of arrestees for identification purposes can and should be used in the same manner. With advancements in technology, DNA samples can be obtained from arrestees with minimal invasiveness. Furthermore, the DNA loci used for law enforcement

purposes yield purely identifying data. They do not code for cancer, genetic diseases, birth defects or other medical information that could be misused by the medical or insurance communities or serve to stigmatize an individual. Thus, privacy concerns are minimized.

The effective implementation of arrestee testing will require the development of new testing technologies. These technologies already are in development. A failure to develop more efficient technologies will result in increased testing backlogs and additional crime. Therefore, the NDAA supports the development of newer, less invasive collection techniques, more efficient testing techniques and the allocation of resources necessary for their development and implementation.

Arrestee sampling will be of limited benefit unless forensic laboratories have the resources to analyze the samples. It is important, therefore, that government provide adequate financial support for the collection and testing of arrestee samples.

ACCEPTANCE OF DNA PROFILES INTO THE NATIONAL DNA INDEX SYSTEM

The National District Attorneys Association strongly encourages Congress to enact legislation, which permits the inclusion of all DNA profiles, lawfully obtained pursuant to state statutes, in the National DNA Index System, the third tier of the CODIS hierarchy.

Currently, federal law (42 USC § 14132 (2003)) permits the following to be included by the Federal Bureau of Investigation in the National DNA Index System (NDIS): "(1) DNA identification records of persons **convicted of crimes**; (2) analyses of DNA samples recovered from crime scenes; (3) analyses of DNA samples recovered from unidentified human remains; and (4) analyses of DNA samples voluntarily contributed from relatives of missing persons" (emphasis added).

The law does not allow the National DNA Index System to accept DNA profiles from arrestees, juvenile offenders, or persons found not guilty by reason of insanity for inclusion even though the DNA sampling and testing are legally permitted by the state. The exclusion of such valuable information significantly undermines the effectiveness of the database and law enforcement's ability to solve crimes. It is, therefore, imperative that federal legislation be enacted, which permits the National DNA Index System to accept all those DNA profiles which are generated as the result of lawful sampling and analysis in the states.

COLLECTION STATUTE RETROACTIVITY

The National District Attorneys Association supports the retroactive application of DNA collection statutes and strongly encourages the enactment of state and federal legislation, which mandates this retroactive application.

The experience of states like Virginia demonstrates the value of including all convicted offenders in DNA offender databases. With over 191,000 offender profiles, as of April 30, 2003 in its database, Virginia is currently experiencing "cold hits" that are aiding law enforcement agencies in solving previously unsolvable crimes at a rate of 35 "hits" a month. Despite this obvious success many convicted offenders who would otherwise be subject to testing, have not been tested for inclusion in the offender database. Most notably these include many convicted offenders who were incarcerated or on probation or parole at the time convicted offender testing laws became effective in their state. Typically, these convicted offender testing laws did not provide for retroactive testing of eligible offenders. This oversight must be corrected quickly if we are to fully realize the potential of DNA to solve crime and relieve or prevent the suffering of crime victims. As more and more offenders are released from incarceration or from court supervision, potentially crime-solving DNA profiles are lost from the databases.

The state and federal statutes, which mandate the collection of DNA from convicted felons, should be applied retroactively. All offenders who are currently incarcerated, on parole or probation, or who remain within the purview of the judicial system after conviction should have their DNA collected and analyzed and the resulting DNA profiles added to CODIS. In as much as DNA testing is both non-invasive and non-punitive, such activities do not raise constitutional issues and serve to enhance the effectiveness of the databases in solving crimes.

LABORATORY BACKLOGS

The National District Attorneys Association supports and encourages funding for forensic laboratories to eliminate backlogs in the testing of biological samples from convicted offenders and crime scenes.

The national DNA database system will not achieve maximum effectiveness until convicted offender samples are entered into the database in a timely fashion. Similarly, laboratories must have the testing capacity necessary to input and test samples obtained at crime scenes as early as possible in the course of investigations. Tests conducted during the investigative phase of a case can lead to the identification and arrest of a serial offender before he or she victimizes others in our communities. Insufficient laboratory resources and resulting backlogs hamper such testing. It is important, therefore, that laboratories be provided with necessary resources to eliminate backlogs and perform testing in a timely manner during the investigative phases of cases.

Presently, hundreds of thousands of DNA samples from convicted offenders remain untested. Similarly, testing of biological evidence from many thousands of sexual assaults has not been completed. For the CODIS system to reach its full potential, the backlog in testing of biological samples from convicted offenders and crime scenes must be eliminated. Prompt testing of samples and entry of DNA profiles into the database will enhance our ability to identify and apprehend perpetrators at the earliest possible stage in an investigation. This, in turn, will reduce the unnecessary suffering that

otherwise may await potential victims. The prompt comparison of suspect samples and crime scene samples also affords the greatest and most timely opportunity to eliminate innocent suspects.

MISSING PERSONS DATABASE

The National District Attorneys Association fully supports the FBI in its efforts to implement the missing persons database.

As a part of the CODIS system the FBI is implementing a national DNA database of missing persons. Over the years local law enforcement agencies have accumulated a large number of unidentified human remains. The missing persons database is designed to identify those remains.

This effort can bring peace of mind to the families of missing persons whose remains finally can be identified. An additional benefit is that investigations into the circumstances surrounding these unknown individuals' disappearances and deaths may be aided. Where foul play is suspected, these investigations may be energized by discovery of these critical investigative leads.

For this effort to be successful, family members of missing persons will be requested to provide biological samples voluntarily to aid in identification.

DISCOVERY AND PRE-TRIAL TESTING

The National District Attorneys Association supports the concept that testing of biological evidence should be conducted as part of the usual pre-trial discovery process. Investigative testing and any defense re-testing should be conducted by properly qualified laboratories.

DNA testing by qualified forensic laboratories produces highly reliable results. Therefore, the need to retest biological evidence during the pre-trial discovery process should be very limited. Such testing should be provided, however, where a defense request is timely and relevant and would provide material assistance to the defense.

Courts should require that the defense be held to the same high standards as the prosecution in the testing or re-testing of DNA evidence. Tests should be conducted by laboratories that meet standards of the DNA Advisory Board and the relevant guidelines of the Scientific Working Group on DNA Analysis Methods. Adherence to such standards by the prosecution and the defense ensures the accuracy and quality of testing results and enhances the truth-finding function.

The defense should be subject to the same discovery standards as the prosecution in providing access to the results of DNA testing or retesting and other related, relevant information.

POST-CONVICTION RELIEF

"ACTUAL INNOCENCE" STANDARD

The National District Attorneys Association supports the use of DNA testing where such testing proves the actual innocence of a previously convicted individual.

In recent years DNA testing has helped to identify and exonerate individuals wrongly convicted of crimes. These exonerations have occurred as a result of law school “innocence projects” and individual defense attorneys, often with the involvement and cooperation of prosecutors. It is not surprising that prosecutors have played a pivotal role in these efforts. The primary ethical duty of a prosecutor is to seek justice. It is consistent with this duty for the prosecutor to support the use of DNA technology in identifying the truly innocent.

The issue of post-conviction DNA testing involves only cases prosecuted before adequate DNA technology existed. In the near future, the need for post-conviction DNA testing should cease because of the availability of pretrial testing with advanced technology.

Post-conviction DNA testing, in most cases, should be afforded only where such testing was not previously available to the defendant. Post-conviction DNA testing, however, may be appropriate in limited instances where testing previously has been performed. Although DNA testing in criminal cases became available in the mid-1980s, the forms of testing typically used today were not widely available until the mid-1990s. These present-day methodologies allow the testing of much smaller samples in a shorter time and are reliable on degraded samples.

As powerful as DNA evidence is, it tells us little if anything about issues such as consent, self-defense or the criminal intent of the perpetrator. In many cases DNA testing results that exclude an individual as the donor of biological evidence do not exonerate a suspect as innocent. In a sexual assault involving multiple perpetrators, for example, a defendant may have participated in the rape without depositing identified DNA evidence. In such a case, a comparative exclusion is not synonymous with an exoneration. Post-conviction testing should be employed only in those cases where a result favorable to the defendant establishes proof of the defendant’s actual innocence, exonerating the defendant as the perpetrator or accomplice to the crime.

LEGISLATION

The National District Attorneys Association supports legislation that removes barriers to post-conviction DNA testing in appropriate cases and with appropriate safeguards.

In some states, legislative enactment of new legal remedies may be required to provide post-conviction DNA testing. Several states have enacted such legislation, and others are considering such measures. The NDAA supports enabling legislation that addresses prosecutors' concerns, such as avoiding frivolous litigation and preserving necessary finality in the criminal justice system. These statutes should provide for the inclusion in the CODIS database of DNA profiles obtained as a result of post-conviction DNA testing. This provision will help to solve crimes and deter abuses of the post-conviction relief mechanism.

As stated earlier, post-conviction testing should be employed only in those cases where a result favorable to the defendant establishes proof of the defendant's actual innocence. Decisions about such issues as the categories of convicted persons to be offered post-conviction relief and the standards to be employed are best made at the state or local level, where decisions can reflect the needs, resources and concerns of states and communities.

PROTECTIONS AGAINST ABUSE

The National District Attorneys Association believes that post-conviction relief remedies should protect against potential abuse and that such remedies must respect the importance of finality in the criminal justice system. Thus, such remedies should be subject to limits on the period in which relief may be sought.

Current prohibitions limiting post-conviction relief are grounded in legitimate policy, enhancing the search for the truth and minimizing potential abuse. The defense, for example, should be expected to exercise due diligence in developing and presenting all legally appropriate exonerating or mitigating evidence to the trial jury. Potentially exonerating evidence should be actively pursued. A trial jury's verdict should be accorded great weight and normally should be overturned only where harmful legal error has occurred or an innocent person convicted. The peace of mind of a crime victim or crime victim's family should not be frivolously disturbed by a lack of finality arising from post-conviction relief remedies. For these reasons, any initiatives to identify and exonerate the innocent should also protect against abuses that necessitated recent post-conviction reforms.

Time limits on the period in which post-conviction relief may be sought provide one of the most important means to ensure finality in the criminal justice system. Post-conviction relief remedies are needed only for a relatively small group of cases prosecuted before present-day DNA technology existed. Thus, reasonable time limits on the consideration of these cases should not interfere with due process for convicted individuals who may seek relief.

DNA SAMPLE DESTRUCTION

Law enforcement should be permitted to destroy biological samples from closed cases, provided that convicted individuals are provided with adequate notice and opportunity to request testing.

Statutory provisions may permit testing requests at any time during the incarceration or probation of a convicted offender. Law enforcement, however, should be permitted to request an order from the trial judge to destroy samples upon providing the convicted individual with adequate notice and a reasonable opportunity to request that testing be performed. If a request for testing is made, no evidentiary samples in the case should be destroyed until the request for relief is resolved.

PROSECUTION INITIATED DNA TESTING

The National District Attorneys Association supports the decisions of individual prosecution offices to initiate post-conviction DNA testing programs.

America's prosecutors have employed DNA technology as a valuable tool in seeking the truth and ensuring that justice is done in every case. Prosecution offices around the country have been at the forefront in using this powerful new tool for justice. One approach by a number of prosecution offices has been to initiate reviews of past convictions to determine if DNA evidence sheds new light on these cases. Such programs can serve to strengthen public confidence in the criminal justice system.

Any post-conviction DNA testing program should focus only on those cases where identity is an issue and where testing would, assuming exculpatory results, establish the actual innocence of an individual. Such programs should recognize the need for finality in criminal justice proceedings by establishing a limited time period in which cases will be considered and reviewing those cases in an expedited manner.

Establishment of a post-conviction prosecution based DNA testing program is only one of the ways in which prosecutors may meet their ethical obligation to seek the truth. Such a program is not the best approach for all offices. The NDAA, however, supports the decisions of individual prosecution offices that determine such programs are needed and appropriate in their communities.

LEGISLATION

STATUTES OF LIMITATIONS

The National District Attorneys Association supports the creation of exceptions to criminal statutes of limitations and other measures to allow the prosecution of a perpetrator who is identified as a result of a DNA profile comparison using evidence collected from a crime scene. For crimes where the statutes of limitations have not lapsed, the National District Attorneys Association encourages states to enact legislation,

which extends or tolls the statute of limitations for an appropriate period of time to allow for prosecution.²

Many states have statutes that limit the time within which a criminal charge may be filed. After the statutory period has run, the prosecution is forever barred from initiating a criminal case against the person responsible. In those states that have statutes of limitations for criminal offenses, an exception is made for the crime of murder. The rationale underlying statutes of limitations is that after the passage of time, the memories of witnesses become less reliable. With the advent of DNA technology, however, the identification of a perpetrator no longer depends entirely upon a witness' memory. Through DNA testing, a perpetrator can be identified many years after a crime was committed. Thus, it is important that statutes of limitations allow exceptions for the charging of perpetrators who are identified as a result of DNA technology. The same enduring nature of DNA evidence that underlies defense arguments for post-conviction relief argues just as persuasively for exceptions to statutes of limitation in cases involving DNA evidence.

The NDAA supports other legislative changes that permit the full development of DNA technology as a tool for justice, including legislation to allow or re-affirm the filing of "John Doe" DNA warrants in cases where a suspect may be identified only by his DNA profile. In such cases, law enforcement agencies know a suspect's DNA profile from biological evidence deposited at the crime scene, but do not know the suspect's name. By filing a criminal complaint against this "John Doe," identified solely by his DNA code, prosecutors prevent the statute of limitations from expiring while the search for the suspect continues.

PRIVACY RIGHTS

The National District Attorneys Association supports the use of DNA testing results primarily for the purposes of resolving crimes, identifying criminals, and identifying unknown victim remains.

The DNA loci, which are tested for law enforcement purposes do not identify specific diseases, predispositions toward certain diseases or conditions, or other private medical information which, if released to certain entities (e.g. health and life insurance companies) would be potentially damaging to the DNA donor. With the advancement of DNA technologies, has come the ability for forensic scientists to determine not only an individual's gender but also their ancestry. Such information should be used for identification and evidentiary purposes only. In addition, DNA blood and tissue samples that are retained should not be provided to any agency or group, except for law enforcement related activities.

The National District Attorneys Association supports legislation that prohibits the release or use of biological samples held by law enforcement agencies or testing laboratories,

² See Stogner v. California, 123 S. Ct. 1382 (2003).

public or private, to any agency, corporation, individual or organization except for legitimate law enforcement purposes.

Advancements in the science of DNA have created the potential for harmful intrusions into individual privacy. For this reason, access to samples in the custody of law enforcement agencies and laboratories by other than criminal justice parties should be strictly limited to avoid the potential for abuse.

FUNDING

LABORATORY FUNDING

The National District Attorneys Association supports full funding at the local, state and federal levels of government for the nation's forensic laboratories.

Few, if any, public investments will have a greater positive impact on public safety than funding of our forensic laboratories. It is imperative that the laboratory system be fully funded to meet the demands for DNA testing. The success of forensic DNA profiling has placed great demands upon testing laboratories. As a result of these varied demands, many forensic laboratories face significant backlogs in the analysis of biological samples. These backlogs threaten to become even larger as states expand the categories of offenders from whom DNA samples are collected. Few legislatures have provided additional funds to support mandated testing of convicted offenders. The laboratory system needs adequate resources to develop its capacity and maintain quality. Without a fully funded laboratory system, the development of a comprehensive, up-to-date national DNA database will be seriously hampered.

Funding by the federal government is a critical component in realizing the full potential of DNA testing. Federal funding should not be contingent upon a state's adoption of any specific federally developed legislation such as post conviction relief standards.

The National District Attorneys Association supports funding to ensure quality in the nation's forensic laboratories.

Besides keeping pace with the volume of cases, laboratories must maintain or improve their quality. An important aspect of the laboratories' ability to perform accurate, consistent analysis and then to have those analyses used and defended in court is the adherence to accepted procedures and guidelines. One indication that a lab successfully follows the forensic community standards is accreditation by a recognized forensic organization. Many publicly operated DNA crime laboratories still lack such accreditation. As the volume of cases increases, the importance of maintaining quality will become even more important. This is a critical component of the use of DNA evidence.

The National District Attorneys Association supports laboratory funding to ensure capacity for post-conviction DNA testing.

Federal, state and local policy-makers increasingly have recognized the importance of post-conviction testing for the criminal justice system. As prosecutors, we are committed to seeking the truth and ensuring that justice is done in every case. DNA technology provides us with a powerful tool for fulfilling that mission. The increasing frequency of post-conviction testing could create an additional capacity issue for the forensic laboratories. Such testing should not delay or reduce testing of current cases, unsolved or otherwise, but neither should it be neglected. There is a clear need to fund the laboratory system across the board so that all of these vital functions can be performed in a timely manner, simultaneously.

The National District Attorneys Association supports and encourages federal funding to establish a system of regional public laboratories to conduct forensic mitochondrial DNA testing.

Additional resources are needed to develop a less well known form of DNA testing that examines DNA found in the mitochondrion of a cell. The properties of mitochondrial DNA permit DNA testing of samples which, as a result of environmental insult or the nature of the biological evidence, might not otherwise be susceptible to the more common forms of DNA testing. Mitochondrial DNA testing is capable of producing reliable testing results in samples such as bones, teeth and hair. This testing is particularly useful in the examination of hairs that might be found at the scene of a crime. Mitochondrial DNA does not provide the same powers of discrimination between individuals that the more common form of nuclear DNA testing offers. It does, however, afford vastly greater levels of discrimination than traditional hair comparison analysis.

At present only a handful of forensic laboratories perform mitochondrial DNA testing in this country. Of that handful only one, the FBI laboratory, is a public laboratory available to state prosecutors. As a result, cases must wait many months before testing is done. Such a waiting period eliminates mitochondrial testing from consideration as an investigative or prosecutorial option.

The NDAA supports the concept of a federal grant program for local or state public laboratories to create mitochondrial DNA testing capabilities. Many state laboratories may not have sufficient caseloads to justify establishment of mitochondrial testing without federal assistance. For that reason the NDAA supports grant funding to create mitochondrial testing in public laboratories on a regional basis. A grant award would be conditioned upon the laboratory agreeing to accept mitochondrial cases from other public laboratories within its region at no charge. Creation of such regional testing sites represents an important final step in realizing the potential of DNA testing for discerning the truth and holding criminals accountable for their crimes.

TRAINING FUNDING

The National District Attorneys Association supports funding for training in the appropriate use of DNA testing throughout the criminal justice system.

The NDAA also encourages funding from local, state, federal and private sources for the training of prosecutors, law enforcement, forensic scientists, the judiciary, the defense bar, probation and parole officers, victim service providers, and medical providers in the appropriate use of DNA testing. Such training is critical because of the potential complexity and nuance inherent in forensic DNA profiling. One of the major problems currently facing forensic laboratories is the dramatic influx of DNA samples and the resulting backlogs. Prosecutors are uniquely positioned to assist and direct law enforcement and laboratories in identifying the most probative evidence for testing and thereby releasing the already burdened resources from needless testing. To this end, training is needed to facilitate the interaction and coordination of efforts among all of the criminal justice participants when dealing with DNA evidence.

c://DNA/DNA Policy Positions Final Draft Adopted on July 20, 2003.doc