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Written Statement for the Record by
The National District Attorneys Association (NDAA)
for the
U.S. Senate Committee on Commerce, Science and Transportation
“Turning the Investigation on the Science of Forensics”
United States Senate
December 7, 2011

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee, thank you for allowing us to submit a “Statement for the Record” for this important hearing on behalf of the National District Attorneys Association (NDAA), the oldest and largest professional organization representing over 39,000 district attorneys, state's attorneys, attorneys general and county and city prosecutors with responsibility for prosecuting 95% of criminal violations in every state and territory of the United States.

Over the past several years, since the National Academy of Sciences released its study titled *Strengthening Forensic Science in the United States*, it has been reported that the law enforcement community – and, more specifically, State and local prosecutors – have worked to curtail reform efforts on forensic sciences. This could not be further from the truth.

Prosecutors do not oppose providing greater support, financially and otherwise, to crime laboratories - especially in the case of public laboratories. Prosecutors also do not oppose research for purposes of validating existing or developing methods or techniques. It should be understood at the outset that when the National Academy of Sciences report suggests that some aspects of some forensic science methods are “invalidated,” that term is not synonymous with a method or technique being “invalidated.”

State and local prosecutors also do not oppose research that will lead to increased laboratory capacity or that will improve accuracy, precision or reliability. Prosecutors want and need the best quality evidence and analysis possible to determine the innocence or guilt of the accused. The continued development and improvement of quality assurance and quality control protocols assist in insuring accuracy, precision and reliability within the laboratory. So do programs providing for the accreditation of laboratories and the certification of practitioners.

Strengthening Forensic Science in the United States recommended laboratories be accredited to an international standard of ISO 17025. The largest laboratory accreditation

authority for forensic laboratories in this county is the American Society of Crime Laboratory Directors Laboratory Accreditation Board, also known as ASCLD-LAB. As of November 3, 2011, 387 crime laboratories are accredited by that body - including 193 state laboratories, 132 local agency laboratories, 23 federal laboratories, 25 private laboratories and 17 international (located outside the United States) laboratories. Efforts to convert to the international standard were begun by ASCLD-LAB well before the release of the National Academy report. As of November 3, 2011, 184 crime laboratories were already accredited under that standard. Currently, two laboratories accredited by that body have been placed on probation by ASCLD-LAB and as a result, one of those laboratories is now closed.

Prosecutors support such research efforts, as one might expect that we would, as any research that provides greater accuracy and reliability to the evidence we regularly present in courtrooms benefits our mission. It is, after all, the prosecutor who is charged, first and foremost, with the duty to seek justice. For that same reason, we likewise support research and development that increases laboratory capacity to generate accurate and reliable testing results and evidentiary analysis. The more evidence accurately and reliably analyzed the better armed prosecutors are to make accurate and reliable judgments in those cases submitted to us. In this way, we are better armed to attempt to bring justice to those victimized in our counties, cities, towns and neighborhoods, while protecting those who might otherwise be wrongly cast under suspicion.

We are aware of and applaud the fact that research studies of this nature have already been commissioned and some undertaken and have reached or are nearing completion. Those studies have been pursued under the auspices of NIJ and the Department of Defense. For example, the April Proceedings of the National Academy of Sciences reported results of a large scale controlled experiment conducted by researchers from the Noblis Corporation and the FBI into the accuracy of latent fingerprint examination. The Noblis Corporation is an affiliate of MIT's Lincoln Laboratory. It is our understanding that many of the commissioned studies have been authorized for some time. We applaud the fact that while this legislative process continues, these research efforts have likewise continued unabated.

In mentioning the participation of the Department of Defense perhaps explanation is necessary. These same methods and techniques are regularly used within the defense community to resolve crimes which occur with the jurisdiction of the Defense Department and our military branches. There is no reason to suggest that those laboratories within the Department of Defense would not or should not continue to use these same methods for purposes of intelligence-gathering or for the purpose of homeland security as well. Undoubtedly these techniques and methods are regularly relied upon by other members of the intelligence community. Just as these techniques are used to protect our country from those that would do us harm or to solve cases of criminal conduct occurring on our military installations, so too they are relied upon everyday in our nation's courtrooms by those who hope to find justice from criminal offenders who have harmed them or their loved ones.

Likewise, we have heard suggestions that the interests of justice would be best served by disbanding the Scientific Working Groups - widely know as SWG's. The SWG's are currently comprised of analysts and examiners working within each of the various forensic disciplines and sub-disciplines. It has been suggested that some benefit might be obtained disbanding these groups and removing them from the Department of Justice where they currently reside. In its place, new groups or committees might be created within the National Institute of Science and Technology within the U.S. Department of Commerce.

Is there really a need for such a change? Experience would suggest not. The "gold standard" that is universally touted as the model to which other discipline might aspire is that of forensic DNA analysis. It shouldn't be forgotten that it was the work of the DNA Advisory Board *within the Department of Justice* that culminated in the establishment of "national" standards within that discipline. That feat was accomplished within the Department of Justice and under the auspices of the Federal Bureau of Investigation (FBI). When their work was finished, it was the recommendation of the DNA Advisory Board that the responsibility for promulgation of future standards in that field be placed in the hands of the Scientific Working Group for DNA Analysis Methods (SWGDM). NDAA questions the wisdom of any suggestion of abandoning a process that worked quite well in the past.

In *Strengthening Forensic Science in the United States*, the committee made reference to various types of bias which might adversely affect the accuracy of analysis and any attendant conclusions. The broad category of biases discussed in the report is known generally as "cognitive bias," that is a distortion in thinking that may occur when information is passed through the subjective factors of our personal beliefs, attitudes and experiences. Those distortions may then inaccurately influence judgment resulting in illogical interpretations based upon factors other than evidence. With the process of research already underway it would be unfortunate if the Senate Commerce Committee were to take action which was intended or understood as passing judgment that an "invalidated" method was "invalid"; without waiting for the evidence from that research, your judgment would represent a most unfortunate example of cognitive bias.

On behalf of our membership, NDAA appreciates the opportunity to submit this statement into the hearing record and we are happy to answer any questions the Committee may have.