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 allocation. 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.