

STATEMENT OF
ONONDAGA COUNTY
DISTRICT ATTORNEY
WILLIAM J. FITZPATRICK
BEFORE THE NEW YORK STATE
LEGISLATURE'S JOINT BUDGET HEARING
JANUARY 30, 2012

**GOOD AFTERNOON AND THANK YOU FOR THE
OPPORTUNITY TO SPEAK IN SUPPORT OF GOVERNOR
CUOMO'S PROPOSAL FOR AN ALL CRIMES DNA BILL.**

**I WANT TO TALK ABOUT CASE HISTORIES THAT
GRAPHICALLY ILLUSTRATE THE EFFICACY OF DNA
TECHNOLOGY BOTH AS A TOOL TO CONVICT THE
GUILTY AND ONE TO EXONERATE THE INNOCENT . . . AND
IN ANTICIPATION OF ARGUMENTS AGAINST THIS
LEGISLATION, I HASTEN TO POINT OUT THAT EVERY
SINGLE TIME THAT DNA ESTABLISHMENT OR EXPANSION
HAS COME BEFORE THE NYS LEGISLATURE, DANGEROUS
FELONS HAVE BEEN CAUGHT AND NOT ONE SINGLE DIRE
PROPHECY ABOUT PRIVACY ABUSE HAS COME TRUE.**

**NO PRIVACY RIGHTS HAVE BEEN VIOLATED IN OVER
16 YEARS OF DNA STORAGE AND COLLECTION IN NEW
YORK . . . NO SO CALLED CONTAMINATED SAMPLE OR**

**SWITCHED SAMPLE HAS LED TO A WRONGFUL
CONVICTION . . . RATHER NEW YORK HAS BECOME A
SAFER PLACE TO LIVE.**

**THE PEACE AND QUIET OF THE SLEEPY HAMLET OF
NARBOROUGH IN CENTRAL ENGLAND WAS SHATTERED
IN 1983 WITH THE RAPE AND MURDER OF LYNDA MANN, A
15 YEAR OLD SCHOOLGIRL. THE PEACE WAS SHATTERED
AGAIN IN AN EERILY SIMILAR MANNER IN 1986 WHEN
ANOTHER 15 YEAR OLD SCHOOLGIRL, DAWN ASHWORTH,
WAS FOUND STRANGLERED AND RAPED. SEMEN SAMPLES
FROM BOTH VICTIMS, USING THE BEST FORENSIC
ANALYSIS AVAILABLE AT THE TIME, REVEALED THAT
THE MURDERER HAD BLOOD TYPE A, AS DID 10% OF THE
MALE POPULATION. POLICE FOCUSED THEIR
INVESTIGATION ON A LOCAL TEENAGER WHO, AFTER
INTERROGATION, CONFESSED TO THE MURDER OF DAWN
ASHWORTH. HE NOT ONLY WAS BLOOD TYPE A, BUT**

ALSO PROVIDED DETAILS OF THE CRIME THAT HAD NOT BEEN RELEASED TO THE GENERAL PUBLIC, AT LEAST ACCORDING TO THE POLICE. TO THE CONSTERNATION OF INVESTIGATORS, HE WOULD NOT ADMIT KILLING LYNDA MANN, DESPITE THE FACT THAT POLICE WERE CONVINCED THEY WERE DEALING WITH ONE ASSAILANT.

CONSTABLES REACHED OUT TO PROFESSOR ALEC JEFFREYS OF LEICESTER UNIVERSITY WHO WAS DEVELOPING THE THEN NOVEL CONCEPT OF DNA PROFILING. DOCTOR JEFFREYS' RESULTS INDICATED THAT NOT ONLY DID THE TEENAGE DEFENDANT NOT KILL LYNDA MANN, HE DID NOT KILL DAWN ASHWORTH EITHER. RATHER, THE SAME MAN KILLED BOTH YOUNG WOMEN AND HE WAS STILL AT LARGE. IN AN INCREDIBLE EFFORT TO SCREEN THE DNA OF ALL 5,000 MEN IN THE IMMEDIATE VICINITY OF THE MURDERS, POLICE EVENTUALLY FOCUSED ON COLIN PITCHFORK, A

LOCAL BAKER, WHO BECAME A SUSPECT BECAUSE HE HAD A FRIEND ATTEMPT TO SUBMIT A FALSE DNA SAMPLE FOR HIM. PITCHFORK'S DNA EVENTUALLY IDENTIFIED HIM AS THE KILLER OF BOTH GIRLS. WHAT COULD HAVE BEEN MORE PROPHETIC TO DEMONSTRATE THE POWER OF DNA. IN THE FIRST EVER DNA ASSISTED PROSECUTION OF A DEFENDANT WHO COMMITTED TWO BRUTAL MURDERS, A YOUNG MAN WHO GAVE A FALSE CONFESSION WAS EXONERATED, AN ATTEMPT TO CONTAMINATE DNA EVIDENCE WAS THWARTED AND A VICIOUS KILLER WAS CAUGHT AND CONVICTED.

CLOSER TO HOME, IN THE EARLY MORNING HOURS OF APRIL 8, 2000, JANE DOE, A 19 YEAR OLD WOMAN WAS ALONE DOING LAUNDRY AT THE COLONIAL LAUNDROMAT IN EAST SYRACUSE, NEW YORK.

UPON EXITING THE BATHROOM, SHE REALIZED SOMEONE HAD TURNED THE LIGHTS OFF. SHE

HURRIEDLY WALKED OUT OF THE BUILDING TO HER CAR WHEN SHE WAS GRABBED FROM BEHIND AND SAVAGELY BEATEN AND RAPED AND LEFT FOR DEAD BY AN UNKNOWN ASSAILANT.

DESPITE THE BEST EFFORTS OF LOCAL LAW ENFORCEMENT, THE CASE WENT UNSOLVED AND FINALLY PROSECUTORS, IN AN EFFORT TO AVOID THE THEN EXISTING STATUTE OF LIMITATIONS WOUND UP RETURNING A JOHN DOE INDICTMENT, IDENTIFYING THE PERPETRATOR BY HIS UNIQUE GENETIC CODE FOUND AT 13 DIFFERENT LOCATIONS OUT OF THE 3 BILLION POSSIBILITIES OF THE HUMAN GENOME.

ANALYSIS OF THOSE 13 LOCI COULD NOT TELL US A SINGLE THING ABOUT THE ASSAILANT . . . NOT HIS RACE, NOT HIS HAIR COLOR, NOT HIS FUTURE HEALTH DIFFICULTIES, IN SHORT, NOT ONE SINGLE PHYSICAL CHARACTERISTIC OF THE RAPIST COULD BE

**DETERMINED FROM FORENSIC ANALYSIS OF THIS
EVIDENCE AT ANY N.Y.S. CRIME LABORATORY.**

**THAT GENETIC FINGERPRINT WAS PERIODICALLY
RUN THROUGH THE STATE AND NATIONAL DNA
DATABANKS WITHOUT A HIT. THE LEVEL OF
FRUSTRATION IS BEYOND MY ABILITY TO ARTICULATE
... HAVING TO TELL A WOMAN WHOSE LIFE HAS BEEN SO
TRAGICALLY ALTERED THAT WE PROSECUTORS HAVE
UNIQUE IDENTIFYING CHARACTERISTICS OF THE MAN
WHO DID THIS THAT ARE FAR MORE PROBATIVE THAN
HIS NAME OR EVEN HIS PICTURE, YET WE SIMPLY
CANNOT APPREHEND HIM.**

**BUT THAT FRUSTRATION LEVEL WAS SOON TO RISE
DRAMATICALLY. ON THE EVENING OF JULY 1, 2007, 65
YEAR OLD MOTHER AND GRANDMOTHER CAROL NELSON**

WAS OUT WALKING IN HER NEIGHBORHOOD IN THE TOWN OF SALINA.

THE NEXT MORNING, THE POLICE DISCOVERED HER BATTERED REMAINS AND WERE ABLE TO RECOVER DNA LEFT AT THE SCENE BY HER KILLER. WHEN CAROL'S MURDERER'S DNA PROFILE WAS DEVELOPED, POLICE DISCOVERED THAT IT WAS A MATCH TO A DEFENDANT GLEN SHOOP WHO WAS AWAITING SENTENCING FOR AN ASSAULT ON HIS WIFE. AND IT WAS ALSO A MATCH TO THE COLONIAL LAUNDROMAT RAPIST FROM 7 YEARS EARLIER.

WHAT IS SO TRAGIC IS THAT ON APRIL 18, 2004, SHOOP HAD BEEN ARRESTED FOR MISDEMEANOR ASSAULT AND HE EVENTUALLY PLED GUILTY, YET NEW YORK LAW AT THAT TIME DID NOT REQUIRE HIM TO GIVE A DNA SAMPLE. NOR DID IT REQUIRE A SAMPLE BE TAKEN FOR HIS 2001 PETIT LARCENY CONVICTION. HAD

**THE SIMPLE ACT OF TAKING A DNA SWAB FROM SHOOP
BEEN DONE IN 2005 OR 2001, CAROL NELSON WOULD BE
ALIVE TODAY ENJOYING HER LIFE AND THE COMPANY
OF HER GRANDCHILDREN. NOT THEORY, NOT
HYPERBOLE . . . JUST A FACT.**

**DNA HAS ANOTHER EQUALLY IMPORTANT ASPECT
AS WELL. WHILE THE MEDIA HAS UNDERSTANDABLY
FOCUSED ON POST CONVICTION DNA EXONERATIONS,
ALMOST 30 IN NEW YORK ALONE, SCANT ATTENTION IS
PAID TO THE HUNDREDS OF POST ARREST
EXONERATIONS THAT PROSECUTORS ENGINEER EVERY
YEAR AND THE ROLE THAT DNA CAN PLAY IN THAT
DYNAMIC.**

**I HAVE AN EXPRESSION I USE IN MY OFFICE WHICH
IS "BEWARE OF JACK FISHER SYNDROME." ON JUNE 27,
1975, ON WHAT WAS TO BE THE LAST DAY OF HER LIFE,**

MARION FISHER, A JAMESVILLE PHYSICAL EDUCATION TEACHER WENT TO A NEDROW RESTAURANT TO HAVE DINNER WITH HER HUSBAND JACK WHILE RELATIVES BABYSAT THEIR SON AND DAUGHTER. IN FRONT OF NUMEROUS WITNESSES, MARION AND JACK GOT INTO AN ARGUMENT THAT CULMINATED WITH MARION DECIDING TO WALK HOME ALONE WHILE JACK STAYED IN THE BAR AREA. SHE NEVER MADE IT.

POLICE THE FOLLOWING MORNING DISCOVERED MARION'S BODY IN A WOODED AREA OFF OF LAFAYETTE ROAD. AN AUTOPSY DETERMINED SHE HAD BEEN RAPED AND STRANGLER WITH A STOCKING AND DISCARDED LIKE GARBAGE. POLICE SUSPICION FOCUSED ON THE HUSBAND, JACK FISHER. HE HAD NO ALIBI AS HE CLAIMED HE CAME HOME AFTER THE ARGUMENT AND SLEPT ON THE COUCH. HE MADE CONTRADICTORY STATEMENTS, SOME OF WHICH WERE BORDERLINE

**INCRIMINATING. HE FLUNKED A LIE DETECTOR TEST
BADLY, AND IN POLICE PARLANCE, HE STOPPED
COOPERATING. AND MARION FISHER'S MURDER WENT
UNAVENGED FOR OVER 30 YEARS. WHEN THE CASE CAME
UP FOR REVIEW SEVERAL YEARS AGO AT OUR COLD
CASE TASK FORCE, THE IMMEDIATE POLICE RESPONSE
WAS, "THE HUSBAND DID IT . . . WE JUST CAN'T PROVE
IT."**

**NEVERTHELESS, A CLOTH FOUND NEAR MARION'S
BODY AT THE CRIME SCENE WAS TESTED FOR DNA AND A
FULL 13 LOCI PROFILE OF MARION'S KILLER WAS
DEVELOPED FROM HER ATTACKER'S SEMEN. WHEN
INFORMED OF THIS BY THE ANALYST, I ASKED IF SHE
HAD A SAMPLE FROM THE HUSBAND TO COMPARE IT
WITH.**

IT TURNED OUT THAT WASN'T NECESSARY. WHEN THE CRIME SCENE SAMPLE WAS RUN THROUGH CODIS, A MATCH WAS MADE . . . NOT TO JACK FISHER, BUT TO CARLTON GARY, A MAN ON DEATH ROW IN GEORGIA WHO WAS KNOWN AS THE "STOCKING STRANGLER" AND A SUSPECT IN THE MURDER OF 2 DOZEN WOMEN.

CARLTON GARY, WHO THIRTY YEARS EARLIER HAD JUST HAPPENED TO BE PASSING THROUGH SYRACUSE, WHO JUST HAPPENED TO ENCOUNTER MARION FISHER, AND WHO JUST HAPPENED TO RAPE HER AND STRANGLE HER.

I CALLED JACK FISHER TO TELL HIM THE NEWS AND HAD A VERY EMOTIONAL CONVERSATION WITH HIM AS I EXPLAINED HOW ALL THIS HAD COME ABOUT. JACK TOLD ME THAT HIS TWO CHILDREN, NOW WITH FAMILIES OF THEIR OWN, HAD DIFFERENT RELATIONSHIPS WITH HIM . . HIS SON STICKING BY HIM, A DAUGHTER HE HAD NOT SPOKEN TO IN THREE

**DECADES. A FEW WEEKS LATER, JACK CALLED ME TO
THANK ME AND TO TELL ME THAT HE WOULD SOON BE
RECEIVING HIS DAUGHTER AND THE GRANDCHILDREN
HE HAD NEVER MET BECAUSE HIS DAUGHTER NOW
KNEW HE HADN'T KILLED HER MOTHER.**

**THE VAST MAJORITY OF THOSE OF US WHO ENTER
PUBLIC SERVICE OFTEN MAKE GREAT PERSONAL AND
FINANCIAL SACRIFICES, BUT WE ARE BOUND BY THAT
COMMON DESIRE TO MAKE OUR STATE AS SAFE AS WE
POSSIBLY CAN. THIS IS A STATUTE THAT ABSOLUTELY
WILL SAVE LIVES, IMPROVE PUBLIC SAFETY, AND
PROVIDE JUSTICE BY CLEARING CASES. IF THOSE
OPPOSED SAY IT VIOLATES THE CONSTITUTION, ASK FOR
ONE COURT CASE THAT HOLDS POST CONVICTION DNA
SAMPLING VIOLATES THE 4TH OR 14TH AMENDMENT. IF
THEY SAY IT WILL COMPROMISE OUR PRIVACY RIGHTS,
ASK FOR THE NAME OF ONE CASE IN THE LAST DECADE**

**AND A HALF WHERE A SINGLE PERSON HAS BEEN
CHARGED WITH OR EVEN INVESTIGATED FOR MISUSE OF
THE DNA DATABANK.**

**MAKE THE ALL CRIMES DNA COLLECTION BILL A
REALITY AND WHEN YOUR CONSTITUENTS ASK YOU
THIS FALL WHAT YOU DID FOR NEW YORK, TELL
THEM PROUDLY YOU MADE IT A SAFER PLACE TO
LIVE.**

I'LL BE HAPPY TO ENTERTAIN ANY QUESTIONS.

COUNTY COURT

COUNTY OF ONONDAGA STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff

Indictment No. 2005-0298-1

Index No. 05-0292

vs.

JOHN DOE, an unknown male, with Dextyribonuleic

Acid (DNA) Profile:

17, 19 at D3S1358 Locus;

16, 18 at vWA Locus;

20, 22 at FGA Locus;

10 at D8S1179 Locus;

28, 30 at D21S11 Locus;

12, 15 at D18S51 Locus;

11, 12 at D5S818 Locus;

11 at D13S317 Locus;

8, 10 at D7S820 Locus;

12, 13 at D16S539 Locus;

7 at TH01 Locus;

9, 11 at TPOX Locus;

10,13 at CSF1PO,

Defendant

THE GRAND JURY OF THE COUNTY OF ONONDAGA by this indictment accuses

JOHN DOE, an unknown male, with Dextyribonuleic Acid (DNA) Profile: 17, 19 at D3S1358 Locus; 16, 18 at vWA Locus; 20, 22 at FGA Locus; 10 at D8S1179 Locus; 28, 30 at D21S11 Locus; 12, 15 at D18S51 Locus; 11, 12 at D5S818 Locus; 11 at D13S317 Locus; 8, 10 at D7S820 Locus; 12, 13 at D16S539 Locus; 7 at TH01 Locus; 9, 11 at TPOX Locus; 10,13 at CSF1PO

*of the crime of **RAPE IN THE FIRST DEGREE***

in violation of Section 130.35(1)

of the Penal Law of the State of New York

committed as follows:

The said JOHN DOE, an unknown male, with Dextyribonuleic Acid (DNA) Profile: 17, 19 at D3S1358 Locus; 16, 18 at vWA Locus; 20, 22 at FGA Locus; 10 at D8S1179 Locus; 28, 30 at D21S11 Locus; 12, 15 at D18S51 Locus; 11, 12 at D5S818 Locus; 11 at D13S317 Locus; 8, 10 at D7S820 Locus; 12, 13 at D16S539 Locus; 7 at TH01 Locus; 9, 11 at TPOX Locus; 10,13 at CSF1PO

on or about the 8th day of April 2000, at the Village of East Syracuse, in this county, engaged in sexual intercourse with Jane Doe, an adult female, whose true identity is known to the Grand Jury, by forcible compulsion.