

THE RIGHT TO USE TECHNOLOGY IN THE HUNT
FOR TRUTH

Mr. DURBIN. Mr. President, the hallmark of our criminal justice system has always been the search for the truth. With this goal in mind, I am introducing legislation to ensure the quality of justice in our criminal courts through the use of DNA testing.

In the last decade, the use of DNA evidence as a tool to assign guilt and acquit the innocent has produced dramatic results. The Innocence Project at the Cardozo School of Law has identified 62 cases in the United States since 1988 in which the use of DNA technology resulted in overturned convictions. In my home State of Illinois, 12 innocent men in the past 12 years have been released from Illinois' Death Row after DNA testing or other evidence proved their innocence.

The bill I am introducing today, The Right to Use Technology in the Hunt for Truth (TRUTH) Act will amend the Federal Rules of Criminal Procedure. Specifically, the bill will allow Federal defendants to file a motion to mandate DNA testing to support claims of actual innocence. Under current law, rule 33 of the Federal Rules of Criminal Procedure imposes a 2-year time limitation for new trial motions based on newly discovered evidence. This time limitation can act as a carrier even in cases where the evidence of actual innocence is available. My bill will allow defendants to bring a motion for forensic DNA testing without regard to the 2-year time limitation. It will not waive the 2-year time limit for all new trial limitations. Only motions for forensic DNA testing under limited circumstances will not subject to the 2-year time limitation.

This Federal rule change allows a defendants to utilize technology that was unavailable at the time of their conviction. The bill requires the defendant to show that identity was an issue in the trial which resulted in his conviction and that the evidence gathered by law enforcement was subject to a chain of custody sufficient to protect its integrity.

DNA technology has undergone rapid change that has increased its ability to obtain meaningful results from old evidence through the use of smaller and smaller samples. In the World Trade Center bombing case, DNA was recovered from saliva on the back of a postage stamp.

In the past, crime laboratories relied primarily on restriction fragment length polymorphism (RFLP) testing, a technique that requires a rather large quantity of DNA (100,000 or more cells). Most laboratories are now shifting to using a test based on the polymerase chain reaction (PCR) method that can generate reliable data from extremely small amounts of DNA in crime scene samples (50 to 100 cells).

Two States in the country, New York and Illinois, have laws mandating post-conviction DNA testing. The Illinois law has led to as many as six over-

turned sentences, including some murder charges.

When the measure was debated in the Illinois Legislature, some lawmakers raised concerns that allowing DNA-based appeals would lead to an avalanche of prisoners' demands for such tests.

But the response from experts is that such motions have not been excessive because prisoners who were justifiably convicted of crimes would have that DNA tests would only underscore their guilt.

Recently, a high-level study of a commission appointed by Attorney General Janet Reno has encouraged prosecutors to be more amenable to re-opening cases where convictions might be overturned because of the use of DNA testing. The Innocence Project in New York estimates that 60 percent of the samples it sends out for testing come back in their clients' favor.

Justice Robert Jackson wrote some 40 years ago, "[i]t must prejudice the occasional meritorious application to be buried in a flood of worthless ones. He who must search a haystack for a needle is likely to end up with the attitude that the needle is not worth the search." This bill will help make the haystack smaller by separating out motions for new trial based on scientific evidence of actual innocence.

I hope my colleagues will join me in this effort to protect the integrity of the criminal justice system by utilizing all that technology has to offer. I ask unanimous consent that a copy of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1700

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as "The Right to Use Technology in the Hunt for Truth Act" or "TRUTH Act".

SEC. 2. MOTION FOR FORENSIC TESTING NOT AVAILABLE AT TRIAL REGARDING ACTUAL INNOCENCE.

(a) IN GENERAL.—The Federal Rules of Criminal Procedure are amended by inserting after rule 33 the following:

"Rule 33.1. Motion for forensic testing not available at trial regarding actual innocence

"(a) MOTION BY DEFENDANT.—A court on a motion of a defendant may order the performance of forensic DNA testing on evidence that was secured in relation to the trial of that defendant which resulted in the defendant's conviction, but which was not subject to the testing which is now requested because the technology for the testing was not available at the time of trial. Reasonable notice of the motion shall be served upon the Government.

"(b) PRIMA FACIE CASE.—The defendant shall present a prima facie case that—

"(1) identity was an issue in the trial which resulted in the conviction of the defendant; and

"(2) the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been sub-

stituted, tampered with, replaced, or altered in any material aspect.

"(c) DETERMINATION OF THE COURT.—The court shall allow the testing under reasonable conditions designed to protect the interests of the Government in the evidence and the testing process upon a determination that—

"(1) the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and

"(2) the testing requested employs a scientific method generally accepted within the relevant scientific community."

(b) TABLE OF CONTENTS.—The table of contents for the Federal Rules of Criminal Procedure are amended by adding after the item for rule 33 the following:

"33.1. Motion for forensic testing not available at trial regarding actual innocence."

By Mr. SESSIONS (for himself, Mr. SCHUMER, Mr. THURMOND, Mr. BIDEN, Mrs. FEINSTEIN, Mr. HELMS, and Mr. CLELAND):

S. 1701. A bill to reform civil asset forfeiture, and for other purposes; to the Committee on the Judiciary.

CIVIL ASSET FORFEITURE REFORM

Mr. SESSIONS. Mr. President, today I am proud to introduce the Sessions/Schumer Civil Asset Forfeiture Reform Act of 1999. This bill is the product of many months of work by a bipartisan group of Judiciary Committee Senators. It will make many needed reforms to the law of civil asset forfeiture. At the same time, our measures preserve forfeiture as a crucial tool for law enforcement.

The Sessions/Schumer bill was drafted in close consultation and with the support of the Justice and Treasury Departments. It has the support of the FBI, the DEA, the INS, and the U.S. Marshall's Service.

There are five major reforms in the Sessions/Schumer bill. First, we have raised the burden of proof on the government in forfeiture claims from probable cause to preponderance of the evidence, the same as other civil cases.

Second, Sessions/Schumer requires that real property can only be seized through the court. It will be illegal for federal agents to physically seize real property until the property has been forfeited in court.

For those who cannot afford the cost bond, our bill also adds a property bond alternative for contesting forfeiture. This provides potential claimants with more flexibility in choosing how to proceed with a claim against seized assets. It will no longer be necessary to provide cash up front to file a claim. Instead, a claimant can simply pledge an asset to cover the anticipated costs or, if the claimant cannot afford this, proceed without posting any bond.

Sessions/Schumer also creates a uniform innocent owner defense; an innocent owner's interest in property cannot be forfeited by the government. An innocent owner includes one who had no knowledge that the property may have been used to commit a crime. And

in cases where the property was acquired after the crime, the uniform innocent owner defense includes bona fide purchasers who have no reason to know that the asset they have purchased may be tainted.

The fifth major reform provides payment of attorney's fees. If a claimant receives a judgment in his favor, the Government will pay the claimant's reasonable attorney's fees.

I am pleased to note that this bill has the support of a broad coalition of law enforcement groups. It has been endorsed by the Fraternal Order of Police, the Federal Law Enforcement Officer's Association, the International Association of Chiefs of Police, the International Brotherhood of Police Officers, the National Association of Police Organizations, the National District Attorney's Association, the National Sheriff's Association, and the National Troopers' Coalition.

As one who believes in justice and who spent many years as a federal prosecutor, I know how important asset forfeiture is in the war on drugs. We cannot allow exaggerated rhetoric and outdated examples to destroy asset forfeiture as a law enforcement tool. I believe that this bill will strike an appropriate balance between those on the front lines of the war on drugs and advocates for reform.

Mr. THURMOND. Mr. President, I rise today as an original cosponsor of the Civil Asset Forfeiture Reform Act of 1999. This important legislation makes needed reforms to Federal civil asset forfeiture while preserving Federal civil asset forfeiture and its important role in fighting crime.

The government has had the authority to seize property connected to illegal activity since the founding days of the Republic. Forfeiture may involve seizing contraband, like drugs, or the tools of the trade that facilitate the crime.

Further, forfeiture is critical to taking the profits out of the illegal activity. Profit is the motivation for many crimes like drug trafficking and racketeering, and it is from these enormous profits that the criminal activity thrives and sustains. The use of traditional criminal sanctions of fines and imprisonment are inadequate to fight the enormously profitable trade in illegal drugs, organized crime, and other such activity, because even if one offender is imprisoned the criminal activity continues.

Asset forfeiture deters crime. It has been a major weapon in the war on drugs since the mid-1980s, when we expanded civil forfeiture to give it a more meaningful role.

The Judiciary Subcommittee on Criminal Justice Oversight which I chair, held a hearing recently on this important issue. We heard from the Department of Justice, the Department of Treasury, the law enforcement community and others involved in this issue. The Departments and law enforcement expressed support for reform but concerns about going too far.

As I stated at that time, many believe the government should have the burden of proving that it is more likely than not that the property was involved in the criminal activity, rather than the owner having to prove that the property was not involved. There is wide support for developing a more uniform innocent owner defense. Further, some are concerned that under current law the government is not liable when it negligently damages property in its possession, even when the property is later returned to its innocent owner.

I believe we have addressed these concerns in this bill. We have raised the burden on the government to the preponderance of the evidence standard, which is the general burden of proof used in civil cases.

We have developed a uniform innocent owner defense to protect an owner's interest in property when he did not have knowledge of the criminal activity or took reasonable steps to stop or prevent the illegal use of the property. The bill also protects the bonafide purchaser who purchased the property after the fact without knowledge of the criminal activity.

As an additional reform provision, this legislation holds the government liable for the negligent damage to property as the result of unreasonable law enforcement actions while the property is in the government's possession.

This bill requires the government to make seizures pursuant to a warrant, based on probable cause, and requires a timely notice to interested parties of the seizure. When a claim has been filed for the return of property, the government must conduct a judicial hearing within 90 days, and if the court enters a judgment for the claimant, the government must pay reasonable attorney fees to the claimant. This is a reasonable way to award attorney fees to the claimant after the court has determined that the claim was justified. This provision also protects the government from frivolous claims because it maintains the possibility of awarding cost to the government if the claim is determined to be frivolous.

In this legislation, we encourage the government to use criminal forfeiture as an alternative to civil forfeiture. We also allow for the use of forfeited funds to pay restitution to crime victims by expanding the ability of the Attorney General to use property forfeited in a Federal civil case to pay restitution to victims of the underlying crime.

This bill represents a compromise between the many interests involved in this issue. I would like to commend my colleagues Senators SESSIONS, BIDEN, SCHUMER, and FEINSTEIN for their work on this complex issue. After the hearing in my Subcommittee, we worked hard to create comprehensive, bipartisan legislation, and I believe we have succeeded.

This bill has been endorsed by law enforcement organizations including the Fraternal Order of Police, the Na-

tional Association of Police Organizations, the National District Attorneys Association, the National Troopers Coalition, the National Sheriffs Association, and the International Association of Chiefs of Police.

This is a balanced reform of Federal civil asset forfeiture laws. It does not tie the hands of law enforcement and does not give criminals the upper hand. It makes needed reforms of civil asset forfeiture while preserving civil asset forfeiture as an essential law enforcement tool.

I hope our colleagues will join with us in supporting this important bipartisan legislation.

By Mr. MURKOWSKI:

S. 1702. A bill to amend the Alaska Native Claims Settlement Act to allow shareholder common stock to be transferred to adopted Alaska Native children and their descendants, and for other purposes; to the Committee on Energy and Natural Resources.

ALASKA NATIVE CLAIMS TECHNICAL AMENDMENTS ACT OF 1999

• Mr. MURKOWSKI. Mr. President, today I rise to introduce legislation that would make technical changes to the Alaska Native Claims Settlement Act (ANCSA).

As my colleagues know, ANCSA was enacted in 1971 stimulated by the need to address Native land claims as well as the desire to clear the way for the construction of the Trans-Alaska Pipeline and thereby provide our country with access to the petroleum resources of Alaska's North Slope. This landmark piece of legislation is a breathing, living, document that often needs to be attended for Alaska Natives to receive its full benefits. This body has amended the Act many times including this Congress.

This bill has nine provisions. One provision would allow common stock to be willed to adopted-out descendants. Another provision would clarify the liability for contaminated lands in Alaska. The clarification of contaminated land would declare that no person acquiring interest in land under this Act shall be liable for the costs of removal or remedial action, any damages, or any third party liability arising out or as a result of any contamination on that land at the time the land was acquired.

In 1917, the Norton Bay Reservation was established on 350,000 acres of land located on the north side of Norton Bay southeast of Nome, Alaska, for the benefit of Alaska Natives who now reside in the village of Elim, Alaska. The purpose of the establishment of the reservation included providing a land, economic, subsistence, and resources base for the people of that area.

In 1929, through an Executive Order, 50,000 acres of land were deleted from the reservation with little consultation and certainly without the informed consent of the people who were to be most affected by such a deletion. After passage of ANCSA, only the remaining