

STATEMENT OF THE DISTRICT OF COLUMBIA ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF
BILL15-034, THE “MILLICENT ALLEWELT ACT OF 2003.”

On behalf of the District of Columbia Association of Criminal Defense Lawyers, (DCACDL), I wish to convey our support for Bill 15-034, The “Millicent Allewelt Act of 2003.” As an organization of criminal defense lawyers practicing in the District of Columbia, we are keenly aware of the power of physical evidence of a crime to convict the guilty and to exonerate the innocent. We believe that Bill 15-034, by requiring the retention of such evidence, is a positive step towards accuracy in the criminal justice system.

As criminal defense lawyers, we understand that physical evidence of crime has value in both the investigation of a crime and any subsequent trial, although this value can vary from case to case. Contrary to the implications of popular television shows such as “CSI,” it is the rare case in which physical evidence alone solves the crime. However, physical evidence, when properly recovered, stored and analyzed, can provide powerful investigative leads to locating witnesses and identifying suspects. Most cases are, therefore, solved by a combination of physical and testimonial evidence. Bill 15-034 recognizes this role for physical evidence while conceding that some cases, even those in which significant physical evidence is obtained, may not be solved initially. The Bill simply does not allow the police to “give up” on the most serious of such cases. Later scientific advances or the development of traditional testimonial evidence, sometimes years later, may “crack” a case once thought hopeless. For this reason alone DCACDL would support Bill 15-034.

Moreover we suspect that every prosecutor would tell you that once a case is brought to trial, they want corroborating physical evidence. When no physical evidence is available, a case depends on traditional testimonial evidence, such as eyewitness testimony, informant and accomplice testimony, and purported “confessions.” All of these forms of testimony have significant known problems with reliability. Thus when the physical evidence provides reliable corroboration of the testimonial evidence, a jury may be more easily convinced of the defendant’s guilt.

However, DCACDL also supports Bill 15-034 because physical evidence not only has the power to incriminate; it has the power to exonerate or exculpate as well. It can clear a suspect during an investigation. During a trial, physical evidence can also demonstrate the unreliability of testimonial evidence, especially when it directly contradicts it. Retaining physical evidence is particularly important when one considers the types of cases which are likely to be reopened many years after the fact. Usually in such cases, there will be some belated “revelation” by a purported witness that cause police to reopen a case. Often the credibility of such witnesses, perhaps a jail house informant who claims the defendant admitted the crime many years later or someone claiming recovery of a “repressed memory,” may be poor. Patently, the existence of physical evidence which might contradict or discredit the “revelation” would be invaluable to the innocent defendant, and the lack of such evidence might easily result in a wrongful conviction, especially since it is virtually impossible for a defendant to meaningfully investigate a case when he or she is not arrested until many years later.

Even some wrongly convicted defendants may benefit from the requirement to retain physical evidence in open cases. One such example is a “copycat” situation where the facts of a crime committed after a defendant's arrest are sufficiently similar that one could infer that the actual perpetrator is still at large. For example, our local innocence project is currently investigating a rape case in a neighboring jurisdiction, which includes some very unusual placement of burned matches through the house and on the bed where the assault occurred. Obviously, if there were other sexual assault cases with a similar feature, even in the District of Columbia, we would want to know about them.

This last case brings up an important point in which Bill 15-034 represents a significant improvement over the evidence retention provisions of the Innocence Protection Act. The Bill not only requires that the evidence itself be retained, but also the case jackets and crime scene investigation files, as these records are crucial for understanding the context in which the physical evidence was obtained and how it may relate to the case as a whole. Rare indeed is the case where the physical evidence alone, and completely out of context, possesses any value at all. In cases which are reopened many years after the crime, both the prosecutors and the defense attorneys will need access to the case jackets and crime scene investigation files in order to make sense of the evidence.

We anticipate that law enforcement authorities may complain about the costs of storing the files and evidence. The Bill provides relief in the case of evidence for which retention is impracticable. In any event, our community does not balk at the much greater “storage costs” of incarcerating a violent killer or sexual offender; (the Administrative Office of the United States Courts recently reported the cost of incarceration in a federal prison to be over \$22,000 per year.) Surely, the costs of obtaining a just and accurate conviction of such a person, even years later, are worth it as well. Perhaps more importantly, if retaining physical evidence prevents a wrongful conviction, such costs are even more well spent. For all of these reasons, DCACDL strongly feels that Council should enact Bill 15-034.

Thank you for your consideration.

Respectfully,

Richard K. Gilbert