

Council of the District of Columbia  
**Draft Report**

1350 Pennsylvania Ave. NW, Washington, D.C. 20004

---

To: All Councilmembers  
From: Kathy Patterson, Chairperson, Committee on the Judiciary  
Date: December , 2003  
Subject: Bill 15-34, the “Millicent Allewelt Act of 2003”

The Committee on the Judiciary, to which Bill 15-34, the “Millicent Allewelt Act of 2003” was referred, reports favorably on the legislation and recommends adoption by the Council of the District of Columbia.

**PURPOSE AND EFFECT**

Bill 15-34 represents the continuation of the Committee on the Judiciary’s commitment to conducting oversight aimed at improving homicide investigations in the District of Columbia. The purpose of Bill 15-64 is to require the Metropolitan Police Department (MPD) and other law enforcement agencies to retain records and evidence from open homicide cases for 100 years, and from other serious and violent crimes consistent with their statute of limitations. It creates requirements related to the disposal of evidence, and provides for penalties for violations of the law, including the creation of a right of civil action by victims or their families against D.C. government employees and the city.

Millicent Allewelt was sexually assaulted and murdered in her apartment in Southwest, Washington, D.C. on June 26, 1973. Her family recently learned of efforts of MPD to re-investigate old murder cases to see if they could be solved through the analysis of DNA evidence, a technological process not available when Millicent Allewelt was killed in 1973. After contacting MPD, the family was informed that the files and evidence related to her case could not be found. While conducting oversight on the quality of MPD’s homicide investigations in 2001, the Committee received a letter from Millicent Allewelt’s cousin asking for assistance in locating the evidence. To date, that evidence has not been found. Bill 15-64 is intended to insure that no victim or victim’s family has to ever again undergo what Millicent Allewelt’s family experienced – the loss of opportunity for justice to be done.

The Allewelt case is only one example of the loss or mismanagement of files and evidence that the Judiciary Committee has learned of during its oversight of the quality of MPD’s homicide investigations over the past three years. In January 2001 the Committee received testimony about the loss of evidence related to the investigation of the murder of Diane

Williams, a victim of the 1972 Freeway Phantom, and about the mismanagement of evidence related to the case of Susan Cvangros, who was murdered in 1999.

In May 2003, MPD released the findings of an audit of evidence housed in the Evidence Control Warehouse related to homicide, assault with intent to kill and sex crime investigations. Because the record keeping at the Warehouse has been so poor or inconsistent over the last several decades, the report was unable to “definitively state how many items are missing from a given period.” Nonetheless, the audit confirmed that evidence and records related to many cases are missing.

The loss of evidence and records related to a case runs counter to the interest of justice in the District of Columbia. It is particularly unacceptable in light of recent advancements in forensic processing technology, and the availability of federal funds and grants for the purpose of processing old DNA evidence.

In recent years, Congress has appropriated millions of dollars in funding for the Department of Justice’s Convicted Offender DNA Sample Backlog Reduction Grant Program. This program authorizes grant funding for states to use to analyze backlogs of convicted offender samples so that the resultant DNA profiles can be entered into the national DNA database, Combined DNA Index System (CODIS). State and municipal jurisdictions across the country have enhanced their forensic capacity in response to the opportunities created by recent scientific advancements and related federal funding. MPD’s forensic capacity urgently needs to be modernized to take advantage of these opportunities. The audit of the Evidence Control Warehouse is one step in this process, as is the proper storage of evidence and records from here forward.

### **LEGISLATIVE HISTORY**

<b>DATE</b>	<b>ACTION</b>
January 7, 2003	Bill 15-34 is co-introduced by Councilmembers Kathy Patterson, Jack Evans and Carol Schwartz, and co-sponsored by Chairman Linda Cropp and Councilmember Vincent Orange (Attachment A).
January 8, 2003	Bill 15-34, the “Millicent Allewelt Act of 2003,” is referred to the Committee on the Judiciary.
January 17, 2003	Notice of introduction of Bill 15-34 is published in the D.C. Register (Attachment B).
May 16, 2003	Notice of a Public Hearing on Bill 15-34 is published in the D.C. Register (Attachment C).
May 22, 2003	Public Hearing on Bill 15-34 held by the Committee on the Judiciary.

December, 2003

Consideration and vote on Bill 15-34 by the Committee on the Judiciary.

### **IMPACT ON EXISTING LAW**

Bill 15-34 enacts a new law requiring the preservation of evidence and records in homicide and other violent crime investigations. It amends D.C. Official Code § 5-113.07, An act providing a permanent form of government for the District of Columbia, to conform with the new law.

### **SECTION BY SECTION ANALYSIS**

Section 1 states the long and short titles of Bill 15-34.

Section 2 defines the terms “biological material,” “case jacket,” “closed investigation,” “crime scene examination case file,” “DNA,” “DNA testing,” “law enforcement agencies,” “open investigation,” “records retention schedule,” and “statute of limitations.”

Section 3 creates requirements for law enforcement agencies with respect to the retention of case jackets, crime scene examination case files, and evidence from homicides and other violent and serious crimes, and for the disposal of such records and evidence.

Subsection (a) requires law enforcement agencies to retain case jackets, crime scene examination case files, and evidence from open investigations of homicides for 100 years from the date the crime is first reported to a law enforcement agency.

Subsection (b) requires law enforcement agencies to retain case jackets, crime scene examination case files, and evidence from open investigations of the following crimes for a period of time equal to the length of each crime’s statute of limitations: assault with intent to kill; aggravated assault; assault on a police officer with a dangerous weapon; burglary; mayhem; malicious disfigurement; sexual abuse and sex offenses. The same requirement holds for the following armed crimes of violence: abduction; kidnapping; robbery; housebreaking; assault with a dangerous weapon; assault with intent to commit any offense punishable by imprisonment in the penitentiary; arson; extortion; and extortion or blackmail accompanied by threats of violence or aggravated assault.

Subsection (c) requires law enforcement agencies to preserve evidence in such a manner, including if necessary by refrigeration, as to maintain the ability to conduct forensic testing, including DNA testing.

Subsection (d) proscribes procedures for disposing of evidence from open homicide investigations that is of such a size, bulk or physical character as to render retention impracticable.

Subsection (e) requires that photographs of evidence created pursuant to subsection (e) be retained in the crime scene examination case files of the corresponding investigation.

Subsection (f) requires law enforcement agencies to retain case jackets and crime scene examination case files from closed cases pursuant to the Innocence Protection Act of 2001 for closed investigations of homicides; assault with intent to kill; aggravated assault; assault on a police officer with a dangerous weapon; burglary; mayhem; malicious disfigurement; sexual abuse and sex offenses; and the following armed crimes of violence: abduction; kidnapping; robbery; housebreaking; assault with a dangerous weapon; assault with intent to commit any offense punishable by imprisonment in the penitentiary; arson; extortion; and armed extortion or blackmail accompanied by threats of violence or aggravated assault for as long as evidence is preserved pursuant to the Innocence Protection Act of 2001.

Subsection (g) prohibits the MPD from disposing of records and evidence from open homicide cases without the written approval of the chief of the MPD and without prior written approval of the United States Attorney for the District of Columbia, for investigations under the prosecutorial jurisdiction of the United States Attorney for the District of Columbia and the District of Columbia Corporation Counsel for investigations under the prosecutorial jurisdiction of the District of Columbia Corporation Counsel.

Section 4 creates penalties for violation of the act, to include administrative sanctions, including termination, for employees of the District of Columbia government; a fine of \$5,000, imprisonment for one year or both; and the right, prospectively from the effective date of the act, of victims or families of victims to file a civil action against the individual or individuals responsible, as well as the District of Columbia, in the Superior Court of the District of Columbia.

Section 5 requires the MPD to issue a records retention schedule, in the form of a general order, consistent with this act.

Section 6 amends the existing tampering with evidence statute to increase the fine for violation of the statute to \$5000.

Section 7 amends D.C. Official Code § 5-113.07 to conform with the act. It allows the Mayor to destroy MPD records upon recommendation of the chief of the MPD and only pursuant to the Millicent Allewelt Act of 2003.

Section 8 states the fiscal impact of the act.

Section 9 provides for the effective date of the act.

### **COMMITTEE REASONING**

As stated in the purpose and effect section of this report, Bill 15-34 seeks to avoid repetition of MPD's past negligence in the storage of evidence and records related to the investigation of homicides and other violent crimes. The experience of the families of Millicent Allewelt and Diane Williams clearly illustrate the need for this legislation in the District of Columbia. District policy makers cannot afford to forget the impact of crime on individuals and

society. Holly Kopp, Millicent Allewelt's niece who was seven years old when Allewelt was killed, testified:

“[Millicent's] death was devastating to my grandmother, Millicent's mother, Violet Allewelt. She suffered a huge stroke shortly after she received the news. For the first time in my short life, I truly understood devastation.”

Not preserving evidence that investigators need to solve violent crimes is an abrogation of duty to people like the Allewelts on the part of the District of Columbia government, particularly in light of recent advancements in forensic processing technology.

In response to those that may question the practicality of mandating the preservation of evidence for long periods of time, the success of the Los Angeles County police department's cold case review project, started on July 1, 2000 with the purpose of reviewing 3,000 previously unsolved cases, is instructive as to potential impact of such a mandate. As of May 1, 2003, LA County's cold case unit had:

- reviewed 2,416 cases
  - identified 526 cases for further investigation, of which:
    - 118 cases were submitted for ballistic analysis
    - 141 cases were submitted for physical/fingerprint analysis
    - 66 cases were submitted for DNA analysis
    - 201 cases were submitted for further field investigation
  - reassigned 115 cases to investigators
  - solved 33 cases

Those cases solved by LA County include a 1957 murder of two El Segundo police department officers, a 1977 rape murder, and a 1994 victim shot during an apparent narcotics transaction. The 1957 murder was solved with the use of new fingerprint processing technology. The 1977 murder was solved by extracting DNA from crime scene evidence and entering it into CODIS, the FBI database. The 1994 murder was solved by re-approaching witnesses who had changed their lifestyles and were later willing to testify. None of these cases could have been solved without the preservation of evidence and records from the original investigations.

The Committee further agrees with the argument made by Patricia Riley of the United States Attorney's Office during the Committee's public hearing on Bill 15-34. Ms. Riley noted that the Council passed the Innocence Protection Act in 2001 to preserve evidence from closed investigations with the purpose of protecting the innocent, and argued that fairness would dictate that the Council approve similar legislation requiring the preservation of evidence from open cases for the sake of victims and to aid the work of prosecutors.

The Committee has made several changes to Bill 15-34 as introduced. First, for homicide cases, the Committee print requires that evidence, case jackets and crime scene examination files be preserved for 100 years instead of the 50 years mandated by the bill as introduced. There is

no statute of limitations for the crime of homicide. For this reason, the Committee concurs with the testimony of MPD and Ms. Riley that 50 years may not be a long enough retention period for evidence from homicide cases. According to Committee research, a 100-year requirement would be consistent with the policy and practice of other jurisdictions. The Prince Georges County, Maryland and LA County police departments both require that evidence from open homicide cases be preserved for 100 years. The Miami Dade County, Florida police department is required by state law to preserve evidence from both homicide and sexual assault investigations for 100 years.

The Committee print also eliminates the requirement that law enforcement agencies preserve for 50 years evidence from sexual assault cases, and from the following cases where there is biological material evidence: assault with intent to kill, aggravated assault, and assault with a deadly weapon. The Committee originally made this proposal with the intent to capture investigations of attempted murder where there is DNA evidence, and for the purpose of exploring whether or not the Council should extend the statute of limitations for those crimes. The Committee concurs, however, that there is no practical rationale for preserving evidence from a crime after the statute of limitations has expired. While the Committee recommends reviewing whether the statute of limitations for some crimes should be extended, such a change in law will not be accomplished through Bill 15-34.

Instead of the 50-year requirement for non-homicide investigations, the committee print requires that MPD hold evidence and records from violent crime investigations for as long a period of time as is consistent with the relevant statute of limitations. Additional violent crimes have been added on the recommendation of the United States Attorney's Office. With this change, the reference to biological material evidence is no longer necessary and has been struck from the committee print. If the Council does ultimately decide to extend the statute of limitations for these crimes, the Millicent Allewelt Act would remain current since it merely references the section of the D.C. Official Code on statutes of limitations.

With the above changes to the Committee print, Bill 15-34 should be consistent with current MPD policy, given the fact that the crime of homicide has no statute of limitations. If MPD is *not* preserving evidence and records related to non-homicide investigations for as long as the District is able to bring charges against the perpetrators, then it certainly should be and will be required to do so with this act<sup>1</sup>.

As for the issue of storage space, the Committee is confident that MPD's current facilities are capable of maintaining evidence and records pursuant to this legislation. MPD testified that its current evidence warehouse has 100,000 square feet of space and 1,000 square feet of refrigeration space off-site. A new storage facility planned by MPD will have 1,300 square feet of on-sight refrigerated space, 500 square feet of freezer space, and 103,601 total square feet (with 69,266 square feet for evidence storage). This is more storage space than the LA County

---

<sup>1</sup> MPD Special Order 79-80, Records Disposition and Retention Schedule Number 2J, is unclear as to current policy vis a vis statutes of limitations. On the one hand, it requires that crime scene examination files be retained for eleven years, five years past the statutes of limitations for most violent crimes. On the other hand, it requires that "court case jacket files" be retained for five years, one year less than the statutes of limitations for most violent crimes. In part because of this inconsistency, Section 5 of Bill 15-34 requires that MPD issue a new general order consistent with this act.

police department has with 55,000 square feet of storage space, though LA County has 6,400 square feet of refrigerator space, more than MPD currently has or has planned. Further, since the public hearing on this legislation, MPD representatives have confirmed that MPD would be able to retain evidence and records from homicide investigations pursuant to this act, and that the main concern regarding lack of storage space had been related to the requirements in the bill as introduced related to non-homicide crimes. Deletion of the 50-year requirement for non-homicide items from the legislation should, therefore, eliminate any outstanding concerns. Finally, If it is not practical for MPD to preserve all pieces of evidence pursuant to this act, Section 3(e) of the Committee print allows for the disposal of bulky items when necessary. Regardless, the Committee recommends that MPD re-evaluate its plans and design for the new facility to ensure that it would be capable of complying with this act.

The Committee print requires the retention of case jackets and crime scene examination files for closed investigations only for as long as evidence from those cases is preserved. The Committee agrees with the testimony of Rich Gilbert of the District of Columbia Association of Criminal Defense Lawyers that it does not make sense to preserve evidence pursuant to the Innocence Protection Act<sup>2</sup> without preserving the files that go with the cases. MPD's own experience has borne out this argument. During the inventory conducted for the evidence audit, a lack of records with specific information regarding cases presented significant obstacles to matching evidence found with cases, and to matching open cases with evidence in the warehouse.

The Committee print also makes changes to the definitions of closed and open investigations contained in the bill as introduced. The Committee's intent is to only treat an investigation as closed if the perpetrator or perpetrators are convicted, or if there is no chance of ever prosecuting the individual or individuals responsible. An examination of conviction and prosecution rates show that cases often remain open beyond the MPD's initial arrest or closure of the case and this legislation requires that evidence and files be preserved until there is absolutely no chance of the case ever coming to final closure. The language in the committee print enumerates additional circumstances under which a case may never be closed that were not included in the bill as introduced.

The Committee print also requires that the United States Attorney and the D.C. Corporation Counsel, for cases under their respective jurisdictions, approve any destruction of evidence or records related to homicide cases.

The language creating a right to a civil action in section 4 has been narrowed and clarified in the Committee print so that only a victim or victim's family can bring a claim under section 4. Claims can be brought against a District of Columbia government employee or the District of Columbia government and only prospectively after enactment of the act.

A new section 6 has been added to the Committee print increasing the fine for committing the crime of tampering with evidence to \$5000.

---

<sup>2</sup> The Innocence Protection Act does not mandate the preservation of case files.

The preliminary findings of the audit of MPD's Evidence Control Warehouse showed not only the extent of the negligence of MPD in preserving evidence in the past, but, more importantly, the amount of work to be done in the future. It is likely that there are open investigations that can be closed through today's technology because of evidence sitting in the possession of MPD unfound or unprocessed. Just as the District of Columbia has a responsibility to ensure that evidence is never again lost as it was in the cases of Millicent Allewelt and Diane Williams, it has an equally great responsibility to ensure that everything possible is done to close those cases for which there is a possibility of closure.

MPD witnesses testified that there are two remaining phases of the evidence audit and the Committee looks forward to those findings to come. Further, MPD testified that it would implement the recommendation of the evidence audit report that homicide cases be given one tracking number linking homicide case jackets and mobile crime files. This should help limit the confusion created by keeping different records of cases in different locations. Finally, the forensic services division began an audit of its own storage space shortly after the Committee's May 22, 2003 hearing. The Committee looks forward to learning the results of this audit.

In its FY 2004 budget report authorizing funding for processing evidence from District cases in the Federal Bureau of Investigation's forensic lab, the Committee argued that greater focus on forensic analysis in investigations would constitute a more pro-active, thorough approach to investigating crime and better investigations overall. Bill 15-34 is consistent with this approach and the Committee recommends its approval to the full Council.

### **FISCAL IMPACT**

As discussed in the committee reasoning section of this report, the Committee has considerably narrowed the length of time required by Bill 15-34 for the retention of evidence and records related to non-homicide cases, making the requirement consistent only with those crimes' statutes of limitations. The Committee print increases the retention requirement for evidence and records related to homicide cases from 50 years in the bill as introduced to 100 years in the Committee print, given that the crime of homicide has no statute of limitations.

Bill 15-34 is based on a similar policy in LA County, where the police department's storage facility is half as large as MPD's current facility and about 25,000 square feet smaller than MPD's planned new evidence storage facility. Further, since the public hearing on this legislation, MPD representatives have confirmed that MPD would be able to retain evidence and records from homicide investigations pursuant to this act, and that the main concern regarding lack of storage space had been related to the requirements in the bill as introduced related to non-homicide crimes. Deletion of the 50-year requirement for non-homicide items from the legislation should, therefore, eliminate any outstanding concerns. Therefore, there should be limited or no fiscal impact associated with this legislation.

### **PUBLIC HEARING**

The Committee held a public hearing on Bill 15-34, The Millicent Allewelt Act of 2003, on May 22, 2003. The following is a summary of the testimony presented during the hearing.

Chairman Patterson began the hearing by stating the purpose and effect of Bill 15-34 and noting specifically the circumstances surrounding the Freeway Phantom and Millicent Allewelt cases.

### **Nelson R. Disco, Cousin of Millicent Allewelt**

Mr. Nelson began his testimony by providing the Committee with a brief biographical sketch of his cousin, Millicent Allewelt. Ms. Allewelt was born in Syracuse, NY, in 1934 and graduated from New York State University College at Oneonta, NY in 1956. She received her Master's degree in Government from Syracuse University's Maxwell School of Government. In 1968, Ms. Allewelt moved to Washington D.C. where she worked for the United States Department of Justice and later the Department of Health, Education and Welfare. Mr. Nelson stated that she was found stabbed to death in her apartment on June 27, 1973.

Mr. Nelson said that he was "shocked and saddened" by her brutal murder, adding, "to this day, many of us often think of her and wonder what could have been." While the family had posted a \$1000 reward for information leading to the conviction of Ms. Allewelt's murderer, the murder was never solved, and the reward never claimed.

Mr. Nelson testified that in the summer of 2000, he attempted to secure DNA review of the evidence collected from the crime scene of his cousin's murder. However, he was eventually advised that Ms. Allewelt's file and all evidence from her case were missing, with no record of their removal. As such, Mr. Nelson said there was "no way this case will ever be solved." Mr. Nelson expressed hope that Bill 15-34 would "prevent the loss or destruction of other files in the future" thereby providing justice for others like Ms. Allewelt. Mr. Nelson concluded his statement by thanking Chairman Patterson for introducing the legislation and for the opportunity to speak before the Committee.

Mr. Nelson then read a letter from Kira Van Deusen, another cousin to Ms. Allewelt. In her letter to the Committee, Ms. Van Deusen recalled "the loving inspiration and support" Ms. Allewelt provided to her. Ms. Van Deusen also expressed her support of Bill 15-34 in order to allow for "all possible clarity and even resolution of those crimes."

Chairman Patterson then asked Mr. Disco if he had any further suggestions or comments for the Committee. In response, Mr. Disco stated that the MPD should be more responsive to family members, and asked whether 50 years would be long enough. "Maybe a longer period of time would be prudent," he said. Chairman Patterson responded by noting that a 100-year period has been designated in other jurisdictions.

### **Holly F. Kopp, Niece of Millicent Allewelt**

Ms. Kopp began her testimony by recounting her memories of her aunt. Ms. Kopp said that she had hoped the murderer would be brought to justice, adding that she "would not wish this visit of evil on any family." Ms. Kopp stated that Ms. Allewelt's murder was especially hard on

Ms. Allewelt's mother, Violet Allewelt. "She suffered a huge stroke, shortly after the news," Ms. Kopp said, "for the first time in my short life, I truly understood devastation."

Ms. Kopp said that her hopes were lifted that DNA technology might provide justice for her cousin, but "that was not to be," she said. Ms. Kopp expressed gratitude for the Metropolitan Police Department's effort to review available evidence and urged the Committee to consider Bill 15-34. In Ms. Kopp's opinion, passage of the bill would help to bring justice for the victims of unsolved crime.

### **Wilma Harper, Aunt of Diane Williams, "Freeway Phantom" Victim**

Ms. Harper, an aunt of Diane Williams, began her testimony by stating that her niece was killed on September 6, 1972, a victim of the "Freeway Phantom," a serial killer who is believed to have been abducted and murdered seven young girls in the District and Maryland in the early 1970's. The killer or killers were never identified. Ms. Harper said that her niece spent her last day preparing for school the next day, adding that she would have graduated high school in May of 1973. Ms. Harper then explained how Ms. Williams' family sacrificed to finance her education, and how they had to use that money to bury her.

Ms. Harper said that the undertaker found human hair in her niece's mouth and notified the police. Unfortunately, Ms. Harper said the evidence has since been "thrown away." "If they didn't have room for it, I would have put it in my safe deposit box," she said. Ms. Harper noted that her niece's death was especially hard on Ms. Harper's brother, Diane's father, who had hoped the case would be solved before he died. "Unfortunately," Ms. Harper said, "he died in 1991." "I don't think I'll ever forget this death," she said. Ms. Harper also urged increased police cooperation with victims' families. "Police should cooperate with the relatives," Ms. Harper said, "they don't involve the families unless they are investigating them for the murder." She also noted that she has set up an organization to console homicide victims' families. Ms. Harper stated that she hopes to raise enough funds to open a memorial to her niece, "not in a statute, but in the form of an apartment building that teaches young people basic living skills." Ms. Harper concluded that she would like to see this legislation passed so that this tragedy wouldn't happen to anyone else.

Chairman Patterson then said that she had discussed the creation of a Family Liaison Unit with Chief Ramsey, whereby officers would be assigned to work with the families of crime victims. Chairman Patterson stated that they have a commitment from the MPD that they are going forward with the unit. Chairman Patterson then asked if the recent MPD audit of evidence had turned up evidence that pertained to any of the public witnesses' cases or whether the MPD had been in contact with them. Mr. Disco said that Metropolitan Police Department Detective Jim Trainum had informed him that all of the evidence in the Millicent Allwelt case was gone.

### **Captain Frank Merriman, Homicide Bureau, Los Angeles County Sheriff's Office**

Captain Merriman testified from Los Angeles, CA via video teleconference. Chairman Patterson noted that Captain Merriman's video-conference testimony marked the first time in Council history that such technology had been used in the Council.

Capt. Merriman began his testimony by expressing his belief that the bill will be a “major improvement to the evidence and report handling procedures of the District’s police department if this retention criteria is not in place.” He noted that California holds homicide evidence for 100 years and has no statute of limitations for murder. “While those in my department charged with evidence storage responsibility are constantly challenged to create the space necessary, it gets accomplished,” Capt. Merriman said. Capt. Merriman said that currently, the LA County Sheriff’s office has a 55,000 square foot storage facility with 6,400 square feet of freezer space.

Capt. Merriman also informed the Committee that the Los Angeles County Sheriff’s Department is now conducting a review of over 3,000 unsolved homicides from the years 1980-1989, using the Violent Criminal Apprehension Program (Vi-CAP) Database. He explained that the reviewing officers are charged with paying special attention to “the possibility of reexamining evidence using today’s technology.” Capt. Merriman said that as of this date, 2,400 cases have been reviewed. He expected completion by June of 2004.

Chairman Patterson asked Capt. Merriman how the Cold-Case File Unit operates. Capt. Merriman responded that they currently have twelve investigators in the Unit. He then identified the major problem in the Unit is manpower and time, noting that there are currently 115 cold case files that need to be reviewed.

Capt. Merriman also recounted the recent resolution of the 1957 murder of two El Segundo Police Department Officers. He explained that the case was being reviewed as a result of a tip, which later turned out to be erroneous, with the aid of a new FBI fingerprint database. In the course of the review, the LA Sheriff’s Department discovered that fingerprint evidence was still being held in storage. As a result, the detectives were able to solve the “oldest case to date in Los Angeles County history.”

Chairman Patterson then inquired as to the LA County Police Department’s use of Vi-CAP. Capt. Merriman said that the Los Angeles County Sheriff Department’s Office went online with the system as a case management tool in July of 1999. He explained that murder cases were entered into the system, which can then be used to link like cases. “All you need is an analyst and someone to input the cases,” Capt. Merriman said.

Chairman Patterson asked Captain Merriman to respond to concerns that the data-entry would ultimately prove too time-consuming. Captain Merriman responded that while investigators would rather investigate crimes than fill out data forms, the entire process only takes twenty minutes.

Chairman Patterson then inquired as to what new technology was applied in closing the 1957 El Segundo murder case. Capt. Merriman explained that since that time, the FBI has developed a computerized database for matching fingerprints, which the Los Angeles County Sheriff’s Department has been using for two years. Prior to that, they had no ability to do “single print” matches. In this case, the Sheriff’s Department used two partial prints and a complete print off of car that the suspect had stolen. After the database narrowed the search to ten hits, technicians did a “physical, point by point search” in order to identify the suspects.

Chairman Patterson also inquired as to the number of times the Sheriff's Department used administrative clearances to close a case and what steps must be taken in order to close a case in that manner. Capt. Merriman stated that often, a case is administratively closed when they know who the suspect is but the necessary witnesses are unwilling to testify. While those cases are rendered inactive, they may be re-opened if a witness changes their mind, and Capt. Merriman emphasized that those are the type of cases that should be periodically revisited. However, Capt. Merriman said that they use administrative procedures to close a case less than ten times per year.

Chairman Patterson then asked Capt. Merriman if he believed that establishing a cold case unit has been worth the resources spent. Capt. Merriman answered that he believed it was. "We are constantly getting phone calls from families on old cases," he said. Captain Merriman stated that over time people would come forward and that the police owed the added effort to the victims, their families and the law.

### **Richard Gilbert, Legislative Chair, District of Columbia Association of Criminal Defense Lawyers**

Mr. Gilbert began his testimony by expressing his support for the retention of evidence. Mr. Gilbert said that the District of Columbia Association of Criminal Defense Lawyers (DCACDL) is seeking "just and accurate convictions of people and evidence can help accomplish that." "Evidence can also exonerate people," he stressed. Mr. Gilbert also expressed support for the retention of case records. "Evidence without context is worthless," he said. "Conceptually, we approve and appreciate what you are trying to do with this bill," he said.

Mr. Gilbert noted that courts are traditionally not sympathetic to defendants in cases where evidence is lost. Citing Supreme Court precedent, he said that defendants are entitled to no due process relief if evidence is lost unless they can show bad faith. As such, defendants in that situation are usually left without a remedy. Mr. Gilbert said that he hoped this bill would "create a culture within the department about evidence retention."

Chairman Patterson then asked Mr. Gilbert whether the DCACDL supports extending a statute of limitation for sex crimes with DNA evidence. Mr. Gilbert responded that he must consult with the board, but did indicate that he preferred "John Doe" indictments to doing away with the statute of limitations all together. "We would have more trouble with no statute of limitations in those cases," Mr. Gilbert said.

### **Patricia Riley, Special Counsel to the United States Attorney**

Ms. Riley testified in support of Bill 15-34, and noted the importance of cold-case investigation. She explained that while the bill lists several types of cases where evidence is required to be retained for 50 years, such preservation does not make sense if the statute of limitations is six years. Ms. Riley said that a number of states, including Virginia and Maryland, have removed statutes of limitations for sex abuse cases and that she would "strongly support changing the statute of limitations."

Ms. Riley also added that it should be clear that the bill applies retroactively. She noted that the Supreme Court is expected to rule on the issue of retroactive application of expanded statutes of limitations in *Stogner v CA* sometime next month. She expressed confidence that the Supreme Court would decide there are neither ex post facto violations nor any other principles that would entitle the appellants to immunity from prosecution.<sup>3</sup>

Ms. Riley also warned that the “John Doe” indictments, preferred by Mr. Gilbert would be insufficient in a number of cases. As an example, Ms. Riley cited the much-publicized issue of molestation by members of clergy. “If that happened here today and occurred before 1997 we could not bring a prosecution for those cases,” Ms. Riley said.

Ms. Riley also noted that DNA is not the only kind of compelling evidence that could support a prosecution years later. She mentioned fingerprints and photographs or videotape, bite marks, tattoos, a suspect’s diary or a confession as other sources of evidence. “While DNA is a unique identifier, it is not the only kind of physical evidence that could be compelling, particularly if it leads to the discovery of other evidence against a suspect,” she added.

Ms. Riley noted that the Council passed the Innocence Protection Act of 2001 and that fairness would dictate that the Council pass similar legislation requiring the preservation of evidence for the sake of victims and prosecutors.

With the MPD’s new property facility currently on the drawing boards, Ms. Riley also suggested that it would be a good time to “reanalyze this to make sure we do have a facility to store it and funding to manage it properly... particularly refrigerated space.” “The length of time evidence should be retained is bounded, in our view, only by the facilities that are available to properly manage and store the evidence,” she said. Ms. Riley also noted that the District should not keep evidence when a prosecution is no longer possible and suggested the definition of a closed case be amended to reflect this concern.

Ms. Riley also urged the Committee to make sure that only probative evidence, or that evidence which has investigative or prosecutorial value, be retained. As an example, she cited the bloody clothes of drive by victim w/ no DNA from the assailant. In her opinion, it doesn’t make sense to preserve evidence lacking any probative value. Moreover, she noted that some evidence might need to be retained. As such, Ms. Riley recommended that the Committee examine what steps will be taken in the event that property is taken and a prosecution is not immediately going forward.

In response to a question by Chairman Patterson, Ms. Riley stated that she preferred the issue of statute of limitations be addressed directly. Nevertheless, she added that if the statute of limitations issue cannot be addressed in Bill 15-34, “then it should be done in tandem with this legislation; if you can’t get one the other doesn’t make sense.” Ms. Riley also noted that the current bill caps the fines for violations in a criminal offense at \$5,000. As such, she suggested a similar cap be established in the bill for civil actions.

---

<sup>3</sup> Since the May 22, 2003 hearing, the Supreme Court has ruled that a California state law that applies an extension of a statute of limitations retro-actively is unconstitutional.

Chairman Patterson then asked Ms. Riley who would determine what evidence has ‘probative value.’ Ms. Riley responded that the authority to make such determinations must be legislatively granted to someone and that the final determination must be tailored to the logistics of storage.

Chairman Patterson then asked Ms. Riley if the US Attorney’s Office makes use of ‘John Doe Warrants.’ Ms. Riley responded that the legality of such warrants is open to question as the issue has not yet been litigated in the District, but that they are rarely used. Chairman Patterson asked Ms. Riley who should decide which cases are prosecutable and which are not, and she responded that the United States Attorney’s Office should make that judgment.

In response to a question from Chairman Patterson, Ms. Riley expressed the support of the U.S. Attorney’s Office for the construction of a forensics lab in the District, as well as for a Memorandum of Understanding between the city and the FBI dedicating locally funded FBI resources to processing evidence from District cases.

**Sgt. Darrick Ross, Fraternal Order of Police Metropolitan Police Labor Committee**

Sgt. Ross testified on behalf of Sgt. Gregory I. Green, Acting Chairman of the Fraternal Order of Police Metropolitan Labor Committee. Mr. Greene stated that the FOP supports the Millicent Allwelt Act. “We support the provisions of the Allewelt Act,” he said, adding, “the preservation of evidence is critical to successful prosecutions of criminal offenders. The continuing technical improvements in the study of preserved evidence makes it likely that future evaluations of existing evidence will produce even more information. This bill can only improve our ability to identify criminals and convict them.”

**Richard Bartel, Advisory Neighborhood Commission, 3C**

Mr. Bartel suggested three modifications to Bill 15-34 in his statement before the Committee. First, he suggested that the evidence definition be expanded to include property taken from arrestees, even though the property may be returned to them. He stressed that this property is often useful in solving crimes. Mr. Bartel then suggested that the civil right of action in Bill 15-34 be carefully drafted so as to avoid the possibility of collateral legal attack by defendants who would want to impeach the evidence used by the government. Finally, Mr. Bartel suggested adding an additional three years beyond the closing of a case to the proposed retention period so as to facilitate any private forensic examinations that might arise in the course of subsequent civil litigation.

**Michael J. Fitzgerald, Executive Assistant Chief, MPD**  
**Commander Christopher Lojacano, Forensic Science Services Division, MPD**  
**Captain Michael Anzallo, Violent Crimes Branch, MPD**  
**Captain Keith Williams, Evidence Control Branch**

Chief Fitzgerald expressed support for the goal of Bill 15-34, “namely, the efficient collection and preservation of evidence in our most serious criminal cases.” Nevertheless, he

also expressed concern that the proposed legislation does not go far enough in certain respects. As an example, Chief Fitzgerald cited the provision of Bill 15-34 that stipulates evidence be retained for 50 years when the statute of limitations for some of those offenses is only six years. He characterized the 50-year retention period in those instances as “impractical.” Similarly, Chief Fitzgerald noted that there is no statute of limitations for homicides, making a 50-year retention rate impractical in those situations as well.

Further, Chief Fitzgerald emphasized the significant increase in land, warehouse space and personnel needed to accommodate the collection and maintenance of evidence. “These additional resources are not inexpensive,” he said, adding that the costs of such legislation “must be weighed against the prosecutorial value of retaining many of these items for an extended period of time.” Chief Fitzgerald also warned that the legislation could inadvertently bog down evidence processing procedures, thereby decreasing efficiency, especially considering that the legislation would impact over “10,000 non-lethal crimes a year.” Given the limited resources of the Evidence Control Branch, he suggested that attention be focused on cases in which the statute of limitations has not expired.

Chief Fitzgerald concluded by noting the Department’s “comprehensive, item by item audit of the Evidence Control Branch.” He explained that phase one of the audit revealed that evidence from the more recent homicide cases is completely accounted for. He also stated that, “evidence is missing from numerous unsolved homicide cases that occurred two or three decades ago,” but added that the audit revealed no instances “in which evidence was purposefully or inappropriately disposed of.” Rather, he attributed the loss to “a variety of breakdowns in systems” during the 1970’s and 80’s.

Now that phase one is complete, the Evidence Control Branch has a “clean slate,” Chief Fitzgerald said. Currently, the Evidence Control Board is in the process of creating a computerized tracking system in order to “provide a more thorough accounting of the status of all items, from recovery through final disposition,” he said. Chief Fitzgerald expressed his belief that the new reforms will “ensure that such problems are never repeated again.” He also said that there are a variety of statute of limitations extensions that the Department would support, adding that no recommendation would advise decreasing any current limitations. “Any recommendation would be to increase it,” he said.

Chairman Patterson asked EAC Fitzgerald how he arrived at his statement that the legislation would require saving evidence from up to 10,000 crimes a year, when the non-homicide crimes affected by the legislation are limited to serious violent crimes where there is biological material evidence. Nola Joyce, Senior Executive Director for Organizational Development for MPD, clarified that the 10,000 figure represents the total number of non-homicide crimes reported in the District every year, not the number of crimes with biological material evidence that would actually be affected by the legislation. Chairman Patterson then stated that it would be useful to have a figure that more accurately represents the number of cases affected by the legislation. EAC Fitzgerald apologized for the apparent misrepresentation.

Chairman Patterson asked EAC Fitzgerald if the audit had found that all the missing evidence was properly disposed of. EAC Fitzgerald responded that the audit had not concluded one way or the other. Chairman Patterson pointed out that since there is no statute of limitations

for the crime of homicide, that it was therefore automatically the case that since evidence from homicide cases was disposed of that it was improperly done.

In response to a question from Chairman Patterson, Captain Williams briefly explained the procedure for handling, retaining and disposing of evidence. He explained that once it is collected it is brought to the evidence control warehouse where it is catalogued. Capt. Williams said that there are currently over 4,000 locations within the warehouse where items are catalogued.

Chairman Patterson then asked Capt. Williams what the subsequent phases of the audit of the Evidence Control Branch would entail. He responded that while the first phase involved the actual documentation of evidence, the next phase would involve ascertaining “what we think we should have.” According to Capt. Williams, the final phase will involve “trying to piece together those last bits we can’t locate.”

Capt. Williams also said that the audit has revealed 65 items that had no property control numbers, making their identification impossible. He said that these items had been sent to the forensic science lab in order to determine what cases they match up with. He added that the evidence from the cases highlighted before the Committee, Millicent Allwelt and Diane Williams, were still unaccounted for. According to Capt. Williams, the oldest evidence in the warehouse dates back to 1972, but that he had no idea where any pre-1972 evidence might be. “That’s the frustrating part,” he said.

Chairman Patterson then asked Capt. Williams if the MPD had contacted the FBI for cases where multiple jurisdictions are involved, such as the Freeway Phantom. Capt. Williams replied that they had started preliminary discussions with the FBI, but that such contact mainly applies to Phases II and III of the audit.

In response to a question from Chairman Patterson, Capt. Anzallo explained the procedure for disposing of old files. Only investigative reports, not mobile crime reports, are sent to MPD’s warehouse facility in Suitland. Capt. Anzallo stated that the last shipment of files was sent out in 2001 and consisted of files from 1988.

In response to a question from Chairman Patterson, EAC Fitzgerald agreed that the statute of limitations for non-homicide cases does need to be extended.

Commander LoJacono responded to questions by Chairman Patterson concerning the current Department policy with regard to processing rape kits. Commander LoJacono said that while he cannot say that they have all been sent to the FBI, “if we have a named suspect, then it is definitely sent to the FBI.” Chairman Patterson then asked if it was possible that submitted kits “are simply sitting there instead of at our facilities?” Commander LoJacono responded that roughly 35% of all DNA casework at the FBI lab comes from the District and must be prioritized, adding that he “[couldn’t] speak to which ones are awaiting their analysis.” Chairman Patterson emphasized that additional data on this point would be useful to the Committee.

In response to a question from Chairman Patterson, Capt. Anzallo summarized the progress of the Predator Murder Project, a project with the purpose of reviewing cold cases to determine their solvability factors, with a particular emphasis on unprocessed DNA evidence. He noted that the Predator Murder Project has solved one case and exonerated one suspect, and that eleven cases have been identified for further analysis, but that the project was still in its infancy. He emphasized the monumental task of identifying all the cold cases and finding which ones have the most probative evidence. EAC Fitzgerald added that through the Predator Murder Project, 199 cases have been reviewed and 41 case jackets are missing. Capt. Anzallo also stated that the MPD is currently working with the FBI to re-vamp their cold-case review process

Regarding the issue of storage space for evidence, Capt. Anzallo said that the MPD currently has 100,000 square feet of space and 1,000 square feet of refrigeration space off-site. Captain Williams clarified that 65-70,000 square feet is used for evidence storage. The MPD's new facility will be 100,000 square feet and will house 1,300 square feet of on-sight refrigerated space. Chairman Patterson noted that this was considerably more than Los Angeles County has, even though they have a 100-year retention requirement.

Chairman Patterson then inquired into the status of the MPD's ViCAP participation. Capt. Anzallo testified that ViCAP data is being entered on cold cases but noted that to date, the biggest hindrance to entering information on current cases has been the availability of data loaders. He also added that there has been an "institutional problem," in getting detectives to fill out the required forms due to the length of time it takes to fill out such forms.

#### **Patricia Riley Written Testimony<sup>4</sup>**

Ms. Riley commended Chairman Patterson for introducing Bill 15-34, but noted that if the Council does not change the statute of limitations for non-homicide crimes, "the preservation of evidence will be largely a futile act for crimes others than murder that are covered by this bill." She repeated her May 22, 2003 testimony that the Council consider eliminating the statute of limitations for felony offenses generally or, at a minimum, for sex offenses, child abuse, and cases where DNA or other identifiers exist, but have not been matched to a suspect.

Ms. Riley testified that it is not enough to clarify that a "John Doe" indictment may be filed based on identifiers other than name because evidence simply may not be discovered within the statute of limitations that would provide the degree of certainty required for such an indictment.

Ms. Riley reiterated her May 22, 2003 testimony that the definitions of an open and a closed investigation should be revised.

### **COMMITTEE ACTION**

---

<sup>4</sup> Following the May 22, 2003 public hearing, Ms. Riley submitted written testimony to the Committee on behalf of the United States Attorney for the District of Columbia.

The Committee on the Judiciary met on December , 2003 to consider and markup Bill 15-34. Present and voting were Chairperson Patterson and Councilmembers

Chairperson Patterson moved for consideration of Bill 15-34 and summarized the main provisions of the legislation. Ms. Patterson then asked for discussion.

Councilmember Patterson then moved for approval of Bill 15-34, with leave for staff to make technical corrections. The Committee voted as follows:

YES:

NO:

PRESENT:

ABSENT:

Chairperson Patterson then moved for approval of the Committee Report on Bill 15-34, with leave for staff to make technical corrections. The Committee voted as follows:

YES:

NO:

PRESENT:

ABSENT:

### **ATTACHMENTS**

- (A) Bill 15-34, the “Millicent Allewelt Amendment Act of 2003” as introduced, including the letter referring the legislation to the Committee on the Judiciary.
- (B) A copy of the notice of introduction of Bill 15-34 published in the D.C. Register.
- (C) A copy of the notice of a public hearing on Bill 15-34 published in the D.C. Register.
- (D) A copy of the hearing record from the Committee on the Judiciary’s May 22, 2003, public hearing on Bill 15-34.
- (E) Committee print of Bill 15-34.