

**TAKING SEXUAL ASSAULT SERIOUSLY:
THE RAPE KIT BACKLOG AND HUMAN RIGHTS**

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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MAY 20, 2015
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Serial No. J-114-19

Printed for the use of the Committee on the Judiciary



www.judiciary.senate.gov
www.govinfo.gov

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U.S. GOVERNMENT PUBLISHING OFFICE

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**TAKING SEXUAL ASSAULT SERIOUSLY:
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WEDNESDAY, MAY 20, 2015

UNITED STATES SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:34 p.m., Room 226, Dirksen Senate Office Building, Hon. John Cornyn, Chairman of the Subcommittee, presiding.

Present: Senators Cornyn [presiding], Tillis, Cruz, Durbin, Whitehouse, and Franken.

Also present: Chairman Grassley, Senators Leahy, Klobuchar, and Blumenthal.

**OPENING STATEMENT OF HON. JOHN CORNYN,
A U.S. SENATOR FROM THE STATE OF TEXAS**

Chairman CORNYN. Good afternoon. This hearing of the Constitution Subcommittee will come to order.

I want to begin by thanking our excellent panel of witnesses for agreeing to be here today to share your concerns, your experiences with this problem that does not get enough attention, this rape kit backlog.

We look forward to hearing from you about the great work you are doing and, of course, first and foremost, giving a voice to those who need it the most.

The rape kit backlog is a national tragedy with serious consequences for sexual assault survivors. By some estimates, there are as many as 400,000 untested rape kits in America, each one of them holding tremendous potential to help solve a crime, take a serial rapist off the streets, or perhaps exonerate somebody who has been falsely accused of a crime.

A rape kit is the forensic DNA evidence, of course, collected from the body of the sexual assault victim following a crime. These kits can include everything from swabs, bodily fluids, hair, bed sheets, clothing and other personal items.

These are, of course, by their nature, invasive tests, the person who also—and they also are part of what a victim of crime has to endure after experiencing one of the most horrific experiences in their life.

After a rape kit is collected, law enforcement agencies can forward this evidence to a crime lab for testing, but, unfortunately, we

know many do not. The DNA from that kit may be used by lab officials and law enforcement to search the FBI's nationwide data base of criminal offender DNA, known as CODIS.

Since so many sexual assailants are serial offenders, there are very high CODIS hit rates in sexual assault cases. In other words, the DNA from a rape kit is often the material difference between a sexual predator going to jail or remaining free to reoffend.

When rape kits remain untested and sitting on the shelf, the consequences can be nothing short of devastating.

I know each of you have stories you could tell, particularly Debbie Smith, but I met a woman from Dallas, Texas by the name of Carol Bart. In 1984, Ms. Bart was sexually assaulted at knife-point outside her Dallas apartment. After she was attacked, she consented to a rape kit examination, but her rape kit sat untested for 24 years on the shelf.

When it was finally tested against the FBI data base, it yielded a match to a serial offender who had sexually assaulted another woman only 4 months after he had attacked Ms. Bart.

Even more tragic, by the time Ms. Bart's rape kit was cleared from the backlog, the statute of limitations had run on her case, meaning, of course, her attacker could not be criminally convicted of the crime against her.

We know, unfortunately, that there are many other examples of this across the Nation.

Another brave Texan I met during the course of my work in this area is Lavinia Masters. She was 13 years old when she was sexually assaulted. Of course, you can imagine a 13-year-old, asleep in her bed and then to be sexually assaulted. It is hard to imagine something more horrific than that.

When she, too, reported her crime and consented to a rape kit examination, she hoped it would help find the monster who robbed her of her childhood, but instead her rape kit sat untested for 20 years. When it was finally tested, it revealed that a recidivist criminal had committed this terrible offense. In other words, this was not the first time nor would it have been the last time if he was not taken off the street.

Because her rape kit sat untested for so long, the statute of limitations has run, as well. Once again, the rape kit backlog meant that another victim had been denied justice.

Carol, Lavinia, brave people like Debbie Smith represent only a few of the countless victims of the rape kit backlog story and that is too many. Each and every untested rape kit represents a real victim and their struggle for justice, and I believe it is our responsibility to honor the bravery of these survivors and to tell them that we are going to do everything we can for our part to stand up for them and we will do everything in our power to track down the people who have assaulted them.

Fortunately, and this is beginning to be a little bit of a good news story, legislators at the State level, victims, law enforcement officials and lab professionals around the country are working together, slowly but surely, to end this rape kit backlog.

I am proud to say that Texas is leading the charge. In 2011, Texas joined Ranking Member Durbin's home State as one of the first States in the Nation to enact a law requiring a comprehensive

audit of the rape kit backlog and the mandatory testing of all sexual assault evidence. I know we will hear more from the attorney general about that.

Just last year, the city of Houston finished clearing its rape kit backlog of 6,600 kits, and so far, just out of the 6,600 kits tested, they have come up with nearly 1,000 CODIS hits on these untested rape kits. Awareness of this effort has grown and so has the movement to end the rape kit backlog forever.

In 2011, Texas and Illinois were only two States with rape kit backlog laws on the books. Four years later, we now have some form of these laws on the books of at least 12 States. That is real progress.

I am proud to say that Congress is continuing to take an aggressive and bipartisan approach in the fight against this backlog. In 2014, I was proud to work with Senators McConnell, Leahy and Grassley to reauthorize the landmark Debbie Smith Act through 2019. This legislation has been the law of the land for more than a decade and it is a true success, touching the lives of thousands of sexual assault victims by providing much needed resources to test the rape kit backlog.

In 2013, I was proud to join Representative Ted Poe and Senator Bennet in sponsoring legislation known as the Sexual Assault Forensic Evidence Reporting Act, or the SAFER Act. This legislation was signed into law in the last Congress, and it strengthens the Debbie Smith Act by directing more funds to test crime scene DNA and increases law enforcement—gives them new resources to audit and to inventory the rape kit backlog.

It is hard to know how big the problem is unless we actually do those audits, and that is a very important part of this process.

While we need to continue to make sure that these important programs are fully implemented, I look forward to hearing the ideas of our witnesses and Subcommittee Members on what Congress can do to continue this fight.

With that, I turn the floor over to Senator Durbin, the Ranking Member.

**OPENING STATEMENT OF HON. RICHARD J. DURBIN,
A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DURBIN. Thanks very much, Chairman Cornyn. Thanks for this bipartisan meeting. I will ask that my full statement be made a part of the record and try to summarize it quickly so we can get to our important panel.

When you see a report from the CDC, they estimate about 1 out of every 5 women in America is going to be raped during the course of their life, and then the National Crime Victimization Survey tells us that between 2006 and 2010, 65 percent of rapes and sexual assaults went unreported.

When a victim does report, has the courage after a sexual assault to step forward and to report what happened to the authorities, we have to do everything in our power to make certain that the person responsible is held accountable.

Instead, thousands of victims have faced inexcusable ongoing trauma as their rape kits went untested and their rapist got away with the crime.

We recently had a column Nicholas Kristof wrote where he interviewed the sheriff of Cook County, Tom Dart, a personal friend of mine and the attorney general's. Tom went into a small community south of Chicago, Robbins, Illinois, and he found a locker filled with rape kits. They pulled out one of the kits and had it tested. It was about a young woman in the community. It had been collected. She was 14 years old when the rape occurred, and it was years ago when it happened. Nothing had been done.

After testing the kit, they found a DNA match, but the statute of limitations had expired. Natasha's attacker could not be prosecuted. How terrible could that be?

It is an indication of what may be happening in many parts of the country. I am happy that the Chairman and I can point to our home States and the efforts that have been made to try to make sure that we reduce the likelihood of that happening.

Attorney General Madigan, who will testify, has been a leader in that effort, and she will say a few words about it when she is given her chance to testify.

We also have to make sure that beyond the testing of rape kits, as important as that is, that we consider the sexual assault epidemic facing our country. We need to focus on preventing rape from occurring in the first place. We need to provide law enforcement agencies with access to training on how to respond to the traumatized victims.

As tested kits reveal suspects, we need to provide investigators and prosecutors with the resources they need to pursue the case, and we need to ensure that crisis centers and victim assistance organizations have the resources to help survivors.

Congress is doing, I think, an important thing in appropriating \$41 million last year to address the rape kit backlog and develop a comprehensive approach to sexual assault cases.

The House Commerce's Justice and Science Appropriations Subcommittee included a continuation of this vital funding in the FY 2016 bill. It is important that we give the resources to these agencies of Government that are investigating and prosecuting.

We also have to make sure that we reorder our priorities when it comes to the way we spend money on fighting crime and we are addressing that with some other bills that are before this Committee.

Two of the members of this panel I invited and I will be happy to introduce at the appropriate time. Let me turn it back over to the Chairman.

Chairman CORNYN. We are happy to have the Chairman of the Full Committee and the Ranking Member of the Full Committee here with us. Senator Grassley.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Chairman GRASSLEY. I would like to show my support and give a short statement, because I want to help you and Senator Durbin in any way I can.

Today the Judiciary Committee will hear from several witnesses about untested DNA evidence from sexual assault forensic exams. We will consider whether backlogs of untested DNA evidence re-

main a problem despite the enactment of the 2004 Debbie Smith Act.

The Debbie Smith Act, which is named after our first witness, originally passed Congress, with my support, as part of the 2004 Justice for All Act. Congress last reauthorized this important Federal statute in 2014. It sends funds to States to help reduce backlogs of untested DNA evidence from crime scenes and from convicted offenders.

Reducing such backlogs of untested DNA evidence is critically important to survivors of sexual violence, as our witnesses will testify today.

We are pleased to have Debbie here. I am going to skip over a description of the crime against her because it is pretty much repetitive of what you said, but it does not mean that I pay any less attention to it.

This program has helped crime labs around the Nation promptly analyze DNA evidence like that which was key to identifying Debbie Smith's rapist. In this same period, however, the demand for DNA testing has increased, as well, because jurisdictions around the country have increased their reliance upon forensic evidence as a crime-solving tool.

Because DNA evidence is now and likely will continue to be such an important tool in identifying perpetrators of rape and other crimes, it is crucial that the evidence be examined timely. Collecting and analyzing such evidence is important to catch offenders before they strike again.

It is completely unacceptable for forensic evidence from crimes of sexual violence to sit untested for months or even longer while rapists remain at large and statutes of limitations are expiring.

Over the last decade, Members of this Committee have played a very important role in ensuring that the Debbie Smith Act is reauthorized and the DNA backlog reduction program is funded. This year, I joined Senator Cornyn and 28 colleagues in calling on Senate Appropriation leaders to again make this program a priority.

I thank Senator Cornyn and Senator Durbin for their leadership and, most importantly, in organizing this hearing because this is a very important step to make sure we keep this whole issue before the Congress.

Thank you.

Chairman CORNYN. Thank you, Senator Grassley. Senator Leahy.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman.

This, as you know, is something—an issue that is very close to me and one I have spent years working on.

When discussing this with Debbie Smith and her husband, Rob, we talked about the fact that survivors of sexual assault for too long have been ignored. They have been ignored or they have been disbelieved, and the vast majority of them, of course, are women.

When we let these rape kits languish on lab shelves, it reinforces the terrible message that somehow these are second class crimes. Each one of these kits represents a devastating, traumatized survivor. We have got to move quickly on them. I remember seeing her

almost in tears the first time we talked, Debbie, and you talked to me about how it was 7 years before your kit was tested and the perpetrator was caught—7 years.

As I told you earlier today, my wife sent a second hug to you because of how moved she has been talking with you and Rob. When we first tried—worked to get the Debbie Smith Act passed as part of the Justice for All Act in 2004, I remember Debbie going from office to office with another good friend of ours, Kirk Bloodsworth. I sat there in the corner a couple of times, you will recall, just listening to your stories. He was the first person to be exonerated from death row by DNA, the first person. It was the personal appeal, it was not the numbers or the statistics; it is when Senators of both parties sat there and listened to them and realized we have got to do something.

We all hoped that your work would be over after getting that and we realize it continues on. I remember September last year, when I went to the Senate floor and asked unanimous consent to reauthorize this important legislation. President Obama signed the law a few days later. I know that commitments I have with Senator Cornyn, we are going to reauthorize the other important programs in the Justice for Act. I want to publicly—I do not want to hurt him back in Texas, but I want to publicly thank Senator Cornyn, Senator Grassley and others for working on this. When we drafted the Leahy-Crapo Violence Against Women Reauthorization Act of 2013, we dramatically changed what was in the original Violence Against Women Act, and we increased specific dedicated funding to sexual assault response, including greater attention to collecting and processing rape kits.

It is not going to be easy, but a lot of it requires the commitments not only in Texas and others in their States. My home State of Vermont has committed professionals of Vermont Forensic Laboratories, the Vermont Network Against Domestic and Sexual Violence. It is also going to require money.

We all say we are in favor of this, but we have got to have specific laws. We have got to make sure it is done and start accepting the fact that when these things happen, let us go out and get the person.

I was a prosecutor, I know what that means. We should not have the case that Senator Durbin talked about where, oh, we finally get around to this; oh, gosh, too bad, the statute of limitations has run. Imagine if that had been done right at the time it should have been. That rapist would have gone to jail.

I wonder how many other people were victims in between?

I will put my full statement in the record, Mr. Chairman. I have already told Debbie and Rob that, like so many others, I am double-booked somewhere else, but I think she knows my commitment to this.

Chairman CORNYN. Thank you, Senator Leahy.

We will now proceed to hear from our witnesses. I feel like the first one, Debbie Smith, has already been introduced, but let me just say that she is one of the foremost champions that we have involving this issue in the country. Thank you for being here.

Debbie is the founder of an organization known as Hope Exists After Rape Trauma, or HEART. Of course, her achievements are

too long to list here, but I look forward to hearing more about her update on the work she is doing around the country and any other light she can help us shed on this continuing issue.

Next, our second witness is Mr. Skylor Hearn, a former Texas Ranger, and, as we say in Texas, one riot, one ranger. He currently serves as the assistant director of the Texas Department of Public Safety and in that capacity, he is overseeing the implementation of the Texas rape kit backlog law.

I am proud of the great work he and other folks are doing there at the Department of Public Safety, and we are glad you are here today.

Our third witness is well known here on the Hill, Scott Berkowitz, who we have worked with for a long time on these issues. He is the founder and president of Rape, Abuse and Incest National Network, or RAINN. RAINN is the Nation's largest anti-sexual assault advocacy group and operates the National Sexual Assault Hotline. In his role as president of RAINN, Mr. Berkowitz has played an instrumental role in advocating for victims and fighting for legislation to take criminals off the street: the Debbie Smith Act, the DNA Fingerprint Act, and the SAFER Act.

I look forward to hearing more about Mr. Berkowitz's work and RAINN's priorities.

With that, let me ask Senator Durbin to do the honors of introducing our next witness.

Senator DURBIN. Thanks, Mr. Chairman. The next witness is Attorney General Lisa Madigan from my State of Illinois. She is a good friend and she was just elected to her fourth term. She is the longest-serving woman attorney currently serving in the United States.

She has done a lot of great work over the years, but particularly when it comes to this subject. Her work on the Illinois Sexual Assault Evidence Submission Act in 2010 was the first of its kind in our Nation. She currently co-chairs the statewide Sexual Assault Working Group in my State.

Before being elected as attorney general, she served in the Illinois Senate, along with a former U.S. Senator from Illinois, Barack Obama, and worked as a litigator for a Chicago law firm.

Attorney General Madigan is a graduate of the highly regarded Georgetown University and the Loyola University Chicago School of Law.

Attorney General Madigan previously testified before this Committee on the student debt crisis. I am glad she is with us.

Our final witness is Sarah Haacke Byrd, the management director of the Joyful Heart Foundation, an organization seeking to heal, educate and empower survivors of sexual assault, domestic violence and child abuse.

Before joining Joyful Heart, she was the director of operations for the Bellevue/New York University Program for Survivors of Torture. Sarah is a graduate of the University of Minnesota-Twin Cities and the Case Western Reserve University Weatherhead School of Management.

We thank her, as well.

Chairman CORNYN. If I can ask each of the witnesses, please, to stand.

[Witnesses are sworn in.]

Chairman CORNYN. Thank you. Please have a seat.

Debbie, would you care to make an opening statement?

**STATEMENT OF DEBBIE SMITH, SEXUAL ASSAULT
SURVIVOR, FOUNDER OF HOPE EXISTS AFTER RAPE
TRAUMA (HEART), WILLIAMSBURG, VIRGINIA**

Ms. SMITH. I want to say it is an absolute privilege to be here today and I appreciate, Senator Cornyn, you asking and giving me that privilege.

Before I begin, I would like to be allowed the opportunity to publicly thank Senator Cornyn and Senator Leahy for being such huge supporters of changing the issues that surround victims of sexual assault.

Your commitments to these issues speak of your devotion to victims of crime and their families. Especially, your staff members have always made themselves available to me at any time I had what may seem to them to be silly or unusual questions, but they were always there and ready and willing to help me out.

I thank both of you for all of your help.

Lifetime Television once described me as an advocate by accident and it is a true statement because I can tell you that I would have never purposely taken this place. Before I got here, there were already those, like NCBC, who were working diligently to pave the road for others.

I am always humbled to sit at the table with Scott Berkowitz from RAINN, another one of those who purposely chose to find a way to make the path easier for sexual assault victims.

Around this wonderful country of ours, there are many more, too numerous to name, who fight the war on sexual assault on behalf of sexual assault victims and I am in awe of their commitment.

As the years have passed, we continue to have others join us, such as Joyful Heart, to join this continuing battle. As a victim of this horrific crime, I am overwhelmed by the dedication of these professionals.

My personal experience as a rape victim provides me with the understanding of the devastation of this crime, and I believe that with devastation comes knowledge, and with knowledge comes responsibility. This vivid understanding of knowledge and responsibility has changed my life forever.

I truly believed that March 3, 1989 would be the last day that I would feel the loving touch of my husband's embrace or hear the precious voices of my children say, "I love you, Mom." It was on that Friday afternoon that a stranger entered my home, threatening to kill me if I screamed. He then abducted, blindfolded, and led me to the woods behind my home, where he robbed and repeatedly raped me.

This day was the day that I was raped, and it also became the day that this particular basket came into my life. This is Basket Number 6, and it has never held anything of any real value, nothing of any monetary value or worth. It used to hold a pair of Reebok tennis shoes. No big deal, except for they were my very first pair of name brand tennis shoes because it just seemed there was not enough money after buying shoes for the children.

There was an Aigner purse and a matching wallet emptied of all of its cash; again, nothing of much monetary value, worth more than the shoes combined, but they still did not carry an enormous price tag, except for the fact they were a Christmas gift from my husband. He worked overtime so that he could afford to buy me the matching set.

Basket Number 6 also held a pair of no name jeans, not any great expense there, except for they were my very favorites, because, you see, and every woman in here can understand, they fit just perfect in the waist and the hips both at the same time.

There was also a sealed envelope containing pubic hairs, vials containing a cotton swab, and a pair of semen-stained underwear, definitely nothing of value. All of these things were stored in this ordinary wire basket. None of these ordinary items were of any real value unless, of course, they happened to belong to you.

After being raped, I struggled with trying to live with the memories of that day. For 6½ years, the smell of this man's breath, the touch of his cool, damp coat sleeve around my neck, and the sight of his black rubber boots were all stored in my memory, and the sound of his voice in my ears reminding me, "Remember, I know where you live and I will come back to kill you if you tell anyone."

All of these things were stored in my mind, unwilling to be discarded. I needed peace, security, and I desperately wanted to feel safe again. I had no hope that I would ever attain this vital relief. I thought I had found a fate worse than death, and it was living, and it was living with the fear that this man would fulfill his promise to return and to kill me or, maybe worse, he would kill my children.

I merely existed for those 6½ years, as fear held my heart and my soul within its grip, choking out any joy of life. I became suicidal, seeking peace and rest from the pictures that played in my mind without warning.

Basket Number 6 has always been filled with what seemed like insignificant items, but it was this very Basket Number 6 that stored my rape evidence kit that would deliver peace to my heart and allow me to truly live again. It held fragments of my life that was lived. It held answers to my questions, solutions to my fears, and peace for my very soul.

All of those resolutions were confined—were confined to this ordinary 11-inch-by-12-inch ordinary wire basket, sealed with red evidence tape.

On July 26, 1995, we received the news that DNA cold hit had revealed the name of my rapist. He was already in prison for another crime. The torment was finally over, and I knew where he was. My family was safe. Basket Number 6 was finally allowed to speak.

Basket Number 6 now sits alone on my bookshelf in my home and it still holds nothing of any great monetary value, but in my heart, it holds the memory of a day that had gone terribly bad, a day that I thought that I would never recover.

Before it was brought to my home, Basket Number 6 sat behind a locked door lined up with many others just like it, on a shelf in a darkened room, doing exactly what it was fashioned to do. Basket Number 6 has long been emptied of its original contents and now

sits on that shelf as a permanent reminder to me of the hundreds of thousands of other baskets, boxes and bags that still have pieces of someone's lives in them.

It is for them that I am here today and it is for them that I will continue to do all I can to get these kits off of the shelves of police evidence rooms and in the labs. It is for the victims represented by the letters and news articles in three different boxes that I have that I keep fighting for their right to justice.

Because someone cared, these ordinary items stored in an ordinary wire Basket Number 6 brought life to truth and that truth finally rendered justice.

Because someone continues to report to work, Basket Number 6 has been emptied. A rapist has been identified. Justice has been rendered and future victims have been spared.

A survivor has found new joy, a family and husband restored, and a community reunited. Every victim represented by those baskets, boxes and bags with viable evidence deserves to have a voice.

The day they allow that evidence to be taken from their bodies, they did everything that we have asked them to do. They endured a 4 to 6 hour intrusive, humiliating exam that they may have an opportunity for justice.

It is their right. We owe them that opportunity, and it is just simply the right thing to do.

Thank you.

[The prepared statement of Ms. Smith appears as a submission for the record.]

Chairman CORNYN. Thank you for that powerful statement, Debbie.

Mr. Hearn.

**STATEMENT OF SKYLOR HEARN, ASSISTANT DIRECTOR,
TEXAS DEPARTMENT OF PUBLIC SAFETY, AUSTIN, TEXAS**

Mr. HEARN. Chairman Cornyn, Ranking Member Durbin, other honorable Members of the Senate Subcommittee, my name is Skylor Hearn, and I serve as an assistant director with the Texas Department of Public Safety. It is an honor to appear before the Subcommittee today and participate in the dialog on this critical issue of untested rape kits in the United States.

My purpose today is to detail the achievements and progress underway in the State of Texas to address this issue and identify the successes, lessons learned, and remaining steps in our effort. My full written testimony has been provided.

As a summary, this national issue relative to the thousands of untested sexual assault kits across the country has focused great attention on the rights of victims, criminal justice practices, law enforcement efficiency, and the crushing demand on forensic science laboratories.

The State of Texas has been proactive in identifying and seeking resolutions through State legislative action. Texas Governor Greg Abbott, both now and as Texas attorney general, is a leading force and champion in this effort. What we have determined in Texas, which likely mirrors other parts of the Nation, is that several causative factors contribute to these sexual assault kits not being tested. Some of these factors include discretionary investigative or

prosecutorial decisions where suspect identity is not an issue; prosecutorial non-acceptance due to suspect, victim or witness credibility issues; and, victim reluctance to formally pursue criminal charges.

The predatory aspect of those who perpetrate sexual assault requires greater scrutiny to effectively address the impact of human rights posed by these criminals and their acts. The shifting nature of the Nation's population and the transitory nature of some sexual predators have resulted in the need to view these crimes in a different light.

There are many scenarios where sexual serial offenders could escape detection by targeting a specific class of victim or by committing crimes across multiple jurisdictions. What could be viewed as an isolated date rape incident in one jurisdiction may be the work of a serial date rapist with similar allegations in other cities and in other States.

This is the dynamic landscape of sexual assault investigations we face today.

The formal effort to address these issues in Texas began with legislative action through the State's 82d legislative session in 2011. The enabling legislation, Senate bill 1636, addressed several important areas surrounding the issues of untested rape kits, including establishing an end to discretionary testing for criminal investigations; defining active cases based on the existing statute of limitations, regardless of whether the case is investigative or judicial status; and, requiring every law enforcement agency and forensic laboratory in the State to audit and report the total number of applicable untested rape kits in its possession to DPS.

The legislation required DPS to provide a report on the total number of estimated untested kits. As a result of law enforcement reporting at the time, Texas identified over 15,000 applicable untested rape kits statewide.

As of reporting this month, the number of reported untested kits has climbed to more than 20,000.

In 2013, the 83d Texas Legislature appropriated funding to DPS to coordinate and outsource the testing of the statewide untested rape kits in this initiative. This process is fully underway and we expect to complete the testing portion of this initiative on every applicable kit in the State by November 2016.

While the issue of previously untested rape kits is being identified and resolved, the future of forensic evidence testing must still be championed. Mandatory submission and testing of sexual assault kits impacts forensic services. Laboratories will continue to need additional funding for personnel, resources and instrumentation to meet the ever increasing demands of forensic case work.

While beneficial in some areas, rapid DNA will offer little or no benefit in expediting the analysis of crime scene evidence.

Finally, while the efficiencies of this initiative can be argued, the forensic results are unequivocal. Forensic DNA evidence from untested rape kits is linking known offenders to reported crimes. Forensic DNA evidence from untested kits is linking previously unassociated cases together and identifying serial offenders.

From a victims' rights and human rights perspective, this initiative could be an extraordinary impact in providing a measure of

justice to current victims and in the prevention of future crimes and victimization.

Thank you.

[The prepared statement of Mr. Hearn appears as a submission for the record.]

Chairman CORNYN. Thank you, Mr. Hearn. Mr. Berkowitz.

**STATEMENT OF SCOTT BERKOWITZ, FOUNDER AND
PRESIDENT, RAPE, ABUSE AND INCEST NATIONAL
NETWORK (RAINN), WASHINGTON, DC**

Mr. BERKOWITZ. Thank you, Chairman Cornyn, Ranking Member Durbin and Members of the Subcommittee, for convening today's hearing on the rape kit backlog.

We believe that one of the greatest threats to public safety is the fact that most rapists are never apprehended or punished, leaving them free to commit more crimes with impunity, and we believe that the rape kit backlog plays a big role in this State of affairs, while also denying justice to many survivors.

According to the Justice Department, this crime is both pervasive, about every 2 minutes, another American is sexually assaulted, and underreported. About two-thirds of rapes are never reported to law enforcement. To make matters worse, rapists are often serial criminals, assaulting many victims over many years.

Forensic DNA is one of the best crime-fighting tools we have. It enables law enforcement to focus in on a suspect. It also identifies serial criminals, supports successful prosecutions, and helps exonerate the innocent.

It helps bring justice to victims and helps take rapists off the streets, making our communities safer and preventing future assaults.

That is why the backlog of untested DNA evidence from unsolved rape cases, the rape kit backlog, has been such a priority for RAINN for so many years.

As you mentioned, Mr. Chairman, to the untrained eye, a rape kit is not much more than a cardboard box or a very large envelope with swabs and vials and packets to hold everything from blood and bodily fluids to hair and fingernail clippings; basically, whatever forensic evidence a rapist leaves behind.

Each kit is actually the result of a victim who sat through an hours' long examination, often just moments after the assault. The victim's body, now a crime scene, is examined in minute detail. It is a sacrifice many victims are willing to make to achieve justice, but when we do nothing with the resulting evidence, we do them a great injustice.

In theory, once the exam is done and the report made, law enforcement sends that box to a DNA lab for testing. That is where the system often breaks down. When we speak of the backlog these days, we are primarily talking about these cases that are hidden from view, the rape kits, hundreds of thousands by some estimates, that are stacked up, usually in law enforcement warehouses, and have never been sent to the lab for testing.

There is a little good news here. Through your leadership, Chairman Cornyn, as you mentioned earlier, Congress last year reauthorized the Nation's first and largest anti-backlog initiative, the

Debbie Smith Act, named for the courageous and most tireless woman I know and dear friend, Debbie.

Congress has also funded a new initiative by the Bureau of Justice Assistance to test more kits and help communities with the downstream impact of testing, and the Manhattan district attorney has announced that he is devoting funds to testing nationally.

There has also been a lot of recent State activity, as was mentioned. Illinois and Texas are pioneers, leading the way on audits and testing. Together with our partners in the Rape Kit Action Project, we are encouraging other States to step up to count their kits and eliminate their backlogs.

Last year, 5 new States enacted such laws and this year there are another 40 bills pending in 20 States.

The work is far from done and there are a number of steps Congress can take to help. First, we need to ensure that existing programs are implemented to the letter of the law and in keeping with congressional intent.

For several years now, the Debbie Smith program, authorized at \$151 million per year, has been funded at just \$117 million per year. Still, that adds up to a lot of money. Over the last 10 years, through FY 2014, almost \$1.25 billion has been appropriated for DNA. Yet, in that time, only 51 percent of the money went for backlog capacity and testing purposes, even though that is, I believe, what Congress intended that it go toward.

Congress, in passing the SAFER Act 2 years ago, instructed that at least 75 percent of spending go toward testing cases and making sure that labs have the capacity to meet demand. Looking back at the last 10 years, if we had spent 75 percent of these funds over the last decade instead of the 51 percent we actually spent, that would have meant an extra \$296 million to put toward the backlog, which is enough to test almost 300,000 rape kits.

That might not have solved the entire problem, but we would have come awfully close, and all that would have been without a dollar of new Federal spending.

The SAFER Act also requires that at least 5 percent of funds go to help law enforcement conduct audits of rape kits, and it required that these audits be made public online. So far, not a dollar has been made available for this purpose under SAFER.

I urge the Members of this Committee, as well as appropriators, to help fix that problem going forward.

SAFER also required the development of national protocols, guidance that would be very helpful to the cities and States now grappling with this issue. The guidelines were due more than 6 months ago, but they have not yet been released.

The need is urgent. We need a public accounting jurisdiction by jurisdiction of how many kits are left to be tested. We also need to identify which ones should get priority. After all, victims in cases in which the statute of limitations will soon expire will never get another chance at justice.

We owe it to survivors like Debbie and to the hundreds of thousands who have not yet gotten a chance at justice to keep this a national priority and get the job done. Thank you for your role in that.

[The prepared statement of Mr. Berkowitz appears as a submission for the record.]

Chairman CORNYN. Thank you, Mr. Berkowitz. General Madigan.

**STATEMENT OF HON. LISA MADIGAN,
ATTORNEY GENERAL, STATE OF ILLINOIS**

Attorney General MADIGAN. Thank you, Chairman Cornyn, Ranking Member Durbin and Members of the Subcommittee, for the opportunity to testify on this important topic of timely testing of sexual assault evidence.

We know that sexual assault is occurring at epidemic levels. In the United States, nearly 1 in 5 women will be raped during their lifetime. Sexual assault is too often a reality and a persistent threat in our homes, our neighborhoods, on college campuses, on military bases, and on Tribal lands.

In contrast to the disturbingly large number of women sexually assaulted is the distressingly low number of women who report it. Studies indicate reporting ranges from 10 to, at most, 35 percent, and, in Illinois, the latest numbers reveal that less than 15 percent of reported rapes result in arrest.

We know the main reason that women do not report rape is that they do not believe their crime will be taken seriously, and these unconscionably low numbers justify their concerns.

Recently, survivors and their advocates have demanded that legislators and law enforcement focus on the horrific failure of our criminal justice system to prevent and properly respond to sexual assault. The failure of police to process rape kits is indicative of the overall problem.

Five years ago, Human Rights Watch investigated unsubmitted rape kits in Illinois. Based on the police departments that responded, HRW determined that of 7,494 rape kits collected, only 1,474 could be confirmed as tested.

In response to these shocking findings, I drafted and worked to pass the Sexual Assault Evidence Submission Act. As you have heard, this was the first State law of its kind in the country. It required two things: first, the identification and testing of previously unsubmitted rape kits and, second, the creation of a statewide protocol to submit new rape kits to the crime lab within 10 days.

This law resulted in the testing of over 4,000 previously unsubmitted kits. The results: 969 matches in the Federal CODIS data base. This massive failure to test rape kits resulted in the criminal justice system failing to protect public safety and failing to provide justice for sexual assault survivors.

How do we ensure that rape kits are properly collected, submitted and tested in a timely manner?

Currently, I am co-chairing a sexual assault working group in Illinois comprised of law enforcement, prosecutors, forensic scientists, and advocates to identify the barriers that prevent the efficient reporting, investigation and prosecution of sexual assault cases.

From what we have learned, I propose the following: first, all States should have a law that requires all rape kits be submitted for testing. Second, we must institute mechanisms to ensure that police comply with the law and submit all rape kits for analysis.

We can require tracking systems to ensure accountability and satisfy chain of custody concerns.

Third, forensic labs need sufficient funding and resources to test all the evidence they receive. Fourth, labs should undertake efficiency reviews.

Those measures are not enough. We must also recognize and rectify the other significant barriers that prevent sexual assaults from being investigated and prosecuted. The most important change necessary for successful sexual assault investigations and prosecutions is proper training for law enforcement and prosecutors.

The fact is that often rape kits are unsubmitted for testing because of a blame-the-victim mentality or because investigators mistrust the survivor's story. I have learned that too often police avoid testing rape kits by unilaterally deciding not to pursue an investigation.

In fact, at a recent summit I held on campus sexual assault, a police officer stated that he learned at the police academy that 80 percent of sexual assault allegations are false.

It is also critical that trained sexual assault nurse examiners are available to all victims of sexual assault 24 hours a day, 7 days a week. SANEs are needed to dramatically improve the collection of evidence and provide a compassionate response to the victim. In Illinois, my office has trained over 1,200 SANEs, but there are only 3 hospitals that I know of that have 24/7 SANE programs.

It is clear that our country's culture surrounding sexual assault and law enforcement's response to it must change. We must support survivors from the moment they report their crime or offenders will never be held accountable.

The United States is still a long way from assuring the safety of women and girls, boys and men from sexual assault and its traumatic aftermath.

I thank the Committee for this opportunity to testify and I welcome your questions.

[The prepared statement of Attorney General Madigan appears as a submission for the record.]

Chairman CORNYN. Thank you very much. Ms. Byrd.

**STATEMENT OF SARAH HAACKE BYRD,
MANAGING DIRECTOR, JOYFUL HEART
FOUNDATION, NEW YORK, NEW YORK**

Ms. BYRD. Chairman Cornyn, Ranking Member Durbin, Members of the Subcommittee, thank you for inviting the Joyful Heart Foundation to testify today.

On behalf of our founder and president, Mariska Hargitay, our CEO, Maile Zambuto, our board, staff and volunteers, and, most of all, the survivors we have the deep privilege to serve, it is an incredible honor to be here to talk about this important issue.

The Joyful Heart Foundation was founded in 2004 with the mission to heal, educate, and empower survivors of sexual assault, domestic violence, and child abuse and to shine a light into the darkness that surrounds these issues.

Our vision is bold and ambitious—one of a world without violence. Since 2010, the Joyful Heart Foundation has made the elimination of the rape kit backlog our top priority. Through partner-

ships with Federal, State and local government, nonprofit organizations, law enforcement, advocates, and survivors, we are working to bring attention, critical funding and reforms to improve the criminal justice response to sexual violence.

Ending the rape kit backlog will take a coordinated effort and deep commitment at all levels of government. Elected officials must ensure that sufficient funding is dedicated to process untested rape kits, to investigate and prosecute those cases, to implement a survivor-centered approach to victim notification and reengagement, and to require law enforcement to keep track of every kit booked into evidence and to make all that information available to the public.

Because most jurisdictions do not have a system for tracking or counting rape kits, we cannot be sure of the full extent of the rape kit backlog in the United States. What we do know is that each of these kits represents a lost opportunity to bring healing and justice to survivors and accountability for perpetrators.

While the road ahead to full and lasting change is long, the good news is that reform is happening. This year more than 20 State legislatures have passed legislation or have bills pending requiring sexual assault kit audits or some kind of mandatory kit submission timeline.

These laws will extend what we know about the true extent of the backlog.

Detroit has become one of the best examples of what a city can do when it has the political will to address its backlog. In 2009, Wayne County Prosecutor Kym Worthy's office discovered 11,341 untested rape kits in a police storage facility.

The county received funding from the National Institute of Justice to create a multidisciplinary team, which included Joyful Heart, to study the causes of the backlog and develop a plan to move forward with reform.

As of May 2015, Detroit's initiative has resulted in 1,133 DNA matches and the identification of 288 potential serial rapists. The DNA from these kits is linked to crimes in 31 States, from Alaska to New York, Texas to Illinois.

The results underscore what we know about sex offenders—that they rape again and again, they commit all kinds of crimes, and they often move from State to State, community to community.

Real reform begins when we extend a jurisdiction's backlog—when a jurisdiction's backlog is revealed. Cities must then confront the enormous task of finding the resources to implement comprehensive reform. The Federal Government has risen to this challenge. We are grateful to the President, Vice President and Congress for last year's creation of the new \$41 million grant program which provides communities with the critically needed resources to test their backlog kits and to implement comprehensive reforms.

Manhattan District Attorney Cyrus Vance has also stepped up to contribute \$35 million in funding for jurisdictions to test their kits. Joyful Heart is a proud partner in this effort.

As more States and jurisdictions enact policies to reform law enforcement practices around rape kit testing, the need for funding will increase. An additional \$41 million was requested in President

Obama's FY 2016 budget request and the House of Representatives announced its inclusion in the FY 2016 commerce bill last week.

We hope we can continue to count on your leadership and advocacy for these much needed funds as the appropriations process continues in the Senate.

We thank you for the attention you have paid to this issue today. As Mariska has often said, the rape kit backlog is one of the clearest and most shocking demonstrations of how we regard these crimes in our society. Testing rape kits sends a fundamental message to survivors of sexual violence that they matter, that what happens to them matters, that their cases matter. We must come together to solve this crisis. Survivors deserve nothing less.

Thank you.

[The prepared statement of Ms. Byrd appears as a submission for the record.]

Chairman CORNYN. Thank you, Ms. Byrd.

We will now proceed with a round of questions and alternate across the aisle here, so to speak.

I think, Mr. Hearn, you and perhaps Attorney General Madigan mentioned this and maybe Mr. Berkowitz. One of the things that seems to me that has changed about the culture of testing rape kits is that previously, local law enforcement officials would make a decision not to test a rape kit if, for example, the identity of the assailant was known or for some other discretionary reason.

Can you talk to the importance of the issue of uniformity of testing or reducing the discretion available to local law enforcement when it comes to testing these rape kits?

Mr. HEARN. Yes, sir. I think it—to address the issue as a whole, you have got to have a stopping point so it does not reoccur and the only way to do that, in our opinion, is through the legislative action of ending discretionary testing.

By requiring it or mandating testing on all criminal investigations, you relieve the burden of those discretionary decisions from law enforcement and prosecutors and the testing becomes mandatory. Across the State, everything is the same, and across the Nation, if it was done in all States.

Chairman CORNYN. That has been a revelation to me, but it strikes me that many times local law enforcement investigating a sexual assault would look at the one crime and think that, well, maybe this rape kit will not shed light on this crime because we know who the assailant was, maybe there would only be an issue of consent or something of the nature.

In fact, we have learned that not only will it help convict people who commit these crimes, it can actually stop people who commit serial offenses, which they typically do, Ms. Byrd and others mentioned. They do not just do it one time and go home. Then the third, at a time when we are all concerned, as we should be, about people being falsely accused, it can have a lot of power to exonerate people who have been falsely accused.

I just think that a lot of people have not—we have not thought as broadly and as deeply as we should about the power of this incredible evidence.

Money is a problem, and these are local crimes, typically, investigated by local police departments who may or may not have the

resources to do it. They may not have access to a forensic lab that has the sort of trained personnel, the sort of state-of-the-art equipment or the like.

I would just like to get the reaction from some of you. Are the things that we ought to be looking at in terms of forensic laboratories—I know Congress can help in terms of standards. We probably cannot help create a forensic laboratory for every jurisdiction that would like one. That is very expensive. I would be interested in Senator Tillis' view from North Carolina, formerly Speaker of the House, how he regards this issue.

Is there some way that we can bring down the cost of testing rape kits and try to improve the uniformity of the labs and the expertise that they have to offer?

General Madigan, do you have any views on that?

Attorney General MADIGAN. I think you can certainly make sure that the labs that are out there are running efficiently, which would reduce both the time and, hopefully, the cost that is incurred. As you point out, I think the number one plea that we hear from our State police, crime labs and the forensic scientists is that they are overwhelmed, and while it is an important step forward that States are passing laws requiring the testing of all kits and requiring the submission of previously unsubmitted kits, I do know that they find that overwhelming.

In Illinois, the commentary is that they will anticipate 70 more kits per month coming in, so hundreds during the year, and that they would need to have at least 5 more forensic scientists hired. The financial resources are absolutely imperative to make sure that we do not continue to have a significant backlog.

Chairman CORNYN. I know chain of custody of the evidence is very important in any criminal investigation. Local law enforcement is probably loathe to outsource some of this testing and every community has a certain amount of pride at having their own forensic lab.

My own experience, when I was attorney general, not just in this area, but, for example, in paternity testing in connection with our child support enforcement program, we found that the cheapest and most efficient way to do this would be to contract on a competitive bidding basis with a national laboratory, not necessarily to try to recreate another lab in every community or in every State.

I would just be interested if you have any light you can help us shed on that. Mr. Berkowitz, do you have any opinion in that regard?

Mr. BERKOWITZ. Yes. I think you are absolutely right that there is a lot of private lab capacity out there, and I think many States have found that that is the most cost-efficient way to go, because dealing with the backlog is a sudden rush of thousands of cases, if it is a big city, and then it is hopefully done.

Staffing up and bringing in all the new equipment you need to expand your State lab or your local lab is not always as efficient as using the private capacity that is out there.

Chairman CORNYN. I will close with this. People might wonder why is the Federal Government concerned with something that frequently is viewed as a local crime or a State-based crime. Given the interstate nature of this crime, as many of you have mentioned,

the transient nature of the assailant going from community to community, maybe State to State, the importance of having the CODIS or the FBI's DNA data base and making sure that the quality of the evidence that that matches against, I think there is, at least to my mind, clearly a strong Federal interest in this matter, as well.

We need to figure a way to work efficiently at the local, State and the Federal level. Senator DURBIN.

Senator DURBIN. Thanks, Mr. Chairman.

I want to try to trace, from your personal experience, Ms. Byrd and Attorney General Madigan and others who might know, who pays for what as we talk about this.

We have a situation that I referred to earlier with our Cook County Sheriff Tom Dart. He goes to Robbins, Illinois. It is a very small, very poor town, with not a very professional police department. He discovers in a locker this accumulation of rape kits that have been sitting there for years.

We have talked about Detroit and finding 11,000 untested rape kits there.

Under the ordinary course of events—let me start with you, Attorney General Madigan—under the ordinary course of events, who starts paying when the investigation is underway, the collection of the rape kit, the forwarding of it to a laboratory, the forwarding of that to prosecutors and such?

Attorney General MADIGAN. You ask a very interesting question because we have a bill pending right now in the State of Illinois Legislature to ensure that after a rape kit has been collected, that the victim is actually not being billed for the medical collection of it.

Senator DURBIN. That happens?

Attorney General MADIGAN. Unfortunately, that does happen and it should not be happening in order to receive Federal funding. That is one of the issues that we are contending with in our State.

Senator DURBIN. Who ordinarily pays for the kit to be—

Attorney General MADIGAN. Then when it moves on, my understanding is the vast majority of it is being paid for through State funding that is also obviously supported with a lot of Federal funding so that the labs are ultimately incurring these costs, which can be anywhere from \$500 to \$1,500, depending on how much evidence and how complex.

Senator DURBIN. Let me take you back to the original examination of the victim and let us say it happens in an emergency room.

Attorney General MADIGAN. Correct.

Senator DURBIN. Who pays the hospital bill?

Attorney General MADIGAN. It could be that the State of Illinois will ultimately pay that. It could be that Medicaid will pay that. It should never be a situation where the victim is paying that, by law.

Senator DURBIN. Does the police department ever end up with responsibility for that?

Attorney General MADIGAN. I do not believe the police department will ever end up with the responsibility of paying for the actual evidence collection of the rape kit.

Senator DURBIN. The kit moves from the emergency room to the police department. Let us assume that for a moment.

Attorney General MADIGAN. In Illinois, that is correct, although we are talking about the possibility of eliminating that step and sending it straight to the crime lab.

Senator DURBIN. That crime lab is run by our Illinois State Police.

Attorney General MADIGAN. It is run by the State Police, correct, but as Senator Cornyn mentioned, our State Police actually does outsource some of their testing and I know that Lake County outsources most of their testing. It is either going to a State Police crime lab, of which we have seven facilities in Illinois, or it is going to a private facility to be tested.

Senator DURBIN. After it has been tested at this police laboratory, I assume that it is then forwarded to a prosecutor.

Attorney General MADIGAN. The information will initially go back to the police department and it may also go to the prosecutor's office if the police department has asked it to go to the prosecutor's office.

Senator DURBIN. Okay. Ms. Byrd, you talked about Detroit, 11,000 kits that had been accumulated and never tested.

Ms. BYRD. That is correct. In Detroit, they have raised local funds. State funds have been dedicated to help them clear their backlog, and private funds, as well. They are outsourcing, in some cases, their kits to a private lab to help them with the capacity.

Through the district attorney's fund in New York, jurisdictions across the country will also have the opportunity to do that if their State or local labs do not have the capacity.

There is a resource and a personnel issue in crime labs, and so it is one of the big challenges in some States. You are seeing a wait in a crime lab over a year for a kit to be tested. It is too long for an opportunity for justice to be served sooner.

Senator DURBIN. I mention this, we had a conversation earlier, the attorney general and I did, and said what about the statute of limitations running while we are waiting and you might tell the panel what is happening in our State or at least being considered.

Attorney General MADIGAN. I think, in part, in response to the situation in Robbins, Illinois, that you brought up earlier during the hearing, the State legislature is currently moving a bill that I anticipate will pass during the spring session that would toll the statute of limitations until the test is actually completed.

God forbid it is 6 years or it is 2 years or 1 year, whatever that is, the statute of limitations will not start running until the kit has actually been tested and those results returned.

Senator DURBIN. It might be interesting to see how many States have responded that way.

Thank you very much. Thanks for your testimony.

Chairman CORNYN. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Thank you for having a hearing on this important subject.

Ms. Byrd, I think I am going to direct my first question to you. I know that the Joyful Heart Foundation issued a press release, I think it was called the Accountability Project, and in that press re-

lease, my home county, Mecklenburg County, had some 1,000 untested kits. Those are untested, not part of the backlog.

I had my office reach out to the Criminal Investigation Bureau for Charlotte, the Charlotte-Mecklenburg Police Department, and wanted to get a little bit more information on it. They have indicated to us that a number of those were cases not tested because the victim chose not to testify or the case was closed for some other reason.

I am just trying to get to a point to where we are measuring the right numbers here. My question to you is what are your thoughts and your organization's thought as to whether or not every kit should be tested? Even in instances where the case may be closed or the victim has not granted authority, what are your thoughts on that?

Ms. BYRD. First, let me say that a survivor's choice to move forward with the case should always be honored and that our approach to testing backlog kits should keep that in mind and be survivor-centered.

What I will say, Joyful Heart Foundation believes that all kits should be tested and dispute the idea that only some kits should be tested. What we have learned through jurisdictions across the country testing their kits is that what we thought we knew about cases, about why to move forward with cases, has not held up. We are seeing the results from the DNA matches that we are seeing in places like Detroit, Cleveland, Memphis in Illinois.

It begs the question why are we not testing these kits and there is a myriad of reasons why we hear from law enforcement they are not testing those kits.

We believe and the evidence is showing that in many cases, survivors are not believed when they go to law enforcement and so law enforcement makes a decision to not move forward with the case. In some cases, there is victim blaming; why were you out too late, why were you in this situation?

What we believe is that testing all kits eliminates that law enforcement bias and affords survivors the full possibility of receiving justice.

Senator TILLIS. Thank you. I do know that at least in North Carolina, we do not require the victim to pay for the test and that is a product of legislation that was put in place a few years back.

You mentioned Detroit. Are there any particularly good examples or best practices of States that you would hold out as something that would just move the Nation ahead if they were more uniform across the other States, best practices, either municipalities or at the State level?

Ms. BYRD. Yes. In fact, in Detroit, what we have seen work is a collaborative, community-based, multidisciplinary approach to reform. That is bringing together law enforcement, prosecutors, community advocates, researchers to come together and to tackle the process and to put in protocol systems in place to ensure that the rape kit backlog does not happen again, that the systemic failures that led to the problem in the first place does not happen, to ensure that there are protocols put in place for victim notification, for reengagement in the case of a backlog, of bringing survivors back in and engaging them with the criminal justice process.

We are seeing that model be replicated in Cleveland and in Memphis and other cities, and I would say that the strongest best practice is to bring everybody in the community together to tackle the issue.

Senator TILLIS. If any other panelist that has anything to weigh in in terms of other best practices, that will be the balance of my time.

[No response.]

Senator TILLIS. Thank you. Thank you, Mr. Chair.

Chairman CORNYN. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman and Ranking Member, for holding this hearing. Thank you all for being here and for your tireless efforts to combat sexual violence and ensure that survivors have access to the resources necessary to begin their healing process.

The rape kit backlog was one of the first issues I worked on when I first became a Senator almost 6 years ago. I was proud, in 2013, when I was part of the Violence Against Women Reauthorization Act. We included a provision that I authored which guaranteed that the survivors of sexual violence do not have to pay for the rape kit; that, again, the entity doing the test gets any Federal funding at all.

Unfortunately, we are still here discussing how to handle the backlog, and I am hopeful that we are going to see some changes as a result of this hearing.

Attorney general, the prevalence of sexual violence in communities across the Nation has received a lot of attention, a lot of media attention lately, and that is valuable.

We need to focus on the ways that survivors of sexual violence often face significant challenges in pursuing and achieving justice, which often only adds to the trauma they already experienced.

In your testimony, you note the need to increase access to sexual assault nurse examiners, or SANEs. Can you explain why these nurses are so critical to making sure that survivors have access to the care that they need and better access to the justice they deserve?

Attorney General MADIGAN. A sexual assault nurse examiner is somebody who has received 80 hours of training—40 hours of classroom training, 40 hours of clinical training—in how to appropriately collect the evidence off an individual, in addition to understanding the psychological impacts of being a victim of a sexual assault. They can collect that evidence in a compassionate way that does not further victimize or traumatize that survivor.

Additionally, you then have somebody who can be a very good expert witness if a prosecution is brought in one of those cases. When you talk to survivors, those individuals who actually went to a hospital ER or went somewhere where there was a SANE practicing report a much greater level of satisfaction with that very difficult, humiliating process.

It is absolutely imperative, we have found, to make sure that we have appropriately trained individuals to collect the evidence, to ensure both the healing process of the victim, as well as a prosecution of one of these criminals.

Senator FRANKEN. Thank you.

Mr. Berkowitz, Ms. Byrd, as a follow-up to my question of the attorney general, can you describe just generally what kind of access Americans currently have to adequately trained sexual assault nurse examiners, especially in rural areas and in communities most vulnerable to sexual violence?

Mr. BERKOWITZ. Sure. It is very inconsistent. The bigger the area, the better the likelihood of finding a trained SANE and one who is available particularly overnight. There definitely needs to be more resources into making sure that there are more SANE nurses that have this training nationally.

There is a lot of—particularly in rural areas and if you go into parts of Alaska, it could be hundreds of miles and a plane ride away to find a SANE. I think that is a problem.

Just to add, I agree with everything General Madigan said about SANES. I would add just one point, which is that it has been found that the likelihood of finding—of getting useable DNA out of the rape kit goes up significantly if it has been collected by a SANE who has had the training. That is another public safety value to having SANES out there.

Senator FRANKEN. Ms. Byrd, do you have anything to add to that?

Ms. BYRD. I think that for survivors who go to the hospital, being treated with the compassion and the care that this training provides is incredibly important. For women to make the journey to go into the hospital, as we have talked about, many women do not report the crime, but those who do go and move forward and get the testing of a rape kit, it is reassuring. It will mitigate some of the trauma of the exposure to the rape kit, which is 4 to 6 hours. It is invasive, it is extensive. We would like to see more across the country.

Senator FRANKEN. Thank you. Thank you, Mr. Chairman. Thank you, to all of you. Ms. Smith, thank you for your testimony.

Chairman CORNYN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman, and thank you for holding this very important hearing. To all of our panel, thank you for being here today.

At the beginning of your testimony, Attorney General Madigan, you mentioned sexual assault on campuses as one of the locations where very frequently this crime—we should never forget that it is a crime no matter where it occurs—perhaps most frequently happens.

I appreciate your reference to campus sexual assault because it is one of the crimes that is most commonly unreported and one of the places where female survivors may be discouraged from reporting by the lack of services, such as rape kits and nursing help.

I have a measure that I proposed, the Campus Accountability and Safety Act, with a number of my colleagues, that would require colleges to post information on their website regarding the name and location of the nearest medical facility where an individual may have a rape kit administered, as well as transportation options to visit those kinds of facilities.

I also understand you hosted a summit on campus sexual assault. I have held roundtables, 13 of them or more now, around my State in Connecticut.

I wonder if you could tell us, and then maybe others on the panel have views, whether that kind of access is important to campus sexual assault survivors? Campus sexual assault survivors may have special needs and there may be special problems with reporting and seeking these kinds of services, and perhaps you can talk about that issue.

Attorney General MADIGAN. Senator Blumenthal, I appreciate your work and we certainly are supportive of what you are doing in the State of Illinois.

As you mentioned, we recently held three summits around the State of Illinois on campus sexual assault and we found that there was an overwhelming response from university, college professionals, as well as advocates and students and survivors, and local law enforcement even, to talk about these issues.

It is absolutely imperative that campuses are following Federal law and do, in fact, have policies in place, are training individuals, and are absolutely providing information and resources to students. When and if they become victims of sexual assault, they know where they can go, they know who they can turn to, and they know the relief that could be available to them on their campus.

As you point out, many of these people on college campuses who are victims of sexual violence do not end up reporting to local law enforcement. Nonetheless, the accommodations that they need should be available through their college administration.

More and more we want to assure that those colleges and universities are aware of their legal requirements and are making those accommodations available so students can move forward with their education and not be permanently traumatized by sexual assault.

Senator BLUMENTHAL. One of the other provisions that we suggested is that there be memoranda of understanding, in effect, protocols between the campus and college administration and local law enforcement, whether it is police or prosecutors, and I wonder to what extent any of the members of the panel think that would be a good thing to do so that there are informed—better informed survivors who know to go to provide this evidence. It really is evidence that is necessary in a prosecution.

Attorney General MADIGAN. Okay. I will respond. We have seen that the reviews of that are mixed. When we had campus lawyers and local law enforcement who had a good personal relationship, they felt that they did not need a memorandum of understanding in place. In other places, there was clearly a disconnect and the idea of having that memorandum of understanding seemed to force people to be put together in a way that may not result in actual cooperation.

While I think it is a good idea, what we heard was most effective was the universities and local law enforcement who had, on their own, developed a relationship to address these situations.

Senator BLUMENTHAL. My time has expired. I want to thank all of you for your great work in this area and thanks for being here today. Thank you.

Chairman CORNYN. Senator Whitehouse.

Senator WHITEHOUSE. Thank you very much, Attorney General Cornyn—I mean, Senator Cornyn.

We are delighted to have this entire panel, which has been very helpful, but I particularly want to welcome my fellow attorney general.

We have, I think, passed two laws already to try to deal with the rape kit problem. We have spent probably north of \$1 billion, which, being from Rhode Island, I still think is real money and we still have this very significant backlog problem.

I am interested in two questions, I guess. One is if we were to try to solve this problem just with Federal carrots, how big do you think the expenditure would need to be considering that we have already spent \$1 billion? Would it be wise to pair something of a stick with the carrot so that burn grant or other types of funding were contingent upon having made progress against rape kit backlogs in order to try to drive progress in this area?

Let me lead with you, Attorney General Madigan.

Attorney General MADIGAN. I think the carrot-and-stick approach is a good idea. For instance, a number of us discussed the idea of ensuring that there are audits done and tracking systems in place so that there can be a measure of public accountability.

To the extent that you are making funds available, I think you also want to make sure that they are being used appropriately and efficiently. There is a series of things that can be done to make that a reality.

Senator WHITEHOUSE. Ms. Byrd.

Ms. BYRD. I agree with the attorney general. Tracking, auditing, greater transparency and accountability built into the system will help ensure that the backlog does not continue, that we continue to address the investigation and prosecutorial resource needs, and I absolutely agree with that.

Senator WHITEHOUSE. Within the—most of these cases are not done by State prosecutors. Most of them are done by county prosecutors, district attorneys. I do not know how many Illinois has, but I bet you have a lot.

Is there a wide array, in the experience of anyone on the panel, between the local best performers, people who are really diligent about clearing their backlogs, trying to preserve the DNA evidence, get cases made, and others for whom it is just not that big a priority for them?

Do you think it is a pretty even march forward, in your experience, across the country and jurisdiction by jurisdiction, are there some real stars who are working really hard and producing great results and some real laggards who just have not picked up the stick at all?

Attorney General MADIGAN. Let me respond to part of your question and then give somebody else on the panel an opportunity to talk, as well.

The State of Illinois has 102 counties. Each county has a State's attorney, who is your front line criminal prosecutor.

We have found that when they submit their DNA to the State crime lab, completely different times. Cook County, they say it takes them over a year to get results of DNA testing. Madison County says 60 to 90 days. Lake County has started to outsource, I think, in large part, for some of the reasons that were addressed

earlier; that it is more efficient and faster to get their testing done by somebody other than the State police crime lab.

Yes, there are some places doing much better in terms of prosecutions than others.

Senator WHITEHOUSE. Mr. Hearn.

Mr. HEARN. Senator, I think part of the issue, though, is the changing mind set of this issue. People are diligent about addressing the individual case and that may be a quick plea. Again, if identity, for instance, is not a question in the case, moving on to the next case has maybe been part of the issue.

By changing the philosophy and the nature of these types of investigations due to the predatory nature and the moving around, it will change some of that thinking so that all kits will be tested regardless of that individual case perspective and viewed more conceptually.

Senator WHITEHOUSE. Do you agree with Attorney General Madigan, in your experience, that there is a wide array of performance at the local, county sheriff level or are people pulling forward pretty evenly?

Mr. HEARN. I guess it varies. There are, obviously, resource issues at the rural side that are not faced at the urban side, but the urban side has volume issues that the rural side does not have. It varies between both.

Senator WHITEHOUSE. Just to conclude, do you think if you had to, you could come up with a handful of benchmarks that every prosecutor's office, every police department or sheriff's department ought to be attaining and make something contingent on their reaching that standard?

Mr. HEARN. At least speaking for Texas, with our current legislation that is in place that requires the submission within 30 days of receipt by law enforcement, I think that issue has been addressed.

It is the second half of the issue that falls on those that oversee a crime lab that getting the testing done in a timely manner, the resources needed to do that, and understanding that while we are here talking about sexual assault kits, sexual assault investigation includes other aspects of forensic science, toxicology, latent prints.

There are other—a kit may not be taken in every sexual assault investigation due to latency or some other issue. The broad investigation of sexual assault includes a whole host of forensic issues.

Senator WHITEHOUSE. Understood. I have gone over my time. I thank the Chairman.

Chairman CORNYN. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you for your leadership on this issue. We also have the good news that yesterday our sex trafficking bill passed through the House of Representatives, after a long journey. We are glad about that.

I know many of you. You have been here before in front of our Committee. As, Mr. Berkowitz, you know, we have a really strong RAINN chapter in Minnesota, and I have met with them many times.

The last time, when I remember back in December 2009, we had a hearing and we heard from you—Ms. Smith, thank you so much

for coming back—from a guy named Steve Redding, who headed up—when I was chief prosecutor in Hennepin County, Minnesota’s biggest county, we led most of the rape cases and the DNA issues in our Supreme Court, which, Attorney General Madigan, a guy named Steve Redding, who has done some really good work in the area.

What I was first curious about was how you have seen things change in the last 5 years. Have there been improvements—I do not know who wants to chime in on that—since we have had that hearing in terms of the backlog nationally.

Mr. HEARN. Senator, I will go first. For the State of Texas, State legislation has dramatically changed the environment of the investigation. The legislation ended discretionary testing for criminal investigation purposes. Every kit must be submitted and must be tested.

Senator KLOBUCHAR. Do people know if the other States are doing the same thing? Because I know our frustration would be even if Minnesota was caught up, if someone was from another State and committed a crime and they had a backlog, it hurt our victims, just as if the perpetrator was from our State.

Mr. HEARN. I think others have spoken earlier that couple of States have mandatory testing. Others are in the process of doing similar legislation.

Senator KLOBUCHAR. There have been some improvements, do you think, nationally?

Mr. HEARN. I think so.

Senator KLOBUCHAR. All right. Then the second thing I would ask about was the VAWA reauthorization which is coming up again. In that bill, we included a number of provisions to allow grant funds to be used to support sexual assault nurse examiners. I know Senator Franken touched on this in his questions.

What more do you think can be done in this area? Anyone can take it.

Attorney General MADIGAN. I am happy to. Do you want to talk? One of the things that could be most helpful is to ensure that hospitals are supportive of SANE programs. I have tried to work with the Illinois Hospital Association to ensure that we have 24/7 SANE programs in at least each trauma region of our State, of which there are 11.

We are still at a point that I am only aware of three known 24/7 SANE programs in hospitals in the State of Illinois.

It is insufficient. Our office has trained over 1,200 SANEs and when I talk to the SANEs, they tell me that they are not supported in terms of the clinical training that they need and that hospitals do not give them an opportunity to practice, which, as we have talked about, for a variety of reasons, traumatizes victims, does not allow us to collect DNA as well, and does not provide us with as good a professional witness during a prosecution.

You can do more or we can all find ways to do more to support SANE programs across the country.

Senator KLOBUCHAR. Anyone else want to chime in on that?

Ms. BYRD. I would just like to say that in a lot of—in some of the rural areas, they have gone to like mobile units, because whereas one area could not afford to have a SANE program, then

they have equipped this van and they actually go to the victim. It still takes some time sometimes, but at least they are making themselves available to a victim, which, in my opinion, SANEs are also one of the best kept secrets in the sexual assault world because a lot of victims do not even know what they are or that they are available. I believe it is also the key to getting victims to report.

Senator KLOBUCHAR. Right. Very good. Thank you. The last question I was going to ask was about recordkeeping, and I think we have known that one of the key things as we talk about what these States—to see what kits are sitting there untested is maintaining accurate records.

Some States have new auditing programs. I know the number of, as I mentioned untested kits in our State is really quite low. We are also considering legislation at the State level to do an audit.

How can we ensure that the audits are effective? How is the backlog issue do you think going to be impacted by continuing transitions to electronic and digital systems which would allow us to check those audits? Do you have any examples of best practices on that?

Mr. Hearn.

Mr. HEARN. I can touch on that from our experience as a lesson learned in Texas. Our legislation provided 45 days for the state-wide audit, which was far too low. I am not aware of any law enforcement agency in the Nation that has an electronic tracking system that shows I have a kit, it was sent to the lab, and it was tested. All three of those components are necessary.

We are asking agencies to go flip through case files to see if there a kit, did it go to the lab, did I get any results back from the lab to know that it was tested, and that takes time, especially for the larger agencies, and it takes resources.

I think Mr. Berkowitz touched on the fact earlier that the SAFER Act has funding available, but I do not believe any of that has been provided at this point.

Senator KLOBUCHAR. Right.

Mr. HEARN. I know that was a burden on our agencies trying to provide the audit.

Senator KLOBUCHAR. To have to do the audit.

Mr. HEARN. The deadline, they were diligent about trying to meet the deadline, but the deadline was missed, and we are still catching up to some of those agencies today.

Senator KLOBUCHAR. In an ideal world, they would be electronic, I suppose.

Mr. HEARN. Ideally.

Senator KLOBUCHAR. To have the funding for that up front and then it would be so simple to do an audit and so simple to have accountability on what is happening with the test.

Mr. HEARN. Yes, ma'am.

Senator KLOBUCHAR. Does anyone want to add anything to that?

Ms. BYRD. Senator, there is a pilot project going on in Detroit right now which is using—in partnership with UPS, is developing a tracking system to do just what you are mentioning right now.

Senator KLOBUCHAR. Where is that again?

Ms. BYRD. That is in Detroit. What they are hoping is it will allow them to monitor through the entire process where the kit is and for them to keep better track and be able to do the audits moving forward.

We are very early in that process, but the investment into technology to track is critically important in order to ensure that backlogs do not occur in the future.

Senator KLOBUCHAR. Exactly. I just always believed that when we started tracking cases, I mean, I remember when I came into my job, there was one attorney that had a bunch of truancy cases in a drawer, but I will just let that go for now. Maybe like 100 of them.

The more we could do the tracking with computers on everything and then you can start having timelines and you just bring accountability into the whole system, and, to me, that is going to make a big difference because people then can be compared from jurisdiction to jurisdiction.

If they have an ultimate problem, which they may really have, about funding, then that explains why they are behind other jurisdictions. It will really help us make the case for funding if we have all that data and that is why I kept asking about these pilots and what is happening.

Thank you very much. Appreciate it.

Chairman CORNYN. Mr. Berkowitz, it seems like there has been a lot of testimony about the role of audits raising the visibility of this issue of the rape kit backlog and, if I am not mistaken, you were one of the people who was championing that idea 5 years or so ago, and we were able to implement that requirement in the SAFER Act.

Would you comment about your views in terms of what function the audit process plays in solving this problem?

Mr. BERKOWITZ. Yes, sir. Thank you for being the lead on the SAFER Act and getting that passed and working with Senator Bennet and with Congressmen Poe and Maloney.

I think audits are a crucial piece of this in two ways. One, it gets law enforcement to go into their warehouses, look through their storage rooms and figure out what cases are there. Because of the lack of technology, that is often a challenge for many departments. Giving that encouragement to go through this process I think is really helpful.

Then the other thing that is really helpful is transparency. I think that the audit numbers—the SAFER Act provided that the Justice Department would post all these on the web so media and the public can compare jurisdiction by jurisdiction, and that is naturally going to create some grassroots pressure on jurisdictions to address and test their backlogs.

Chairman CORNYN. I could not agree more that as long as this problem is sort of out of sight, out of mind, it is easy to ignore, but you cannot ignore the numbers that we are seeing from these audits, and I think part of the reason we are here today is because the visibility of this issue has been raised over time.

The person who I credit it with mostly is Debbie Smith for being such a great example and a champion on this issue. I would be remiss, Debbie, if I did not ask you if, based on what you have heard

today, based on your own experience and working so hard in this area for so long for so many people, do you have any advice and counsel about what else we need to be doing that we are not doing or what we may have overlooked?

Ms. SMITH. There has been a lot of talk about money today and I know that is huge. I think, for me, and I guess—I have said often that I guess this is why they do not name bills after people who are still alive, because we come around and we say what is going on. For me, I would just like to see the money used more for what Congress meant it to be used for.

Everybody—there was such bipartisanship on this bill and it is supposed to be a backlog bill, and backlog meaning several different things; backlog meaning the rape kits which need to be tested.

Without testing offender samples, testing those kits means nothing. It is not just about testing. It is about matching and matching those numbers and getting those rapists' names and getting them off the street.

It is also about building capacity and making sure that the labs can keep up with their workload once that backlog is done.

I believe the Debbie Smith Act has been sort of a victim of its own success. We have done a great job and police officers are beginning to see the value of what was once—when my case went to trial, it was termed as the voodoo science and that was just in 1995.

When we look back and see, we have come such a long way. We still have a long way to go. We have to be able to get all three of these components working together in order to get this job done so we do not have to keep reauthorizing the Debbie Smith bill and Debbie Smith can go back to Williamsburg and she does not have to come to Washington anymore.

I just would like to see that money used efficiently for what Congress and for what everybody fought for it and used for that purpose, and, to me, that is the best way that we can serve victims is to do what we set out to do.

Chairman CORNYN. Mr. Berkowitz, I think you were the one who talked about if the 75 percent of the funds had been used actually to test rape kits, what a dramatic impact that would have on this—who knows what it is—400,000 rape kit backlog without anymore taxpayer money being appropriated.

Thank you for that observation. I think that makes Ms. Smith's point very well.

We talked a lot about transparency and accountability and I agree that that has really been an important part of the reforming of this whole problem that we have seen.

I would just note, Mr. Hearn, Texas actually posts on a website all of the rape kit audit information, does it not?

Mr. HEARN. Yes, sir. We post the reported cases from the audit and their current outsourcing status.

Chairman CORNYN. Someone asked about carrots and sticks. We need to be careful on how we approach that and what we tie grant money to, but it strikes me as a pretty commonsense approach to creating the kind of transparency and accountability that I think will continue to cause people to come to Congress and to their

local—their State legislature and their local county government and say what are you doing to help address this problem and to make the situation better.

I think that sort of transparency and accountability is really important.

Senator Durbin, I have taken another partial round, any other questions you have?

Senator DURBIN. No.

Chairman CORNYN. Let me just say, to all of you, thank you very much for being here today. Thanks to each of you in your own way for being leaders in this important effort. We are all committed to working together to eliminate this backlog, if that is humanly possible, recognizing that this is a big country and a lot of different layers of law enforcement and a lot of different challenges, rural and urban and the like.

I am convinced that working together we can definitely make this situation much better than it is now for people like Debbie Smith and the people she represents.

Thank you very much. The hearing is adjourned.

[Whereupon, at 4:16 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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Senator Dick Durbin, Ranking Member
Opening Statement
Subcommittee on the Constitution
Hearing on “Taking Sexual Assault Seriously: The Rape Kit Backlog and Human Rights”
May 20, 2015

Thank you, Mr. Chairman, for convening this important hearing. I'm glad that we were able to work together on a bipartisan basis for this Subcommittee's first hearing in the 114th Congress. Clearly, this is an issue we must work together to solve.

According to the Centers for Disease Control and Prevention, an estimated 19.3% of women and 1.7% of men have been raped during their lifetimes in the United States. And a National Crime Victimization Survey found that between 2006 and 2010, 65% of rapes and sexual assaults went unreported. When a victim does report, she should be confident that there will be a thorough investigation and that her attacker will be prosecuted. Instead, thousands of victims have faced inexcusable, ongoing trauma as their rape kits go untested and rapists get away with their horrific crimes.

Experts have estimated that hundreds of thousands of rape kits remain backlogged across the country, stuffed into police department evidence lockers or awaiting testing at crime labs. Experts believe that this estimate is low, given that jurisdictions are not required to report the number of kits that have yet to undergo testing.

The backlog has resulted in heartbreaking miscarriages of justice. Last week, *New York Times* columnist Nicholas Kristof detailed the story of Natasha, a young woman from Robbins, Illinois who was brutally raped at the age of 14. Years after the assault, the Cook County Sheriff's Office found scores of untested kits in the evidence room of the Robbins Police Department, including Natasha's. After testing, the kit revealed a DNA match—but the statute of limitations had expired, and so Natasha's attacker could not be prosecuted.

For victims like Natasha, justice delayed too often means justice denied. And, as Cook County Sheriff Tom Dart has noted, victims from cash-strapped, low-income communities—like Robbins—often are disproportionately affected.

The good news is that we have made improvements in recent years. In 2004, the Debbie Smith Rape Kit Backlog Reduction Act became law as part of the bipartisan Justice for All Act. I was glad to see the Debbie Smith Act reauthorized last year to help ensure that crime labs have the resources they need to test the kits they receive.

States like Illinois and Texas are leading the way on this issue. In 2010, Illinois passed the first rape kit backlog law in the nation. The law mandates that law enforcement submit kits to the Illinois State Police for testing within ten days of receipt. As a result of this, the backlog of approximately 4000 kits in Illinois has been eliminated, and 969 profiles of suspects have been matched in CODIS, the national DNA databank. While Illinois has more work to do, as evidenced by Natasha's story, the law is a significant step toward justice for victims.

Testing all rape kits not only helps ensure that dangerous offenders are prosecuted; it also helps exonerate innocent people. To cite just one example, when New York City processed its backlog, DNA evidence revealed that a man who had spent 11 years in jail had been wrongfully convicted of rape after the victim mistakenly identified him as the perpetrator.

Beyond the rape kit backlog, we must consider how we can comprehensively address the sexual assault epidemic. We need to focus on preventing rapes from occurring in the first place. We need to provide law enforcement agencies with access to training on how to respond to traumatized victims. As tested kits reveal suspects, we need to provide investigators and prosecutors with adequate funding to pursue cases. And we need to ensure that crisis centers and victim assistance organizations have the resources to aid survivors.

Congress took a step in the right direction by appropriating \$41 million last year to address the rape kit backlog and develop comprehensive, multi-disciplinary responses to sexual assault cases. The House Commerce, Justice, and Science Appropriations Subcommittee included a continuation of this vital funding in its Fiscal Year 2016 bill, along with funding the Debbie Smith Act. This is a step in the right direction, and I hope that the Senate CJS Subcommittee will take the same approach.

This funding will make a significant difference in cities and states across the country, but there is much more work to be done. Eliminating the rape kit backlog, prosecuting offenders, and providing support services to victims will require ongoing appropriations in the years ahead. That's one reason we need to pursue critical reforms to our criminal justice system like the bipartisan Smarter Sentencing Act, which would reduce overcrowding in federal prisons by lowering sentences for non-violent drug offenses. At a time when incarceration and detention costs account for one third of the Department of Justice's budget, we need to free up resources for other priorities, like eliminating the rape kit backlog.

Thank you Mr. Chairman, I look forward to working together to ensure that victims of sexual assault receive the justice they deserve.

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Subcommittee on the Constitution
Hearing on “Taking Sexual Assault Seriously: The Rape Kit Backlog and Human Rights”
May 20, 2015**

Today, the Judiciary Committee will hear from several witnesses about untested DNA evidence from sexual assault forensic exams. We will consider whether backlogs of untested DNA evidence remain a problem, despite the enactment in 2004 of the Debbie Smith Act.

The Debbie Smith Act, which is named after our first witness, originally passed Congress, with my support, as part of the 2004 Justice for All Act. Congress last reauthorized this important federal statute in 2014. It sends funds to states to help reduce backlogs of untested DNA evidence from crime scenes and from convicted offenders.

Reducing such backlogs of untested DNA evidence is critically important to survivors of sexual violence, as Debbie Smith will today testify. We are pleased to have Debbie, who played such an important role in the enactment of the Debbie Smith Act, with us at today’s hearing.

In 1989, Debbie was raped by a masked intruder. She reported the crime and underwent a sexual assault forensic exam. Debbie waited approximately six years for the rapist to be identified. The case eventually was solved, thanks to DNA evidence. Since then, Debbie and her husband, Rob, a former police officer, have advocated for full funding of the Debbie Smith DNA Backlog Reduction Program.

This program has helped crime labs around the nation promptly analyze DNA evidence, like that which was key to identifying Debbie Smith’s rapist. In this same period, however, the demand for DNA testing has increased as well, because jurisdictions around the country have increased their reliance on forensic evidence as a crime solving tool.

Because DNA evidence is now, and likely will continue to be, such an important tool in identifying perpetrators of rape and other crimes, it is crucial that the evidence be examined in a timely manner. Collecting and analyzing such evidence is important to catch offenders before they strike again. It is completely unacceptable for forensic evidence from crimes of sexual violence to sit untested for months or even longer while rapists remain at large and the statute of limitations is expiring.

Over the last decade, members of this Committee have played an important role in ensuring that the Debbie Smith Act is reauthorized and the DNA Backlog Reduction Program is funded. This year, I joined Senator Cornyn and 28 other colleagues in calling on Senate Appropriations leaders to again make this program a priority in the fiscal year 2016 appropriations process.

I want to thank Senator Cornyn for his involvement in organizing today’s subcommittee hearing and his leadership in chairing it. I welcome our other witnesses and look forward to hearing their testimony on this important issue.

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on “Taking Sexual Assault Seriously: The Rape Kit Backlog and Human Rights”
May 20, 2015**

We are here today to address our nation’s response to the devastating crime of rape. I appreciate that this hearing will not only focus on the unacceptable and ongoing backlog of untested rape kits, but also on the human right to be free from this violence. The crimes of rape and sexual assault are so reprehensible because they strike at the core of victims’ personal autonomy and control over their bodies.

For too long, survivors of sexual assault, the vast majority of them women, have been ignored or disbelieved. They have been told they must have done something wrong - they walked down the wrong street, sent mixed signals, or just feel regret. This attitude is offensive and unacceptable – at its base it suggests a lingering belief that women do not fully own their own bodies or decide their own actions. When we let these rape kits languish for years on lab shelves, when we treat crimes of rape with less urgency, it reinforces the terrible message that these are second class crimes. Each of these kits represents a devastated, traumatized survivor, and we owe it to them to find their offenders and to hold them accountable.

Debbie Smith, who I am proud to count as a dear friend, waited seven years after being attacked before her rape kit was tested and the perpetrator was caught. *Seven years.* I have worked with Debbie and her husband Rob for more than a decade to ensure others will not experience the same ordeal.

Debbie is a model of courage and the most tenacious and effective advocate I know. When we first worked to get the Debbie Smith Act passed as part of the Justice for All Act in 2004, Debbie spent hours going from office to office with another friend of ours Kirk Bloodsworth – the first person to be exonerated from death row by DNA. It was their personal appeal – their ability to remind us all that real lives are in the balance – that got that legislation passed into law.

Now, Debbie, I know you thought your job would be over long ago, but I am so grateful for your ongoing and tireless efforts.

The Debbie Smith Act makes a difference - rape survivors across the country have found justice because of it. In September of last year, I went to the Senate Floor and asked unanimous consent to reauthorize this important legislation. I was proud when President Obama signed it into law just a few days later. And now I look forward to working with Senator Cornyn to reauthorize the other important programs in the Justice for All Act.

We must change the national response to sexual assault and that is why when we drafted the Leahy-Crapo Violence Against Women Reauthorization Act of 2013, we put our money where our mouth is and dramatically increased specific, dedicated funding to sexual assault response, including greater attention to collecting and processing rape kits.

Solving this problem won't be easy. My home state of Vermont has committed professionals at the Vermont Forensics Laboratory and the Vermont Network Against Domestic and Sexual Violence who work to ensure these kits are tested promptly and backlogs are minimized. But challenges remain. Although the goal in Vermont is to have every kit tested by the lab within 48 hours, sometimes kits remain in storage longer, and the cause of delay is not always clear. Sometimes the kits remain at the hospital, sometimes the police station, and sometimes the lab. States all over this country are wrestling with these same issues - they want to do better - and it is our job to help them improve.

Survivors are asking us to do more. They are asking us to believe them and to take these cases seriously. We owe them that.

I thank Senator Cornyn for convening this hearing, and I look forward to hearing the testimony of our witnesses.

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Subcommittee on The Constitution

May 20, 2015

It is an absolute privilege to be here today. Before I begin please allow me to take this opportunity to publicly thank Senator Cornyn for being a huge supporter of changing the issues that surround victims of sexual assault. His commitment to these issues speaks of his devotion to crime victims and their families. His wonderful staff has always made themselves available with pertinent information and help. Thank you, Senator Cornyn! Lifetime Television once described me as an “advocate by accident” and it is a true statement for I would have never walked purposefully into this place. But before I got here, there were already those, like NCVC, who were working diligently to pave the road for others. I am always humbled to sit at the table with Scott Berkowitz from RAINN, another one of those who purposely chose to find a way to make the path easier for sexual assault victims. Around this wonderful county of ours there are many more, too numerous to name, who fight this war on behalf of sexual assault victims and I am in awe of their commitment. As the years have passed we continue to have others, such as Joyful Heart, to join this continuing battle. As a victim of this horrific crime I am overwhelmed by the dedication of these professionals.

My personal experience as a rape victim provides me with the understanding of the devastation of this crime. With understanding

comes knowledge and with knowledge comes responsibility. This vivid understanding of knowledge and responsibility has changed my life forever.

I truly believed that March 3, 1989 would be the last day that I would feel the loving touch of my husband's embrace or hear the precious voices of my children say, "Mom, I love you." It was on that Friday afternoon that a stranger entered my home threatening to kill me if I screamed. He then abducted, blindfolded and led me to the woods behind my home where he robbed and repeatedly raped me.

The day I was raped was also the day this basket came into my life. This is Basket #6 and it has *never* held anything that gave it any real value ... nothing of monetary worth. It used to hold a pair of Reebok tennis shoes ... no big deal ... except it my first pair of brand name tennis shoes. There just never seemed to be enough money after buying the children's shoes. There was an Aigner purse and matching wallet emptied of its cash ... the purse and wallet combined were worth more than the shoes, but they still didn't carry an enormous price tag ... except they were a Christmas gift from my husband. He worked overtime so he could surprise me with the matching set. Basket #6 also held a pair of no name jeans ... no great expense there except ... they were my favorite as they fit just right in the waist and hips. There was also a sealed envelope containing public hairs, vials containing a cotton swab, and a pair of semen stained underwear ... definitely nothing of value. Stored in this ordinary wire basket, none of these

ordinary items were of any real value ... unless, of course, they belong to you.

After being raped I struggled with trying to live with the memories of that day. For 6½ years the smell of his breath, the touch of his cool, damp coat sleeve around my neck, the sight of his black rubber boots and the sound of his voice in my ears reminding me, “Remember I know where you live and I will come back to kill you if you tell anyone” were all stored in my mind unwilling to be discarded. I needed peace, security and to feel normal again. I had no hope that I would ever attain this vital relief. I had found the fate worse than death and it was living with the painful memory, living with the fear that he would fulfill his promise to return to kill me or even worse that he would he take out his revenge on my children or my husband. I merely existed for those 6½ years as fear held my heart and soul within its grip, choking out any joy of life. I became suicidal, seeking peace and rest from the pictures that played without warning in my mind.

Basket #6 has always been filled with what seemed like insignificant items, but it was this very Basket #6 that stored the rape evidence kit that would deliver peace to my heart and allow me to truly live life again. It held fragments of a life lived ... it held answers to my questions, solutions to my fears and peace for my soul. All of these resolutions were confined to this 11” x 12” ordinary wire basket sealed with red evidence tape.

On July 26, 1995 we received the news that a DNA cold hit had revealed the name of my rapist. He was already in prison for another crime. The torment was finally over ... I knew where he was! My family was safe! Basket #6 was finally allowed to speak!

Basket #6 now sits on my bookshelf alone. In my home, it still holds nothing of great value, but in my heart it holds the memory of a day gone terribly bad ... a day from which I thought I may never recover. Before it was brought to my home Basket #6 sat behind a locked door, lined up with many others on shelves in a darkened room doing exactly what it was fashioned to do ... sitting, holding, separating and waiting. Basket #6 has long been emptied of its original contents and now sits on that shelf in my office as a permanent reminder of the hundreds of thousands of other baskets, boxes and bags that still have the pieces of someone's life within them. It is for them that I speak today and it is for them that I will continue to do all I can to get these kits off the shelves of police evidence rooms and labs. It is for the victims represented by letters and news articles in this box and the two others like it at home that I keep me fighting for their right to justice.

Because someone cared those ordinary items stored in ordinary wire Basket #6 brought life to truth and that truth rendered justice! Because someone continues to report to work, Basket #6 has been emptied, a rapist has been identified, justice has been rendered, his future victims

have been spared, a survivor has found new joy, a family has been restored and a community united. Every victim represented by those baskets, boxes and bags with viable evidence deserves to have a voice. The day they allowed that evidence to be taken from their bodies they did all they were asked to do. They endured a four to six hour intrusive, humiliating exam that they may have an opportunity to receive justice. It is their right, we owe them this opportunity and it is simply the right thing to do.



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Hearing on the Rape Kit Backlog
Written Testimony of Scott Berkowitz of the
Rape, Abuse & Incest National Network (RAINN)
Before the U.S. Senate Judiciary Committee
Subcommittee on the Constitution
May 20, 2015

Chairman Cornyn, Ranking Member Durbin and members of the subcommittee, thank you for convening today's hearing and for the opportunity to address you on the backlog of untested DNA evidence from unsolved rape cases. The vast number of rape kits sitting in warehouses, and the frightening number of rapists left free to strike again, make this an urgent national issue that threatens public safety.

My name is Scott Berkowitz, and I am the founder and president of the Rape, Abuse & Incest National Network, or RAINN. RAINN, the nation's largest anti-sexual violence organization, founded and operates the National Sexual Assault Hotline (NSAH) in partnership with more than 1,000 local sexual assault service providers across the U.S. The NSAH, which has helped more than 2.1 million survivors of sexual assault by telephone and through online chat, serves as the nation's primary resource for victims of sexual violence. RAINN also operates, on behalf of the Department of Defense, the DoD Safe Helpline, which provides services to members of the US military affected by sexual assault.

RAINN also educates more than 130 million Americans each year about sexual assault prevention and recovery, and works hard to improve the criminal justice response to rape and create an environment in which more victims will feel comfortable reporting.



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This is a crime that reaches every corner of our society – about once every two minutes, an American is sexually assaulted, according to the Justice Department. But it's also a crime for which, all too often, the only one who pays a price is the victim. More than two-thirds of sexual assaults — 68% — go unreported to law enforcement. Meanwhile, rapists tend to be serial criminals, striking more than once and assaulting more than one victim in the course of their criminal careers. Forensic DNA, which enables law enforcement to identify sexual predators early on and stop them in their tracks, is not only important to attain justice for those who have already been harmed, it is one of the most effective rape prevention tools that we have available.

Congress made the processing of forensic DNA a national priority by passing the DNA Analysis Backlog Elimination Act. It expanded its commitment — specifically in regards to rape kits — through enactment of the Debbie Smith Act in 2004. That act, which RAINN worked hard, in partnership with Debbie Smith and other advocates, to get passed and reauthorized, established the nation's first and largest anti-rape kit backlog program. In 2013, Congress passed a key amendment to this landmark law to require, for the first time, support law enforcement audits of their so-called "hidden" backlogs of unsubmitted forensic evidence, and to make sure that a higher percentage of the DNA funding dollars goes directly to what matters most: testing rape kits and making sure labs have the capacity to meet demand.

Before I discuss the incredible advancements we've witnessed in both science and public policy in the nearly two decades of work around this issue, I want to remind everyone exactly what it is we're talking about.



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To the untrained eye, a rape kit is little more than a cardboard box that contains slides, swabs, white sheets, plastic bags, and the like, in which is stored biological evidence collected during a sexual assault forensic medical exam.

But we must look beyond the box. Each rape kit, in actuality, represents a victim — a victim who chose to endure an invasive, hours-long examination. Often starting just minutes or hours after the sexual assault, this victim will stand over a sheet and lie on a table to allow evidence — a ripped fingernail, a piece of torn clothing, anything his or her attacker might have left behind — to fall, be scraped or removed from their body. A medical professional (ideally, but not always, a trained sexual assault nurse examiner) will examine and photograph the victim's genitals for evidence of trauma. The victim's buttocks, armpits, breasts, and mouth will be wiped and swabbed in the hope that a strand of hair, a bit of dried blood, or a drop of semen or spit might be recovered.

Once collected, in the event that a victim decides to report the crime to law enforcement, the items in that box will, if the system is working as it should, go to a laboratory for DNA analysis. Unfortunately, it is often at this stage that the system breaks down. Hundreds of thousands of kits, it is estimated, have never reached a lab. Instead, they became part of what we call the "hidden backlog," warehoused in evidence rooms and, often, never seen again.

Assuming the kit makes it to the lab for processing, is analyzed in a timely fashion and, after processing, yields a profile to be uploaded to the FBI's Combined DNA Index System (CODIS), the results may be used by law enforcement to bring an assailant to justice.



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No one, of course, *expects* (nor deserves) to be a victim of sexual violence. Nobody wakes up in the morning expecting to later lie prone on an examination table and have their body, now a crime scene, poked and prodded to collect evidence.

And they certainly do not expect, after this incredibly difficult process, for the evidence so painstakingly collected to be shelved in a warehouse or evidence room for decades on end, never to be reviewed or analyzed.

What a victim does — and should — expect is that the evidence from the assault will be treated with care and taken seriously. Not every rape kit will lead to a conviction, of course. Getting a conviction will still require lots of hard work by law enforcement and prosecutors, who will conclude, in some cases, that there's just not enough evidence to make an arrest or to prosecute. But even when, in a state where testing is not mandated, a decision is made not to test a particular kit, the victim deserves to know that someone, somewhere, took time to review it and make an informed determination about its disposition.

Recognizing this, and the fact that forensic DNA has the ability to spare potential new victims, bring justice to those who have been victimized, and exonerate the innocent, Congress, the administration, and, increasingly, states, have taken actions to reduce current backlogs and prevent future ones.

For two decades, RAINN has worked closely with policymakers on this front. As earlier discussed, we supported and advocated for landmark legislation, including the DNA Backlog Elimination Act of 2000 and Debbie Smith Act of 2004 and its subsequent reauthorizations.



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In 2013, we worked with you, Chairman Cornyn, to encourage passage of the SAFER Act, an important amendment to the Debbie Smith Act. SAFER mandated an increase in the percentage of DNA funds that are spent on DNA testing and analysis, and it will, when implemented by the National Institute of Justice (NIJ), provide funds to law enforcement agencies to audit their backlogged forensic evidence.

Many states are also starting to do their part to fix the problem. Working with our partners in the Rape Kit Action Project (RKAP), we have encouraged states to require law enforcement agencies to inventory unsubmitted rape kits and devise policies for prompt evidence processing.

Last year, with RKAP's technical assistance and support, seven states¹ passed new laws. To date, 13 have started or completed audits of their state's hidden backlog.² However, in a number of states, the information gleaned from these audits has been less than perfect: without meaningful enforcement mechanisms, they encountered challenges in getting results from all jurisdictions. This is where the SAFER Act will be particularly helpful — once it is implemented as the law requires.

This legislative session alone, there have been about 40 bills introduced in 20 states, while five states have enacted new reforms.³ States are also starting to build this work into their budgets. Texas and Illinois have been national leaders in this area. Illinois was the first state in the nation to legislate a statewide audit. Texas conducted audits that found an estimated 20,000 kits and then allocating \$11 million to address the backlogged cases. In Washington state, lawmakers are expected to soon approve \$2.7 million for anti-backlog work.

¹ CA, LA, MA, MI, TN, UT, and VA.

² CA, CO, IL, KY, LA, MA, MD, MI, TN, TX, WA

³ AR, KY, MD, TN, WA



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Also reflective of the power of DNA as a tool to stop rapists and other criminals in their tracks is the fact that nearly thirty states are properly treating DNA as, essentially, a more sophisticated and accurate version of fingerprints, collecting it after someone is arrested on certain felony charges. (The remaining states wait until a conviction to collect DNA.)

As more and more communities discover large numbers of unsubmitted kits, they sometimes encounter systemic challenges, including a lack of investigative resources and weak inter-organizational collaborations for victim-centered, post-assault services. For these reasons, we also support programming — like the new Sexual Assault Kit Initiative funded in this year's budget and announced by the Bureau of Justice Assistance — to ensure that communities grappling with rape kit backlogs have the necessary tools, resources, training, and opportunities for collaboration to turn a CODIS hit into a conviction, and promote victim healing. Similarly, we are pleased that Manhattan District Attorney Cy Vance has pledged \$35 million to help states test backlogged kits. We view these as great complements to the critically important work being done through the Debbie Smith Act.

Is there a benefit to public safety to test kits from crimes that happened years ago? So far, the data are encouraging: In Colorado, 24 rape suspects were identified after the testing of 150 previously unsubmitted kits. In Ohio, 1,600 rape suspects were identified after 4,000 old kits were tested. In Detroit, where a tremendous undertaking has been supported through Debbie Smith Act dollars, after testing a batch of 1,600 kits, 100 rape suspects were identified. We're encouraged by NIJ initiatives like the Detroit Sexual Assault Kit Action Research Project. Through such initiatives, we are gaining insights into the why backlogs occurred and how they should be handled.



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For all of our progress in recent years, there remain challenges that we urge the Judiciary Committee to evaluate and address.

Our first challenge lies in ensuring existing programs are implemented to the letter of the law and in keeping with explicit Congressional intent.

Since it was first authorized in 2004, the Debbie Smith DNA backlog Grant program has provided states the help and resources they desperately need to carry out DNA analyses of backlogged evidence, particularly rape kits. The law, which was just renewed for another five years with overwhelming bi-partisan Congressional support, is authorized at the level of \$151 million per year. Yet, consistently, the program has been funded below that authorization level – for the last several years at the level of \$117 million.

Even worse, only about 65% of that \$117 million, on average from FY11 through FY14, is actually being spent on Debbie Smith backlog testing and capacity building purposes. That means, out of \$476 million appropriated in that period, about \$309 million went to testing and lab capacity. Further, this trend actually shows signs of worsening, not improving: according to DOJ's figures, from FY11 to FY13, the amount of DNA money that allocated to administrative and program support costs rose by 94%, or approximately \$6.8 million, after excluding costs imposed by sequestration, while the amount spent on Debbie Smith Act backlog reduction grants decreased by 16%, or about \$14.2 million per year.

While spending 65% of DNA funds on testing is an improvement over some prior years, it still falls short of the 75% floor that Congress mandated in the SAFER Act, and the president signed into law, more than two years ago.



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We hope that all members of the Judiciary Committee will urge appropriators to rectify this in the FY16 budget. We believe that Congressional intent on this point is clear: the law mandates that not less than 75% of the funding available for the purposes of the Debbie Smith Act shall support testing and capacity enhancement; and an additional 5-7%, as required by the SAFER Act, must be made available for law enforcement evidence audits. Clearer appropriations language would result in testing thousands of additional kits without any additional federal spending.

This need is urgent: As law enforcement increasingly accounts for the hidden backlogs, states will be grappling with higher-than-ever demand for critical forensic DNA casework. Already, according to NIJ, public crime labs processed 10% more DNA cases in 2011 than in 2009, while demand for such tests grew by 16%. We can't afford to have funds siphoned away from the Debbie Smith Act purpose areas, however worthy those other goals are.

This need is time-sensitive: Without accelerated testing of backlogged cases, many victims will lose their chance at justice. Among the 43 states that still have a statute of limitations on felony sex crimes, , DC and 16 states, including Ohio and Rhode Island, do not make an exception for when DNA evidence is available. It is heartbreaking when we hear about a victim who is unable to secure justice against her rapist, even after a CODIS hit identifies the assailant, because the statute of limitations has already run out.

In addition to improving the funding process to favor testing and audits, the SAFER Act requires increased transparency around local backlogs. Grant recipients are required to disclose the number of kits discovered, testing status, status of the cases' statute of limitations, and the state's plan for those kits that have been discovered. The attorney general, under SAFER, is required to share these findings with the American public.



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Unfortunately, more than two years after SAFER became law, NIJ has yet to release a grant solicitation for law enforcement agencies to conduct audits. Also, the law required the development of national protocols and policies related to rape kit evidence processing and testing. These were due no later than September, 2014, but as of this date have not been released.

Thank you again for the opportunity to address and bring awareness around these critical issues and I look forward to further discussion.

Skylor D. Hearn
Assistant Director, Texas Department of Public Safety
May 20, 2015
Committee on the Judiciary - Subcommittee on The Constitution
Taking Sexual Assault Seriously: The Rape Kit Backlog and Human Rights

Chairman Cornyn, Senator Cruz, and other honorable members of this Senate subcommittee:

My name is Skylor Hearn, and I serve as an assistant director with the Texas Department of Public Safety (DPS). It is an honor to appear before this subcommittee today and participate in the dialogue on this critical issue of untested rape kits in the United States. My purpose today is to detail the achievements and progress underway in the State of Texas to address this issue and identify the successes, lessons learned, and remaining steps in our effort.

Issue Overview

This national issue relative to the thousands of untested sexual assault kits across the country has focused great attention on the rights of victims, criminal justice practices, law enforcement efficiency, and the crushing demand on forensic crime laboratories. The State of Texas has been proactive in identifying and seeking resolutions through state legislative action. What we have determined in Texas, which likely mirrors other parts of the nation, is that several causative factors contribute to these sexual assault kits not being tested.

Investigative or prosecutorial discretion is the most prevalent reason identified. Generally, this area covers two aspects: non-identity cases and non-acceptance cases. In non-identity cases, both the victim and the known suspect agree that a sexual act occurred; however, they argue whether it was consensual. The forensic processing of a rape kit in these cases provides no probative value. As such, many law enforcement agencies choose not to conduct forensic testing on these kits as a matter of investigative expediency and financial efficiency.

In non-acceptance cases, many victims decide not to pursue charges for a variety of reasons. Prosecuting attorneys also assess the perceived credibility of suspects, victims, and witnesses to these crimes and may determine that a successful prosecution is unattainable regardless of the potential forensic evidence. In both of these scenarios, if the determination is made early in the investigation, then it is unlikely the rape kit would be submitted and analyzed by a forensic laboratory. Other causative factors include a lack of resources within law enforcement agencies and forensic crime laboratories to facilitate appropriate submission and timely analysis, as well as reported allegations of negligence on behalf of law enforcement agencies for a lack of appropriate procedures and evidence preservation.

While many of these causative factors for not testing every rape kit are legitimate in the criminal justice system from an individual case perspective, the predatory aspect of those who perpetrate sexual assault requires greater scrutiny to effectively address the impact to human rights posed by these criminals and their acts. The shifting nature of the nation's population and the

transitory nature of some sexual predators have resulted in the need to view these crimes in a different light. There are many scenarios where serial offenders could escape detection by targeting a specific class of victim or by committing crimes across multiple jurisdictions. What could be viewed as an isolated date rape incident by one jurisdiction may be the work of a serial date rapist with similar allegations in other cities and in other states. This is the dynamic landscape of sexual assault investigations we face today.

Texas Legislation

The formal effort to address these issues in Texas began with legislative action during the state's 82nd Legislative Session in 2011. The enabling legislation, Senate Bill 1636, addressed several important areas surrounding the issue of untested rape kits. First and foremost, the legislation established an end point for discretionary rape kit testing. Effective August 1, 2011, every sexual assault kit collected as part of a criminal investigation is required to be submitted to a forensic crime laboratory within 30 calendar days and testing must be completed. This critical step eliminated the potential for future kits to go untested. The legislation did not mandate a timeframe or priority on the analysis of the kits.

The legislation then statutorily defined "active cases" based on the existing statute of limitations under Texas law. This step sought to ensure that untested rape kits from closed or suspended criminal investigations based on agency or prosecutorial nomenclature were not excluded from the initiative. Based on the language, the statute required analysis of untested kits even if a prosecution had already been completed and a defendant was convicted or acquitted.

The statute required every law enforcement agency and forensic laboratory in the state to audit and report the total number of applicable untested rape kits in its possession to DPS. The legislation provided 45 days for this audit and reporting to be completed. As a lesson learned, 45 days was not long enough for larger agencies with greater volumes of sexual assault cases to complete this action. Most law enforcement agencies do not have an electronic database of case evidence that specifically identifies if the evidence was submitted to a crime laboratory and whether or not it was analyzed. That type of information is maintained in case folders. Therefore, law enforcement agencies were required to review every sexual assault case folder individually to determine if there was a rape kit collected, if it was applicable to the initiative, and if it remained untested. This effort resulted in many agencies missing the reporting deadline. However, most agencies were diligent in their efforts and completed their reporting as soon as possible.

Findings and Funding

The legislation required DPS to provide a report to the 83rd Texas Legislature in 2013. As a result of law enforcement reporting at the time of the report, Texas identified over 15,000 applicable untested rape kits statewide with the majority, not surprisingly, located in the major urban areas. However, based on informal communication with agencies and other crime laboratories – as well as the latency in reporting – DPS believed and stated in the report that the total number could actually be as high as 20,000 kits. As of May 2015, the number of reported untested rape kits has climbed to more the 20,000.

Of the total reported kits, approximately 6,600 belonged to the City of Houston. To their credit, the city identified internal funding as well as grants to outsource the testing of their kits. Their effort to complete the testing, verifications, and investigative follow-up continues.

In 2013, the 83rd Texas Legislature appropriated funding to DPS to coordinate and outsource the remainder of the statewide untested rape kit initiative. This process is fully underway, and we expect to complete the testing portion of the initiative on every applicable rape kit in Texas by November 2016.

Early Results

Prior to the appropriations provided by the Texas Legislature, DPS obtained grant funding from the Texas Governor's Office to begin analyzing these cases. With those grant funds, DPS completed testing on approximately 1,700 kits. Some of those initial results include:

- Testing produced CODIS eligible samples in approximately 350 cases or in 20 percent of the analyzed kits.
- Approximately 40 percent of those eligible samples resulted in CODIS matches.
- Several matches were made to a convicted offender where no suspect was previously identified.
- Several matches linked one case to another case with the offender still unknown.
- Over 50 percent of the matches were confirmatory. The same defendant convicted for that case was identified by DNA located in the rape kit.
- In 40-50 percent of rape kits analyzed, no foreign DNA was discovered.

With the outsourcing under way, over 1,300 additional rape kits have been analyzed under the state-funded initiative through March 2015. No CODIS information from the outsource testing is available at this time, but DPS expects similar results from the overall testing as seen in the smaller sampling. It is important to remember that a CODIS match does not guarantee a prosecution or a conviction. Many of the same discretionary issues previously detailed that could prevent a successful prosecution could remain applicable.

To increase the transparency of the effort and aid those seeking information on the status of the initiative, DPS posts its outsourcing status sheet on our public website. The data is updated monthly as invoices are received. Our latest figures are included as an attachment to this testimony and a link to the website is provided below.

<http://dps.texas.gov/CrimeLaboratory/documents/sb1636OutsourceStatusRpt.pdf>

Next Steps

The Texas legislation has addressed two of the three core issues with untested rape kits: 1) it ended discretionary testing practices to prevent this issue from resurfacing in the future, and 2) it is facilitating the forensic analysis of the untested kits. The third core issue is the effective, efficient, and timely analysis of forensic evidence going forward.

Mandatory submission and testing of sexual assault kits impacts forensic laboratory services. Laboratories will continue to need additional funding for personnel, resources, and instrumentation to meet the ever-increasing demands of forensic case work. While validated

rapid DNA (rDNA) instruments will be a reality in 18 to 24 months, unfortunately they will not be beneficial in this effort. The rDNA instruments will only expedite the analysis of known offender and sole contributor samples. The rDNA instruments cannot be used for analyzing evidentiary crime scene samples with mixed genetic profiles.

Today, DPS reports CODIS matches to the submitting law enforcement agency or local laboratory, but we have no further insight into the outcome or disposition of the match. This “blind” notification system creates the potential that important leads could be missed and never investigated. Those important leads can be exculpatory as well as inculpatory. The current match notification system also prohibits our ability to report metrics on the effectiveness and efficiency of this initiative to state legislative or congressional bodies that appropriate its funding. To address this issue, state CODIS laboratories must have electronic case management and reporting systems that facilitate joint access to laboratories, law enforcement agencies, and prosecuting attorneys. CODIS matches reported to a submitting law enforcement agency or local laboratory must be updated regarding any investigative closure or prosecution and the resulting dispositions. DPS is currently in the process of acquisitioning such a system.

Conclusion

While the efficiencies of this initiative can be argued, the forensic results are unequivocal. Forensic DNA evidence from untested rape kits is linking known offenders to reported crimes. Forensic DNA evidence from untested rape kits is linking previously unassociated cases together and identifying serial offenders. From a victim’s rights or human rights perspective, this initiative could result in an extraordinary impact in providing a measure of justice for current victims and in the prevention of future crimes and victimization.

SB 1636 Sexual Assault Kit Initiative (for pre-August 2011 SAKs)

1 of 3

Data Valid Through April 1, 2015

DPS Lab Region	Agency	# SA Cases Reported to DPS	# Cases Completed by DPS prior to outsource contracts	To Be Outsourced	Outsource Complete
Austin	Alamo PD, San Antonio	2	2	0	
	Austin PD	1204		1204	
	AISD PD	10		10	
	Bandera Co SO		1	0	
	Balcones Heights PD		1	0	
	Bartlett PD	none to report		N/A	
	Boerne PD	none to report		N/A	
	Bryan PD		19	0	
	Cedar Park PD	14	14	0	
	College Station PD	48		48	
	Comal Co SO	1	7	0	
	Devine PD	1	2	0	
	Elgin PD	4		4	
	Florence PD	none to report		N/A	
	Georgetown PD	5		5	
	Giddings PD	7	7	0	
	Granger PD	none to report		N/A	
	Hallettsville PD	1		1	
	Helotes PD	1	1	0	
	Hutto PD	none to report		N/A	
	Jarrell PD	none to report		N/A	
	Johnson City PD	2	2	0	
	Kendall Co. So	none to report		N/A	
	Kyle PD	4		4	
	Lakeway PD	2	2	0	
	Leander PD	3	3	0	
	Liberty Hill PD	none to report		N/A	
	Llano PD	1	1	0	
	New Braunfels PD	2	3	0	
	Pflugerville PD	2		2	
	Round Rock PD	54	40	14	
	San Antonio PD	2077	515	1830	71
	San Marcos PD	39	3	36	35
	Schertz PD	none to report		N/A	
	Schulenburg PD		2	0	
	Seguin PD	31	11	20	
	SouthWestern Univ PD	3	3	0	
	Taylor PD	22	20	2	
	Texas A&M Univ PD	5		5	5
	Thrall PD	none to report		N/A	
	Travis Co. SO	365	2	363	
	Universal City PD	8	13	4	4
	Williamson Co SO	85	57	28	
	Austin Totals	4003	731	3580	115
Corpus Christi	Atascosa SO	2	3	0	
	Bishop PD	4		4	
	Corpus Christi PD	207	3	204	
	Dimmit Co SO		3	0	
	Ingleside PD	13	2	11	
	Jim Wells SO	1	1	0	
	Kennedy Co SO		1	0	
	Mathis PD		1	0	
	Port Lavaca PD	10	10	0	
	Refugio PD		1	0	
	Rockport PD	12			
	Victoria PD	107	2	105	
	Victoria SO	15	9	6	
	Corpus Totals	371	36	330	0
El Paso	El Paso PD	27	28	0	

SB 1636 Sexual Assault Kit Initiative (for pre-August 2011 SAKs)

2 of 3

Data Valid Through April 1, 2015

	El Paso SO	27	81	0	
	Socorro PD	26	0	27	10
	El Paso Totals	80	109	27	10
Garland					
	Addison PD	4	0	4	
	Allen PD	20	15	1	2
	Anderson Co SO	3	3	3	3
	Athens PD	2	2	0	
	Carrollton PD	36	16	3	1
	Dallas PD	4144	0	4144	551
	Denton PD	12	10	9	9
	Denton Co. SO	5	4	0	
	DeSoto PD	20	10	2	8
	Duncanville	2	0	2	2
	Ellis Co. SO	12	0	12	
	Farmers Branch PD	31	2	28	11
	Flower Mound PD	1	0	1	
	Fort Worth PD	1018	0	1018	264
	Frisco PD	12	1	1	12
	Garland PD	18	2	16	16
	Haltom City PD	8	0	8	10
	Harrison Co. SO	2	2	0	
	Henderson PD	30	0	30	8
	Italy PD	2	0	2	
	Lewisville PD	31	0	31	29
	Marshall PD				1
	McKinney PD	17	18	17	17
	Morris Co. SO	3	1	1	1
	Paris PD	9	0	9	8
	Parker SO	5	4	0	
	Richardson PD	20	5	17	3
	Roanoke PD	2	2	2	2
	Seven Points PD	5	0	5	
	Sherman PD	35	33	33	32
	TDCJ OIG	2	1	0	
	Terrell PD	1	3	0	
	The Colony PD				22
	Tyler PD	30	29	0	
	UT Dallas PD	1	0	1	1
	Winnboro PD	1	1	0	
	Waxahachie PD	38	0	38	34
	Wood Co SO	1	1	1	1
	Garland Totals	5583	165	5439	1048
Houston					
	Beaumont PD	none to report		N/A	
	Conroe PD	75		75	
	Galveston Co. SO		1	0	
	Harris Co DA	1		1	
	Houston PD	6663	N/A	N/A	
	Lufkin PD	28	29	0	
	Nacogdoches PD	42		42	
	Orange PD	9		9	
	Pasadena PD	67	45	22	
	TDCJ OIG - Reg E	10	10	0	
	Houston Totals	6895	85	149	0
Lubbock					
	Abilene PD	309		309	
	Amarillo PD	952	10	942	8
	Big SPRING P.D.	8	8	0	
	Borger PD	32	40	8	18
	Colorado City PD	2		2	
	Dumas PD	5		7	
	Hardeman County SO	none to report		N/A	
	Lockney PD	none to report		N/A	
	Lubbock-Cooper ISD PD	none to report		N/A	

Data Valid Through April 1, 2015

	Lubbock PD	205	81	0	1
	Lubbock SO	9		9	
	Midland PD	197	129	30	58
	Odessa PD	60	1	76	
	Plainview PD	11	11	0	
	Potter Co. SO	18		18	
	Randall Co. SO	28		28	
	San Angelo PD	138	99	53	6
	Snyder PD	none to report		N/A	
	Stratford PD	1	1	0	
	Sweetwater PD			10	10
	TDCJ OIG Region C	2		2	
	Texas Tech PD	none to report		N/A	
	Tom Green SO	11	11	0	
	Texas A&M PD	1			
	TX Rangers	2		2	
	Vernon Police Dept	2		2	2
	West Texas A&M PD	1		0	
	Lubbock Totals	1994	391	1498	103
	Weslaco				
(McAllen)	Edinburg PD	18	9	0	
	Pharr PD	9	9	0	
	McAllen PD	102	10	70	
	Mission PD	59	0	59	
	Weslaco Totals	188	28	129	0
	Waco				
	Belton PD	5	4	1	
	Comanche PD	none to report		N/A	
	Copperas Cove PD	89	68	21	
	Corsicana PD	38		38	
	Coryell Co SO	7	7	0	
	Gatesville PD	2	5	0	
	Harker Heights P.D.	152		152	
	Hewitt PD	2		2	
	Hill Co SO	27	28	0	
	Hood Co S.O.	3		3	
	Killeen P.D.	233	96	137	
	Lacy Lakeview P.D.	4		4	
	Mills Co S.O.	1		1	
	TDCJ OIG	1		1	
	Temple PD	48		48	
	T.S.T.C.	none to report		N/A	
	Waco P.D.	19		19	
	Whitney P.D.	2		2	
	Waco Totals	633	208	429	0
As of 04/17/15					
Totals	# Agencies 155	19747	1753	11581	1276

Note: all numbers are approximate.

Note: Requests for information regarding the probative nature of any testing that was done, the determination of any investigative information that was revealed, or the use of any of the testing results for investigative or prosecutorial use should be directed to the individual law enforcement agencies.

Prepared Statement
Illinois Attorney General Lisa Madigan
“Taking Sexual Assault Seriously: Rape Kit Backlog and Human Rights”

Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
May 20, 2015

I. Introduction

Chairman Cornyn, Ranking Member Durbin, and members of the Committee, thank you for giving me the opportunity to speak with you. As a strong advocate for the rights of crime victims in Illinois, I am honored to testify about the very important issue of testing sexual assault evidence.

Sexual assaults have reached epidemic proportions in our nation. It is happening in our homes, in our neighborhoods, on military bases, on our college campuses, and on tribal land. The White House reports that 1 in 5 women will be sexually assaulted during their lifetimes.¹ According to the Department of Defense, 1 in 4 military members reported a sexual assault during their military service in 2014.² A White House Report found that 1 in 5 women experience sexual assault or attempted sexual assault while they are attending college.³ The statistics for Native American women are even bleaker. The Washington Post reported that 1 in 3 Native American women will be sexually assaulted during their lifetimes.⁴

¹ White House Council on Women and Girls, “Rape and Sexual Assault: A Renewed Call to Action,” Jan. 2014,” available at whitehouse.gov.

² Department of Defense, Sexual Assault Prevention and Response, “Fiscal Year 2014 Annual Report on Sexual Assault in the Military,” Appendix A, p. 2, May 1, 2015.

³ White House, “Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault,” Apr. 2014, available at www.notalone.gov/assets/report.pdf.

⁴ Washington Post, “New law offers protection to abused Native American women,” Feb. 8, 2014.

Furthermore, a distressingly low number of women report sexual assaults. Fewer than 4 in 10 survivors report their rape to the police.⁵ Many victims do not report sexual assaults out of fear they will not be believed, lack of support from friends and family, or lack of confidence in the criminal justice system. Those who do report and submit to a rape kit, do so with the belief that the kit will be tested and the offender brought to justice.

But in 2010, Human Rights Watch discovered that tens of thousands of sexual assault kits were stored in police stations nationwide, untested.⁶ The untested kits had been gathering dust for years; hundreds were more than a decade old. Many kits had been completed more recently but never sent to a lab for DNA testing.

Strong survivors and advocates urged law enforcement to focus on these unconscionable numbers and test all sexual assault kits so offenders could be brought to justice. The timely testing of sexual assault kits is essential to our fight against sexual assault. When kits are not tested, public safety is jeopardized; the offender remains free to look for the next victim. Because we know that many rapists are repeat offenders, every day a kit is not tested, women, girls, men, and boys are placed in danger.

There are serious consequences when rape kits are not timely tested. Victims must deal with the devastating effects of the trauma and waiting for test results exacerbates the stress. Some survivors want to put the ordeal behind them and as time passes are less likely to assist with the apprehension and prosecution of the offender. They may begin to question why they consented to an intrusive medical forensic examination that took hours. They may wonder why they bothered to report the incident in the first place.

⁵ U.S. Department of Justice, Bureau of Justice Statistics, "Criminal Victimization, 2013," revised Sept. 19, 2014 (34.8% of rape/sexual assaults reported to police in 2013).

⁶ Human Rights Watch, "I Used to Think the Law Would Protect Me: Illinois' Failure to Test Rape Kits," July 7, 2010.

Testing delayed is justice denied. Many of the unsubmitted tests in Illinois were stored in police departments in economically distressed communities, as was the case in Robbins, IL. Natasha, a resident of Robbins, was 14 years old in 1991 when she was brutally assaulted and raped. Natasha's parents immediately reported the crime to the police and Natasha was taken to the hospital where she underwent an intrusive medical forensic examination that lasted several hours. Nurses collected evidence from Natasha's body and gave the rape kit to the police, but the rape kit sat on a police department shelf for more than two decades. When the kit was tested in 2013, the results identified Natasha's rapist. Testing of other unsubmitted kits revealed that another victim had been raped by the same man who raped Natasha. Unfortunately, the delay in testing was so long, the offender could not be prosecuted because the 10-year statute of limitations had run.⁷

These delays represent a horrific failure of our criminal justice system.

II. Two Types of Backlogs Must be Addressed

In 2010, Human Rights Watch investigated the backlog of rape kits in Illinois and reported that only 1,474 of 7,494 rape kits had been tested in the 127 jurisdictions that provided information.⁸ Hundreds of these kits had been collected more than 10 years earlier, one dating as far back as 1978.

At my urging, Illinois passed the Sexual Assault Evidence Submission Act in 2010.⁹ It was the first law of its kind and did two things:

⁷ Chicago Magazine, "The Trouble with Robbins," Dec. 2, 2014; New York Times, "Despite DNA, the Rapist Got Away," May 9, 2015.

⁸ Human Rights Watch, "I Used to Think the Law Would Protect Me: Illinois' Failure to Test Rape Kits," July 7, 2010.

⁹ 725 ILCS 202 (P.A. 96-1011).

First, it required all law enforcement agencies with untested kits on the effective date of the law (September 1, 2010) to submit an inventory of untested rape kits in their possession. Ninety-six percent of law enforcement agencies inventoried the evidence in their custody and reported 4,138 unsubmitted kits.¹⁰

The Illinois State Police then developed a plan for the testing and analysis of the unsubmitted kits.¹¹ Testing began in March 2011 and was completed in November 2013. Testing of the 4,138 rape kits produced 969 CODIS hits.¹²

Second, it required law enforcement to send all rape kits that were released for testing after the effective date of the law to the Illinois State Police Crime lab for testing. The kits must be sent within 10 days from the day law enforcement takes custody of the kit. Compliance with this part of the law resulted in a second type of backlog. Since all kits must now be tested, the number of kits submitted to the crime lab increased. It now can take a year or more to test a timely submitted kit.

We need to address both of these issues: rape kits that were not submitted in the past and the increased number of kits that are submitted shortly after a kit is completed. The goal should be to have new kits tested by the lab within 30 days of receipt. If we fail to address these backlogs and fail to timely test rape kits, the ability to arrest, prosecute and convict is compromised.

¹⁰ Ninety-six rape kits were not tested because of administrative reasons or because further investigation indicated that no sexual assault had occurred.

¹¹ Illinois State Police, "The Sexual Assault Evidence Submission Plan," March 1, 2011.

¹² Illinois State Police, "FY 2014 DNA Testing Accountability Report," Nov. 13, 2013.

Survivors continue to suffer from the devastating effects of the sexual assault, witnesses move away, the opportunity to obtain other physical evidence may no longer exist, and statutes of limitations expire. Offenders are not held accountable; they remain free to rape again.

III. How to Fix the Backlogs

While the backlog is often addressed as an issue of funding, funding is not the only thing we must fix. We must look throughout the criminal justice system.

To address these issues in Illinois, my office is doing a number of things. Currently, I co-chair a statewide Sexual Assault Work Group with two State's Attorneys and the Executive Director of the Illinois Coalition Against Sexual Assault. Along with law enforcement, prosecutors, forensic scientists, and advocates we are identifying the barriers that prevent the efficient reporting, investigation, and prosecution of sexual assault cases.¹³ From what we have learned thus far, I propose the following recommendations:

First, states should adopt a law or implement a statewide protocol that requires all DNA to be submitted to a crime lab for testing once it is collected in a timely manner. Not only do all kits need to be timely submitted, but kits should be submitted for testing even when police are skeptical of the victim's story. This will ensure that all evidence is preserved for future use.

Second, all police departments must comply with those laws. Since the enactment of the 2010 law, there have been reports of police departments that failed to submit all of the rape kits that were in their custody. Oversight will be an important piece of this puzzle.

Third, states should implement tracking systems to improve accountability and satisfy chain of custody concerns. The ability to track a rape kit from hospital, to police department, to crime lab, to prosecution, will improve efficiency in the system. This is necessary for assessing

¹³ Illinois Attorney General Lisa Madigan, Press Release, "Attorney General, Prosecutors & Advocates Announce Joint Working Group to Combat Sexual Assault Crime in Illinois," March 31, 2015.

whether DNA matches made through CODIS or statewide databases are resulting in arrests, prosecutions and convictions.

Fourth, forensic labs need sufficient funding and resources to test the evidence they receive. The “second backlog” of long-processing times is unacceptable and we must make sure that labs and police departments have capacity to process kits in a timely fashion.

Fifth, forensic labs must look at their systems and improve efficiency. Programs like those in Louisiana and New York are examples of how to restructure testing to achieve maximum results. In Louisiana, for example, the number of DNA testing requests sent to the Louisiana State Police Crime Laboratory increased 22% from 2006 to 2007 and 48% from 2008 to 2009.¹⁴ The lab could not keep up with the increase and over time, it took more than a year to test DNA evidence. In May of 2008, the average turnaround time was 291 days. The lab hired outside consultants who applied a methodological approach called Lean Six Sigma. As of June 2011, the average turnaround time was 31 days, with 95% of the evidence processed within 30 days. The lab’s productivity went from 50 cases per month to 160 cases. The results at the crime lab in Monroe County, in Rochester, New York, were similar. Implementation of the Lean Six Sigma approach increased productivity four-fold -- from 25 cases per month to 100 cases. States should use similar approaches to examine the effectiveness of their crime labs.

Sixth, we must increase access to Sexual Assault Nurse Examiners who are trained on how to properly collect evidence and respond appropriately to the victim. How the criminal justice system responds when a victim first seeks help can dictate whether they receive proper support from law enforcement and support services. SANEs are an incredible asset to survivors and we must increase their availability.

¹⁴ Louisiana State Police Crime Laboratory, “Increasing Efficiency in a DNA Unit Using Lean Six Sigma; Forensic DNA Unit Efficiency Improvement Grant Final Report,” June 2011.

Finally, we must improve and increase training for law enforcement and prosecutors. The fact is that often rape kits are unsubmitted for testing because of a blame-the-victim mentality or because investigators mistrust the survivor's story. This outdated way of thinking must change. Training for law enforcement when they are studying in the academy as well as ongoing education throughout their career is crucial.

IV. Looking at the Whole Picture

We cannot look at the backlogs of rape kits in isolation. We must explore changes to how our society, law enforcement and prosecutors treat sexual assault victims starting from the moment a victim reports a crime and submits to a rape kit to the day an offender is sentenced.

In Illinois, I hired a Sexual Assault Nurse Examiner (SANE) Coordinator to provide training to registered nurses with the goal of providing every victim of sexual assault access to a SANE. The use of SANEs improves the treatment the victim receives during the medical forensic examination and improves the collection of evidence resulting in more successful prosecutions. Since 2004, a total of 1,131 nurses attended the classroom training to become an Adult/Adolescent SANE and 135 nurses attended the classroom training to become a Pediatric SANE.

Training of law enforcement is essential to change the culture of sexual assault. Too often an officer will question the credibility of a sexual assault victim from the moment the victim reports. This doubt about what the victim is telling the officer is conveyed in a number of ways. Questions focus not what the offender did, but rather on what the victim was wearing, whether she was drinking, and why she was where the rape occurred.¹⁵ This doubt is further manifested in the officer's decision not to have the rape kit tested, not to interview the offender

¹⁵ See, e.g., Belleville News-Democrat, "Absent Justice: Sex crime victims in Southern Illinois find that police, prosecutors typically do not charge their attackers," Feb. 12, 2015.

or not pursue evidence that would corroborate victim's story. Unlike other crimes, the officer classifies the rape as "unfounded" before any investigation is conducted.

Training of prosecutors is also essential, particularly in cases where the victim and the offender know each other or the victim has consumed alcohol or been slipped a drug to make her vulnerable. Prosecutors have limited time during voir dire to educate jurors about sexual assault. And they must encourage the jurors to not blame the victim.

Yet training those in the criminal justice system is not enough. We need to change our culture and the way society views sexual assault. We need to educate high school and college students on how to respect one another. We need to educate the public that when someone resists sexual contact and the contact continues, a sexual assault is being committed. We need to teach friends and family members to believe the victim and to respond with compassion. We need to encourage bystanders to intervene.

In closing, eliminating the backlogs of rape kits is essential to the fair and human treatment of victims and the protection of women, girls, men and boys.

Thank you for the opportunity to testify.

**STATEMENT FOR THE RECORD FOR SARAH HAACKE BYRD,
MANAGING DIRECTOR FOR THE JOYFUL HEART FOUNDATION**

**BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION**

**“Taking Sexual Assault Seriously: The Rape Kit Backlog and Human
Rights”**

Wednesday, May 20, 2015

Chairman Cornyn, Ranking Member Durbin, and members of the Subcommittee, thank you for inviting the Joyful Heart Foundation to testify today. I am in great company. Having dedicated more than 15 years of my professional life to work on behalf of survivors of violence—domestic and international—it is an incredible honor to be here today to talk about this very important issue.

About the Joyful Heart Foundation

The Joyful Heart Foundation was founded in 2004 by *Law & Order: SVU* actress, director and producer Mariska Hargitay with the mission to heal, educate and empower survivors of sexual assault, domestic violence, and child abuse, and to shine a light into the darkness that surrounds these issues.

Our vision at Joyful Heart is bold and ambitious—one of a world without violence.

Over the last 11 years, Joyful Heart has evolved into a national organization that is paving the way for innovative approaches to treating trauma, igniting shifts in the way the public views and responds to sexual assault, domestic violence, and child abuse, and reforming and advancing policies and legislation on the city, state and federal levels to ensure justice for survivors.

Since our inception, we have raised nearly \$20 million and leveraged more than \$74 million in in-kind contributions to: serve more than 15,000 survivors and healing professionals; connect over 2.5 million visitors on our website and social media to resources and life-saving help; garner more than two billion impressions about our issues and work in digital and print media; affect policy changes in jurisdictions from New York to California; and produce the groundbreaking NO MORE PSA campaign to end domestic violence and sexual assault that has already generated more than three billion media impressions online, in print, and on TV.

Since 2010, Joyful Heart has made the elimination of the national rape kit backlog a top priority. Our advocacy team, along with board members, advisors, researchers and partners with expertise in this work, is at the forefront of identifying backlogs in cities across the country; advocating for federal and regional funding to test backlogged kits and investigate cases; appealing for laws and policies to improve criminal justice responses to sexual violence; and working with jurisdictions to assist them in the development and implementation of survivor-centered reforms. Joyful Heart has a long history of successful public-private partnerships guiding cities, including Los Angeles, Detroit and Memphis, through the process of clearing their backlogs.

Through ENDTHEBACKLOG.org, the first and only comprehensive compendium of data on the rape kit backlog across the United States, we are sharing best practices, progress on reform and resources, and are offering a way for people to join the movement. Joyful Heart is also the social action partner on a feature documentary on the rape kit backlog crisis in the United States.

Our work advocating for national comprehensive rape kit reform is driven by the ambitious goal of bringing the possibility of healing and increased access to justice to hundreds of thousands of survivors across the country. Through partnerships with federal, state and local government, non-profit organizations, law enforcement, advocates and survivors, we are working to bring attention, critical funding, and reforms to improve the criminal justice response to sexual assault.

The stakes could not be higher. In this country, one in three women experience physical or sexual abuse by an intimate partner in her lifetime, and one in four girls and one in six boys are sexually abused before the age of 18. Every two minutes, someone is sexually assaulted in the United States.

As Mariska has often said: "The rape kit backlog is one of the clearest and most shocking demonstrations of how we regard these crimes in our society. Testing rape kits sends a fundamental and crucial message to victims of sexual violence: You matter. What happened to you matters. Your cases matter."

We must come together to solve this crisis.

The Rape Kit Backlog

DNA evidence can be a powerful tool to solve and prevent crime, yet the federal government estimates that there are hundreds of thousands of untested rape kits sitting in police and crime lab storage facilities across the country. The reality is that because most jurisdictions do not have systems for tracking or counting rape kits, we cannot be sure of the total number. This lack of transparency and accountability means that thousands of backlogs remain hidden in jurisdictions across the country and violent offenders remain free.

What we do know is that every single untested rape kit represents a victim who has taken the courageous step of reporting the crime to the police—a step that many never take. When a victim does report an assault, he or she undergoes an exhaustive, invasive and often re-traumatizing forensic examination that can take four to six hours to complete. Victims and the public rightfully assume that the evidence from the crime will be tested for DNA evidence.

However, in too many cases, the decision is made not to test the evidence. Instead, all too often, rape kits end up in a police evidence room or storage facility and never make it to the crime lab. Each of these kits represents a lost opportunity to bring healing and justice to survivors of sexual assault and accountability for perpetrators.

In recent years, significant backlogs have been found in police evidence facilities in cities and states across the country—20,000 in Texas, 12,669 in Los Angeles, 4,000 in Illinois, and 12,164 in Memphis. These are rape kits that never made it to a crime lab for testing.

Jurisdictions often cite a lack of resources and personnel as the largest barrier to processing more rape kits. Another—rarely acknowledged—cause of the backlog is the unwillingness

among many law enforcement agencies to prioritize and dedicate sufficient resources to sexual assault cases. More than with any other crime, law enforcement frequently disbelieve or even blame victims of sexual assault. Despite data proving otherwise, many agencies also maintain the philosophy that testing a rape kit is only useful when a stranger committed the assault.

At Joyful Heart, we join experts in this work to roundly dispute the idea that there are kits that do not require testing.

When tested, rape kit evidence can identify an unknown assailant, confirm the presence of a known suspect, affirm the survivor's account of the attack and discredit the suspect, connect the suspect to other crime scenes, and exonerate innocent suspects. In cities such as Detroit, early testing has identified more than 288 serial rapists—violent offenders who have been acting with impunity for years, and in some cases decades.

Mandating the testing of every sexual assault kit sends a powerful message to survivors that they—and their cases—matter. It sends a message to perpetrators that they will be held accountable for their crimes. It demonstrates a commitment to survivors to do everything possible to bring healing and justice. It is also the pathway to a more effective criminal justice system and safer communities across the country.

The Tide is Changing

Ending the rape kit backlog will take a coordinated effort and deep commitment at all levels of our government and in communities across the country. Elected officials must ensure that sufficient funding is dedicated not only to processing untested rape kits, but also to investigating leads and moving cases forward to prosecution. They must assist jurisdictions with implementing a comprehensive survivor-centered approach for victim notification and support services. They must require law enforcement to keep track of every kit booked into evidence and to make information about backlog numbers public. They must allocate the resources—money, staff, time and technology—to make these reforms happen.

The good news is that reform is happening. We are witnessing the reform efforts of major jurisdictions, such as Detroit, which discovered 11,341 untested rape kits and has made a commitment to test every single kit. Other cities and states are making progress too. Cleveland has sent more than 4,000 sexual assault kits for testing; Houston has sent more than 6,000; Dallas has sent 4,000. Memphis is diligently working through their backlog of untested kits numbering over 12,000. Illinois has eliminated its backlog of 4,000 kits.

As awareness grows about this crisis, states across the country have begun to respond. Governors, attorneys general, prosecutors, mayors and state elected officials are taking notice and action, following the lead of Illinois, Texas and Colorado, each of which has enacted comprehensive rape kit testing legislation.

In this recent legislative session, more than 20 state legislatures have passed legislation, have bills pending, or are drafting legislation that requires sexual assault kit audits or some type of mandatory kit submission timelines. These state laws will expand what we know about the true extent of the number of untested rape kits in police storage facilities and will result in thousands of cases for law enforcement to investigate and prosecute in addition to their current cases.

In 2016, we expect to see more states join the growing list of those that have taken steps towards rape kit reform.

Meaningful Progress

For communities who have begun to undertake rape kit reform efforts and test their backlog of kits, they are seeing the results.

Detroit has become one of the best examples of what a city can do when it has the political will to address its backlog. In 2009, Wayne County Prosecutor Kym Worthy discovered 11,341 untested rape kits in a Detroit Police Department storage facility. The county received a National Institute of Justice grant to create a collaborative multi-disciplinary team of law enforcement, prosecutors, researchers and advocates to study the causes of the backlog and develop a plan for testing the kits and investigating and prosecuting the cases that resulted from the testing. Joyful Heart has been a proud partner in this work.

The cases that Detroit is solving through testing demonstrate why we should be testing every rape kit. As of May 2015, Detroit's kit testing initiative has resulted in approximately 1,133 DNA matches and the identification of 288 potential serial rapists. The DNA from the kits tested in Detroit are linked to crimes committed in 31 states and the District of Columbia. The results in Detroit, similar to other cities, underscore what we know about sex offenders: that they rape again and again, they commit all kinds of crimes, and they often move from state to state, community to community.

Cuyahoga County, Ohio, has seen similar successes with testing their backlogged rape kits. In 2014, the Cleveland Police Department announced that they sent every one of their 4,373 rape kits dating from 1993 through 2009 for testing in accordance with Ohio's Sexual Assault Kit Testing Initiative. As of May 2015, the Ohio Bureau of Criminal Investigation had completed testing on 3,763 of the submitted kits, yielding 1,476 matches in the national DNA database and resulting in 905 completed investigations, 305 criminal indictments, and the identification of 221 potential serial offenders. The Cuyahoga County Prosecutor's Office anticipates indicting 1,000 cases over the next few years—a third of them serial rapists—as a result of clearing the backlog. Cuyahoga County Prosecutor Tim McGinty has referred to many of the offenders they have identified by rape kit testing as having committed "a one man crime wave." Memphis and Houston have seen some similar results.

When the extent of a jurisdiction's backlog is revealed, real reform can begin. Driven by this knowledge, and as demonstrated by the progress these cities have made, Joyful Heart launched The Accountability Project last year to uncover the true extent of the rape kit backlog in cities across the country. Through a pro bono partnership with Goodwin Procter LLP and Weil, Gotshal & Manges LLP, the initiative has issued public records requests in more than 20 cities to ascertain the number of untested kits at police departments.

Yesterday, we made our second announcement releasing the number of untested kits from five communities: 1,019 kits in Charlotte, North Carolina; 1,943 in Jacksonville, Florida; 1,324 in Kansas City, Missouri; 1,931 in Portland, Oregon; and 2,873 untested kits in San Diego, California.

These jurisdictions, many of which are cash-strapped, need our assistance.

Why Resources are Needed

The ability of law enforcement, crime labs, and prosecutors to implement newly enacted legislation and policies often depends, in part, on whether additional resources and funding are dedicated to clearing the backlog and pursuing leads. The federal government has a key role to play in investing in justice for survivors, accountability for perpetrators, and safety for America's communities.

More than a decade ago, Congress took a major step toward addressing the rape kit backlog with the creation of the Debbie Smith Act. Thanks to the courageous leadership of Debbie Smith, this law has been essential in drawing attention to rape kit backlogs, especially those in crime laboratories, and galvanizing lawmakers and the public to action.

Testing rape kits is only one step toward comprehensive reform. Once the problem is acknowledged and the first kits are sent out for testing, cities are left to grapple with the enormous task of finding a way to test all of the rape kits in their storage facilities, and figuring out how to investigate and prosecute these cases, re-engage survivors in the process and address any systemic failures that led to the creation of the problem in the first place.

This work takes political will, but it also takes significant resources, and finding the money has been a struggle. Communities simply do not have the resources necessary to make all of this possible while also responding to newly reported cases.

For the first time, the federal government created a grant program last year within the Department of Justice's Bureau of Justice Assistance to provide local communities critically needed resources to: test backlogged kits in their police storage facilities; create multi-disciplinary teams to investigate and prosecute cases connected to the backlog; and address the need for victim notification and re-engagement with the criminal justice system.

Joyful Heart would like to thank the members of this Committee for your support of this funding in last year's spending bill.

As more states and local jurisdictions enact legislation and policies to reform law enforcement practices around rape kit testing, the need for funding to implement a multi-disciplinary, community-based response will increase. An additional \$41 million to provide funds for more communities was requested in President Obama's FY16 budget request, and the House of Representatives Appropriations Committee announced its inclusion in their FY16 Commerce, Justice and Science spending bill last week.

We hope we—and the survivors we represent—can continue to count on your advocacy for these much-needed funds as the appropriations process continues in the Senate in the weeks and months to come.

Manhattan District Attorney Cyrus Vance has also stepped up to contribute \$35 million in funding to support jurisdictions wanting to do the right thing and test their kits. In New York City, which eliminated its backlog in 2003, law enforcement and crime lab officials implemented a policy and developed a system to test every rape kit booked into police evidence. The city's arrest rate for rape subsequently jumped from 40 percent to 70 percent, compared to 24 percent nationally. New York City presently tests every kit that is collected.

Importance of Survivor Engagement

We know that sexual assault can bring deep pain and suffering—physical, mental, emotional and spiritual. We honor the process of healing and know that it looks different for each individual. Deciding what choices to make in the aftermath of an assault is a complex and deeply personal part of this process. Seeking medical attention, reporting the crime and moving forward with prosecution takes a tremendous amount of courage and fortitude.

One of Joyful Heart's priorities is to draw attention to the need to ensure that survivors are notified about the status of their rape kits, a process referred to as victim notification. One of the most critical steps along a community's journey toward comprehensive rape kit reform is determining the best process for the notification and re-engagement of survivors.

It is likely that notification about a survivor's rape kit will bring to the surface strong feelings and emotions. Despite the passage of time, survivors might feel as though their assault just occurred and can relive the trauma and fear they experienced. This can cause traumatic levels of distress including flashbacks, nightmares, panic attacks and other difficult and confusing experiences.

Those who are responsible for delivering this information to survivors—usually members of law enforcement—often have no protocol to guide them through the process. They face difficult questions, such as when, if at all, notification should occur, who should deliver the notification and how. They frequently report that they worry about what harm they may be doing, and that they would like greater access to information on best practices.

But the fact is there is little research examining and suggesting best practices for victim notification. Joyful Heart is conducting groundbreaking research on how jurisdictions across the country have approached and should approach this process. Most importantly, we're hearing from survivors about their experiences. We are compiling our findings in a forthcoming report, which will serve as the first comprehensive resource that will establish a set of best practices for how communities can approach victim notification.

Because every untested rape kit represents a victim and a life that has been touched in a violent way, the notification practices jurisdictions implement should be informed by survivor preferences and, therefore, be truly survivor-centered. Joyful Heart's victim notification report will fill a much-needed gap in information and guidance that will help jurisdictions re-engage survivors in a responsible way as they work to address their backlogs.

In closing, I want to share the words of a courageous survivor that we have had the privilege to work with over the past several years, Helena Lazaro.

"When I was assaulted in 1996, there wasn't even a name for the backlog. It was an invisible injustice that grew each day, without anyone to turn to for help. In the relatively short time since, I've watched this movement grow in leaps and bounds—and I have grown alongside it. From someone as afraid to leave her home as she was to be in it, to the survivor standing here today.

"I can't wonder how my life would have been different if this had happened at 17 instead of 34; I don't want to mourn the half of my existence that I spent in the shadows. I don't want to mourn the fact that because my evidence had not been processed in a timely manner, and because no one returned my ongoing calls, this man was able to assault again. Instead, I want to celebrate

the incredible time I've spent in the light—and use my experience to help bring other survivors out of the darkness, sooner.”

On behalf of survivors across the country—many of whom have felt re-traumatized by the experience of wading through the rape kit backlog—I thank you for the attention you have paid to this issue today. It is my hope that we continue to have this dialogue, to commend the jurisdictions taking responsibility for reform, and to continue to raise awareness around those that have not.

Survivors deserve nothing less.

THE CHRISTIAN POST

CP OPINIONS Thursday, May 21, 2015

Women Still Not 'SAFER' From Sexual Assault, Rape



Penny Nance is the President of Concerned Women for America and a nationally known conservative commentator.

By Penny Young Nance
May 8, 2015 | 12:05 pm

Rape. As a mother about to send her only daughter off to college, this is one of my biggest fears, and it is something we all hope that our loved ones will never face.

The statistics, however, are startling. According to the Rape, Abuse, and Incest National Network, there are approximately 293,066 victims of rape and sexual assault each year. The National Institute of Justice at the Department of Justice found that a college with a student population of 10,000 could account for as many as 350 rapes per year.

These are more than just numbers on a page for me. Years ago, I was almost a statistic, and the incident has haunted me each day since. Despite being attacked while running in Northern Virginia, I was neither raped nor sexually assaulted, thanks to the quick actions of a passerby.

The man who accosted me was identified and apprehended -- but not before he assailed two other women.

Thousands of women face a much different situation than mine -- women, like Debbie Smith, who did not have someone to come to their aid. In 1989, Debbie Smith was in her home doing laundry while her husband, a police officer, napped after working the night shift. Her attacker grabbed her from her house and dragged her to the woods where he robbed and repeatedly raped her.

She, and thousands like her, courageously go to the hospital to have evidence collected for their rape kit. They suffer the invasive, several-hours-long exam to take the first step towards seeking justice for themselves.

And they live in fear while waiting for their assailant to be identified. It took six years for the man who raped Debbie Smith to be identified. The DNA evidence was the key to her justice. The great travesty for many women, however, is that they wait for years, expecting to hear that there was a match on the DNA evidence from their kit and their attacker has been locked up. All the while, their rape kit remains on some shelf in the police station – untested.

After hearing Debbie's testimony on Capitol Hill about using DNA to solve rape cases, Rep. Carolyn Maloney (D-New York) introduced the Debbie Smith Act. Concerned Women for America (CWA) joined the coalition pushing to enact this important legislation. In conversations with then-Majority Leader Bill Frist, CWA emphasized that our government has an obligation to protect its citizens and that's why passing the Debbie Smith Act had to be a top priority. In 2004, this historic legislation, which was included in the Justice for All Act, was signed into law. The Debbie Smith Act was heralded as the most important anti-rape legislation ever passed.

The Debbie Smith DNA Backlog Grant Program, which was reauthorized in 2008 and 2014, provides Federal grants to states to reduce the DNA backlog in criminal investigations, particularly rapes and sexual assaults.

Simply stated, the Debbie Smith Act should alleviate some of the strain placed on our nation's crime laboratories that did not have the capacity to analyze DNA samples in an appropriate and timely fashion.

The sweet taste of victory after the bill's passage was short-lived. Only 40 percent of the funds appropriated are required to be used for these important purposes. Furthermore, in recent years the Department of Justice has spent a great deal of Debbie Smith Act money on purposes not directly related to the testing of rape kits.

In the Committee Report on the Fiscal Year 2012 Commerce, Justice and Science Appropriations bill, the Senate Appropriations Committee noted that: "Too often ... NIJ appears to fritter away forensic and DNA analysis funding by broadly dispersing grants to agencies and entities of dubious merit." The report found the money was misspent on polling firms, colleges and universities, and cell phone technology components, instead of spending it to test DNA evidence.

To rectify the backlog of rape kits, Reps. Ted Poe (R-Texas) and Carolyn Maloney (R-New York) and Sens. John Cornyn (R-Texas) and Michael Bennet (D-Colorado) introduced the Sexual Assault Forensic Evidence Registry (SAFER) Act, which was included and passed into law as part of the Violence Against Women Act in 2013. SAFER would help clear up the backlog on the estimated 400,000 rape kits currently collecting dust either at the crime labs or in local

9/21/2015

Print News - Women Still Not 'SAFER' From Sexual Assault, Rape

law enforcement agencies by requiring that a minimum of 75 percent of the funds go directly towards DNA testing. The legislation was designed to hold state and local law enforcement accountable for utilizing federal funds to provide speedy justice for victims of sexual assault.

Unfortunately, the Department of Justice (DOJ) continues to drag its feet and not implement SAFER, leaving thousands of women to live with the knowledge that the individual who assaulted them has not yet been punished. This failure is the true "War on Women." With Sexual Assault Awareness Month wrapped up, now is the time to join together to insist that the DOJ follow the law and make sure that thousands of women get justice.

Penny Nance is the President and CEO of Concerned Women for America, the nation's largest public policy women's organization. For more information visit concernedwomen.org.

Source URL : <http://www.christianpost.com/news/women-still-not-safer-from-sexual-assault-rape-138875/>

Statement of Nancy E. O'Malley, District Attorney
Alameda County, California

BEFORE THE

U.S. Senate

COMMITTEE ON JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION

“TAKING SEXUAL ASSAULT SERIOUSLY:
THE RAPE KIT BACKLOG AND HUMAN RIGHTS”

MAY 20, 2015

Thank you to the Senate Judiciary Subcommittee on the Constitution and Chair of the Subcommittee, Senator Cornyn, for convening a public hearing on the issue of untested forensic sexual assault examination kits (SAKs). Thank you for leading the national discussion and framing the issue in the context of Human Rights' Protections.

Over the last several years, we as a society have become more aware and informed of the impact of sexual assault and the gravity of the crime against the victim-survivor as well as the broader implications for society at large. Sexual assault has evolved from a violent crime to one implicated by a much broader range of aggressive behaviors. We have gained a deeper understanding of sexual assault crimes in terms of the physical, emotional, psychological and long-term impacts. This learning has solidified our belief that sexual assault crimes violate the victims' human rights and failure to test SAKs that could contain evidence linking the perpetrator to the sexual assault is also a violation of her or his human rights.

I have been working in the field of Sexual Assault Awareness and Advocacy for 40 years, first as a Rape Crisis Advocate volunteer, then as a Prosecutor in the courtroom and eventually as a Statewide and National leader in addressing issues attendant to and advancing our appropriate response to sexual assault. For several years, I served as the Technical Advisor and Trainer for all California prosecutors and Rape Crisis Center leaders and Advocates. I have trained thousands of police officers and officials. I have written several bills that have become law in California, advancing the laws in survivor protection and empowerment as well as bills that have advanced the forensic sciences, most particularly, DNA. In 2014, I successfully led the passage of AB 1517 which sets forth appropriate and tight timelines for law enforcement to submit SAKs to the Crime Laboratory (20 days after booking it into the Police Property Room) and for the Government Crime Laboratory to process the SAK for DNA (120 days after receipt in the laboratory).

In 2010, we created the Alameda County District Attorney's Office "Eliminate The Backlog" Initiative after it was discovered that Alameda County had a backlog of 1,900 untested SAKs. With a population of 1,600,000, some opined that the number of untested SAKs may have seemed low, but to us, one untested SAK is one too many. We also discovered that law enforcement in my County and across the State of California could take as long as 18 months to test a SAK and upload any DNA profile into the state and national databases. As part of our efforts to find workable solutions to

eliminating backlogs of untested SAKs, we identified several areas where “backlog” can occur. In late 2013 and in early 2014, we created “flowcharts” (1 of which is attached) to emphasize and explain where backlogs occur that contributed to the horrific phenomena of untested SAKs.

Alameda County shares in the outcry of SAKs going untested, or delayed testing. We do believe this situation is a violation of a sexual assault survivor’s basic human rights. And, as a secondary point, if an individual has been wrongly accused or convicted of a sexual assault crime, DNA can often provide exonerating evidence for the innocent. Our research led us to a national search for communities like Alameda County and California, and the national platform to advocate for the testing of all SAKs in cases that were not deemed “unfounded.”

The law and social norms have become more clear that every person has the right to be free from interpersonal and sexual violence, whether the perpetrator is someone known or married to the victim-survivor or a stranger. If someone becomes the victim of a sexual assault crime, s/he is entitled to the full strength of the laws to investigate and where appropriate, prosecute the perpetrator. As we have articulated in California law, *“[timely] DNA analysis of [SAK] evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of [SAK] evidence within the time limits.”* Cal Penal Code § 680(b) (6) We have also gained greater insight into the pathology of a sex offender and the predatory nature of many sex offenders. Certainly, the testing of SAKs have established evidence-based outcomes that many of us inherently knew—sex offenders are repeat offenders.

Across America, it is estimated that there are more than 400,000 untested sexual assault kits, sitting in police evidence rooms waiting for processing, untouched and untested, crimes unsolved or unprosecuted. While this number is unvalidated, my own research and experience working with other communities, suggest the estimate of 400,000 is low. Nevertheless, there are vital funds provided to government Crime Laboratories under the Debbie Smith Act enabling Crime Laboratories to conduct forensic testing on submitted SAKs in a timely manner. However, if SAKS are never submitted to the Crime Laboratories, the backlog can never be eliminated.

While some communities have received unique federal funding to assist in the process of testing untested SAKs, the numbers remain completely unacceptable and somewhat overwhelming. We are grateful for the passage of the FY15 CJS Appropriations bill containing \$41,000,000 for local law enforcement to have SAKs tested, and were honored to be a strong voice in advocating for the passage of the budget with these critical funds. We know, from our national efforts, that the problem across America is huge. A quick review of only 7 communities (Los Angeles, New York City, Memphis, Houston, Detroit, Cleaveland and Alameda County) revealed more than 66,000 SAKs sitting in Police Property/Evidence rooms for a number of years, untested.

Alameda County’s “Eliminate the Backlog” Initiative brought to light this hidden problem that in essence, left valuable evidence untested, denied many victims justice and put other members of our communities in jeopardy and in harms way to a sex offender. We are very close to completing the testing of all SAKs, irrespective of whether the Statute of Limitations has expired or not. We found that we needed to use a private laboratory (Bode Technologies) used by nearly all of the major cities and the federal government for DNA testing, in order to accomplish this task.

We have now accumulated far too many examples of why we should test all kits:

In Cleveland, SAK testing linked a man to three unsolved sexual attacks reported between 2006 and 2009. He had two prior sexual assault convictions. Another arrest occurred in April 2015. That man, linked by DNA, sexually assaulted 3 separate women in 1995, 1997, and 2009. In Cleveland, more than 200 men have been linked to more than 600 unsolved sexual assault crimes since the State Crime Labs began testing more than 4,700 rape kits from Cleveland and the surrounding suburbs in 2011.

In Memphis, 2003, a 16 year old was raped at knifepoint. Her rape kit was finally tested in 2012, revealing the identity of her rapist and that he committed six more rapes. He is now serving a 178-year sentence.

In St. Louis, 1991, a woman was viciously beaten and raped. In 2009, evidence from her case was linked to a 2001 rape case where the kit had only just been tested. 19 years after the rape, her attacker is finally serving a 19-year sentence.

In Los Angeles, 1996, a 17 year old was kidnapped and raped in her own car. She was led to believe her kit had been lost or destroyed, but thirteen years later it was tested and her rapist was identified. He has been extradited from an Ohio prison where he was serving a 25-year sentence for another rape, and is currently awaiting trial.

In 2002, a University of California woman was dragged off the street and sexually assaulted. In 2006, DNA linked an Indiana parolee-at-large to the crime that occurred in Berkeley, California. The defendant has committed four prior sexual assault crimes, of which we know, and one murder-sexual assault crime of a 17 year old woman who knew the defendant. The other victims did not know the defendant. The first three separate sexual assault crimes resulting in convictions occurred in Illinois, the fourth conviction occurred in Indiana and the murder-sexual assault occurred in Indiana. The defendant fled to California where, within a month's time, he sexually assaulted the University of California student. He is serving life terms in California and in Indiana.

In 2014, a victim met a man here in Alameda County, unbeknownst to her, he is a registered sex offender. He sexually assaulted her. She reported to police and she went to Highland Hospital – the SART center – for a forensic examination and completion of the kit. The kit was sent for testing immediately, per our new protocol. The perpetrator's DNA profile was uploaded into the statewide and national databases. A DNA "hit" came back within 5 days of upload, within 30 days of sexual assault. The case is now pending in Court.

As part of our "Eliminate The Backlog" Initiative, we have created a Toolkit, which is a Blueprint for how communities can come together to create their own process for testing all SAKs as well as building relationships within the community to more effectively respond to sexual assault crimes, closing gaps and ensuring victim-survivors of her or his human rights and protections of the law. Creation of a toolkit for other communities to use as they take on this issue will encourage and engage prosecutors, law enforcement, hospitals, labs and victim advocates to all work together to develop strategies to provide for the timely testing of kits.

To achieve our unified goals of providing a process whereby all SAKs are tested, and done so in a timely manner, we have incorporated the following in our “Eliminate The Backlog” Initiative:

- Bring tomorrow’s technology to today’s solutions
- Use of robotics and other modern technology to streamline the analysis in the crime labs
- Use of CERTIFIED private labs who work in partnership with government crime labs
- Expedited technical review process
- Rapid upload to CODIS
- Use of Rapid Testing DNA technology to identify DNA profiles within 90 minutes rather than days or weeks, or longer

Additionally, we have been in discussion with the FBI Crime Laboratory Staff to create a Pilot Project that would expedite the upload of perpetrator DNA profiles without sacrificing the integrity or security of CODIS.

**Forensic Sexual Assault Examination Kit Backlog
Elimination Toolkit Proposal
Alameda County District Attorney’s Office**

In 2010, under the direction of District Attorney Nancy E. O’Malley, the Alameda County District Attorney’s Office (ACDA) partnered with every law enforcement agency in the county to audit their property and evidence rooms for untested rape kits. The inventory revealed 1,982 kits that had never been tested. Due to staff and budget constraints, our county crime lab concluded it did not have the capacity to process these untested kits. Recognizing the importance of evaluating and testing rape kits, the ACDA found a private lab capable of completing the forensic work. In early 2014, the ACDA sent the first batch of one hundred and sixteen (116) kits to Bode Cellmark in Virginia to be tested. As expected, Bode efficiently tested the kits and reported their work.

The results from the first batch of kits affirmed the importance of testing all rape kits. Out of the 116 kits that were tested, 51 yielded profiles that were uploaded into the Combined DNA Index System (CODIS). Within days of being uploaded into CODIS, there were 27 “hits” where the profiles matched known offender profiles.

We are encouraged with these results, but face several challenges as we move forward. These challenges include working with law enforcement agencies to ensure that all cases are fully investigated when uploaded profiles result in “hits” to individuals in CODIS. Protocols and measures must also be put into place to prevent any future backlogs from forming. We are putting a great amount of thought and effort into addressing all of these challenges.

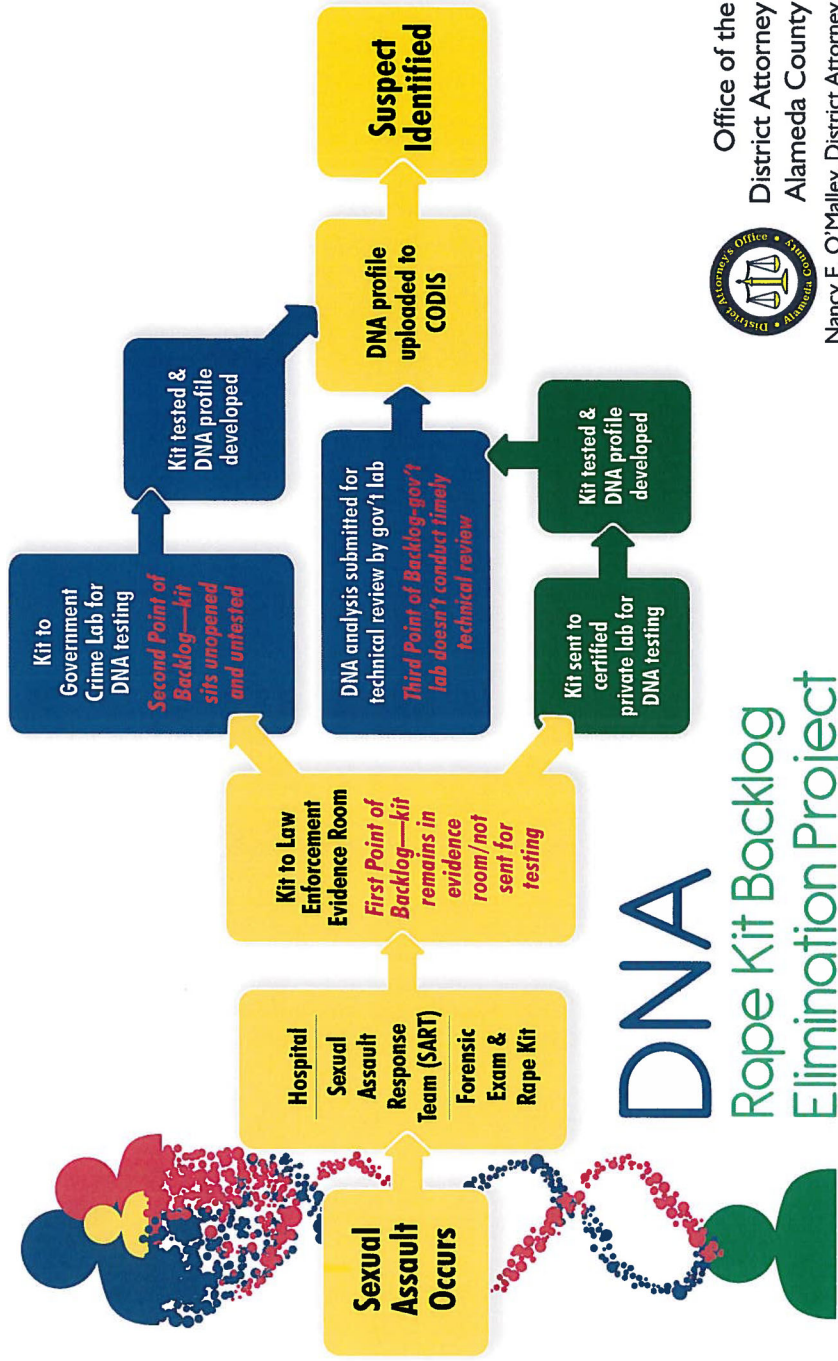
From the very beginning of this project, we have kept an ongoing log of the steps we have taken, challenges we have faced and solutions we have created. Our proposal is to turn this log into a tool kit that can be used by jurisdictions that are beginning the process of addressing their own rape kit backlogs. We often get calls and inquiries from other prosecutor’s offices and law enforcement

agencies asking where to begin and how to even start counting kits when labs or police departments are hesitant to cooperate.

The tool kit that we seek to create would start with the very basic task of how to begin counting kits and setting the tone early with local labs and law enforcement to one of collaboration as opposed to one of blame. It would provide guidance on using resources such as records from the hospitals where kits are collected to get a handle on exactly how many rape kits are collected versus ones that are associated with cases brought to the prosecutor for charging. This disparity can be a useful starting point when beginning the conversation of where kits are located and where backlogs occur. Additionally, the tool kit would highlight steps that need to be taken to ensure that cases don't get backlogged at other stages leading up to and including investigation of cases for prosecution.

Finally, we would serve as a resource for training and technical assistance to jurisdictions that are looking for additional help. We believe that jurisdictions throughout the country may benefit from such a tool kit where they can learn from our experience and hopefully gain the knowledge necessary to tackle backlogs in their own communities.

In conclusion, I thank The Subcommittee for its attention to this issue, to its recognition of the seriousness of the circumstances, and its leadership in bringing attention to the human rights violation – sexual assaults committed against another and valuable evidence left untested. I support your efforts and stand ready to serve our communities and Country to change the culture.




 Office of the
 District Attorney
 Alameda County
 Nancy E. O'Malley, District Attorney

May 6, 2015

The Honorable Richard Shelby
Chairman
Subcommittee on Commerce, Justice,
Science and Related Agencies
Senate Appropriations Committee
Washington, DC 20510

The Honorable Barbara Mikulski
Vice Chairwoman
Subcommittee on Commerce, Justice,
Science and Related Agencies
Senate Appropriations Committee
Washington, DC 20510

The Honorable John Culberson
Chairman, Subcommittee on Commerce,
Justice, Science and Related Agencies
Committee on Appropriations
Washington, DC 20515

The Honorable Chaka Fattah
Ranking Member, Subcommittee on Commerce
Justice, Science, and Related Agencies
Committee on Appropriations
Washington, DC 20515

Dear Chairmen Shelby and Culberson, Vice Chairwoman Mikulski and Ranking Member Fattah:

The undersigned organizations write to respectfully request support for continued federal funding of innocence and forensic science programs at the Department of Justice and the National Institute of Standards and Technology at the Department of Commerce in the final FY 2016 appropriations bill. These programs increase the accuracy and fairness of the criminal justice system, provide the strongest possible forensic science tools to justice system stakeholders, and generate greater public safety for our nation.

Specifically, we request the following FY 16 funding levels:

- **\$4 million** for the Wrongful Conviction Review Program at the Department of Justice (DoJ), Bureau of Justice Assistance (*the Wrongful Conviction Review Program is a part of the Capital Litigation Improvement Program*)
- **\$4 million** for the Kirk Bloodsworth Post-Conviction DNA Testing Program (the “Bloodsworth Program”) at the DoJ, National Institute of Justice (NIJ);
- **\$12 million** for the Paul Coverdell Forensic Sciences Improvement Grant Program (the “Coverdell Program”) at the NIJ;
- **\$6 million** for the Department of Justice to support the National Commission on Forensic Science; research at the National Institute of Justice; and related forensic science standards setting activities at the National Institute of Standards and Technology (NIST);
- **\$11 million** for NIST to support forensic science research and measurement science.

Freeing innocent individuals and preventing wrongful convictions through reform *greatly benefits public safety*. Every time DNA identifies a wrongful conviction, it enables the identification of the real perpetrator of those crimes. *True perpetrators have been identified in approximately half of the over 300 DNA exoneration cases*. Unfortunately, many of these real perpetrators had gone on to commit additional crimes while an innocent person was convicted and incarcerated in their place.

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To date, 325 individuals in the United States have been exonerated through DNA testing, including at least 20 who served time on death row. These innocents served an average of 14 years in prison before exoneration and release. However, the value of federal innocence and forensic science programs is not to just these exonerated individuals. It is important to fund these critical programs because reforms and procedures that help to prevent wrongful convictions *enhance the accuracy of criminal investigations, strengthen criminal prosecutions, and result in a stronger, fairer system of justice that provides true justice to victims of crime.*

Wrongful Conviction Review Program

We know that wrongful convictions occur in cases where DNA evidence is not sufficient or even available to prove innocence. The National Registry of Exonerations currently lists a total of more than 1,500 exonerations since 1989 -- over 300 of which were based primarily on DNA. The Wrongful Conviction Review Program provides critical support to ensure that experts are available to navigate the complex landscape of post-conviction litigation, as well as oversee the thousands of volunteer hours local innocence organizations leverage to help investigate these complex cases and support the significant legal work they require. The Wrongful Conviction Review Program has contributed to the exoneration of at least ***12 innocent individuals just this past year.***

Particularly when DNA is not available, or when DNA alone is not enough to prove innocence, proving one's innocence to a level sufficient for exoneration is difficult compared to "simply" proving the same with DNA evidence. In these cases, innocent individuals require expert representation and the need for such representation is enormous, because only a small fraction of cases involve evidence that could be subjected to DNA testing. (For example, it is estimated that among murders, only 10% of cases have the kind of evidence that could be DNA tested.) The Wrongful Conviction Review Program provides applicants with funds for providing high quality and efficient representation for potentially wrongfully convicted defendants in post-conviction claims of innocence.

The program's goals are both to alleviate burdens placed on the criminal justice system through costly and prolonged post-conviction litigation *and to identify, whenever possible, the actual perpetrator of the crime.* To help continue this important work, we ***urge you to provide \$4 million for the Wrongful Conviction Review Program in FY 16.*** (Please note that the *Wrongful Conviction Review Program is a part of the Capital litigation Improvement Program.*)

The Bloodsworth Program

The Bloodsworth Program provides hope to innocent inmates who might otherwise have none by helping states more actively pursue post-conviction DNA testing in appropriate situations. These funds have had a positive impact that has led to great success. Many organizational members of the national Innocence Network have partnered with state agencies that have received Bloodsworth funding.¹

¹ The Innocence Network is an affiliation of organizations dedicated to providing pro bono legal and investigative services to individuals seeking to prove innocence of crimes for which they have been convicted and working to redress the causes of wrongful convictions.

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The Bloodsworth Program does not fund the work of organizations in the Innocence Network directly, but instead focuses on state applicants which seek support for a range of entities involved in innocence cases, including law enforcement agencies, crime laboratories, and a host of others – often in collaboration with each other, and with Innocence Network organizations. For example, a Bloodsworth grant to Arizona allowed the Arizona Attorney General’s Office to partner with the Arizona Justice Project to create the Post-Conviction DNA Testing Project. This effort canvassed the Arizona inmate population, reviewed cases, worked to locate evidence and filed joint requests with the court to have evidence released for DNA testing. In addition to identifying the innocent, *Arizona Attorney General Terry Goddard has noted that the “grant enable[d] [his] office to support local prosecutors and ensure that those who have committed violent crimes are identified and behind bars.”*² Such joint efforts have also been pursued in Connecticut, Louisiana, Minnesota, New York, North Carolina, and Wisconsin.

The Bloodsworth program is a relatively small yet powerful investment for states seeking to free innocent people who were erroneously convicted and to identify the true perpetrators of crime. ***The program has resulted in the exonerations of 26 wrongfully convicted persons in 10 states. The true perpetrator was identified in 10 of those cases.*** For example, Virginian Thomas Haynesworth, who was wrongfully incarcerated for 27 years, was freed thanks to Bloodsworth-funded DNA testing that also revealed the real perpetrator. The real perpetrator in that case went on to terrorize the community by attacking twelve women, with most of the attacks and rapes occurring while Mr. Haynesworth was incarcerated. Given the importance of this program to both innocent individuals and public safety, we ***urge you provide \$4 million to continue the work of the Bloodsworth Post-Conviction DNA Testing Program in FY 16.***

The Coverdell Program

Recognizing the need for independent government investigations in the wake of allegations of forensic negligence or misconduct, Congress created the forensic oversight provisions of the Coverdell Program, a crucial step toward ensuring the integrity of and improving public confidence in forensic evidence. Specifically, in the Justice for All Act, Congress required that

[t]o request a grant under this subchapter, a State or unit of local government shall submit to the Attorney General... a certification that *a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results* committed by employees or contractors of any forensic laboratory system, medical examiner’s office, coroner’s office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.³

The Coverdell Program provides state and local crime laboratories and medical examiner offices with much needed federal funding to carry out their work both efficiently and effectively. Now, more than ever, as forensic science budgets find themselves on the chopping block in states and localities nationwide and as federal bodies recommend the implementation of new policies,

²Arizona receives federal DNA grant, <http://community.law.asu.edu/news/19167/Arizona-receives-federal-DNA-grant.htm> (last visited Mar. 13, 2012).

³ 42 U.S.C. § 3797k(4) (emphasis added).

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standards, and guidelines, the very survival of many crime labs may depend on Coverdell funds. As the program supports both the capacity of crime labs to process forensic evidence and the essential function of ensuring the integrity of forensic investigations in the wake of serious allegations of negligence or misconduct, we **urge you to provide \$12 million for the Coverdell Program in FY 16.**

Forensic Science Improvement

To continue the critical work to improve forensic science, and help prevent wrongful convictions, we urge you to provide **\$17 million to support forensic science improvements, including:**

- **\$6 million for the Department of Justice**, including:
 - **\$1 million** for the DOJ-NIST National Commission on Forensic Science to continue its work.
 - **\$2 million** for the National Institute of Justice to conduct implementation and applied research in this area.
 - **\$3 million** directed to NIST to support technical standards development in forensic science through the Organization of Scientific Area Committees.
- **\$11 million for the National Institute of Standards and Technology (NIST)** at the Department of Commerce to support forensic science research and measurement science.

*As the federal entity that is both perfectly positioned and institutionally constituted to conduct measurement science and foundational research in support of forensic science, NIST's work will improve the validity and reliability of forensic evidence, a need cited by the National Academy of Sciences 2009 report, *Strengthening Forensic Science in the United States: A Path Forward*. NIST's reputation for innovation will result in technological solutions to advance forensic science applications and achieve a tremendous cost savings by reducing court costs posed by litigating scientific evidence and redirecting resources to identifying the true perpetrators of crime.*

The unfolding development of NIST forensic science standards setting groups is seen by many stakeholders as the most significant federal forensic science initiative in recent years. State and local forensic scientists, who conduct the vast majority of forensic science casework, are in strong support and are significantly involved in this effort. Also, the newly created National Commission on Forensic Science, a partnership between DOJ and DOC/NIST, is an important policy guidance group, which includes State and local systems experts as well as leading scientific experts. At a time when public safety and national security are some of our nation's top priorities, it is imperative that Congress invest in scientific tools that support these endeavors. The Coverdell Program and forensic science activities and research at NIJ and NIST will help to greatly improve forensic disciplines and propel forensic science toward greater accuracy and reliability.

Thank you for your leadership in helping to ensure the integrity of our nation's criminal justice system. We urge you to support all of the aforementioned programs, including the Wrongful Conviction Review; Bloodsworth; Coverdell; and forensic science programs. If you have any

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questions, or need additional information, please contact Jenny Collier, Federal Policy Advisor to the Innocence Project, at jennycollierjd@yahoo.com or (202) 295-7188.

Sincerely,

Alaska Innocence Project
Arizona Innocence Project
Arizona Justice Project
California Innocence Project
Call to Do Justice
Center on Wrongful Convictions at Northwestern University School of Law
Citizens United for Rehabilitation of Errants
Church of Scientology Nation Affairs Office
Committee for Public Counsel Services Innocence Program
Connecticut Innocence Project/Post Conviction Unit
Duke Law Center for Criminal Justice and Professional
Exoneration Initiative
FedCURE
Healing Justice
Georgia Innocence Project (and Alabama Innocence Initiative)
Justice Policy Institute
Justice Fellowship
Kentucky Innocence Project
Idaho Innocence Project
Illinois Innocence Project
Innocence Project (New York)
Innocence Project Clinic - University of Baltimore
Innocence Project New Orleans
Innocence Project Northwest
Innocence Project of Florida
Innocence Project of Iowa
Innocence Project of Texas
NAACP
New Mexico Innocence and Justice Project
Michigan Innocence Clinic
Midwest Innocence Project
Minnesota Innocence Project
Mississippi Innocence Project
Montana Innocence Project
New England Innocence Project
Nebraska Innocence Project
National African American Drug Policy Coalition, Inc.
National Association of Criminal Defense Lawyers
National Association of Medical Examiners
National Association of Social Workers

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National Juvenile Justice Network
North Carolina Center on Actual Innocence
Northern California Innocence Project
Ohio Innocence Project
Oklahoma Innocence Project
Oregon Innocence Project
Palmetto Innocence Project (South Carolina)
Pennsylvania Innocence Project
Puerto Rico Innocence Project
Reinvestigation Project
Reentry Central and One Million Americans, Ltd.
SparkAction
The Constitution Project
Thomas M. Cooley Innocence Project
University of Miami Law Innocence Clinic
Wisconsin Innocence Project
Wrongful Conviction Clinic (IU)
Wrongful Conviction Project
West Virginia Innocence Project
W. Haywood Burns Institute
Women Who Never Give UP

Taking Sexual Assault Seriously: The Rape Kit Backlog and Human Rights

United States Senate Committee on the Judiciary
Subcommittee on the Constitution

Testimony of Cook County Sheriff Thomas J. Dart:

In too many cases, rapists walk free. It happens even when a woman who has been raped, braves the secondary ordeal of going to a hospital, being interviewed by police and being examined by doctors. It happens because some police agencies leave that rape kit on a shelf instead of having it tested.

In 2010, Illinois became the first state to require all rape kits to be tested. Four states have followed suit. This should be the law in all 50 states. (<http://www.ilga.gov/legislation/publicacts/96/096-1011.htm>)

Illinois' law, which should serve as a model, requires:

- 1) Police agencies must submit any new sex assault cases to a forensic science laboratory for analysis within 10 days of collection.
- 2) Analysis must be completed within six months.
- 3) Previous cases which had never been submitted for analysis, must upon passage of the law, be submitted.
- 4) The state police were compelled to offer training to hospital personnel on proper evidence collection.

The Illinois State Police were able to avail themselves of federal grants to help test the backlog of 4,000 untested rape kits after our law was passed in 2010. DNA matches were found in about a quarter of the cases.

Victims who work with police to try to catch their attackers should not be re-victimized by bad policing. When our office came to the aid of the Robbins Police Dept. two years ago, we found 176 rape kits dating back to 1978 gathering dust in the office. At least 55 of those kits had never been submitted for testing. Of the 121 that were tested, in only eight cases did the officers bring the evidence to prosecutors to pursue a case.

The women whose rapes went unsolved are not statistics. They are real people like Natasha from Robbins, who may never see justice catch up with her rapist. As Nick Kristof described in his New York Times column, Natasha was 14 years old when a man raped her and tried to kill her after following her when she got off her school bus.

She submitted to collection of samples at the hospital so that police could track down her rapist. That rape kit sat on a shelf for 22 years until our office moved in to help the Robbins police department. We found a DNA match from that kit to a career criminal but the statute of limitations had run. They left him and other rapists free to victimize other women like Natasha.

We welcome Congress' interest in addressing this problem and stand ready to work with you on this.



Statement of

Charles A. “Chuck” Spahos
Executive Director of
The Prosecuting Attorneys’ Council of Georgia
Georgia Innocence Project & GBI
DNA & Post-Conviction Program

for the

Senate Judiciary Subcommittee on the
Constitution

“Taking Sexual Assault Seriously:
The Rape Kit Backlog and Human Rights”

May 18, 2015

The Prosecuting Attorneys' Council of Georgia appreciates the opportunity afforded Chairman Cornyn, Ranking Member Durbin, and Members of the Subcommittee on the Constitution to submit the following statement regarding today's hearing, "*Taking Sexual Assault Seriously: The Rape Kit Backlog and Human Rights.*"

In the past 20 years, innocence organizations have used post-conviction DNA testing to correct over 300 wrongful convictions throughout the United States. Locally, Georgia Innocence Project (GIP) has addressed more than 6,000 requests for assistance and has assisted 5 Georgia men in proving their innocence through the use of DNA testing. Although GIP does great work, they are handicapped by a lack of access to CODIS Database information when evaluating claims of innocence.

As a resource organization, the Prosecuting Attorneys' Council of Georgia (PAC) strives to provide prosecutors in Georgia with the tools and support necessary to bring justice to Georgia. To that end, PAC is always seeking ways to affect systemic change in the criminal justice system. Reviewing CODIS hits to find and substantiate innocence claims solidifies the credibility and finality Georgia's criminal justice system.

In 2013, PAC partnered with GIP and the Georgia Bureau of Investigation (GBI) to launch an effort to review post-conviction claims of innocence. This unprecedented collaboration was funded by the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program from NIJ. The work of the 2013 grant fell into three categories:

- (1) Investigation of CODIS hits from 2009 to present in Georgia to determine if they related to a case that was closed with a conviction;
- (2) Barcoding of a backlog of evidence in the GBI's evidence vault; and
- (3) Evaluation, investigation and litigation of claims of innocence received by GIP.

The results from the effort have been substantial. GBI has completed the barcoding of all evidence in their vault, resulting in evidence from 20,000 cases being entered into their Laboratory Management System (LIMS), facilitating faster location of evidence. Of the 2,890 CODIS hits delivered in the 2013 grant, to date PAC has evaluated 2,761, leaving approximately 129 CODIS hits from 2009 to present.

Of the 2,757 cases, GIP further evaluated 27 cases that related to the conviction of an individual who differed from the CODIS hit. According to GIP, they are still looking at 2 of the 27 cases to determine if there is a viable claim of innocence. Additionally, with the funds of the 2013 grant, GIP was able to continue its work of evaluating and litigating claims of innocence submitted by incarcerated individuals.

Despite the success of the 2013 grant, further work is needed to complete the review of post-conviction innocence claims. According to GBI personnel, there are an additional 1,223 CODIS hits that pre-date 2009. Also, there is a vast amount of evidence in the GBI vault that needs to be organized and investigated by PAC.

In May of 2015, PAC and GIP applied for the Post-Conviction Testing of DNA Evidence to Exonerate the Innocent grant from NIJ. The funds from this grant will enable PAC and GIP to continue to work collaboratively to conduct case investigations relating to CODIS database matches. Additionally, PAC will be able to work with the GBI to organize and investigate evidence located in the vault to determine potential claims of innocence.

With the continuation of this work, PAC will have the benefit of possessing the tools to potentially assist local law enforcement and district attorneys' offices to resolve cold cases with DNA testing. Likewise, PAC's case investigations will streamline colorable claims of innocence to GIP.

**Statement for the Record by Jennifer Thompson, Founder, Healing Justice
for the Senate Judiciary Committee's Constitution Subcommittee
Hearing on the Rape Kit Backlog and Human Rights**

May 20, 2015

Thank you, Chairman Cornyn and Ranking Member Durbin, for considering my statement for the record.

In June of 1995, I found myself on a journey I never wanted, never asked for and never would have wished on another human being. I learned that the man whom I had identified in court as my rapist – the man whose face, breath and evilness I had dreamt about for 11 years – was innocent. The man whom I believed had destroyed me that night, who had stolen everything from me, and whom I hated with an all-consuming rage had lost 4000 days, eleven Christmases, eleven birthdays, and relationships with loved ones. And on June 30th of 1995, Ronald Cotton, the man I had hated and prayed for to die, walked out of prison a free and innocent man.

My rage and hatred had been misplaced. I was wrong. An innocent man had been sent to prison. A third of his life was over, and the shame, guilt and fear began to suffocate me. I felt I had let down everyone -- the police department, the district attorney's office, the community, the other women who became victims of the real perpetrator, Bobby Poole, and especially the recently exonerated Ronald Cotton and his family.

Several years after Ronald was freed, I received a phone call from Bobby Poole's last victim. I remember hearing her story about what happened to her and realized that we all had left him on the streets to commit further crimes – rapes -- that we possibly could have prevented if Ronald had not been locked up for something he had never done. The knowledge that Mr. Poole had been left at liberty to hurt other women paralyzed me and sent me into a backward spiral that took years to recover from.

This journey has taught me that the impact of wrongful convictions goes so much further than a victim and the wrongfully convicted. The pool of victims from 1984 was huge – me, Ron, the police department, our families, and the other women who became victims of Bobby Poole all suffered.

This case crystalized for me why it is so important to have laws and programs in place that help protect the innocent. These laws and programs would be important enough if they only protected the innocent, but they do so much more. They also protect the potential victims of real perpetrators, the families and children of the wrongfully convicted person, and – ultimately – the victim who learns the truth.

Federal innocence programs, including the Kirk Bloodsworth Post-Conviction DNA Testing Program and the Wrongful Conviction Review Program, help men such as Ronald obtain post-conviction DNA testing and legal representation that can lead to their freedom and to the conviction of the guilty. These programs increase criminal justice system fairness while also increasing public safety.

Additionally, programs that support crime labs that process forensic evidence, such as the Coverdell Forensic Sciences Improvement Grant Program, and that support forensic and measurement science research to more effectively identify and convict the right person during initial investigation and prosecution, play a vital role in creating a system approach to helping to prevent and rectify wrongful convictions and provide real justice to victims.

Details regarding the effectiveness and funding needed for these innocence and forensic science programs are in the attached letter signed by 60 organizations, including the Innocence Project of Texas and innocence organizations from Illinois.

Additionally, to address the aftermath of wrongful convictions for all involved – the innocent and their families, as well as victims of crime and their families, I recently founded an organization called the Healing Justice (healingjusticeproject.org). Healing Justice operates in partnership with the Duke Center for Criminal Justice and Professional Responsibility, and works closely with innocence organizations and service providers to:

- Organize teams of direct service providers who stand ready and able to provide comprehensive healing to all who are injured by wrongful convictions;
- Explore the application of restorative justice principles in wrongful conviction cases;
- Create a platform for bringing together all of the diverse individuals affected by wrongful convictions; and
- Develop a unified voice across these diverse individuals for the purposes of achieving systemic change in our criminal justice system.

Charitable organizations, such as Healing Justice, as well as federal innocence and forensic science programs, and programs to improve rape kit processing and reduce the rape kit testing backlog all are needed to ensure that our criminal justice system is fair, just and effective. Congress should support these critical federal programs robustly and spend a relatively small and strategic amount of funding to ensure that the criminal justice system, which costs tens of billions of dollars, is as effective as possible and that there are opportunities for post-conviction relief in place for innocent men such as Ronald Cotton. Without access to DNA testing, expert legal representation, validated forensic science, and best practices, innocent men will remain in prison, real perpetrators will remain free, and new victims will have to experience the same horrors and indignities that I did.

Thank you so much for your time and consideration of my statement.

**STATEMENT FOR THE RECORD FOR MAILE M. ZAMBUTO, CHIEF
EXECUTIVE OFFICER FOR THE JOYFUL HEART FOUNDATION**

**BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION**

**“Taking Sexual Assault Seriously: The Rape Kit Backlog and Human
Rights”**

Wednesday, May 20, 2015

Chairman Cornyn, Ranking Member Durbin, and members of the Subcommittee, I want to thank you for your leadership in holding today’s hearing on the nationwide rape kit backlog, and its impact on survivors of sexual violence. I deeply appreciate your invitation to the Joyful Heart Foundation to testify before you today, and apologize that I am not able to be there in person to participate in this critical discussion.

I am grateful for the opportunity to contribute my voice to those of our partners speaking to you today, as well as Joyful Heart’s Managing Director, Sarah Haacke Byrd.

Each year, thousands of individuals take the step of reporting their rape to the police. And yet, hundreds of thousands of times, a decision is made not to process the evidence. Even when law enforcement does send a rape kit to the crime lab for testing, we know it can sit for months—and in some cases, years—before being tested.

But this issue is not about kits of evidence. Or process. Or dusty shelves in long-forgotten storage facilities. This issue is a profoundly human one. It is about the courageous survivors who deserve all the tools at our disposal to bring about the possibility of healing and justice.

We must continue on the path toward greater access to justice, to treat rape as seriously as any other crime, to test all kits, investigate cases thoroughly and pursue leads resulting from rape kit testing, and to believe survivors and honor the decision to report their sexual assault.

Sarah’s testimony will highlight our partnership in Detroit, and the significant progress being made by the unbelievable Wayne County Prosecutor Kym Worthy. Already, Detroit’s initiative to test all kits has resulted in the identification of 288 potential serial rapists linked to crimes committed in 31 states and the District of Columbia.

One of those kits belonged to a young mother who was raped at gunpoint in her own bed, while her two young children were sleeping next to her. Immediately following the attack, she called the police and went to the hospital, where evidence was collected from her body.

In her words: “I had no choice. That was the only way I had of getting this person off the street.”

Her rape kit was tested—14 years later.

And when a prosecutor finally told her they had identified her rapist, she courageously moved forward with the prosecution. Her attacker was found guilty and sentenced to up to 60 years in

prison.

As people align themselves with this movement, and the rape kit backlog gains visibility, policymakers are taking notice, leading to stronger public policies and more funding for testing, investigations and prosecutions. That means more funding for places like Wayne County, Memphis, Cleveland and Texas. More funding for jurisdictions to do right by survivors. More opportunities for justice to be served.

We applaud the elected officials, police officers, and district attorneys that have begun this journey. We know that it is a challenging one. It takes significant political will and resources.

An important choice point along this journey to reform is determining the best process for the notification and re-engagement of survivors whose rape kits were part of the backlog. As a survivor, I can tell you that there is nothing more important. The response a survivor is met with can make all the difference in their recovery from the trauma.

I was sexually abused during most of my childhood, for the first time when I was five by a teacher at my school. And as a young woman, I was raped.

What I carry with me, what creeps in still, is not the abuse itself, but what I was met with; the response of the community around me. Most of that response was filled with ignorance, judgment, anger, disbelief, blame, fear and even disgust.

This response, and the attitudes they represent, can bring deep suffering into a survivor's life. They also contribute to keeping these the most underfunded, underreported, under-researched, under-regarded social issues of our time.

It left *me* filled with shame. I know I am not alone in this—that my experience echoes those of so many survivors. I know this is why at the core of my pursuit for healing is also a pursuit for change. And so it is my greatest honor and privilege to lead an organization that is a fierce agent for change. But we are not alone.

We are all part of this community—elected officials, members of law enforcement, advocates, business leaders, media, educators, parents and philanthropists who have joined us in this national reform movement.

This Committee and its members have a powerful opportunity to acknowledge the truth about this issue, embrace survivors, and insist on change. If you don't think you play a vital role in this community, please hear us when we tell you that YOU DO.

As a survivor, if I can communicate only one thing about your role in a survivor's journey, it is this: never, ever underestimate your power to affect its course.

We all have a role to play in ushering in change, and I so deeply encourage you to play yours.

Five years ago, Joyful Heart President & Founder Mariska Hargitay testified before a House of Representatives Committee professing her outrage about the rape kit backlog. At the time, policymakers were just starting to learn about the depth of this issue. Today, we stand before you an active partner, guided by the lessons we have observed, emboldened by the need for greater justice, and driven by the ambition that together, we can end this violence.

That healing is possible.

That change is possible.

That justice is possible.

On behalf of all of us at Joyful Heart, I want to thank you for the privilege of providing this testimony, and sharing this opportunity to honor survivors who have made the bold choice to heal.

