



1 OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR  
2 FROM THE STATE OF TEXAS, CHAIRMAN, SUBCOMMITTEE ON THE  
3 CONSTITUTION, COMMITTEE ON THE JUDICIARY

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5 Senator Cornyn. Good afternoon. This hearing of the  
6 Constitution Subcommittee will come to order.

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

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

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

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

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

5           After a rape kit is collected, law enforcement  
6 agencies can forward this evidence to a crime lab for  
7 testing, but, unfortunately, we know many do not. The  
8 DNA from that kit may be used by lab officials and law  
9 enforcement to search the FBI's nationwide database of  
10 criminal offender DNA, known as CODIS.

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

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

19           I know each of you have stories you could tell,  
20 particularly Debbie Smith, but I met a woman from Dallas,  
21 Texas by the name of Carol Bart. In 1984, Ms. Bart was  
22 sexually assaulted at knife-point outside her Dallas  
23 apartment. After she was attacked, she consented to a  
24 rape kit examination, but her rape kit sat untested for  
25 24 years on the shelf.

1           But when it was finally tested against the FBI  
2 database, it yielded a match to a serial offender who had  
3 sexually assaulted another woman only 4 months after he  
4 had attacked Ms. Bart.

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

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

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

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

25           Because her rape kit sat untested for so long, the

1 statute of limitations has run, as well. So once again,  
2 the rape kit backlog meant that another victim had been  
3 denied justice.

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

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

19 I am proud to say that Texas is leading the charge.  
20 In 2011, Texas joined Ranking Member Durbin's home state  
21 as one of the first states in the Nation to enact a law  
22 requiring a comprehensive audit of the rape kit backlog  
23 and the mandatory testing of all sexual assault evidence.  
24 I know we will hear more from the Attorney General about  
25 that.

1           Just last year, the City of Houston finished clearing  
2           its rape kit backlog of 6,600 kits and so far, just out  
3           of the 6,600 kits tested, they have come up with nearly  
4           1,000 CODIS hits on these untested rape kits.

5           So awareness of this effort has grown and so as the  
6           movement to end the rape kit backlog forever.

7           In 2011, Texas and Illinois were only two States with  
8           rape kit backlog laws on the books. Four years later, we  
9           now have some form of these laws on the books of at least  
10          12 States. That is real progress.

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

20          In 2013, I was proud to join Representative Ted Poe  
21          and Senator Bennet in sponsoring legislation known as the  
22          Sexual Assault Forensic Evidence Reporting Act, or the  
23          SAFER Act. This legislation was signed into law in the  
24          last Congress and it strengthens the Debbie Smith Act by  
25          directing more funds to test crime scene DNA and

1 increases law enforcement -- gives them new resources to  
2 audit and to inventory the rape kit backlog.

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

6 So while we need to continue to make sure that these  
7 important programs are fully implemented, I look forward  
8 to hearing the ideas of our witnesses and Subcommittee  
9 members on what Congress can do to continue this fight.

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

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

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

9 When you see a report from the CDC, they estimate  
10 about 1 out of every 5 women in America is going to be  
11 raped during the course of their life and then the  
12 National Crime Victimization Survey tells us that between  
13 2006 and 2010, 65 percent of rapes and sexual assaults  
14 went unreported.

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

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

23 We recently had a column Nicholas Kristof wrote where  
24 he interviewed the sheriff of Cook County, Tom Dart, a  
25 personal friend of mine and the Attorney General's. Tom

1 went into a small community south of Chicago, Robbins,  
2 Illinois, and he found a locker filled with rape kits.  
3 They pulled out one of the kits and had it tested. It  
4 was about a young woman in the community. It had been  
5 collected. She was 14 years old when the rape occurred  
6 and it was years ago when it happened. Nothing had been  
7 done.

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

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

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

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

1 victims.

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

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

11 The House Commerce's Justice and Science  
12 Appropriations Subcommittee included a continuation of  
13 this vital funding in the fiscal year 2016 bill. It is  
14 important that we give the resources to these agencies of  
15 government that are investigating and prosecuting.

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

20 Now, two of the members of this panel I invited and I  
21 will be happy to introduce at the appropriate time. Let  
22 me turn it back over to the Chairman.

23 [The prepared statement of Senator Durbin follows:]

24 / COMMITTEE INSERT

25 Senator Cornyn. We are happy to have the Chairman

1 of the full Committee and the Ranking Member of the full  
2 Committee here with us.

3 Senator Grassley?  
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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.  
2 SENATOR FROM THE STATE OF IOWA, CHAIRMAN, COMMITTEE ON  
3 THE JUDICIARY  
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5 Chairman Grassley. I would like to show my support  
6 and give a short statement, because I want to help you  
7 and Senator Durbin in any way I can.

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

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

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

23 We are pleased to have Debbie here. I am going to  
24 skip over a description of the crime against her because  
25 it is pretty much repetitive of what you said, but it

1 does not mean that I pay any less attention to it.

2 This program has helped crime labs around the Nation  
3 promptly analyze DNA evidence like that which was key to  
4 identifying Debbie Smith's rapist.

5 In this same period, however, the demand for DNA  
6 testing has increased, as well, because jurisdictions  
7 around the country have increased their reliance upon  
8 forensic evidence as a crime-solving tool.

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

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

19 Over the last decade members of this Committee have  
20 played a very important role in ensuring that the Debbie  
21 Smith Act is reauthorized and the DNA backlog reduction  
22 program is funded. This year I joined Senator Cornyn and  
23 28 colleagues in calling on Senate Appropriation leaders  
24 to again make this program a priority.

25 So I thank Senator Cornyn and Senator Durbin for

1 their leadership and, most importantly, in organizing  
2 this hearing because this is a very important step to  
3 make sure we keep this whole issue before the Congress.

4 Thank you.

5 [The prepared statement of Senator Grassley appears  
6 in the appendix.]

7 / COMMITTEE INSERT

8 Senator Cornyn. Thank you, Senator Grassley.

9 Senator Leahy?

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

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4 Senator Leahy. Thank you, Mr. Chairman.

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

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

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

17 I remember seeing her almost in tears the first time  
18 we talked, Debbie, and you talked to me about how it was  
19 7 years before your kit was tested and the perpetrator  
20 was caught -- 7 years.

21 As I told you earlier today, my wife sent a second  
22 hug to you because of how moved she has been talking with  
23 you and Rob. When we first worked to get the Debbie  
24 Smith Act passed as part of the Justice for All Act in  
25 2004, I remember Debbie going from office to office with

1 another good friend of ours, Kirk Bloodsworth. I sat  
2 there in the corner a couple of times, you will recall,  
3 just listening to your stories. He was the first person  
4 to be exonerated from death row by DNA, the first person.  
5 But it was the personal appeal, it was not the numbers or  
6 the statistics, it is when Senators of both parties sat  
7 there and listened to them and realized we have got to do  
8 something.

9 We all hoped that your work would be over after  
10 getting that and we realize it continues on. I remember  
11 September last year when I went to the Senate floor and  
12 asked unanimous consent to reauthorize this important  
13 legislation. President Obama signed the law a few days  
14 later. I know that commitments I have with Senator  
15 Cornyn, we are going to reauthorize the other important  
16 programs in the Justice for Act.

17 I want to publicly -- I do not want to hurt him back  
18 in Texas, but I want to publicly thank Senator Cornyn,  
19 Senator Grassley and others for working on this. When we  
20 drafted the Leahy-Crapo Violence Against Women  
21 Reauthorization Act of 2013, we dramatically changed what  
22 was in the original Violence Against Women Act and we  
23 increased specific dedicated funding to sexual assault  
24 response, including greater attention to collecting and  
25 processing rape kits.

1           It is not going to be easy, but a lot of it requires  
2           the commitments not only in Texas and others in their  
3           States. My home State of Vermont has committed  
4           professionals of Vermont forensic laboratories, the  
5           Vermont Network Against Domestic and Sexual Violence.  
6           But it is also going to require money.

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

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

17          I wonder how many other people were victims in  
18          between?

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

23          [The prepared statement of Senator Leahy appears in  
24          the appendix.]

25          / COMMITTEE INSERT

1           Senator Cornyn.    Thank you, Senator Leahy.

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

7           Debbie is the founder of an organization known as  
8    Hope Exists After Rape Trauma, or HEART.  Of course, her  
9    achievements are too long to list here, but I look  
10   forward to hearing more about her update on the work she  
11   is doing around the country and any other light she can  
12   help us shed on this continuing issue.

13          Next, our second witness is Mr. Skylor Hearn, a  
14   former Texas Ranger, and, as we say in Texas, one riot,  
15   one ranger.  But he currently serves as the Assistant  
16   Director of the Texas Department of Public Safety and in  
17   that capacity, he is overseeing the implementation of the  
18   Texas rape kit backlog law.

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

22          Our third witness is well known here on the Hill,  
23   Scott Berkowitz, who we have worked with for a long time  
24   on these issues.  He is the Founder and President of  
25   Rape, Abuse and Incest National Network, or RAINN.  RAINN

1 is the Nation's largest anti-sexual assault advocacy  
2 group and operates the National Sexual Assault Hotline.  
3 in his role as President of RAINN, Mr. Berkowitz has  
4 played an instrumental role in advocating for victims and  
5 fighting for legislation to take criminals off the  
6 street, the Debbie Smith Act, the DNA Fingerprint Act,  
7 and the SAFER Act.

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

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

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

17 She has done a lot of great work over the years, but  
18 particularly when it comes to this subject. Her work on  
19 the Illinois Sexual Assault Evidence Submission Act in  
20 2010 was the first of its kind in our Nation. She  
21 currently co-chairs the statewide Sexual Assault Working  
22 Group in my State.

23 Before being elected as Attorney General, she served  
24 in the Illinois Senate, along with a former U.S. Senator  
25 from Illinois, Barack Obama, and worked as a litigator

1 for a Chicago law firm.

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

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

8 Our final witness is Sarah Haacke Byrd, the  
9 Management Director of the Joyful Heart Foundation, an  
10 organization seeking to heal, educate and empower  
11 survivors of sexual assault, domestic violence and child  
12 abuse.

13 Before joining Joyful Heart, she was the Director of  
14 Operations for the Bellevue/New York University Program  
15 for Survivors of Torture. Sarah is a graduate of the  
16 University of Minnesota-Twin Cities and the Case Western  
17 Reserve University Weatherhead School of Management.

18 We thank her, as well.

19 Senator Cornyn. If I can ask each of the witnesses,  
20 please, to stand.

21 [Witnesses sworn.]

22 Senator Cornyn. Thank you. Please have a seat.

23 Debbie, would you care to make an opening statement?  
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1 TESTIMONY OF MS. DEBBIE SMITH, SEXUAL ASSAULT SURVIVOR,  
2 FOUNDER OF HOPE EXISTS AFTER RAPE TRAUMA (HEART),  
3 WILLIAMSBURG, VIRGINIA

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

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

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

18 So I thank both of you for all of your help.

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

25 I am always humbled to sit at the table with Scott

1 Berkowitz from RAINN, another one of those who purposely  
2 chose to find a way to make the path easier for sexual  
3 assault victims.

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

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

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

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

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

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

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

21           There was also a sealed envelope containing pubic  
22 hairs, vials containing a cotton swab, and a pair of  
23 semen-stained underwear, definitely nothing of value.  
24 All of these things were stored in this ordinary wire  
25 basket. None of these ordinary items were of any real

1 value unless, of course, they happened to belong to you.

2 After being raped, I struggled with trying to live  
3 with the memories of that day. For 6-and-a-half years,  
4 the smell of this man's breath, the touch of his cool,  
5 damp coat sleeve around my neck, and the sight of his  
6 black rubber boots were all stored in my memory and the  
7 sound of his voice in my ears reminding me, "Remember, I  
8 know where you live and I will come back to kill you if  
9 you tell anyone."

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

18 I merely existed for those 6-and-a-half years, as  
19 fear held my heart and my soul within its grip, choking  
20 out any joy of life. I became suicidal, seeking peace  
21 and rest from the pictures that played in my mind without  
22 warning.

23 Basket No. 6 has always been filled with what seemed  
24 like insignificant items, but it was this very Basket No.  
25 6 that stored my rape evidence kit that would deliver

1 peace to my heart and allow me to truly live again. It  
2 held fragments of my life that was lived. It held  
3 answers to my questions, solutions to my fears, and peace  
4 for my very soul.

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

8 On July the 26th of 1995, we received the news that  
9 DNA cold hit had revealed the name of my rapist. He was  
10 already in prison for another crime. The torment was  
11 finally over and I knew where he was. My family was  
12 safe. Basket No. 6 was finally allowed to speak.

13 Basket No. 6 now sits alone on my bookshelf in my  
14 home and it still holds nothing of any great monetary  
15 basket (sic), but in my heart, it holds the memory of a  
16 day that had gone terribly bad, a day that I thought that  
17 I would never recover.

18 Before it was brought to my home, Basket No. 6 sat  
19 behind a locked door lined up with many others just like  
20 on a shelf in a darkened room, doing exactly what it was  
21 fashioned to do. Basket No. 6 has long been emptied of  
22 its original contents and now sits on that shelf as a  
23 permanent reminder to me of the hundreds of thousands of  
24 other baskets, boxes and bags that still have pieces of  
25 someone's lives in them.

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

7           Because someone cared, these ordinary items stored in  
8 an ordinary wire Basket No. 6 brought life to truth and  
9 that truth finally rendered justice.

10          Because someone continues to report to work, Basket  
11 No. 6 has been emptied. A rapist has been identified.  
12 Justice has been rendered and future victims have been  
13 spared.

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

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

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

24          Thank you.

25          [The prepared testimony of Ms. Smith appears in the

1 appendix.]

2 / COMMITTEE INSERT

3 Senator Cornyn. Thank you for that powerful  
4 statement, Debbie.

5 Mr. Hearn?

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1 TESTIMONY OF MR. SKYLOR HEARN, ASSISTANT DIRECTOR, TEXAS  
2 DEPARTMENT OF PUBLIC SAFETY, AUSTIN, TEXAS

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4 Mr. Hearn. Chairman Cornyn, Ranking Member Durbin,  
5 other honorable members of the Senate Subcommittee, my  
6 name is Skylor Hearn and I serve as an Assistant Director  
7 with the Texas Department of Public Safety. It is an  
8 honor to appear before the Subcommittee today and  
9 participate in the dialogue on this critical issue of  
10 untested rape kits in the United States.

11 My purpose today is to detail the achievements and  
12 progress underway in the State of Texas to address this  
13 issue and identify the successes, lessons learned and  
14 remaining steps in our effort.

15 My full written testimony has been provided.

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

22 The State of Texas has been proactive in identifying  
23 and seeking resolutions through State legislative action.  
24 Texas Governor Greg Abbott, both now and as Texas  
25 Attorney General, is a leading force and champion in this

1 effort. What we have determined in Texas, which likely  
2 mirrors other parts of the Nation, is that several  
3 causative factors contribute to these sexual assault kits  
4 not being tested. Some of these factors include  
5 discretionary investigative or prosecutorial decisions  
6 where suspect identity is not an issue; prosecutorial  
7 non-acceptance due to suspect, victim or witness  
8 credibility issues; and, victim reluctance to formally  
9 pursue criminal charges.

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

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

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

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

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

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

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

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

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

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

19           From a victims' rights and human rights perspective,  
20 this initiative could be an extraordinary impact in  
21 providing a measure of justice to current victims and in  
22 the prevention of future crimes and victimization.

23           Thank you.

24           [The prepared testimony of Mr. Hearn appears in the  
25 appendix.]

1 / COMMITTEE INSERT

2 Senator Cornyn. Thank you, Mr. Hearn.

3 Mr. Berkowitz?

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1 TESTIMONY OF MR. SCOTT BERKOWITZ, FOUNDER AND PRESIDENT,  
2 RAPE, ABUSE AND INCEST NATIONAL NETWORK (RAINN),  
3 WASHINGTON, DC  
4

5 Mr. Berkowitz. Thank you, Chairman Cornyn, Ranking  
6 Member Durbin and members of the Subcommittee, for  
7 convening today's hearing on the rape kit backlog.

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

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

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

25 It helps bring justice to victims and helps take

1 rapists off the streets, making our communities safer and  
2 preventing future assaults.

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

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

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

19 In theory, once the exam is done and the report made,  
20 law enforcement sends that box to a DNA lab for testing.  
21 But that is where the system often breaks down. And when  
22 we speak of the backlog these days, we are primarily  
23 talking about these cases that are hidden from view, the  
24 rape kits, hundreds of thousands, by some estimates, that  
25 are stacked up usually in law enforcement warehouses and

1 have never been sent to the lab for testing.

2 There is a little good news here. Through your  
3 leadership, Chairman Cornyn, as you mentioned earlier,  
4 Congress last year reauthorized the Nation's first and  
5 largest anti-backlog initiative, the Debbie Smith Act,  
6 named for the courageous and most tireless woman I know  
7 and dear friend, Debbie.

8 Congress has also funded a new initiative by the  
9 Bureau of Justice Assistance to test more kits and help  
10 communities with the downstream impact of testing, and  
11 the Manhattan District Attorney has announced that he is  
12 devoting funds to testing nationally.

13 There has also been a lot of recent state activity, a  
14 was mentioned. Illinois and Texas were pioneers leading  
15 the way on audits and testing. Together with our  
16 partners in the Rape Kit Action Project, we are  
17 encouraging other states to step up to count their kits  
18 and eliminate their backlogs.

19 Last year, five new states enacted such laws and this  
20 year there are another 40 bills pending in 20 states.

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

1           For several years now, the Debbie Smith program,  
2 authorized at \$151 million per year, has been funded at  
3 just \$117 million per year. Still, that adds up to a lot  
4 of money. Over the last 10 years, through fiscal year  
5 2014, almost \$1.25 billion has been appropriated for DNA.  
6 Yet, in that time, only 51 percent of the money went for  
7 backlog capacity and testing purposes, even though that  
8 is, I believe, what Congress intended that it go toward.

9           Congress, in passing the SAFER Act 2 years ago,  
10 instructed that at least 75 percent of spending go toward  
11 testing cases and making sure that labs have the capacity  
12 to meet demand.

13           Looking back at the 10 years, if we had spent 75  
14 percent of these funds over the last decade instead of  
15 the 51 percent we actually spent, that would have meant  
16 an extra \$296 million to put toward the backlog, which is  
17 enough to test almost 300,000 rape kits.

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

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

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

3 SAFER also required the development of national  
4 protocols, guidance that would be very helpful to the  
5 cities and states now grappling with this issue. Ths  
6 guidelines were due more than 6 months ago, but it has  
7 not yet been released.

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

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

18 [The prepared testimony of Mr. Berkowitz appears in  
19 the appendix.]

20 / COMMITTEE INSERT

21 Senator Cornyn. Thank you, Mr. Berkowitz.

22 General Madigan?

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1 TESTIMONY OF HON. LISA MADIGAN, ATTORNEY GENERAL, STATE  
2 OF ILLINOIS, CHICAGO, ILLINOIS

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4 Ms. Madigan. Thank you, Chairman Cornyn, Ranking  
5 Member Durbin and members of the Subcommittee, for the  
6 opportunity to testify on this important topic of timely  
7 testing of sexual assault evidence.

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

14 But in contrast to the disturbingly large number of  
15 women sexually assaulted is the distressingly low number  
16 of women who report it.

17 Studies indicate reporting ranges from 10 to, at  
18 most, 35 percent and in Illinois, the latest numbers  
19 reveal that less than 15 percent of reported rapes result  
20 in arrest.

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

25 But recently survivors and their advocates have

1 demanded that legislators and law enforcement focus on  
2 the horrific failure of our criminal justice system to  
3 prevent and properly respond to sexual assault. The  
4 failure of police to process rape kits is indicative of  
5 the overall problem.

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

11 In response to these shocking findings, I drafted and  
12 worked to pass the Sexual Assault Evidence Submission  
13 Act. As you have heard, this was the first state law of  
14 its kind in the country. It required two things; first,  
15 the identification and testing of previously unsubmitted  
16 rape kits and, second, the creation of a statewide  
17 protocol to submit new rape kits to the crime lab within  
18 10 days.

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

25 So how do we ensure that rape kits are properly

1 collected, submitted and tested in a timely manner?

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

8 From what we have learned, I propose the following:  
9 first, all states should have a law that requires all  
10 rape kits be submitted for testing.

11 Second, we must institute mechanisms to ensure that  
12 police comply with the law and submit all rape kits for  
13 analysis. We can require tracking systems to ensure  
14 accountability and satisfy chain of custody concerns.

15 Third, forensic labs need sufficient funding and  
16 resources to test all the evidence they receive.

17 Fourth, labs should undertake efficiency reviews.

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

24 The fact is that often rape kits are unsubmitted for  
25 testing because of a blame-the-victim mentality or

1 because investigators mistrust the survivor's story. I  
2 have learned that too often police avoid testing rape  
3 kits by unilaterally deciding not to pursue an  
4 investigation.

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

9 It is also critical that trained sexual assault nurse  
10 examiners are available to all victims of sexual assault  
11 24 hours a day, 7 days a week. SANEs need to  
12 dramatically improve the collection of evidence and  
13 provide a compassionate response to the victim. In  
14 Illinois, my office has trained over 1,200 SANEs, but  
15 there are only three hospitals that I know of that have  
16 24/7 SANE programs.

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

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

25 I thank the Committee for this opportunity to testify

1 and I welcome your questions.

2 [The prepared testimony of Ms. Madigan appears in the  
3 appendix.]

4 / COMMITTEE INSERT

5 Senator Cornyn. Thank you very much.

6 Ms. Byrd?

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1 TESTIMONY OF MS. SARAH HAACKE BYRD, MANAGING DIRECTOR,  
2 JOYFUL HEART FOUNDATION, NEW YORK, NEW YORK

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4 Ms. Byrd. Chairman Cornyn, Ranking Member Durbin,  
5 members of the Subcommittee, thank you for inviting the  
6 Joyful Heart Foundation to testify today.

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

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

17 Our vision is bold and ambitious -- one of a world  
18 without violence. Since 2010, the Joyful Heart  
19 Foundation has made the elimination of the rape kit  
20 backlog our top priority. Through partnerships with  
21 Federal, state and local government, nonprofit  
22 organizations, law enforcement, advocates and survivors,  
23 we are working to bring attention, critical funding and  
24 reforms to improve the criminal justice response to  
25 sexual violence.

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

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

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

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

24           Detroit has become one of the best examples of what a  
25 city can do when it has the political will to address its

1 backlog. In 2009, Wayne County Prosecutor Kym Worthy's  
2 office discovered 11,341 untested rape kits in a police  
3 storage facility.

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

8 As of May 2015, Detroit's initiative has resulted in  
9 1,133 DNA matches and the identification of 288 potential  
10 serial rapists.

11 The DNA from these kits is linked to crimes in 31  
12 states, from Alaska to New York, Texas to Illinois.

13 The results underscore what we know about sex  
14 offenders -- that they rape again and again, they commit  
15 all kinds of crimes, and they often move from state to  
16 state, community to community.

17 Real reform begins when we extend a jurisdiction's  
18 backlog -- when a jurisdiction's backlog is revealed.  
19 Cities must then confront the enormous task of finding  
20 the resources to implement comprehensive reform.

21 The Federal Government has risen to this challenge.  
22 We are grateful to the President, Vice President and  
23 Congress for last year's creation of the new \$41 million  
24 grant program which provides communities with the  
25 critically needed resources to test their backlog kits

1 and to implement comprehensive reforms.

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

6 As more states and jurisdictions enact policies to  
7 reform law enforcement practices around rape kit testing,  
8 the need for funding will increase. An additional \$41  
9 million was requested in President Obama's fiscal year  
10 2016 budget request and the House of Representatives  
11 announced its inclusion in the fiscal year 2016 commerce  
12 bill last week.

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

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

25 Thank you.

1 [The prepared testimony of Ms. Byrd appears in the  
2 appendix.]

3 /COMMITTEE INSERT

4 Senator Cornyn. Thank you, Ms. Byrd.

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

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

14 But can you talk to the importance of the issue of  
15 uniformity of testing or reducing the discretion  
16 available to local law enforcement when it comes to  
17 testing these rape kits?

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

23 By requiring it or mandating testing on all criminal  
24 investigations, you relieve the burden of those  
25 discretionary decisions from law enforcement and

1 prosecutors and the testing becomes mandatory. Across  
2 the state, everything is the same, and across the Nation,  
3 if it was done in all states.

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

11 But, in fact, we have learned that not only will it  
12 help convict people who commit these crimes, it can  
13 actually stop people who commit serial offenses, which  
14 they typically do, Ms. Byrd and others mentioned. They  
15 do not just do it one time and go home.

16 Then the third, at a time when we are all concerned,  
17 as we should be, about people being falsely accused, it  
18 can have a lot of power to exonerate people who have been  
19 falsely accused.

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

23 Money is a problem, and these are local crimes,  
24 typically, investigated by local police departments who  
25 may or may not have the resources to do it. They may not

1 have access to a forensic lab that has the sort of  
2 trained personnel, the sort of state-of-the-art equipment  
3 or the like.

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

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

15 General Madigan, do you have any views on that?

16 Ms. Madigan. I think you can certainly make sure  
17 that the labs that are out there are running efficiently,  
18 which would reduce both the time and hopefully the cost  
19 that is incurred. But as you point out, I think the  
20 number one plea that we hear from our state police, crime  
21 labs and the forensic scientists is that they are  
22 overwhelmed and while it is an important step forward  
23 that states are passing laws requiring the testing of all  
24 kits and requiring the submission of previously  
25 unsubmitted kits, I do know that they find that

1       overwhelming.

2

3               So in Illinois, the commentary is that they will  
4       anticipate 70 more kits per month coming in, so hundreds  
5       during the year, and that they would need to have at  
6       least five more forensic scientists hired.

7               So the financial resources are absolutely imperative  
8       to make sure that we do not continue to have a  
9       significant backlog.

10              Senator Cornyn.    I know chain of custody of the  
11       evidence is very important in any criminal investigation.  
12       So local law enforcement is probably loathe to outsource  
13       some of this testing and every community has a certain  
14       amount of pride at having their own forensic lab.

15              But my own experience, when I was Attorney General,  
16       not just in this area, but, for example, in paternity  
17       testing in connection with our child support enforcement  
18       program, we found that the cheapest and most efficient  
19       way to do this would be to contract on a competitive  
20       bidding basis with a national laboratory, not necessarily  
21       to try to recreate another lab in every community or in  
22       every state.

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

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

7           So staffing up and bringing in all the new equipment  
8 you need to expand your state lab or your local lab is  
9 not always as efficient as using the private capacity  
10 that is out there.

11          Senator Cornyn.   I will close with this.  People  
12 might wonder why is the Federal Government concerned with  
13 something that frequently is viewed as a local crime or a  
14 state-based crime.  But given the interstate nature of  
15 this crime, as many of you have mentioned, the transient  
16 nature of the assailant going from community to community  
17 maybe state to state, the importance of having the CODIS  
18 or the FBI's DNA database and making sure that the  
19 quality of the evidence that that matches against, I  
20 think there is, at least to my mind, clearly a strong  
21 Federal interest in this matter, as well.

22          But we need to figure a way to work efficiently at  
23 the local, state and the Federal level.

24          Senator Durbin?

25          Senator Durbin.   Thanks, Mr. Chairman.

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

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

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

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

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

24 Senator Durbin. That happens?

25 Ms. Madigan. Unfortunately, that does happen and it

1 should not be happening in order to receive Federal  
2 funding. And so that is one of the issues that we are  
3 contending with in our state.

4 Senator Durbin. But who ordinarily pays for the kit  
5 to be --

6 Ms. Madigan. And then when it moves on, my  
7 understanding is the vast majority of it is being paid  
8 for through state funding that is also obviously  
9 supported with a lot of Federal funding so that the labs  
10 are ultimately incurring these costs, which can be  
11 anywhere from \$500 to \$1,500, depending on how much  
12 evidence and how complex.

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

16 Ms. Madigan. Correct.

17 Senator Durbin. Who pays the hospital bill?

18 Ms. Madigan. Well, it could be that the State of  
19 Illinois will ultimately pay that. It could be that  
20 Medicaid will pay that. But it should never be a  
21 situation where the victim is paying that, by law.

22 Senator Durbin. Does the police department ever end  
23 up with responsibility for that?

24 Ms. Madigan. I do not believe the police department  
25 will ever end up with the responsibility of paying for

1 the actual evidence collection of the rape kit.

2 Senator Durbin. So the kit moves from the emergency  
3 room to the police department. Let us assume that for a  
4 moment.

5 Ms. Madigan. In Illinois, that is correct, although  
6 we are talking about the possibility of eliminating that  
7 step and sending it straight to the crime lab.

8 Senator Durbin. That crime lab is run by our  
9 Illinois State Police.

10 Ms. Madigan. It is run by the State Police,  
11 correct, but as Senator Cornyn mentioned, our State  
12 Police actually does outsource some of their testing and  
13 I know that Lake County outsources most of their testing.  
14 So it is either going to a State Police crime lab, of  
15 which we have seven facilities in Illinois, or it is  
16 going to a private facility to be tested.

17 Senator Durbin. And after it has been tested at  
18 this police laboratory, I assume that it is then  
19 forwarded to a prosecutor.

20 Ms. Madigan. The information will initially go back  
21 to the police department and it may also go to the  
22 prosecutor's office if the police department has asked it  
23 to go to the prosecutor's office.

24 Senator Durbin. Ms. Byrd, you talked about Detroit,  
25 11,000 kits that had been accumulated and never tested.

1           Ms. Byrd.    That is correct.  So in Detroit, they  
2    have raised local funds.  State funds have been dedicated  
3    to help them clear their backlog, and private funds, as  
4    well.  And they are outsourcing, in some cases, their  
5    kits to a private lab to help them with the capacity.

6           Through the District Attorney's fund in New York,  
7    jurisdictions across the country will also have the  
8    opportunity to do that if their state or local labs do  
9    not have the capacity.

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

15          Senator Durbin.  I mention this, we had a  
16    conversation earlier, the Attorney General and I did, and  
17    said what about the statute of limitations running while  
18    we are waiting and you might tell the panel what is  
19    happening in our State or at least being considered.

20          Ms. Madigan.  So I think, in part, in response to  
21    the situation in Robbins, Illinois that you brought up  
22    earlier during the hearing, the State Legislature is  
23    currently moving a bill that I anticipate will pass  
24    during the spring session that would toll the statute of  
25    limitations until the test is actually completed.

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

5           Senator Durbin.    It might be interesting to see how  
6   many states have responded that way.

7           Thank you very much.   Thanks for your testimony.

8           Senator Cornyn.    Senator Tillis?

9           Senator Tillis.    Thank you, Mr. Chairman.   Thank you  
10   for having a hearing on this important subject.

11          Ms. Byrd, I think I am going to direct my first  
12   question to you.   I know that the Joyful Heart Foundation  
13   issued a press release, I think it was called the  
14   Accountability Project, and in that press release, my  
15   home county, Mecklenburg County, had some 1,000 untested  
16   kits.   Those are untested, not part of the backlog.

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

24          I am just trying to get to a point to where we are  
25   measuring the right numbers here.   So my question to you

1 is what are your thoughts and your organization's thought  
2 as to whether or not every kit should tested? And even  
3 in instances where the case may be closed or the victim  
4 has not granted authority, what are your thoughts on  
5 that?

6 Ms. Byrd. Well, first, let me say that a survivor's  
7 choice to move forward with the case should always be  
8 honored and that our approach to testing backlog kits  
9 should keep that in mind and be survivor-centered.

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

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

22 We believe and the evidence is showing that in many  
23 cases, survivors are not believed when they go to law  
24 enforcement and so law enforcement makes a decision to  
25 not move forward with the case. In some cases, there is

1 victim blaming, why were you out too late; why were you  
2 in this situation.

3 So what we believe is that testing all kits  
4 eliminates that law enforcement bias and affords  
5 survivors the full possibility of receiving justice.

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

10 You mentioned Detroit. Are there any particularly  
11 good examples or best practices of states that you would  
12 hold out as something that would just move the Nation  
13 ahead if they were more uniform across the other states,  
14 best practices, either municipalities or at the state  
15 level?

16 Ms. Byrd. Yes. In fact, in Detroit, what we have  
17 seen work is a collaborative, community-based,  
18 multidisciplinary approach to reform. So that is  
19 bringing together law enforcement, prosecutors, community  
20 advocates, researchers to come together and to tackle the  
21 process and to put protocol systems in place to ensure  
22 that the rape kit backlog does not happen again, that the  
23 systemic failures that led to the problem in the first  
24 place does not happen, to ensure that there are protocols  
25 put in place for victim notification, for reengagement in

1 the case of a backlog, of bringing survivors back in and  
2 engaging them with the criminal justice process.

3 And we are seeing that model be replicated in  
4 Cleveland and in Memphis and other cities and I would say  
5 that the strongest best practice is to bring everybody in  
6 the community together to tackle the issue.

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

10 [No response.]

11 Senator Tillis. Thank you. Thank you, Mr. Chair.

12 Senator Cornyn. Senator Franken?

13 Senator Franken. Thank you, Mr. Chairman and  
14 Ranking Member, for holding this hearing. And thank you  
15 all for being here and for your tireless efforts to  
16 combat sexual violence and ensure that survivors have  
17 access to the resources necessary to begin their healing  
18 process.

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

1 Federal funding at all.

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

5 Attorney General, the prevalence of sexual violence  
6 in communities across the Nation has received a lot of  
7 attention, a lot of media attention lately, and that is  
8 valuable.

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

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

18 Ms. Madigan. So a sexual assault nurse examiner is  
19 somebody who has received 80 hours of training, 40 hours  
20 of classroom training, 40 hours of clinical training in  
21 how to appropriately collect the evidence off an  
22 individual, in addition to understanding the  
23 psychological impacts of being a victim of a sexual  
24 assault. And so they can collect that evidence in a  
25 compassionate way that does not further victimize or

1 traumatize that survivor.

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

9       And so it is absolutely imperative, we have found, to  
10 make sure that we have appropriately trained individuals  
11 to collect the evidence, to ensure both the healing  
12 process of the victim, as well as a prosecution of one of  
13 these criminals.

14       Senator Franken. Thank you.

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

21       Mr. Berkowitz. Sure. It is very inconsistent. The  
22 bigger the area, the better the likelihood of finding a  
23 trained SANE and one who is available particularly  
24 overnight. But there definitely needs to be more  
25 resources into making sure that there are more SANE

1 nurses that have this training nationally.

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

6       Just to add, I agree with everything General Madigan  
7 said about SANEs. I would add just one point, which is  
8 that it has been found that the likelihood of finding --  
9 of getting useable DNA out of the rape kit goes up  
10 significantly if it has been collected by a SANE who has  
11 had the training. So that is another public safety value  
12 to having SANEs out there.

13       Senator Franken. Ms. Byrd, do you have anything to  
14 add to that?

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

25       Senator Franken. Thank you. Thank you, Mr.

1 Chairman. And thank you, to all of you. Ms. Smith,  
2 thank you for your testimony.

3 Senator Cornyn. Senator Blumenthal?

4 Senator Blumenthal. Thanks, Mr. Chairman, and thank  
5 you for holding this very important hearing. And to all  
6 of our panel, thank you for being here today.

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

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

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

25 I also understand you hosted a summit on campus

1 sexual assault. I have held roundtables, 13 of them or  
2 more now, around my State in Connecticut.

3

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

11 Ms. Madigan. Senator Blumenthal, I appreciate your  
12 work and we certainly are supportive of what you are  
13 doing in the State of Illinois.

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

20 It is absolutely imperative that campuses are  
21 following Federal law and do, in fact, have policies in  
22 place, are training individuals, and are absolutely  
23 providing information and resources to students. So when  
24 and if they become victims of sexual assault, they know  
25 where they can go, they know who they can turn to, and

1 they know the relief that could be available to them on  
2 their campus.

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

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

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

24 Ms. Madigan. I will respond. We have seen that the  
25 reviews of that are mixed. And so when we had campus

1 lawyers and local law enforcement who had a good personal  
2 relationship, that they felt that they did not need a  
3 memorandum of understanding in place. In other places,  
4 there was clearly a disconnect and the idea of having  
5 that memorandum of understanding seemed to force people  
6 to be put together in a way that may not result in actual  
7 cooperation.

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

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

15 Senator Cornyn. Senator Whitehouse?

16 Senator Whitehouse. Thank you very much, Attorney  
17 General Cornyn -- I mean, Senator Cornyn.

18 We are delighted to have this entire panel, which has  
19 been very helpful, but I particularly want to welcome my  
20 fellow Attorney General.

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

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

10 Let me lead with you, Attorney General Madigan.

11 Ms. Madigan. I think the carrot-and-stick approach  
12 is a good idea. So, for instance, a number of us  
13 discussed the idea of ensuring that there are audits  
14 done, tracking systems in place so that there can be a  
15 measure of public accountability.

16 And so to the extent that you are making funds  
17 available, I think you also want to make sure that they  
18 are being used appropriately and efficiently. And so  
19 there is a series of things that can be done to make that  
20 a reality.

21 Senator Whitehouse. Ms. Byrd?

22 Ms. Byrd. I agree with the Attorney General.  
23 Tracking, auditing, greater transparency and  
24 accountability built into the system will help ensure  
25 that the backlog does not continue, that we continue to

1 address the investigation and prosecutorial resource  
2 needs, and I absolutely agree with that.

3 Senator Whitehouse. Most of these cases are not  
4 done by state prosecutors. Most of them are done by  
5 county prosecutors, district attorneys. I do not know  
6 how many Illinois has, but I bet you have a lot.

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

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

17 Ms. Madigan. Let me respond to part of your  
18 question and then give somebody else on the panel an  
19 opportunity to talk, as well.

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

23 We have found that when they submit their DNA to the  
24 state crime lab, completely different time. So Cook  
25 County, they say it takes them over a year to get results

1 of DNA testing. Madison County says 60 to 90 days. Lake  
2 County has started to outsource, I think, in large part,  
3 for some of the reasons that were addressed earlier, that  
4 it is more efficient and faster to get their testing done  
5 by somebody other than the state police crime lab.

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

8 Senator Whitehouse. Mr. Hearn?

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

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

20 Senator Whitehouse. And do you agree with Attorney  
21 General Madigan, in your experience, that there is a wide  
22 array of performance at the local, county sheriff level  
23 or are people pulling forward pretty evenly?

24 Mr. Hearn. I guess it varies. There are,  
25 obviously, resource issues at the rural side that are not

1 faced at the urban side, but the urban side has volume  
2 issues that the rural side does not have. So it varies  
3 between both.

4 Senator Whitehouse. But just to conclude, do you  
5 think if you had to, you could come up with a handful of  
6 benchmarks that every prosecutor's office, every police  
7 department or sheriff's department ought to be attaining  
8 and make something contingent on their reaching that  
9 standard?

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

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

21 A kit may not be taken in every sexual assault  
22 investigation due to latency or some other issue. So the  
23 broad investigation of sexual assault includes a whole  
24 host of forensic issues.

25 Senator Whitehouse. Understood. I have gone over

1 my time. I thank the Chairman.

2 Senator Cornyn. Senator Klobuchar?

3 Senator Klobuchar. Thank you very much, Mr.  
4 Chairman. Thank you for your leadership on this issue.  
5 And we also have the good news that yesterday our sex  
6 trafficking bill passed through the House of  
7 Representatives, after a long journey. So we are glad  
8 about that.

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

13 So the last time when I remember back in December  
14 2009, we had a hearing and we heard from you -- Ms.  
15 Smith, thank you so much for coming back -- from a guy  
16 named Steve Redding, who headed up -- when I was chief  
17 prosecutor in Hennepin County, Minnesota's biggest  
18 county, we led most of the rape cases and the DNA issues  
19 in our Supreme Court, which, Attorney General Madigan, a  
20 guy named Steve Redding, who has done some really good  
21 work in the area.

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

1 backlog nationally.

2 Mr. Hearn. Senator, I will go first. For the State  
3 of Texas, state legislation has dramatically changed the  
4 environment of the investigation. The legislation ended  
5 discretionary testing for criminal investigation  
6 purposes. So every kit must be submitted and must be  
7 tested.

8 Senator Klobuchar. Do people know if the other  
9 states are doing the same thing? Because I know our  
10 frustration would be even if Minnesota was caught up, if  
11 someone was from another state and committed a crime and  
12 they had a backlog, it hurt our victims, just as if the  
13 perpetrator was from our State.

14 Mr. Hearn. I think others have spoken earlier that  
15 couple of states have mandatory testing. Others are in  
16 the process of doing similar legislation.

17 Senator Klobuchar. So there have been some  
18 improvements, do you think, nationally?

19 Mr. Hearn. I think so.

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

1           What more do you think can be done in this area?

2           Anyone can take it.

3           Ms. Madigan.    I am happy to.    Do you want to talk?

4           One of the things that could be most helpful is to ensure  
5           that hospitals are supportive of SANE programs.    So I  
6           have tried to work with the Illinois Hospital Association  
7           to assure that we have 24/7 SANE programs in at least  
8           each trauma region of our State, of which there are 11.

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

12          It is insufficient.    Our office has trained over  
13          1,200 SANES and when I talk to the SANES, they tell me  
14          that they are not supported in terms of the clinical  
15          training that they need and that hospitals do not give  
16          them an opportunity to practice, which, as we have talked  
17          about, for a variety of reasons, traumatizes victims,  
18          does not allow us to collect DNA as well, does not  
19          provide us with as good a professional witness during a  
20          prosecution.

21          And so you can do more or we can all find ways to do  
22          more to support SANE programs across the country.

23          Senator Klobuchar.    Anyone else want to chime in on  
24          that?

25          Ms. Byrd.    I would just like to say that in a lot of

1 -- in some of the rural areas, they have gone to like  
2 mobile units, because whereas one area could not afford  
3 to have a SANE program, then they have equipped this van  
4 and they actually go to the victim. It still takes some  
5 time sometimes, but at least they are making themselves  
6 available to a victim, which, in my opinion, SANEs are  
7 also one of the best kept secrets in the sexual assault  
8 world because a lot of victims do not even know what they  
9 are or that they are available. And I believe it is also  
10 the key to getting victims to report.

11 Senator Klobuchar. Very good. Thank you. The last  
12 question I was going to ask was about record-keeping and  
13 I think we have known that one of the key things as we  
14 talk about what these states -- to see what kits are  
15 sitting there untested is maintaining accurate records.

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

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

25 Mr. Hearn?

1           Mr. Hearn.    I can touch on that from our experience  
2           as a lesson learned in Texas.  Our legislation provided  
3           45 days for the statewide audit, which was far too low.  
4           I am not aware of any law enforcement agency in the  
5           Nation that has an electronic tracking system that shows  
6           I have a kit, it was sent to the lab, and it was tested.  
7           All three of those components are necessary.

8           So we are asking agencies to go flip through case  
9           files to see is there a kit, did it go to the lab, did I  
10          get any results back from the lab to know that it was  
11          tested, and that takes time, especially for the larger  
12          agencies, and it takes resources.

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

16          Senator Klobuchar.    Right.

17          Mr. Hearn.    And I know that was a burden on our  
18          agencies trying to provide the audit.

19          Senator Klobuchar.    To have to do the audit.

20          Mr. Hearn.    And the deadline, they were diligent  
21          about trying to meet the deadline, but the deadline was  
22          missed and we are still catching up to some of those  
23          agencies today.

24          Senator Klobuchar.    In an ideal world, they would be  
25          electronic, I suppose.

1 Mr. Hearn. Ideally.

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

6 Mr. Hearn. Yes, ma'am.

7 Senator Klobuchar. Does anyone want to add anything  
8 to that?

9 Ms. Byrd. Senator, there is a pilot project going  
10 on in Detroit right now which is using -- in partnership  
11 with UPS, is developing a tracking system to do just what  
12 you are mentioning right now.

13 Senator Klobuchar. And where is that again?

14 Ms. Byrd. That is in Detroit. And what they are  
15 hoping is it will allow them to monitor through the  
16 entire process where the kit is and for them to keep  
17 better track and be able to do the audits moving forward.

18 So we are very early in that process, but the  
19 investment into technology to track is critically  
20 important in order to ensure that backlogs do not occur  
21 in the future.

22 Senator Klobuchar. Exactly. I just always believed  
23 that when we started tracking cases, I mean, I remember  
24 when I came into my job, there was one attorney that had  
25 a bunch of truancy cases in a drawer, but I will just let

1 that go for now. Maybe like 100 of them.

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

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

14 Thank you very much. Appreciate it.

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

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

24 Mr. Berkowitz. Yes, sir. And thank you for being  
25 the lead on the SAFER Act and getting that passed and

1 working with Senator Bennet and with Congressmen Poe and  
2 Maloney.

3 I think audits are a crucial piece of this in two  
4 ways. One, it gets law enforcement to go into their  
5 warehouses, look through their storage rooms and figure  
6 out what cases are there. And because of the lack of  
7 technology, that is often a challenge for many  
8 departments. So giving that encouragement to go through  
9 this process I think is really helpful.

10 And then the other thing that is really helpful is  
11 transparency. I think that the audit numbers -- the  
12 SAFER Act provided that the Justice Department would post  
13 all these on the Web so media and the public can compare  
14 jurisdiction by jurisdiction, and that is naturally going  
15 to create some grassroots pressure on jurisdictions to  
16 address and test their backlogs.

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

23 The person who I credit it with mostly is Debbie  
24 Smith for being such a great example and a champion on  
25 this issue. I would be remiss, Debbie, if I did not ask

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

6 Ms. Smith. Well, there has been a lot of talk about  
7 money today and I know that is huge. I think, for me,  
8 and I guess -- I have said often that I guess this is why  
9 they do not name bills after people who are still alive,  
10 because we come around and we say what is going on. But  
11 for me, I would just like to see the money used more for  
12 what Congress meant it to be used for.

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

17 But without testing offender samples, testing those  
18 kits means nothing. It is not just about testing. It is  
19 about matching and matching those numbers and getting  
20 those rapists' names and getting them off the street.

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

24 I believe the Debbie Smith Act has been sort of a  
25 victim of its own success. We have done a great job and

1 police officers are beginning to see the value of what  
2 was once -- when my case went to trial, it was termed as  
3 the voodoo science and that was just in 1995.

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

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

16 Senator Cornyn. Mr. Berkowitz, I think you were the  
17 one who talked about if the 75 percent of the funds had  
18 been used actually to test rape kits, what a dramatic  
19 impact that would have on this -- who knows what it is --  
20 400,000 rape kit backlog without anymore taxpayer money  
21 being appropriated.

22 So thank you for that observation. I think that  
23 makes Ms. Smith's point very well.

24 We talked a lot about transparency and accountability  
25 and I agree that that has really been an important part

1 of the reforming of this whole problem that we have seen.

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

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

7 Senator Cornyn. Someone asked about carrots and  
8 sticks. We need to be careful on how we approach that  
9 and what we tie grant money to, but it strikes me as a  
10 pretty commonsense approach to creating the kind of  
11 transparency and accountability that I think will  
12 continue to cause people to come to Congress and to their  
13 state legislature and their local county government and  
14 say what are you doing to help address this problem and  
15 to make the situation better.

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

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

20 Senator Durbin. No.

21 Senator Cornyn. Well, let me just say, to all of  
22 you, thank you very much for being here today. Thanks to  
23 each of you in your own way for being leaders in this  
24 important effort. We are all committed to workign  
25 together to eliminate this backlog, if that is humanly

1 possible, recognizing that this is a big country and a  
2 lot of different layers of law enforcement and a lot of  
3 different challenges, rural and urban and the like.

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

8 Thank you very much. The hearing is adjourned.

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

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