

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~~<sup>this</sup> 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, <sup>as</sup>  
14 was mentioned. Illinois and Texas <sup>are</sup> ~~were~~ pioneers <sup>J</sup> 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 <sup>last</sup> 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. <sup>The</sup> ~~This~~  
6 guidelines were due more than 6 months ago, but <sup>they have</sup> ~~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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