

# **TESTIMONY OF SUSAN SMITH HOWLEY**

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**Before the  
Committee on the Judiciary  
United States Senate**

## **Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide**

**December 15, 2009**

Good Morning, Chairman Leahy, Ranking Member Sessions, and members of the Committee. My name is Susan Howley, and I am the public policy director for the National Center for Victims of Crime. The National Center is a nonprofit resource and advocacy organization that will soon celebrate our 25<sup>th</sup> year of championing the rights and interests of victims of crime. Our members include victim service providers and allied professionals who assist crime victims at the federal, state, and local levels.

The National Center has a long history of advocating for sexual assault victims and working to promote the use and understanding of DNA evidence. We were actively involved in efforts to secure passage of the Justice for All Act of 2004. In recent years, we have trained victim service providers and law enforcement officers about the use of DNA evidence. In preparation for that work, we conducted research and held a focus group of victim advocates to determine the victim service providers' level of understanding about DNA evidence. We have also created a series of educational brochures for law enforcement, for victim service providers, and for crime victims on the use of DNA in criminal investigations.

The National Center also has a National Crime Victim Helpline, through which we speak with thousands of victims every month. Many of those callers are victims of sexual assault.

The issue of DNA processing is important to crime victims. Many offenders commit multiple violent and property offenses over a lifetime; identifying those offenders as early as possible can limit their offending career and thus the number of victims they create.<sup>1</sup> DNA evidence also provides the surest form of identity evidence available. Its competent use ensures a level of certainty in convictions.

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<sup>1</sup> In one important study of college men, 120 admitted conduct that would be considered rape or attempted rape, and 76 of those committed a total of 439 rapes and were responsible for 1,045 total acts of interpersonal violence including battery, child abuse, and sex crimes. David Lisak and Paul Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Journal of Interpersonal Violence* 17, no. 1 (February 2002): 73-84.

The testing of DNA and other forensic evidence has been particularly valuable in sexual assault cases. In a recent survey of our members, nearly one-half of those who work with sexual assault victims said that DNA testing has made victims more willing to report sexual assault. Because few sexual assault cases involve witnesses or visible evidence, many sexual assault victims are afraid they won't be believed. The forensic evidence, however, can corroborate a victim's report.

Even when the identity of the accused is not in question, a forensic exam can provide other important evidence, such as documentation of ligature marks, bruising, bite marks, and other physical injuries that can support a victim's report about the force or violence involved in the rape.<sup>2</sup>

### **What we hear from victims**

In many jurisdictions, forensic evidence in rape cases is gathered in a manner that is sensitive to victims and promotes a just result in the criminal case. But in other jurisdictions, we have far to go.

Sexual assault victims call our National Crime Victim Helpline every day, seeking our help because they can't find assistance or information at the local level. We know from them that the forensic rape exam can be intrusive, violating, exhausting, and confusing, especially in the absence of a specially trained sexual assault nurse examiner (SANE). Even when victims are fortunate enough to have a SANE available, they often report that they faced hours of distress and fear waiting in a crowded emergency room or left alone in an examination room.

Once the examination is completed and the evidence is collected, victims often have no idea what happens to the rape kit. They call us because no one has been able to answer their questions. Hospital staff and even the local rape crisis volunteer may be unsure what happens to the rape kit after the victim leaves the hospital. Some victims mistakenly assume that in every sexual assault case the rape kit is immediately sent to the lab for processing, so they don't understand why they can't get any information about their case. We've talked to victims who have waited months or years after undergoing a forensic exam to hear the results.

When forensic evidence is taken in a sexual assault case and not tested, or if victims learn the investigation is not progressing, they become very upset and disheartened. Many victims have told us the police said they wouldn't process the evidence because they knew who the suspect was. Other victims say the police won't process the evidence because they don't have a suspect.

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<sup>2</sup> It is important to note that the sexual assault forensic exam provides more than an opportunity to gather evidence. It allows the victim to receive immediate medical care and advice regarding trauma and injuries, information regarding the risk of sexually transmitted disease or pregnancy, and referrals to supportive services. For more about the elements of compassionate care during a sexual assault medical response, see U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents" (September 2004): 27-37, [www.ncjrs.gov/pdffiles1/ovw/206554.pdf](http://www.ncjrs.gov/pdffiles1/ovw/206554.pdf) (accessed December 10, 2009).

Victims whose rape kits have been lost or destroyed prior to being tested are especially angry. One recent caller said the forensic lab told her that they didn't have the kit from her case, while law enforcement insisted that they had sent the kit to the lab. This victim spoke at length about her frustration and anger, because she had done her part by undergoing the exam and reporting the crime, but no one else seemed to care about seeing the offender brought to justice.

Another recent caller was outraged that rape kits from her offender's previous victims had languished for years. She wants to sue state and local officials because she is convinced that if they had processed those kits, the rapist would have been caught and she would never have been victimized.

### **What we hear from our members**

The stories we hear from our members who serve rape victims mirror those we hear from victims themselves. Some advocates report efficient, local crime labs, well-run SANE programs, and coordinated action by prosecutors, police and advocates.

Others report that in their jurisdiction, sexual assault victims become upset as cases are continued repeatedly because of delays in processing the forensic evidence. In some places, victims often wait months for the rape kit to be analyzed, then months longer to find out what will happen with the case. Other advocates report working with victims who are devastated to learn that after all they've been through to try to cooperate with the investigation, their kits are never processed.

### **Moving forward: the rape kit backlog**

We would like to be able to appear today with a concrete recommendation to address the rape kit backlog. But before we can recommend a clear path forward, we need more information. For example, a recently released National Institute of Justice (NIJ) report on law enforcement forensic evidence processing nationwide revealed that many local law enforcement agencies are not forwarding rape kits to labs in cases where they haven't identified a suspect.<sup>3</sup> We need to know more: is the problem a lack of knowledge about the investigative power of DNA, lack of funding to process evidence, or lack of will? The answer to that question should guide the approach forward.

We also need to know whether there is any benefit in testing all kits, even in cases when the identity of the defendant is not at issue. We might learn the answer to that question from the experience of those jurisdictions, such as Los Angeles, that have worked to clear

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<sup>3</sup> Kevin J. Strom, et al., "The 2007 Survey of Law Enforcement Forensic Evidence Processing, Final Report" (Washington, DC: U.S. Department of Justice, National Institute of Justice, September 2009): 3-6 and 3-7, at [www.ncjrs.gov/pdffiles1/nij/grants/228415.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/228415.pdf) (accessed December 10, 2009).

their rape kit backlog by testing every kit. Their experience should inform the national policy response.

Until we have this information, we are reluctant to recommend that every rape kit be tested. While such a policy might be easy to understand and administer, it could negatively affect other cases. Because our capacity to process DNA and other forensic evidence is limited, to require testing of all rape kits—even where such processing is unlikely to produce any probative evidence—will inevitably reduce or delay testing in other types of cases.

Many victims of other crimes have a compelling interest in the prompt testing of forensic evidence. For example, homicide cases frequently require forensic analysis. The recent NIJ survey estimated that more than 87 percent of unsolved homicide cases have forensic evidence that could be processed.<sup>4</sup>

Victims of burglary and other property crimes could also benefit from the processing of have forensic DNA testing. Nearly one-third of open property offenses have forensic evidence that can be analyzed.<sup>5</sup> Jurisdictions that have made an effort to broaden DNA testing in burglary cases have shown that such analysis brings justice to a range of victims and improves public safety. In Denver, many of the burglars identified in such an effort had committed 100 to 200 burglaries a year.<sup>6</sup> In addition, property crime offenders frequently commit a range of offenses, both violent and nonviolent. When Virginia expanded its DNA database to include samples from a range of offenders, 40 percent of violent crimes solved through the database were perpetrated by those with previous property crime convictions.<sup>7</sup>

Families with missing loved ones are also awaiting additional DNA testing. The growth of the National Missing and Unidentified Persons System, NAMUS, which provides cross-matching between the Missing Persons Database and the Unidentified Decedents Database, has the potential to bring answers to families across the country. Unfortunately, many jurisdictions still have a backlog of body parts awaiting DNA sampling and processing, leaving too many families waiting for word about a missing loved one.

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<sup>4</sup> Id., at Exhibit 3-1.

<sup>5</sup> Id.

<sup>6</sup> Dale Garrison, “Solving Property Crimes with DNA Evidence,” *Evidence Technology Magazine* (July-August 2009), 12-15.

<sup>7</sup> See Virginia Department of Forensic Science, “DNA Databank Statistics,” [www.dfs.virginia.gov/statistics/index.cfm](http://www.dfs.virginia.gov/statistics/index.cfm) (accessed December 10, 2009). Similarly, a cost-benefit analysis of the use of DNA in high-volume property crimes, such as burglary and theft from automobiles, conducted by the Urban Institute, found that property crime suspects identified by DNA had at least twice as many prior felony arrests and convictions as those identified by traditional investigation. John Roman, Shannon Reid, Jay Reid, Aaron Chalfin, William Adams, Carly Knight, “The DNA Field Experiment: Cost-Effectiveness Analysis of the Use of DNA in the Investigation of High-Volume Crimes,” (Washington, DC: Urban Institute, April 2008) [www.urban.org/publications/411697.html](http://www.urban.org/publications/411697.html) (accessed December 10, 2009).

Improvement in the capacity and processing time for DNA and other forensic evidence can increase access to justice for a range of crime victims. But until that capacity grows, any prioritization of cases should be crafted carefully.

### **Moving forward: helping sexual assault victims**

While the best way forward to address the rape kit backlog is still unclear, there is much Congress can do to improve the treatment of rape victims as forensic evidence is gathered and processed.

First, Congress can provide additional support for sexual assault nurse examiners (SANEs). This investment is the best way to ensure that victims of sexual assault receive compassionate treatment in a manner that also collects and preserves the physical evidence. We know that the use of such specially trained professionals increases the numbers of successful rape prosecutions.<sup>8</sup> Unfortunately, too many jurisdictions have no SANE, and many formerly existing SANE programs have been discontinued for lack of funding.<sup>9</sup>

Once victims undergo a forensic exam, they should have the right to be informed about the standard procedure for processing such kits, including where they can obtain information about the status of the processing. They should be told whether the rape kit produced a DNA profile of the assailant, whether that profile was entered into the DNA database, and whether a match resulted. If the identity of the perpetrator is in question but law enforcement decides not to forward the rape kit for analysis, the victim should be informed of that decision as well.<sup>10</sup> Simply by informing victims of the status of this evidence, we can improve victims' experience. Congress could follow the example of California and create a Sexual Assault Victims DNA Bill of Rights that ensures victims will receive such key information.

Across the nation we need increased public awareness that sexual assault victims have the right to a free forensic exam, even before they have decided whether to report the crime. Victims typically learn about forensic exams when they report the crime to the police or call a rape crisis center. However, only a fraction of rape victims report to the police, and many do not contact a rape crisis center until long after the assault. Because forensic evidence can be gathered only within a brief period of time after a rape, we must increase awareness about the importance and availability of this exam. We are convinced that capturing the evidence immediately and linking victims to supportive services will empower more victims to report the offense and bring more offenders to justice.

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<sup>8</sup> See Philip Bulman, "Increasing Sexual Assault Prosecution Rates," *NIJ Journal*, (November 2009), [www.ojp.usdoj.gov/nij/journals/264/SANE.htm](http://www.ojp.usdoj.gov/nij/journals/264/SANE.htm) (accessed December 10, 2009).

<sup>9</sup> For example, see Senate Judiciary Committee, Alaska State Legislature, "Report and Recommendations: Reducing Sexual Assault in Alaska," October 16, 2009, [www.aksenate.org/french/101609\\_Senate\\_Judiciary\\_report\\_on\\_sexual\\_assault.pdf](http://www.aksenate.org/french/101609_Senate_Judiciary_report_on_sexual_assault.pdf) (accessed December 14, 2009).

<sup>10</sup> See Cal. Penal Code § 680 (2009). Available through [www.victimlaw.info](http://www.victimlaw.info).

## **Conclusion**

We applaud this Committee for its repeated efforts to bring justice to sexual assault victims and other victims of crime. The issue of the effective use of DNA and other forensic evidence is an important one, and appropriate for federal attention. The National Center for Victims of Crime looks forward to working with you in crafting legislation to advance the use of DNA evidence, reduce the backlog of rape kits, and bring a just response to victims of crime.