

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

IRVIS OFFICE BUILDING
ROOM G50
HARRISBURG, PENNSYLVANIA

PUBLIC HEARING ON
HOUSE BILL 2255

WEDNESDAY, SEPTEMBER 8, 2010
10:00 A.M.

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE,
MAJORITY CHAIRMAN
HONORABLE DEBERAH KULA
HONORABLE RON MARSICO, MINORITY CHAIRMAN
HONORABLE RICHARD R. STEVENSON

ALSO PRESENT:

HONORABLE CHERELLE L. PARKER
HONORABLE JOHN R. EVANS
HONORABLE NICK KOTIK
HONORABLE DANTE SANTONI, JR.

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1 ALSO PRESENT: (cont'd)

2 DAVID D. TYLER, EXECUTIVE DIRECTOR (D)
3 V. KURT BELLMAN, LEGISLATIVE ASSISTANT (D)
4 DAVID M. MCGLAUGHLIN, ACTING CHIEF COUNSEL
5 DOMINICK LEBO, INTERN (D)
6 TAMARA FOX, STAFF COUNSEL
7 KAREN S. COATES, SENIOR LEGAL COUNSEL (R)
8 BRIANA ELZEY, CHIEF LEGISLATIVE AIDE FOR REP.
9 PARKER

10 BRENDA J. PARDUN, RPR
11 REPORTER - NOTARY PUBLIC
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P R O C E E D I N G S

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CHAIRMAN CALTAGIRONE: We'll get started with the hearing. It's House Bill 2255, Cherelle Parker. I'm Chairman Tom Caltagirone, Co-Chairman Marsico.

If the members and staff would just please introduce themselves for the record.

David.

MR. TYLER: Good morning. I'm Dave Tyler, executive director for Tom Caltagirone.

MR. MCGLAUGHLIN: Good morning, everyone. My name is David McGlaughlin. I'm the acting chief counsel for the judiciary committee.

REP. PARKER: Rep. Cherelle Parker, 200th District and prime sponsor of House Bill 2255.

REP. MARSICO: Good morning. Rep. Ron Marsico. I represent parts of Dauphin County.

REP. KOTIK: Good morning. Rep. Nick Kotik from Allegheny.

REP. SANTONI: Dante Santoni. I'm a member from Berks County.

REP. EVANS: Representative John Evans, represent parts of Erie and Crawford Counties.

1 REP. STEVENSON: Good morning, Dick
2 Stevenson, representing parts of Butler County and
3 Mercer County.

4 MS. FOX: Tammy Fox, staff to the
5 committee.

6 CHAIRMAN CALTAGIRONE: And Karen
7 Coates, counsel to the committee.

8 Just to let you know, I have been
9 requested to come over to the Justice Center with
10 chief -- not chief justice -- Justice McCaffery
11 dealing with some veterans issue, so I'll stay for
12 a little bit and I will be turning the hearing over
13 to counsel -- Chairman Counsel Ron Marsico to take
14 the rest of the testimony, but I will read all of
15 this, I promise you, and we'll see how today's
16 hearing goes.

17 And I'd like to open it, even though
18 she's lost her voice. She just got married, so
19 let's have a little round of applause for her.

20 So she's back from the honeymoon and
21 joined us today.

22 And if you'd like to open up with your
23 statement.

24 REP. PARKER: Before you leave Chairman
25 Caltagirone, to many of you who are in the

1 audience, you were with us in Philadelphia when we
2 held a hearing on this in the 200th district. And
3 when we talked about this issue, got a lot of the
4 testimony on the record, we immediately came back
5 to Harrisburg to speak to Chairman Caltagirone.

6 And I need to thank you, Mr. Chairman,
7 for the record for making this bill a priority and
8 allowing us to have a hearing and in an effort to
9 move the legislative process forward in an
10 expedient manner. So I just want to thank you and
11 Chairman Marsico. I want to thank you also for
12 allowing us to be here today. Thank you.

13 Let me start by saying -- and no one
14 told me that the work was going to start after the
15 wedding and I would immediately lose my voice. He
16 has something to do with this.

17 Let me say that when I first learned of
18 this issue, it was when I was first elected. I
19 read an article in the Philadelphia Inquirer and
20 the Daily News about a case that those of you in
21 this room are very much familiar with. And it was
22 about a serial rapist who, because expert testimony
23 regarding victim's behavior was not allowed or not
24 admissible during the trial, that several of the
25 victim's cases were found -- or just unfounded,

1 they couldn't be proven. The prosecution just did
2 not have enough evidence.

3 And my friend, Diane Morris (phonetic),
4 she and I we talked, we communicated. We put
5 together language in a form of House Bill 66 that
6 was during this previous session. We did move --
7 we did work on redrafting the language, and with
8 the assistance of Deborah Harley -- we thank you so
9 much, all of those who testified in the hearing in
10 Philadelphia, the Philadelphia Police Department --
11 we made sure that we streamlined the language so
12 that we were not trying to do what was
13 characterized early on in prior language, was
14 bolster the credibility of a victim in cases of
15 sexual assault. That wasn't my goal. That wasn't
16 the intent when we had the discussion. It was
17 really just to provide a vehicle to educate
18 juries.

19 I'm going to hear someone now, and I'm
20 so happy. She comes from an organization out of
21 New York, but finally the judges, so that they too
22 could understand what a victim's behavior is like.

23 One of the things I did,
24 Mr. Chairman -- I found it very interesting as a
25 woman, after the hearing in Philadelphia, I put my

1 own sort of prejudices and biases on trial, and did
2 so with male family members and friends. And each
3 of us had preconceived notions about how someone
4 who is a victim of sexual assault was supposed to
5 respond. Cherelle Parker's a pretty assertive,
6 pretty aggressive woman. If someone ever tried to
7 do something like that to me, I would fight to
8 death. I would scream. I would kick. I would
9 holler. I would immediately go to the police if I
10 survived. And that's what I thought I said that I
11 would do.

12 And then when I talked to people who
13 were actually victims, they said, Cherelle, you
14 watch Special Victims. You think he's going to
15 jump out the bushes if you're trying to take a jog
16 around Lincoln Drive or Kelly Drive. But the thing
17 about the testimony given to you from the chief of
18 the special victims unit in the Philadelphia Police
19 Department and the number of sexual assaults that
20 take place by someone that the victim knows, so I
21 thought it was, you know, just opposite.

22 So it let me know that being a
23 legislator, even a lay person who, you know, really
24 thinks that I'm connected to what regular people
25 think and feel, I, as a human being, have

1 preconceived notions and biases about how victims
2 of sexual assault were supposed to act. And
3 without the education that I received from those of
4 you who participated in the hearing, I would simply
5 be walking around like normal every day
6 Pennsylvanians, we're lay people. And what I'm
7 learning, that we're not a monolithic people. We
8 don't all don't think alike and we don't form the
9 same opinions.

10 So I'm excited about you all being here
11 and moving this process forward.

12 And I want to state for the record that
13 when House Bill 2255 was introduced, it is not a
14 Democratic or Republican sponsored bill, there were
15 equally the number of Democrats as well as
16 Republicans, so this was a bipartisan effort, and I
17 want to thank all of the colleagues who sponsored
18 it.

19 And again, Chairman Marsico and
20 Chairman Caltagirone, I'm so ever grateful for
21 allowing us to move forward. So thank you.

22 CHAIRMAN CALTAGIRONE: Thank you,
23 Cherelle.

24 And with your pardon, I will excuse
25 myself and go over to the justice center. I'll

1 turn the meeting over to Chairman Marsico.

2 REP. MARSICO: Thank you.

3 Mr. Chairman.

4 First to testify -- excuse my
5 mispronunciation but Dr. Valliere.

6 DR. VALLIERE: Valliere.

7 REP. MARSICO: Valliere. I've got the
8 Italian pronunciation. I'm sorry.

9 DR. VALLIERE: You had to go for
10 French.

11 REP. MARSICO: Begin when you're ready.

12 DR. VALLIERE: Thank you for allowing
13 me to be here today. I mean, I'm very honored that
14 my voice is considered important in this fight.

15 Just a secretarial matter, it does not
16 appear like you have all pages of my testimony
17 prepared; there's a missing page. But I'm not
18 going to focus this.

19 I just want to first give you a little
20 foundation of where I'm from. I have -- I'm a
21 clinician, and I've dealt with hundreds of victims
22 and literally thousands of sex offenders from being
23 on -- running a violent offender program and being
24 on the PA Sex Offender Assessment Board, doing the
25 Megan's law evaluations.

1 And when I first testified to this, and
2 Rep. Parker said that the law was considered to
3 unfairly bolster the credibility of victims, I
4 thought, wow, I've heard dozens and dozens,
5 hundreds now, of disclosures from offenders of how
6 they've eroded the credibility of their victims,
7 and the idea of -- that I can sit here and tell
8 stories upon stories of how offenders take
9 advantage of the biases we carry, how they
10 construct their crimes to fool the audience, who we
11 are, so that whatever the victim says, they're not
12 believed. It was really a profound kind of
13 statement, the idea that the victims could have
14 unfairly bolstered credibility.

15 Everything about a sexual offense is to
16 erode the victim's credibility. The grooming
17 process or the clinical process of preparing the
18 victim to be accepting of an assault, whether
19 they're an adult victim or a child victim, to use
20 the things that we count on in the community, like
21 trust and kindness and care and vulnerability,
22 that -- how the offenders exploit that and then
23 rely on the victim's, quote, unquote, nonintuitive
24 behavior. Because, as you explained, real victims
25 are supposed to act a certain way.

1 And not only in my clinical experience
2 is this relevant to confront this with the
3 offenders and in my work with victims to show that
4 this is not counterintuitive behavior, it's normal
5 behavior in an abnormal situation, that truly what
6 is going on is the offender is using
7 counterintuitive behavior. The offender is taking
8 the foundations of the trust and using kindness as
9 a weapon, using the appearance of niceness to get
10 the victim to protect the offender, too confuse and
11 obfuscate the -- camouflage the offense behavior,
12 and that not only is the community fooled by this,
13 the audience, who we are, by expecting certain
14 behaviors out of the victim, but the victim
15 themselves are fooled.

16 And I want to just quickly address some
17 of the typical counterintuitive behaviors that we
18 expect. First of all, we carry a whole bunch of
19 biases and prejudisms about how people should act.
20 And I'm going to tell a quick vignette about -- one
21 of the big issues is the idea of delayed reporting,
22 that we think victims should, like in SVU, march
23 into the police station and be righteously angry
24 and report these crimes. And we had a big hail
25 storm in Allentown, where I'm from. And my

1 husband's truck got completely dented, like
2 seventy, eighty dents in it, and he was beside
3 himself. And he didn't call the insurance company
4 that day, and he didn't call them the next day or
5 the next day, and I'm bugging him. I'm like, it's
6 a truck, it's a truck. I don't want to talk about
7 it.

8 On the sixth day, he called the
9 insurance company, and that insurance agent did not
10 say, sir, I'm not going to pay this claim, you
11 delayed disclosure. You waited six days before you
12 said this. And that example shows me that all
13 these behaviors that we label counterintuitive in
14 victims are really normal human behaviors. We
15 don't want to talk about bad things. We don't want
16 to talk a shameful things.

17 And multilayered on top of that is the
18 idea and the biases of things like, how we
19 differentiate intimate crime from normal crime. If
20 there are no witnesses to a crime, like a robbery
21 or a mugging or a carjacking, we don't call it a
22 "he said/she said" thing, but in sexual assault, we
23 say it's only he said/she said.

24 And so there are all these things that
25 impact the victim's behavior post offense. The

1 offender's ability to exploit and the audience's
2 interpretation of that victim's behavior. And
3 some -- and the research bears this out, the
4 clinical experience bears this out, and the
5 offenders know this and exploit it as well.

6 And so with things like delayed
7 disclosure, it's important for somebody to be able
8 to say to a jury, to be able to say to a judge,
9 Rethink this, think about it this way. This isn't
10 counterintuitive behavior.

11 So we -- not only do we have issues
12 with the idea of delayed disclosure, we have the
13 idea of resistance, earnest resistance it's called,
14 fighting back with an offender. And there are lots
15 of reactions to an assault, especially in an
16 assault that you don't anticipate, especially in an
17 assault by a loved one or a trusted one or someone
18 you like or care for. The immediate response is
19 typically confusion for most all of us, when
20 somebody -- not anger, not rage, not fighting back
21 or retaliation. It's confusion. It's shock. It's
22 fear. It's frozenness, which is the other side of
23 fight, which is flight or frozen.

24 And so we have to be reminded of that,
25 that that's not counterintuitive behavior. It's

1 exactly normal behavior to be in shock. But when
2 we're going against the misunderstanding that not
3 only real rapes happen with aggression and
4 retaliation from the victim, but real rapes are
5 stranger rapes, that's false as well. Real rapes
6 happen by loved ones, more than 80 percent of
7 people are assaulted by someone they know. And so
8 that immediate bewilderment of the victim and
9 freezing of the victim and confusion creates an
10 atmosphere that the victim themselves cannot always
11 label what's exactly happening.

12 So all of these behaviors that we look
13 upon and say, Well, if he really raped her, this is
14 how she would react, or if he really raped her,
15 this is how he would react, totally, totally
16 false.

17 And this is true whether it's a male
18 victim or female victim. I'm currently working
19 alongside the military, where the rate of -- in
20 some military male sexual assault on male sexual
21 assault is much higher than in the general
22 population and these are soldiers trained to fight,
23 and they still experience the freezing, the
24 disbelief, the confusion, the avoidance of the
25 wanting to be labeled as "asking for it." And a

1 male-on-male assault is very paralyzing for the
2 victim. So when I'm using the term "she," I don't
3 mean to be saying this is just male and female.
4 It's a victim and offender behavior.

5 And the -- the biases and stereotypes
6 we carry around that are borne out in juror
7 research, research on public opinion, even
8 nonscientific research, are -- shows that we carry
9 around these things, and by carrying around these
10 things, we judge whether or not this could have
11 really happened. And we judge whether or not the
12 victim is credible. We don't take the assumption
13 that this kind of nice guy or nice-looking guy
14 could do this. We take the assumption that he
15 wouldn't do this, and she has to act a certain way
16 to prove he did.

17 In the case that you were referring to,
18 Rep. Parker, it's called the -- referred to as the
19 Match.com rapist, where he solicited dates from
20 Match.com and would drug and rape women. Forty-
21 eight victims were identified by the Philly DA's
22 office. I believe eight or eleven came to
23 prosecution, and only two were prosecuted. And
24 they were prosecuted at a much pled down, like
25 indecent assault.

1 The man went out and committed some
2 rapes in Idaho and was convicted after PA convicted
3 him, and some of the victim's behavior was
4 explained. They had witnesses to explain the
5 offender behavior, and he got sentenced to life out
6 there, where he was only sentenced, I believe, on
7 two counts of perhaps indecent assault in
8 PA.

9 And the big thing in PA, the jury
10 perceived these women as having what they quoted as
11 buyer's remorse, they didn't like the date so they
12 cried raped. And the proof of that was some of
13 these women called him back and said, What did you
14 do to me last night. We need to talk about this.
15 We need to have coffee. He asked them out again
16 and women responded.

17 He met one for another date, and she
18 tried to figure out with this guy, Did you rape
19 me? 'Cause real rapists don't bring you coffee in
20 the morning. This was a confusing thing. And
21 because of that behavior on the victim, this guy
22 completely camouflaged his offense and the offense
23 was successful in having him not prosecuted, and
24 forty-eight victims he drugged and raped.

25 This is the kind of impact we're

1 talking about in terms the offenders power to
2 influence the truth and the offenders power to use
3 biases and misunderstandings, the secrecy and
4 privacy of rape behavior, the confusion of the
5 victim, and the disbelief of our environment. We
6 want to be able to believe we can see who a rapist
7 is. And we want to be able to believe that victims
8 will take an active role in protecting themselves
9 further, and the offenders exploit that, those
10 needs in us, and over and over and over again.

11 I wish I could invite you all to sit in
12 a treatment group and go around the circle and say
13 to each offender, How did you get people to not
14 believe the victim? And they will say, I got her
15 drunk. They'll say, You know, I told her mother
16 what a liar she was. They'll say, I told him when
17 he -- when he came back, you must have liked it,
18 because if you didn't like it, you wouldn't keep
19 coming back to see me. So it's not really rape.
20 You like this. And we're talking about thirteen-
21 year-old boys.

22 This is the kind of thing that I think
23 this bill will help us expose. I do not think it's
24 going to bolster the credibility of the victim. I
25 think it will expose the weapons of the offender,

1 which they have the upper hand in all of this.

2 So I did not go off my testimony, and
3 there's more research and information on that, but
4 I really appreciate you -- I'm very passionate
5 about this, and it's very -- it's a very difficult
6 crime to expose. It's very difficult to have
7 reported, and it's even more difficult to
8 prosecute, and offenders have been far too
9 successful in our community at exploiting not only
10 the victim's trust and kindness and forgiveness,
11 but our own.

12 And so I strongly urge you to consider
13 this bill. Appreciate your time.

14 REP. MARSICO: Thank you very much.
15 Appreciate your -- hold on a second. Any questions
16 from members? From the members? Staff? Anyone?

17 Thank you very much for your time and
18 your expertise with this. We certainly appreciate
19 you coming in.

20 DR. VALLIERE: Thank you.

21 REP. MARSICO: Next on the agenda is
22 Kate -- are Kate Rush Cook and Beth Docherty.
23 Please come forward and begin when you are ready.
24 We have you scheduled for both of you to testify at
25 the same time.

1 If you could introduce yourselves.

2 MS. COOK: Good morning. My name is
3 Kate Rush Cook. Thank you for having me.

4 I believe you have my testimony, but I
5 went back and made some revisions. I'm going to
6 share with you my court experience and help you
7 hopefully to understand what I, as a rape victim,
8 went through during my trial.

9 I was victimized once by my rapist and
10 subsequently by the court system, only to have my
11 rapist acquitted. I believe that my experience
12 could have been completely different had expert
13 testimony be permitted. Maybe another woman would
14 not have suffered at the hands of my attacker, had
15 the expert testimony been permitted.

16 In 1993, I was kidnapped, terrorized,
17 robbed, and raped. I promptly reported my offense
18 to the police, still in tears and hysterical. Days
19 later, my rapist was arrested, and months later the
20 case went to trial.

21 I was not prepared for what was to come
22 during my trial and would ultimately occur. I did
23 not realize that I would have to defend myself from
24 the myths and stereotypes the jurors had, which may
25 have been negated had expert testimony been

1 permitted.

2 The day my trial began, I came to the
3 courthouse dressed in a business suit, high heels,
4 nails painted, and my long hair twisted up in the
5 back. Is was told by the district attorney's
6 office that I had to change my clothing to appear
7 more victim-like to the jury. That request
8 confused me. I had thought that I presented myself
9 in a professional and appropriate manner for a
10 courtroom. But while my rapist was on trial, I was
11 made to feel as if I had to prove my innocence.

12 This was only the beginning of the
13 litany of stereotypes for rape victims that I would
14 encounter during the course of my trial and be
15 expected to live up to. Myths and stereotypes that
16 could have been avoided with the use of expert
17 testimony.

18 Ironically, what I was told by the
19 district attorney's office seventeen years ago
20 still haunts me. Even as I was preparing to come
21 here today, in a passing moment, I wondered if I
22 would be wearing victim-like clothing. I wondered
23 if I would fit your stereotype of what a rape
24 victim should look like.

25 I will never forget the last day of my

1 trial. I came to the courthouse dressed in my
2 victim-like clothing, as directed by the district
3 attorney's office. I was wearing tan pinstriped
4 pants, a cream turtleneck, a cream crocheted
5 sweater, and had my long hair pulled up on the
6 sides. The joke of the day with the victim witness
7 coordinator and my mother and my friends was that
8 if I had little glasses, I would look like a
9 librarian.

10 During the trial, I was using the
11 locked employee's bathroom because I had been
12 attacked by my rapist's family on the first day of
13 the trial. After lunch that last day, I was in the
14 locked employee's bathroom with my mother. Closing
15 arguments were to start, and I was a bundle of
16 nerves. I was crying and my mother was comforting
17 me.

18 She told me, After today, you won't
19 have to wear these librarian clothes anymore. You
20 can go back to wearing your funky clothes and being
21 Katie. A perfectly innocent conversation.

22 During the course of these events, a
23 woman entered the bathroom. She used the restroom,
24 washed her hands and left without a second glance.

25 When I reentered at the time courtroom

1 with my mother, I saw the woman from the bathroom
2 speaking to the defense attorney. I later learned
3 that she was an attorney with the public defender's
4 office and that they shared that locked bathroom.

5 When Court reconvened, I was called to
6 the stand again. The defense attorney asked my
7 mother -- asked -- excuse me. Asked me about using
8 the locked employee's bathroom and the conversation
9 that I had with my mother. The conversation was
10 twisted around to give it a different connotation.
11 I was asked if I knew the woman from the bathroom,
12 which I did not. He asked me if she had been in
13 the bathroom when I was in there, and I answered
14 yes. He said, So you know her? I answered, Just
15 because I saw her in the bathroom does not mean
16 that I know her. I was dismissed from the witness
17 stand without so much as an objection from the
18 district attorney or a comment from the judge.

19 The woman from the bathroom was then
20 called to the stand. She recounted a story that
21 was twisted and made it sound as if I was not
22 telling the truth.

23 Closing arguments were given and the
24 jury was charged. Forty-five minutes later, the
25 jury acquitted my rapist. The district attorney

1 asked the jury why they made that decision and
2 found that there were two reasons. Two jurors saw
3 me laughing at lunch, and the line of questioning
4 concerning the bathroom incident called my
5 credibility into question.

6 A jury member saw me laugh outside the
7 courtroom prior to deliberations. I was with my
8 mother and my friends at lunch and laughed at a
9 joke my mother had told me. It is a stereotype
10 that rape victims should appear to be broken or
11 else they are lying about their experience.

12 The defense attorney even asked me
13 where I had bought my underwear and what color they
14 were. It is a stereotype that rape victims who
15 dress provocatively are asking to be raped or even
16 deserve it.

17 I had no physical injuries because I
18 did what I needed to do in order to survive the
19 horrific situation that I was in. I complied with
20 every one of my rapist's demands and was in genuine
21 fear for my life. He told me many times that he
22 would kill me if I did not cooperate.

23 Sometimes -- excuse me -- jurors want
24 to see physical injuries or proof that you fought
25 your attacker. I believe that it -- that a common

1 perception is that -- sorry -- that it is not rape
2 if there was no struggle. The fact is that many
3 victims do not have physical injuries, but the
4 mental health of the victim is forever altered.

5 It is also a stereotype that all rape
6 victims have -- behave the same way regardless of
7 the circumstances surrounding the rape. There are
8 many different reactions to rape and not everyone
9 victim will respond the same way. Some victims go
10 on to develop post-traumatic stress disorder, as I
11 did, while others will not.

12 It is these stereotypes and beliefs
13 that can be dispelled by using expert testimony in
14 rape cases. Jurors are lay persons who only -- who
15 have these societal beliefs or stereotypes
16 engrained into them. Only experts can explain
17 reactions that do not fit the societal beliefs or
18 stereotypes and provide evidence to the contrary
19 and provide jurors with a better understanding of
20 what happens mentally and emotionally to the rape
21 victim, not only during the offense itself, but in
22 the months and even years afterward.

23 Rape is the only crime where the victim
24 is often on trial. We don't ask a burglary victim
25 to prove that their home was burglarized, nor do we

1 ask a mugging victim to prove that they were
2 mugged. So why is the crime of rape any
3 different?

4 Rapists also have one of the highest
5 rates for recidivism. Many of the cases are pled
6 down or acquitted, many times because prosecutors
7 are concerned that a jury does not or will not
8 understand the behaviors and the actions of the
9 victim. And these cases are pled down in fear of
10 an acquittal by a lack of understanding by jury
11 members.

12 By using the expert testimony, we would
13 enable to the jury to make a more informed
14 decision. It is my hope that these decisions will
15 result in justice being served for the victims of
16 these violent and life-altering events.

17 My rapist was acquitted. He
18 re-offended. Perhaps his other victim -- sorry --
19 could have been saved had expert testimony been
20 allowed at my trial.

21 Thank you.

22 REP. MARSICO: Beth, do you wish --

23 MS. DOCHERTY: Good morning. I
24 appreciate your willingness to allow me some of
25 your time today to speak about the importance of

1 using expert testimony in sexual assault cases.

2 My name is Beth Docherty and I a
3 survivor of rape and childhood sexual abuse. I was
4 fifteen years old when my high school music teacher
5 began raping me. Music was and still is my
6 passion, so when this teacher showed a special
7 interest in me, I was thrilled. I didn't know that
8 I was being groomed for abuse.

9 This man, who held this trusted
10 position, quickly became my mentor. I looked up to
11 him, and I respected him.

12 The abuse started with benign comments
13 and gradually escalated. By the time I turned
14 fifteen, he was raping me daily at school,
15 sometimes two to three times a day, in classrooms,
16 bathrooms, practice rooms, and closets.

17 He threatened me, telling me not to
18 breathe a word to anyone. He said that he would
19 kill me and nobody would believe me. He told me
20 that it was my fault.

21 I endured these rapes for almost a
22 year, telling no one. I was afraid that what my
23 teacher told me would come true. I was filled with
24 fear and shame, which forced me to live in a world
25 of loneliness and isolation. I was terrified but

1 tried to appear like a happy teenager on the
2 outside, burying the brutality as deeply as I
3 possibly could.

4 I remained active, got good grades, and
5 excelled in music, but I was always aware of the
6 reality. Instead of being a carefree teenager,
7 thinking about boys, clothes, and school, I was
8 trying to figure out which clothing would be the
9 most difficult to rip off. I was trying to hold
10 back tears while taking my chemistry test because
11 I had just been raped ten minutes earlier. I was
12 worried about what I'd tell my parents if I somehow
13 mysteriously got pregnant.

14 I appeared happy on the outside but
15 remained in complete terror and turmoil on the
16 inside.

17 Eventually, I told a trusted adult that
18 I was being sexually abused. Even then, I just was
19 very little. I was greatly relieved when she
20 believed me and told me that it wasn't my fault,
21 but I still had trouble accepting that that was
22 true.

23 I pressed criminal charges and went
24 through the brutal process of the court trial.
25 Five other girls came forward; the teacher had

1 sexually abused them as well. There were many
2 girls who told me that they had been abused by the
3 same teacher but could not muster up enough courage
4 to come forward.

5 One woman called the police and said
6 that my teacher had raped her twelve years earlier,
7 while he was student teaching, but the statute of
8 limitation had expired, therefore, nothing could be
9 done.

10 During the trial, the defense attorney
11 accused me of seducing my teacher and being a drug
12 addict, having mental problems. Anything to place
13 the blame on me and perpetuate the societal myths
14 about rape. He repeatedly asked why I hadn't told
15 anyone I was being raped, why I had waited so long
16 if this, quote, really happened.

17 Friends and teachers had actually seen
18 my crying after some of the rapes and asked me what
19 was wrong, why didn't I just tell them. Why hadn't
20 I screamed while it was happening. It was painful,
21 wasn't it? How is it possible that I could still
22 have good grades and continue in music while this
23 man was brutally raping me daily.

24 The defense asked me why, once I did
25 tell, that I didn't tell everything that happened

1 all at once. When I wasn't able to recall every
2 detail and date, he accused me of then being
3 cavalier with the rapes.

4 It may be a surprise to some that there
5 are parts of my abuse that I have never disclosed.
6 It is just too painful to recount such horrific
7 memories.

8 Fortunately, the judge permitted my
9 psychologist to testify. She was able to talk
10 about my diagnosis of post-traumatic stress
11 disorder, PTSD. She was able to explain to the
12 jury that it's not normal -- I'm sorry -- that it
13 is normal for children in my situation to not
14 disclose immediately. She indicated that some have
15 waited years to disclose, which I witnessed
16 firsthand with some of my classmates and friends.
17 She explained that victims feel that disclosing
18 would bring on shame, anger, punishment or
19 ostracism from family and friends, which often
20 causes the victim to become paralyzed and unable to
21 tell anyone about the abuse. In addition, the
22 perpetrators have betrayed the victim's trust once,
23 and the victim is likely to be reluctant to trust
24 again.

25 The psychologist was able to clarify

1 that she would be suspicious if a child did
2 disclose everything that happened at one sitting.
3 Usually the details about sexual abuse come out
4 piecemeal, with easier pieces of the story coming
5 out first and more difficult, anxiety-laden pieces
6 of the story emerging only later.

7 She testified that it was unfortunate
8 that I was able to conceal the extent of my
9 distress so well. She was able to point out how my
10 behavior was common for a child of sexual abuse and
11 to explain some of my misunderstood reactions.

12 My music teacher was found guilty and
13 sentenced to thirty to seventy years in prison.

14 Unfortunately, many myths regarding sex
15 crimes still exist, and there is still a stigma
16 attached to rape victims. Although we have made
17 great strides, society still tends to ask what the
18 victim did or didn't do to cause the abuse. Jurors
19 are not immune to societal influences and beliefs.

20 The psychologist's testimony in my
21 teacher's trial cleared up any doubts that the jury
22 may have had. Jurors are not experts in the field
23 of trauma or how trauma effects the behavior of
24 sexual assault survivors, victims.

25 There's a lack of understanding about

1 the different responses that survivor may have. If
2 my jury hadn't been educated by an expert in the
3 field, the verdict may have been gone the other
4 way, giving this teacher unlimited access to
5 hundreds of children.

6 The abuse that I endured has affected
7 every aspect of my life, but I'm able to find some
8 peace knowing that no more children are being raped
9 and permanently scarred by this predator.

10 I believe, from my own personal
11 experiences, that it is of the utmost importance
12 for PA to utilize expert testimony in sexual
13 assault cases.

14 I thank you in advance for helping to
15 protect victims of sexual crimes, especially our
16 children.

17 REP. MARSICO: Any questions, members?

18 REP. PARKER: For Kate and Beth, this
19 is -- first let me just start by saying thank you
20 so much for your courage and your willingness to
21 just come forward and sort of bring back to the
22 forefront of your minds the horrific acts and
23 violations that took place in your personal lives.
24 But today you showed a lot of strength and you
25 showed a lot of character, and this is the way that

1 you were to do what you mentioned when you talked
2 about protecting children in the future, when you
3 talked about the person who assaulted you going on
4 to re-offend after your case.

5 Your being here and testifying today is
6 the strength and courage that we need to help to
7 prevent this from happening in the future.

8 Just wanted to just bring to light,
9 listening to you, Kate, you immediately went to the
10 police.

11 And, Beth, you were a child, and it
12 took you about a year to finally share with an
13 adult what was happening to you. And yet at two
14 different times in your lives, you were both
15 experiencing some of the same feelings that others
16 characterize as being abnormal without knowing
17 exactly what the behaviors are and listening to
18 experts who, you know, work with people who have
19 been victims and to know that your behavior was
20 actually a normal behavior.

21 So I just wanted to thank you for the
22 record for your courage and standing up and sharing
23 with the committee your experience.

24 MS. COOK: Thank you.

25 REP. MARSICO: Counsel McGlaughlin, do

1 you have a question?

2 MR. MCGLAUGHLIN: Yes. Thank you,
3 Mr. Chairman.

4 Ms. Rush Cook, I just real quickly
5 wanted to -- first of all, thank you very much for
6 coming. And I know it's difficult.

7 Which county did your prosecution take
8 place in?

9 MS. COOK: Mine was York County.

10 MR. MCGLAUGHLIN: York County?

11 MS. COOK: Um-hum.

12 MR. MCGLAUGHLIN: Okay. Thank you.

13 REP. MARSICO: Any other members?

14 Yes. Thank you very much, on behalf of
15 the committee, for being here and certainly had to
16 be very difficult, and we thank you for being
17 here. It took a lot of courage. Thank you.

18 MS. DOCHERTY: Thank you.

19 MS. RUSH: Thank you for having us.

20 REP. MARSICO: Next to testify is
21 Deborah Harley, chief of the Family Violence and
22 Sexual Assault Unit from the Philadelphia District
23 Attorney's Association.

24 MS. HARLEY: Good morning, members of
25 the House Judiciary Committee.

1 As stated, my name is Deborah Harley,
2 chief of the Family Violence and Sexual Assault
3 Unit in the Philadelphia DA's Office. I am also
4 testifying here today on behalf of the PA District
5 Attorneys Association. And I'm here today to
6 testify in support of House Bill 2255, very
7 important legislation, permitting expert testimony
8 in cases involving sexual assault and sexual
9 violence.

10 I want to thank Rep. Parker for her
11 outstanding leadership in this issue. And I want
12 to thank you for holding this hearing. It is a
13 very important issue to victims of sexual assault.

14 Victim of rape and sexual assault
15 undergo one of the most traumatic violations of
16 humanity: forced, violent, sexual attacks on their
17 physical person. While the occurrence of rape in
18 America is shockingly high, 20 to 30 percent of
19 women experience a sexual assault in their life
20 time. Societal attitudes towards sexual violence
21 create an atmosphere of skepticism, criticism, and
22 backlash for victims.

23 It is because of the pervasive
24 misperception in our culture that passage of this
25 legislation is critical. Under current case law in

1 PA, expert testimony is impermissible to assist the
2 jury in explaining any type of victim behavior.
3 This is in contrast to forty-eight states, the
4 District of Columbia, the military, and the federal
5 courts, where it is permissible for the prosecution
6 to introduce expert testimony regarding the
7 behavior of adult victims of sexual assault.

8 Additionally, in PA, the law expressly
9 permits the instruction to a jury that the jury may
10 consider the promptness of a complaint in accepting
11 a victim's -- in assessing a victim's credibility.
12 The law, as it currently stands in the
13 Commonwealth, is only serving to perpetuate the
14 myths and misunderstanding surrounding the
15 behaviors of sexual assault victim.

16 Over the last twenty years, I have seen
17 thousands of cases of rapes and sexual assaults.
18 In each case, the victim undergoes a traumatic
19 experience with a wide range of behavioral and
20 psychological responses. Some victim experience
21 memory loss, some do not fight back, some
22 disassociate themselves from the event, some blame
23 themselves, and some are in a state of denial.

24 These patterns of behavior often
25 contradict how the general public believes a victim

1 of crime would react, especially given the general
2 skepticism regarding sexual assault.

3 Psychologists, psychiatrists, victim
4 advocates, nurses, social workers, counselors, and
5 other trained individuals who come into constant
6 contact with rape victims must be allowed to
7 testify, through their experience in the field, to
8 the ranges of psychological and physical responses,
9 victims may undertake. Such expert testimony on
10 the general complexity of victim's reaction is
11 necessary for the jury to be able to properly
12 evaluate the response of a particular victim.

13 Jury members, unaided by expert
14 testimony, are very likely to interpret victim
15 behavior in flawed and biased ways, according to
16 their own uneducated beliefs and beliefs that were
17 impressed upon them by society. Juries often
18 regard a rape victim as being unreliable because of
19 behavior that is in direct response to prior sexual
20 and/or physical abuse.

21 Victims that delay the reporting of
22 sexual assault are deemed unreliable. Victim
23 response psychology can offer explanations, based
24 on research, education, training, and experience,
25 for the cycle of domestic violence and for other

1 victim behaviors that appear to be counterintuitive
2 after a traumatic assault and for delayed reports
3 of rapes and sexual assault.

4 Lastly, even jurors have who have
5 undergone a traumatic event themselves or know
6 someone close to them who has gone through a
7 traumatic event, they may be biased, because these
8 jurors will compare the victim's responses to their
9 own responses when assessing the facts of the
10 case. Yet we know no two victims can be expected
11 to react the same way.

12 For all of these reasons, legislation
13 to allow expert testimony to explain victim
14 behavior is absolutely necessary in PA. I
15 sincerely believe that the misperceptions and myths
16 surrounding sexual trauma are negatively impacting
17 the state and our victims in successfully
18 prosecuting rapists.

19 Permitting experts to testify as to the
20 effects that sexual assault has on victims gives
21 the jury the necessary tools to make an educated
22 credibility decision and assess the facts of the
23 case without bias or prejudice.

24 In our judicial system, it is
25 imperative that juries be fair and impartial. It

1 is only with expert testimony in sexual abuse cases
2 that those values can be ensured.

3 I thank you again, and I would be happy
4 to answer any questions that you would have.

5 REP. MARSICO: Representative Parker.

6 REP. PARKER: Thank you, Ms. Harley,
7 for your testimony.

8 You've heard the response that we've
9 received from many members of the judiciary about
10 expert testimony just bolstering the credibility,
11 you know, of the victim. And when you listen to
12 Beth Docherty's testimony, and she said that when
13 her psychologist was allowed to testify, he or she
14 determined that if, in fact, Beth had told her
15 story and it was completely filled, with no holes,
16 she remembered absolutely every detail, she
17 communicated the assault as it occurred on each
18 occasion, that that would have, like, sort of been
19 a red light for the psychologist, because it's
20 abnormal for a child to sort of recant in detail
21 having been victimized in this way.

22 Can you to me talk about how -- how
23 this legislation would assist in sort of making
24 sure that we move forward to obtaining justice for
25 both the victim and also the defendant?

1 So if -- so if, again, someone goes in
2 and they tell you a complete story, that may be
3 pause for you and the investigating officer to look
4 at some other details.

5 MS. HARLEY: In the overwhelming
6 majority of cases, we see that disclosure is a
7 process. There are many reasons for it and most of
8 it is safety. Children might put their toe in the
9 water, tell a little bit about what happened, to
10 see the reaction. And if the reaction is not one
11 of anger or disbelief, the child might tell a
12 little bit more.

13 There's so many issues that are
14 involved with the sexual assault, the disclosure,
15 what happens after the disclosure, especially a
16 sexual assault that -- their family members. You
17 know, children see, teenagers see what will happen
18 if they give a full disclosure. The family will be
19 torn apart. The victim might have to go into
20 foster care. They would have to change schools.
21 They would not be able to see their brother and
22 sister anymore. And they see all of this. And
23 they're also told this as they are being abused by
24 a family member.

25 So we see it all the time, that

1 disclosure is a process. And when it isn't, it is
2 usually a one-time event, and the child or the
3 adult has spoken out immediately. Other than that,
4 it is typical and expected for the disclosure to be
5 a process.

6 REP. PARKER: Let me ask you a
7 question, because I was really listening to the
8 testimony, I just want to be clear that I'm
9 understanding your testimony, because I'm not an
10 attorney.

11 You state that PA law expressively
12 permits instructing jury members that they may
13 consider the promptness of a complaint in assessing
14 a victim's credibility. So just let me understand,
15 because I'm not a lawyer. So those who are expert
16 in this field, from the psychologists to
17 psychiatrists, doctors, law enforcement officers,
18 those of you who are in the DA's office, you
19 already know, and you've told us that when a victim
20 doesn't immediately report the crime, that that is
21 not abnormal behavior. You're telling this
22 committee that that is normal behavior.

23 But our judicial system allows a judge
24 to instruct a jury that if they want to determine
25 whether or not this victim is credible, they can

1 use the promptness, the timing that the complainant
2 actually disclose -- I just want to make sure
3 I'm --

4 MS. HARLEY: You're exactly right.

5 REP. PARKER: I want to understand this
6 correctly.

7 MS. HARLEY: You're exactly right. If
8 I could just describe, in a jury trial, after --
9 after closing, the judge gives jury instructions,
10 that the jury is there to determine the facts and
11 the judge is there to provide the law. So if you
12 were to have an aggravated assault case, after the
13 testimony and the closings, the judge would give
14 the elements of the crime of aggravated assault to
15 the jury. There is no jury instruction on an
16 aggravated assault as to prompt complaint.

17 In a rape case, after the closings and
18 the judge is to give the instruction to the jury,
19 he'll give the elements of the charge of rape
20 and/or indecent assault, and then will instruct the
21 jury about the prompt complaint or lack thereof.
22 And if there was not a prompt complaint, the judge
23 will instruct the jury that they may assess that,
24 use that fact in assessing the credibility of the
25 victim.

1 It is -- it's only in sexual assault
2 cases. In no other case is there a jury
3 instruction regarding prompt complaint. So we're
4 trying cases with our hands tied behind our backs.

5 REP. PARKER: Just thank you for your
6 professionalism and giving up the facts for the
7 record.

8 If I look a little flabbergasted,
9 Mr. Chairman, it's just because I was just a little
10 surprised.

11 Briana.

12 CHAIRMAN CALTAGIRONE: Rep. Evans.

13 REP. EVANS: Thank you, Mr. Chairman.

14 Just a couple quick questions here.

15 I'm glad Rep. Parker, the sponsor of the bill, is
16 here.

17 And also thank you, Miss Harley, for
18 your testimony today. I think having you here
19 would answer the question that I have. On page two
20 of the bill, when it gets into the rule itself, the
21 testimony by an expert qualified by the court
22 regarding any recognized and accepted form of post-
23 traumatic stress disorder and any recognized and
24 acceptable counterintuitive behavior shall be
25 admissible, I guess my question is, what does the

1 court recognize as an expert? Is perhaps the bill
2 drawn broadly in the sense that, would this be a
3 psychologist, a psychiatrist, would it be a school
4 counselor, would it be a school nurse, would it be
5 a member of the clergy? Who would be considered an
6 expert?

7 MS. HARLEY: In order to be qualified
8 as an expert, the Commonwealth prosecutors would
9 have show that that person, standing before the
10 court, has more knowledge than the ordinary lay
11 person. So to qualify somebody as an expert, we
12 would show -- suppose it was a psychologist, their
13 education, their work with victims, and anything
14 that they've written about it, anything they've
15 read about it, anything to show that they have more
16 knowledge on the subject than an ordinary jury
17 would have.

18 REP. EVANS: I'm just wondering if
19 perhaps that is too broad to what we are looking to
20 do here, to identify that. Wouldn't it be best to
21 say psychologist or psychiatrist.

22 MS. HARLEY: Well, actually social
23 workers, people who have constant contact with rape
24 victims would have an expertise in that area.
25 People who work in the emergency rooms. In

1 Philadelphia, as it currently stands, we have two
2 hospitals that see our rape victims, Jefferson and
3 Episcopal. So it is not like our victims are going
4 to fifteen different hospitals, so that the workers
5 there see rape victims each and every day. We had
6 on over a thousand -- over a thousand?

7 CAPTAIN DARBY: About a thousand rapes
8 reported every year.

9 MS. HARLEY: About a thousand rapes
10 every year. So if you look at it statistically,
11 what you're seeing, that's at least three victims a
12 day. So they would have elevated knowledge.

13 REP. EVANS: Okay. Thank you.

14 And I do see that there is an amendment
15 Rep. Parker has to clarify that language that I was
16 concerned about.

17 MS. HARLEY: We did that after the
18 February hearing.

19 REP. EVANS: I didn't see that on the
20 original bill here, so I apologize for that.

21 Thank you very much.

22 REP. MARSICO: Anyone else?

23 MS. ELZEY: I had a quick question. It
24 wasn't in your testimony, but I noticed it in a
25 slight dissent to certain things in the bill. I

1 just was wondering if you've known any cases where
2 the defendant has been denied the use of an expert
3 to explain their behavior in a sexual assault
4 case.

5 MS. HARLEY: I'm sorry. Where --

6 MS. ELZEY: Where the defense may want
7 to bring in an expert to explain their behavior in
8 any way, shape, or form when they're accused of
9 sexual assault, to help exonerate them. Have they
10 ever been denied or a case be retried because they
11 brought in expert?

12 MS. HARLEY: I can tell you that as
13 long as I've been here, we've not had any case
14 where the defense has attempted to bring in an
15 expert. But it also may be because the
16 Commonwealth can't bring in an expert, so,
17 therefore, we wouldn't get to the step of the
18 defense bringing in an expert.

19 MS. ELZEY: Yeah, I just asked just in
20 case -- because the cases we've seen cited are ones
21 where the prosecution has brought in one, it's been
22 allowed, but it's been overturned on appeal. I was
23 just wondering if there were any cases -- I mean,
24 you know, it's probably something nobody was
25 thinking about, but cases where defense has brought

1 it in, and, of course, you can't really appeal on
2 defense. I mean you can, but usually when the
3 defense wins a case and they're acquitted, it's
4 left alone. That is double jeopardy.

5 MS. HARLEY: Right.

6 MS. ELZEY: I was just curious maybe if
7 any were on record but I doubt it since it wasn't
8 an appeals process.

9 MS. HARLEY: Right.

10 MS. ELZEY: Okay.

11 MR. MCGLAUGHLIN: Mr. Chairman, very
12 quickly.

13 Ms. Harley, don't you think it would
14 permit or open the door to allowing defense
15 witnesses, expert witnesses? If this -- this bill
16 would cut both ways, wouldn't it?

17 MS. HARLEY: But at least it would be
18 an even playing field.

19 MR. MCGLAUGHLIN: Understood. Thank
20 you.

21 REP. MARSICO: Okay. Any other
22 questions?

23 Thank you.

24 MS. HARLEY: Thank you.

25 REP. MARSICO: Appreciate your help

1 with this.

2 MS. HARLEY: Thank you very much.

3 REP. MARSICO: Next to testify is Lynn
4 Hecht Schafran, director of the National Judicial
5 Education Program.

6 MS. SCHAFRAN: Good morning, and thank
7 you so much for having me. I am the one out-of-
8 stater here, I believe. I was very honored to be
9 asked to testify at the hearings in Philadelphia in
10 the winter, and I so much appreciate the
11 opportunity to be with you again today.

12 My question is, do you have my
13 testimony? Because I see that it wasn't in the
14 pile that was reproduced. And I have extra copies
15 to give out and so on, if need be.

16 How I come to you today is, as Rep.
17 Parker said, I run the National Judicial Education
18 Program. And this is a project of legal momentum
19 in cooperation with the National Association of
20 Women Judges. We have been around since 1980.

21 And from the beginning of this project,
22 we have been very concerned with the issue of adult
23 victims of assault.

24 In the mid '90s, I secured a grant from
25 the State Justice Institute to create a two-day

1 curriculum for judges. And Rep. Parker mentioned
2 this with specificity, and I'm going to highlight
3 that. A two-day curriculum for judges called
4 Understanding Sexual Violence: The Judicial
5 Response to Stranger and Nonstranger Rape and
6 Sexual Assault.

7 We've presented that program here in
8 PA. And how we learned that PA does not allow
9 expert witness testimony in these cases is that
10 when we came to present this program in
11 PA, which the first time we did it was 1997, we
12 learned from your judges that you are one of the
13 two outlier states in the country -- the other is
14 Minnesota. Both of you have a supreme court case
15 that came very early in the years when the people
16 began to research the response of rape victims.
17 And there was simply an assumption on the part of
18 your respective high courts that you didn't need to
19 have any expert witnesses in cases like this.
20 Common sense would tell the jury how to evaluate
21 the credibility of the witness.

22 Not to belabor everything that you've
23 heard today, I think that what you've heard from
24 the prior witnesses and what's detailed in my
25 testimony is that common sense about rape victims

1 is exactly a hundred eighty degrees from reality.
2 People do not report immediately. Victim most
3 often freeze with fright and couldn't resist, even
4 if they thought that that was the way to save their
5 lives, which usually it is not. People have post
6 contact assault with victims. People display every
7 possible kind of behavior on the witness stand.
8 And one thing that wasn't mentioned, of course, is
9 that if you display too much emotion, then, for a
10 woman, you're labeled hysterical and you won't be
11 believed either. So the notion that common sense
12 will do it is really wrong.

13 And the other state, I think you will
14 be interested to know, that doesn't allow this, as
15 I said, is Minnesota. Right now they have an
16 expedited appeal to their supreme court on a case
17 which is, once again, testing this issue of the
18 admission of expert witness testimony. And I know,
19 because I'm working with Minnesota on another
20 project, that they're very interested in what you
21 are doing here in PA, because if they are not able
22 to change this through their supreme court, they
23 will be looking at HB-2255 and thinking about going
24 to their own state legislature. So what you do
25 here will not only profoundly affect victims of

1 sexual assault here in PA, but could very well
2 affect profoundly the lives of victims of sexual
3 assault in Minnesota as well.

4 So we produced a four-hour video that
5 was based on our two-day curriculum for judges.
6 There's a PA judge on this DVD -- I brought some
7 copies for the committee -- Judge Jacqueline Allen
8 from Philadelphia. She had been a faculty member
9 for us when we did our live, two-day curriculum,
10 and the judges -- when we came to the judge's panel
11 in these DVDs, the judges from the other four
12 states were real amazed to learn from Judge Allen
13 that, as we're here discussing today, PA does not
14 permit expert witness testimony.

15 The question about how we come to know
16 this, I mean, is this just anecdotal evidence that
17 expert witness testimony makes such a difference or
18 that juries really don't know what they're talking
19 about, or that they really rely on bias when
20 they're making their decisions?

21 There is a huge amount of very serious
22 sociological, professional research on jury bias.
23 And interestingly, it all started here in PA, with
24 Kalven and Zeisel back in the 1960s. They did some
25 research where they found that in cases where

1 the -- rape cases where the victim and offender
2 knew one another and there wasn't a weapon, that
3 the judges and the juries came out very -- in very
4 different places, where the judges would have
5 convicted, the jurors acquitted.

6 And their analysis of this came down to
7 what they called assumption of risk, that if a
8 woman went to a bar with a man, went home with him,
9 anything that was short of, you know, an arranged
10 marriage, she assumed the risk of whatever might
11 happen afterward.

12 There has subsequently, for example,
13 been some extensive research with three hundred
14 thirty-one jurors who actually sat in sexual
15 assault cases in Indianapolis, ninety-minute
16 interviews with each one of them. And the bias was
17 rampant. Their idea of how to make a decision was
18 their assessment of the complaining witness's
19 character. Tremendous bias against women of
20 color.

21 There was a horrible situation in --
22 written up -- it's a book by Garrett
23 LaFree (phonetic) -- where he describes all this
24 research. A thirteen-year-old black girl, raped,
25 and the attitude of the jurors was, Well, she came

1 from a bad neighborhood anyway.

2 So the juror ignorance and bias is a
3 tremendous, tremendous factor in these
4 cases. There's also a tremendous amount of opinion
5 polling. And, you know, who makes up our jurors?
6 They're the public. When you look at opinion polls
7 from the United States, and the most recent
8 research has been done in the UK, but I think kind
9 of similar population, similar attitudes, you find
10 that both men and women take the attitude that if a
11 woman is wearing, quote, unquote, provocative
12 clothing, if she's drinking, if she's alone in a
13 dangerous, deserted neighborhood, she's asking for
14 it. She's culpable. She deserved to be raped.
15 Maybe she wasn't even raped at all, she's just
16 lying.

17 There is a huge mistaken belief about
18 false allegations. This is also an area where
19 there is a tremendous amount of serious methodical
20 research. I cite some of it in my testimony. The
21 best research in this area is that, depending upon
22 the study, between 2 and 10 percent of cases are
23 false, meaning not just unfounded, not just the
24 detectives didn't bother to do the work, meaning it
25 was determined that there was no reality to this

1 claim, but the assumption is that women just cry
2 rape willy-nilly, and these cases are not real.

3 We have comments that are made by
4 jurors who come out of the experience of sitting
5 with their colleagues and they're just stunned by
6 what has been said in the jury room. They cannot
7 believe that, in the face of all this evidence, if
8 the woman's genitals weren't carved up, then she
9 couldn't have been telling the truth. And I quote
10 in my own testimony some statements made by jurors
11 in these cases, interviews they have given to the
12 New York Times and other places after the fact.

13 I -- in preparation for the hearings
14 that were held in February, I thought it would be
15 useful to talk to two people whom we work with
16 extensively who have been expert witnesses in
17 probably between more than a hundred cases.
18 They're both in Colorado. And apropos of the
19 question that was asked about who would be
20 qualified as an expert, these are -- one of these
21 women was the head of an organization called Moving
22 to End Sexual Assault -- thank you -- and is now
23 head of a major unit within that same mental health
24 center. Another is a social worker who was also a
25 clinician and ultimately served for many years as

1 head of the Colorado Sex Offender Management
2 Board.

3 And they told me about their testimony,
4 and I asked them afterward, Colorado jurors, can
5 you poll the jurors, can you talk to them about
6 what was salient in their decision making, and what
7 I learned from them was the jurors themselves would
8 tell the prosecutors that absent the expert witness
9 testimony that was offered to them about why
10 victims don't report immediately, why victims have
11 post assault contact with a rapist, all of these
12 issues that you've heard about this morning, but
13 absent the testimony that they heard from
14 Dr. D'Anniballe and Dr. McAllister, they would not
15 have understood what happened in this case. They
16 would not have understood why they should convict.

17 Dr. D'Anniballe told me she's actually
18 had jurors seek her out and call her up afterward
19 to say, Thank you so much for your testimony. If
20 you had not been there, I would have let this
21 rapist go.

22 The other person that I spoke of, Jean
23 McAllister, said that she constantly hears from
24 prosecutors who say that the jurors told them that
25 she was pivotal to their understanding of this case

1 and judges who have told other therapists that
2 expert witness testimony that she gave was
3 pivotal.

4 And I want to speak to this notion that
5 this is bolstering the credibility of the witness,
6 because this is very disturbing to hear. Not in my
7 testimony is something that I think is worthwhile
8 bringing up. We're in the process of a major
9 project -- in which PA, by the way, is also
10 involved -- which has to do with developing an
11 approach toward judicial education about adult and
12 elder victim sexual assault, which is going to
13 cover the waterfront from the straightforward
14 sexual assault case to women in drug treatment
15 courts who are there because they are self
16 medicating the results and the consequences of
17 childhood and adult sexual abuse, and if you don't
18 have the right kind of program that deals with the
19 underlying trauma, the program fails them, they
20 fail the program, and they end up in prison and
21 lose their children.

22 And in the course of developing this
23 whole program, I knew that I wanted to do something
24 for new judges, because this is an area that is so
25 fraught with misinformation that if the judges

1 themselves don't have both the misinformation from
2 the point of view of this is what the public is
3 believing and the accurate information, they won't
4 know how to run a fair process. They won't
5 understand why they need to admit expert
6 witnesses.

7 Obviously, in our particular form of
8 jurisprudence, a judge cannot call an expert
9 witness him or herself, but when the prosecution,
10 or the question was asked, the defense seeks to
11 bring in an expert witness, the judges need to know
12 how to evaluate that request and how to evaluate
13 the qualifications of the proffered expert.

14 And in speaking to a judicial educator,
15 she said, Well, why don't you do something like the
16 top ten things I wish I knew before I presided in
17 an adult victim sexual assault case. And so I
18 polled judges across the country who have served as
19 faculty for us over the years, and I ended up
20 writing something called Judges Tell: What I Wish
21 I Had Known Before I Presided in an Adult Victim
22 Sexual Assault Case. And it is more than David
23 Letterman's top ten at this point, but what it is,
24 is a series of -- it's like seventeen points and a
25 commentary.

1 And the most basic thing these judges
2 are writing: I wish I knew that most assaults are
3 committed by someone the victim knows. I wish I
4 knew that most people don't report immediately. I
5 wish I knew that most people aren't physically
6 injured in a, you know, visible sense.

7 How is this one: I wish I knew that it
8 is not uncommon for a rape victim to have a
9 physical response. It's not an expression of
10 mutuality and desire. It's an expression of sheer
11 physiology. The defense expert says to the
12 witness: Didn't you have some sexual response?
13 Were you lubricated? Did you have an orgasm? This
14 is enormously confusing to victims. By the way,
15 this can also happen to male victims as well. How
16 do you explain that without expert witness
17 testimony?

18 So judges themselves really need to
19 have a lot of education, and they need to hear it
20 hopefully from programs like mine and other
21 entities to provide judicial education. And I know
22 PCAR does some of that here in your own state. And
23 Judge Panella has written a wonderful bench book
24 for judges on sexual assault with PCAR.

25 But not every judge is going to be

1 reached this way. Not every topic will be
2 covered. The judges themselves need to hear from
3 expert witnesses.

4 I know that my time is short, so I just
5 want to touch on one other thing. With respect to
6 the fact that PA law has this very unusual prompt
7 complaint jury charge written into its law, I
8 thought I could best tell you how misleading this
9 is and how undermining the fair administration of
10 justice by telling you that in Britain, where I
11 have worked with them over a number of years
12 because it's virtually impossible to get a
13 conviction, the Crown Court judicial bench book now
14 directs the judges that they are to charge the jury
15 the reverse of what your judges charge. They are
16 to charge the jury that the fact that someone did
17 not immediately make a disclosure or a complaint is
18 not to be taken as evidence of fabrication, that
19 everybody responds differently and reports
20 differently, and that this is an individual thing,
21 and they should assess it from the point of view of
22 the individual response, explanation, how things
23 happened, but they should not make an assumption --
24 that's the word they use -- don't make an
25 assumption that because someone delayed reporting

1 there was a fabrication.

2 So, in sum, this is extremely important
3 legislation. I thank you for considering this. I
4 thank you for allowing me to come and testify
5 again. And I hope that very soon this will be the
6 law in PA.

7 And, again, I'd also be happy to answer
8 any questions.

9 REP. MARSICO: Any questions?

10 Thank you very much for your coming to
11 central PA, and have a good trip back. Thank you.

12 Jill Maier, director of National
13 Judicial Education Program, Women Organized Against
14 Rape.

15 Welcome.

16 MS. MAIER: Good morning. Thank you
17 very much for taking the time to hear my
18 testimony. I'm very honored to be here.

19 As was said, I'm Jill Maier, director
20 of counseling services for Women Organized Against
21 Rape. If I can just clarify, we're a rape crisis
22 center in Philadelphia, PA, and America's oldest
23 rape crisis center. I'm also a licensed
24 professional clinician.

25 As we've been talking today, sexual

1 violence is a trauma which can violate an
2 individual's mind, body and soul. The most
3 startling statistics from the Rape, Abuse, and
4 Incest National Network state that almost eighteen
5 million American women and 3 percent of American
6 men have been victims of attempted or completed
7 sexual assault.

8 The effects of sexual assault can be
9 life altering, causing a multitude of short and
10 long-term system and -- excuse me -- and result in
11 victims being three times more likely to experience
12 depression, six times more likely to experience
13 post-traumatic stress disorder, thirteen times more
14 likely to abuse alcohol, twenty-six times more
15 likely to abuse drugs, and four times more likely
16 to consider suicide than the average American.
17 With statistics such as these, our society needs to
18 make great efforts to protect and care for its
19 women, men and children.

20 Over the last several decades there
21 have been great strides in research, advocacy
22 efforts, and treatment for sexual assault. The
23 criminal justice system has made great strides as
24 well, but there remains some areas in which the law
25 needs to provide better protection for victims of

1 crime. And I'm glad that the House is taking the
2 time today to look at one of these issues.

3 Unfortunately, as we've been discussing
4 already this morning at great length, the general
5 public still does not truly understand the dynamics
6 of sexual violence. It's not a topic people like
7 to talk about. Many people think that most
8 assaults are the stranger jumping out of the bushes
9 in the park. And while this does happen, the
10 majority of rapes are perpetrated by someone the
11 victim knows such as a family member, a friend, or
12 a lover.

13 Many people get their conceptions of
14 rape from the media, most often the popular
15 television show, Law and Order: Special Victims
16 Unit. On this show, a victim is typically
17 portrayed as female, extremely emotional, and the
18 criminal case proceeds very quickly, always hinging
19 on the discovery of DNA.

20 Most times we know in reality this is
21 not the case. A victim can be a woman, a man, or a
22 child. They may experience a range of emotions
23 following an assault, including fear, anger, shock,
24 depression, avoidance, or be completely numb and
25 express no feelings at all.

1 Also rape remains one of the most
2 underreported crimes, with only less than 50
3 percent being reported to the police, mainly
4 because of the victim's fear of reporting due to
5 threats made by the perpetrator or a fear that the
6 system will not believe them.

7 Now, imagine when a rape case is being
8 heard in court. It is difficult enough for a
9 victim to retell their story and to sit a few feet
10 away from their attacker, but to then have a jury
11 that may not truly understand the issues seems like
12 yet another crime being committed.

13 Courts across the nation have
14 recognized the importance of allowing expert
15 testimony in criminal proceedings in sexual assault
16 cases in order to provide jurors an informed and
17 comprehensive understanding of the complexities of
18 a victim's behavior. This is important because
19 many jurors, as members of the general public, may
20 hold certain preconceived notions about what a rape
21 victim should look like and how they should behave
22 after an assault.

23 For example, as we've said, if the
24 victim is not crying on the stand, did not report
25 the assault immediately, they find the victim

1 unbelievable because she's not acting like a
2 typical rape victim.

3 During a trial, the defense may try to
4 claim the victim displayed unusual behavior after
5 the assault, for example not fighting back,
6 freezing instead of running, not having any
7 physical evidence of injury, blaming oneself for
8 the assault, not having an overly emotional
9 reaction, or having a personal relationship with
10 the perpetrator.

11 What the research has demonstrated,
12 however, and what I have seen in my own treatment
13 of victims, is that these are not unusual behaviors
14 but are common reactions to trauma. By allowing an
15 expert in the field to testify that these behaviors
16 can be explained as common, albeit counterintuitive
17 behaviors, the jurors will be well informed and be
18 able to fairly interpret the evidence presented.

19 Additionally, it is important for the
20 jury to be able to learn about post-traumatic stress
21 disorder. Many people assume that PTSD is
22 diagnosed for people returning from battle zones or
23 people who've experienced a natural disaster.
24 However, rape victims suffer the same symptoms of
25 PTSD as people who've experienced other forms of

1 trauma.

2 In PA, the jury should be allowed to
3 understand all the aspects of a case, similar to a
4 medical expert explaining medical evidence, an
5 expert in the field of psychology and victims
6 services should be allowed to explain the
7 psychological realities of sexual violence.

8 I have testified previously in a civil
9 proceeding describing the counseling my client
10 received in a support group. This was the cause of
11 thirty-five-year-old woman who went to a car
12 dealership looking to buy a new car. While on the
13 test drive with the salesman, she was forced to
14 pull over into a parking lot where he raped her.
15 She was in shock and embarrassed after the rape and
16 did not tell anyone or go to the police.

17 After a few days, she told her husband,
18 and he took her to the police, where they filed a
19 report. The criminal case could not be pursued due
20 to lack of physical evidence, so she decided to
21 pursue the case in civil court. Because expert
22 testimony was not allowed when I was testifying, I
23 could merely say that she received counseling but
24 could not explain why she did not immediately
25 report the assault to the police because I was not

1 allowed to state common reaction to trauma. I was
2 also not allowed to explain I had diagnosed her
3 with post-traumatic stress disorder because I could
4 not say that the words PTSD.

5 Because of this, I felt the jury was
6 not being provided with any accurate picture of my
7 client's experience, and, therefore, was not being
8 given a fair trial. When the verdict came in, it
9 was a mistrial. Her attorney informed me later
10 that the jurors were not able to come to a decision
11 because some did not believe her story simply
12 because she did not go to the police or tell her
13 husband. And this a civil case.

14 I can only imagine with dismay how many
15 times this is happening in criminal cases, which is
16 even more frightening, because then we're keeping
17 the criminals on the streets to rape again.

18 We're asking today for your support of
19 House Bill 2255 so that we can follow what other
20 parts of country are already doing. We're simply
21 asking that a victim of rape be given a fair trial,
22 which means having a jury that is allowed to hear
23 all the evidence in a case.

24 Research has demonstrated that the
25 general public still holds beliefs in rape myths

1 and misconceptions about sexual assault, therefore,
2 it should be clear that expert testimony be allowed
3 to dispel the myths and allow rape victims to have
4 a fair day in court.

5 Thank you very much.

6 REP. MARSICO: Any questions?

7 Thank you very much for being here.
8 Appreciate it.

9 Next to testify is Joyce Lukima, deputy
10 director of field services, PA Coalition Against
11 Rape.

12 MS. LUKIMA: Good morning. Thank you
13 so much for the opportunity to be here to speak to
14 you on this important issue of expert testimony in
15 sexual assault. I think my comments will act to
16 summarize much of what you've already heard from my
17 colleagues today.

18 I've spent my career counseling and
19 advocating for victims of sexual violence. In the
20 twenty years I have worked with victims of
21 violence, I have seen vast improvements in the way
22 we respond to rape and other forms of sexual
23 assault.

24 Both research and experience have
25 taught my colleagues and I to better understand

1 and, therefore, better respond to victims of sexual
2 violence. This includes understanding behavior
3 that sometimes does not make sense to someone who
4 has not been raped or someone who has worked
5 extensively with victims of rape.

6 As you know, rape is a deeply personal
7 and invasive crime. Its impact is often
8 devastating. Although an understanding of the
9 pervasiveness of sexual violence has increased,
10 there is still many misconceptions held about the
11 way a woman who is raped should act.

12 A common reaction from a person on the
13 street is, if I were raped, I would fight to the
14 death. While it is easy to understand how someone
15 might expect themselves to react when confronted
16 with an attack of sexual violence, the reality, as
17 you've heard today, is that freezing in a traumatic
18 situation is a normal response and sometimes maybe
19 life saving.

20 Myths continue to be engrained in our
21 society and the impact of actions we each take when
22 we come into contact with victims of rape. Jurors
23 who are -- who are a reflection of this society,
24 believe those myths and bring those beliefs into
25 the courtroom as well as into the jury deliberation

1 room and may subsequently allow the myths to
2 influence their credibility assessment and the
3 verdict, even more than the evidence and the law
4 that they are instructed to follow.

5 Expert testimony related to the reality
6 of sexual violence and the response of victims of
7 sexual violence is integral in helping to discern
8 reality from myth. If, like most rape -- most
9 victims of rape, the victim does not report, as
10 you've heard today, or does not report immediately,
11 we may assume that she is not truthful. Without an
12 understanding of the confusion, fear of being
13 blamed, fear of not being believed, or shame
14 experienced, a delayed report may be interpreted as
15 an untruth rather than a common reaction.

16 This occurred in -- this occurred in
17 egregious proportion in the Jeffrey Marsalis case,
18 which you've heard about earlier today. The vast
19 majority of the twenty-one known women that were
20 sexually assaulted had significant delays in
21 reporting. Some only reported when confronted by
22 law enforcement. Like most victims of sexual
23 violence, their first thought was not to contact
24 the police.

25 The testimony of an expert can play a

1 key role in explaining this behavior, which may
2 seem illogical but is the norm for victim of sexual
3 violence.

4 The unfortunate reality for many
5 victims of rape is that we have preconceived
6 expectations about the behavior which we believe is
7 associated with real rape. Behavior which falls
8 outside of this scope has suspicion and judgment on
9 victim's credibility and impacts the outcome in
10 court.

11 If a victim of rape does not present
12 tearfully when reporting to law enforcement or
13 during testimony, doubt erupts. The behaviors of
14 victims of sexual violence follow along a
15 continuum. Individual victims have individual
16 responses.

17 There is a lack of understanding about
18 the vast variety of responses we have all -- we
19 have when presented with a life-altering event like
20 rape, and the influence our culture and
21 socialization have in shaping this. Appearing calm
22 or numbing emotions can be a result of trying to
23 maintain order in what has become a chaotic world
24 as a result of the rape.

25 Or if raised in a culture where

1 expressing emotions is frowned upon, fighting to
2 maintain control -- a controlled appearance in
3 court is a very normal response.

4 An assessment of sexual assault
5 victim's credibility is intertwined with her
6 behavior, and the judgment of her behavior is based
7 on myths.

8 The dynamics of sexual violence and its
9 impact on victims is not complicated but it is
10 beyond the common understanding of jurors. Expert
11 testimony about victim's behavior is relevant and
12 often necessary to counter the misconception
13 surrounding sexual assault. The realities of
14 sexual assault do not match myths. The victim's
15 credibility cannot be judged based on her behavior
16 without understanding the underlying factors which
17 cause this behavior.

18 REP. MARSICO: Okay. Thank you.

19 Any questions?

20 Thank you very much.

21 MS. LUKIMA: Thank you.

22 REP. MARSICO: Next to testify is
23 Captain John Darby, Special Victims Unit,
24 Philadelphia Police Department.

25 Welcome.

1 CAPTAIN DARBY: Good morning,
2 Mr. Chairman, Rep. Parker, members of the Judiciary
3 Committee, my law enforcement partners from the
4 Philadelphia's District Attorney's office, victims,
5 and victim advocates.

6 I've been asked and am pleased to
7 attend this hearing as a representative of the
8 Philadelphia Police Department. My name is John
9 Darby, a captain in my thirtieth year on the police
10 force. I currently am the commanding officer of
11 the Special Victims Unit, a position that I have
12 held since early 2002, a little over eight years.

13 If I may contribute some background,
14 the Philadelphia Police Department's Special Victim
15 Unit was formed and centralized in 1980 to provide
16 a dedicated, specialized response to and
17 investigation of all allegations of sexual assault
18 and related crimes city wide as well as child
19 physical and sexual abuse by a caretaker or
20 caretakers.

21 Formerly known as the Sex Crimes Unit,
22 which was a crass label, the name was changed to
23 the Special Victims Unit in 1998, to reflect the
24 sensitive, personal, and invasive nature of these
25 crimes. The purpose of this specialized unit is to

1 enable the police department to offer minimally
2 threatening intervention by specially trained and
3 motivated police investigators. The focus of adult
4 sexual assault, child sexual abuse investigations
5 is to establish all facts, evidence, and supporting
6 statements relevant to the case.

7 Special Victims investigations are
8 intense and they are emotionally charged. Fact
9 finding is conducted by a thorough and careful
10 assembly of the case from the primary account of
11 the incident, a very important account, that is
12 provided by the victim, as well as the all
13 collateral and corroborative sources of
14 information. Physical evidence, photographs, DNA
15 or biological material, clothing, fingerprints,
16 records, and journals are collected to provide an
17 objective background to the allegation.

18 After assembling the facts of the case
19 and establishing probable cause, the case is
20 referred to the district attorney's office, the
21 Family Violence and Sexual Assault Unit
22 specifically, for review and approval of charges,
23 where appropriate.

24 The Special Victims Unit investigates
25 approximately five thousand cases annually. That

1 is my universe. Approximately one thousand rape
2 cases, they're rape reports, annually, aside from
3 the thousands of equally important but lesser-coded
4 cases of sexual assault and child sexual abuse.

5 From my perspective as well as
6 independent sources, statistically and otherwise,
7 there clearly exists unique challenges to the
8 successful investigation and prosecution of these
9 cases.

10 The PA Coalition Against Rape cites
11 probability of arrest at just over 50 percent of
12 reported rapes. The challenges begin with the
13 alarming low rate of reporting. The United States
14 Department of Justice estimates that only 36
15 percent of completed rapes, 34 of percent of
16 attempted rapes, and 26 percent of other sexual
17 assaults occurring between the years 1992 and 2000
18 were actually reported to police. And those
19 figures haven't changed over the year, folks.

20 At the same time, National Crime
21 Victims surveys reflect that persons aged twelve
22 years and older experienced, on average, over four
23 hundred thousand such crimes annually. Many
24 founded rapes go unreported to police because of
25 fears, distrust, yes, including distrust of the

1 police, self blame, and personal relationships.

2 Some victims, especially but not
3 exclusively children, are unaware that a crime has
4 even been committed against them. The majority of
5 rapes and related sexual assaults are not
6 perpetrated by strangers, but -- not the individual
7 jumping out from behind the bushes, as you've
8 heard, to attack an unsuspecting victim, but rather
9 by a current or former domestic or family member, a
10 partner, friend, or acquaintance.

11 National statistics, similar to our
12 local breakdown at Philadelphia's SVU, indicate
13 that 32 percent of reported rapes and related
14 sexual assaults are committed by a stranger or an
15 unknown offender; 68 percent, however, by someone
16 that the victim knows. The closer the relationship
17 between the victim and the offender, of course the
18 more likelihood of no report.

19 For the victims who do report, there is
20 an incredible burden placed upon them. In the case
21 of the stranger rape, identification of the
22 perpetrator becomes the focus. The advancement of
23 DNA technology, where evidence is present, has
24 greatly enhanced our search for and positive
25 identification of the perpetrator.

1 On the other hand, in cases of known or
2 acquaintance rape of an adult, identification is a
3 nonissue; however, consent is.

4 Rape is looked upon as a different kind
5 of crime. The only crime in which the victim must
6 prove their innocence. As a result of cultural
7 myths and misconceptions and stereotypes, there is
8 a marked contrast between what is called the real
9 rape versus the righteous rape.

10 Unfortunately, juries carry into the
11 courtroom these preconceived attitudes as they
12 judge their peers, both the accused and the
13 victim.

14 Now, historically, legislative changes
15 have been, in hindsight, reflective of society's
16 reluctance to focus on the victim. Under PA law
17 prior to 1990, statute explicitly excluded a spouse
18 from being capable of rape by another spouse. In
19 1991, progress was made. Spousal sexual assault
20 was introduced; however, the victim was required to
21 report within ninety days of the incident.

22 In the case of what could be termed a
23 date rape, prior rape language required force.
24 Now, lack of consent is sufficient to arrest and to
25 prosecute.

1 Any discussion regarding victims of
2 sexual assault, in my experience and opinion, has
3 to include the devastating emotional impact of the
4 crime. We at Special Victims witness daily
5 complaints, that is victims of all ages, whose
6 demeanor, whose affect is unpredictable or seems
7 inappropriate at times. Our watch word is: Don't
8 be fooled, don't be misled. Continue the
9 investigation.

10 We have seen the agitation, sometimes
11 directed at the investigator, the hysteria,
12 including uncontrolled giddiness and laughter, the
13 blank affect, the poor recall of the events, the
14 anxiety, the fear, the mood swings, the denial.

15 The detail and disclosure of a sexual
16 assault is not a one-time event. It is a process.
17 The emotional trauma is often manifested,
18 exacerbated by the actual report. Delayed
19 reporting, then, is no doubt common.

20 The most illustrative case and one of
21 the more challenging crime patterns handled by my
22 unit as it relates to delayed reporting, involved
23 one Jeffrey Marsalis. You've heard him. I'm going
24 to diverge right now from my testimony.

25 You've met several victims today. Now

1 I want you to meet a rapist (displaying photo).
2 Not a bad looking fellow. Jeffrey Marsalis
3 portrayed himself as a astronaut, as a trauma
4 surgeon, as a CIA agent, as a confidant to the
5 president. My unit investigated Jeffrey Marsalis.

6 Over a period of several years, he
7 victimized women, mostly professional women. He
8 actually -- he actually paraded, I'd guess you say,
9 one of his victims through one of our major center
10 city hospitals, right through the emergency room,
11 wearing a white lab coat and portraying himself as
12 a surgeon on staff at that particular hospital.

13 Our investigation revealed costumes
14 like this, multiple forms of ID, body armor, at
15 least one weapon. This guy had it all. He had it
16 all. But he is a predator. He is a rapist,
17 actually deemed by some to be the worst date rape
18 serial rapist in PA history and perhaps beyond.

19 I just wanted to bring him -- I wanted
20 you to meet this fellow.

21 So appropriately the seemingly unusual
22 behavior exhibited by victims of sexual assault
23 should not be held against them. Additionally,
24 jurors should be provided with all pertinent,
25 relevant information in their role as decision

1 makers, information professionally supplied by
2 expert testimony.

3 It is for all the above reasons that I,
4 as a representative of the Special Victims Unit and
5 the Philadelphia Police Department, without
6 hesitation, support the judicial amendment title
7 House Bill 2255.

8 Thank you, Chairman, for the
9 opportunity to comment, as well as to all the
10 members of the committee for your time today. I'll
11 be glad to take any questions you have.

12 REP. MARSICO: Thank you.

13 Representative Parker has a question.

14 REP. PARKER: Thank you, Mr. Chairman.

15 I wanted to give full disclosure. In
16 my opening remarks, when I mentioned that I had to
17 put my own preconceived notions about how victims
18 should act to test, after I received an education
19 at the hearing in February, it was much of Captain
20 Darby's testimony, being on the front line and
21 heading up this unit and seeing firsthand how
22 victims respond from a law enforcement perspective,
23 so your experience and your knowledge in this arena
24 was very much valuable to me.

25 I want to go back, because I just read

1 a article today, and I said, Wow, I'm glad Captain
2 Darby's going to be here, and this was, I believe,
3 in the Inquirer or even in the Daily, one of our PA
4 senators is hosting a hearing about the chronic
5 failure to report and investigate rape cases. The
6 Women's Law Project has, you know, raised some
7 concerns about it, and they talk about it happening
8 in New York, the Baltimore Sun, but I haven't heard
9 PA. So I just -- not that you can give us an
10 answer for all of PA, but just based on your
11 knowledge and in the field, is this a challenge
12 that we see within law enforcement in our
13 commonwealth?

14 CAPTAIN DARBY: Well, we certainly did
15 see it in Philadelphia. In fact, I met with
16 Commissioner Ramsey yesterday afternoon to prepare
17 his -- help prepare his testimony in front of the
18 Senate Judiciary Committee.

19 Philadelphia has -- has taken its
20 knocks. You know, back in 1998, '99 we had a
21 history of -- of falling victim -- as many do, as
22 many jurors do -- as it relates to accepting cases
23 of rape and sexual assault, given all the
24 misconceptions that are out there.

25 The police -- the civilians are not the

1 only ones that have these misconceptions. You
2 know, police are the -- they're family members,
3 they're fathers, they're brothers, they're sons
4 just as well. And we sometimes carry those
5 misconceptions into our workplace.

6 And -- but Philadelphia has come a long
7 way. There's been quite a turnaround, certainly in
8 my tenure there. And Commissioner Ramsey, I think,
9 has been called down to testify that Philadelphia
10 is -- you know, is a prototype.

11 REP. PARKER: If you could, just for
12 the record, for me -- one of the things that I also
13 mentioned in my opening remarks was the
14 misconception about who the rapist is, and we've
15 heard it from a number of individuals who've
16 testified, but I think it's very important for us,
17 using this as sort of a fact finding sort of cause
18 here, for you, as the law enforcement agency, to
19 talk about who the rapist is. Because I too, you
20 know, if it wasn't Kelly or Lincoln Drive, and they
21 weren't jumping out of the driveway in my district,
22 you know, what do you mean? Talk about that and
23 how often you see it.

24 CAPTAIN DARBY: Yeah. The reality is,
25 and I illustrate it with some statistics, but the

1 reality is that those that are closest, especially
2 in the case of children, and 65 to 70 percent of
3 our victimology involves juveniles, involves kids.
4 And what happens in many of those cases is that
5 those that are around the child, that child depends
6 on, that the child respects, that the child is
7 living with and who is charged or responsible for
8 taking care of that child, actually becomes their
9 rapist.

10 We stressed or I stressed certainly a
11 lot about Mr. Marsalis as it relates to adult
12 sexual assault victims. When you start talking
13 about child victimology, I mean, we're in a whole
14 other world, folks. And that is that, you know, I
15 think the sense is that people think that children
16 are miniature adults; they are not. You really
17 have to, when you're talking with a child sexual
18 assault victim, you have to stop for a moment,
19 hesitate and think about what their life is about,
20 what their circumstances are.

21 Just a couple weeks ago, I had -- I
22 happened to step into a room and there were two
23 young victims, age six and eight, and they were
24 there to -- as part of a disclosure, as I said, a
25 process, a disclosure of a -- of a rapist inside

1 their household. That's not what they were worried
2 about. Their greatest fear -- and to some degree
3 sometimes that overwhelms the idea of disclosure or
4 reporting -- is -- that, they asked the police
5 investigator, Are you going to take me out of the
6 house? Am I going to have to go back to foster
7 care? Or, am I going to be removed? So their
8 whole world is turned upside down as a result of
9 their disclosure.

10 So they -- they feel the guilt. They
11 feel the direct and indirect pressure, sometimes
12 threats from the other -- from the other parent in
13 cases. Indirect influence, and that is, they start
14 thinking about, what's going to happen to my world
15 after I report this crime.

16 So it's hesitancy and delay not only as
17 it relates to adults but also victims.

18 REP. PARKER: I know a question,
19 Mr. Chair, is that I'm wondering now and should
20 have asked this of Miss Harley, and I'm thinking
21 about Lynn Schafran's testimony, and I just want to
22 ask you, Captain, when I think about the
23 instructions that our judges give to a jury, I'm
24 thinking from -- from my perspective, has there
25 ever been an opportunity for judges to sit with law

1 enforcement meetings of the police department, the
2 district attorney's association, an educational
3 organization like this national judges education
4 program, who -- who in the judiciary ever calls on
5 the people who are on the front line or the people
6 who have been prosecuting this to say, what is
7 normal behavior? Or, you know, what my grandmother
8 used to say, Cherelle, there is no utopia. Am
9 I describing utopia, with hoping that different
10 branches of people in our criminal justice process
11 are talking and that just doesn't happen?

12 CAPTAIN DARBY: That's a difficult
13 question. The only thing I wanted to mention, as
14 it relates to -- and I don't want to keep going
15 back to Jeffrey Marsalis, but it was -- there was a
16 article in the Daily News, which I have in front of
17 me, and again it diverges from my testimony -- or
18 from my formal testimony, and that is ,there was a
19 request by the jurors themselves, Daily News
20 article, after the second series of trials
21 involving Jeffrey Marsalis in Philadelphia, and as
22 I think it's been presented, that of the many
23 victims of rape that were prosecuted and tried in
24 Philadelphia, only two victims -- there were only
25 two convictions, and they were of lesser crimes.

1 But jurors themselves, if I could just
2 quote from the Daily News article, one juror in the
3 second trial told the Daily News about a week after
4 Marsalis' sentencing that the woman's behaviors were
5 just so hard, so hard to believe. It wasn't so
6 much the actions of Jeffrey but the actions of the
7 women, the jurors said. This is from a juror.

8 She said she has known people who have
9 been date raped and didn't tell police, but you
10 don't go back out with them, the men. That doesn't
11 make sense.

12 Another juror said, There should have
13 more evidence. She said, Like I said, wasn't
14 explained too much why some of the women would go
15 back and see Marsalis again. These are jurors
16 asking for more, more testimony, perhaps expert
17 testimony. I leave you with that.

18 REP. MARSICO: Go ahead.

19 MS. ELZEY: Just, just for the record,
20 I'm just curious, because, you know, I want to make
21 it clear that, of course, this is not SVU, this is
22 real life. Just general questions. How many
23 detectives about are in your unit, like how large
24 is your unit?

25 CAPTAIN DARBY: I've got a total

1 contingent of seventy people. That's broken down
2 by investigators, supervisors and other support
3 staff.

4 MS. ELZEY: So you divide by
5 specialities and things like that as far as --

6 CAPTAIN DARBY: We break down -- yeah,
7 there's a -- the line squad, which handles the
8 crimes coming in via the 911, 24/7. We have a
9 child abuse section, which handles just those
10 specific types of reports, which often come in as
11 third-party reports, again not from the victims,
12 but from some other source.

13 MS. ELZEY: Okay. I just wanted to
14 clarify that -- you know, that indeed, within your
15 own unit, there are experts as opposed to just five
16 detectives that generally go to every case and then
17 try to work it out.

18 CAPTAIN DARBY: Oh, yeah. Yeah. We
19 handle them all.

20 MS. ELZEY: Okay. Thank you very
21 much.

22 REP. MARSICO: Well, thank you very
23 much, Captain. Appreciate you being here.

24 For the record, actually, we have
25 written testimony from Jules Epstein, the associate

1 professor of law, Widener University. We'll
2 provide that to you as well.

3 And also for -- we will keep the record
4 open for written comments for one week.

5 And thank you for your leadership with
6 this, Rep. Parker.

7 And, once again, thanks to everyone for
8 coming here today. Appreciate your time and your
9 input with this.

10 That concludes the hearing. Thank
11 you very much.

12 (Whereupon, the hearing concluded
13 at 11:45 a.m.)

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was
present upon the hearing of the above-entitled
matter and there reported stenographically the
proceedings had and the testimony produced;
and I further certify that the foregoing is a
true and correct transcript of my said
stenographic notes.

BRENDA J. PARDUN, RPR
Court Reporter
Notary Public