

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

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

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

Wednesday, May 20, 2015

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

**About the Joyful Heart Foundation**

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

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

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

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

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

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

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

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

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

We must come together to solve this crisis.

### **The Rape Kit Backlog**

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

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

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

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

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

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

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

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

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

### **The Tide is Changing**

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

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

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

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

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

## **Meaningful Progress**

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

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

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

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

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

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

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

## **Why Resources are Needed**

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

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

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

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

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

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

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

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

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

## **Importance of Survivor Engagement**

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

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

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

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

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

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

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

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

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

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

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

Survivors deserve nothing less.