

Testimony of
Sally Wolfgang Wells

June 10, 2009

STATEMENT OF SALLY WOLFGANG WELLS
BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE
JUNE 10, 2009

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

THANK YOU VERY MUCH FOR ALLOWING ME THE OPPORTUNITY TO PRESENT THE VIEWS OF THE MARICOPA COUNTY ATTORNEY'S OFFICE CONCERNING THE CONTINUED IMPORTANCE OF THE VIOLENCE AGAINST WOMEN ACT, AND MORE SPECIFICALLY, ABOUT THE VALUE OF MANDATORY MINIMUM SENTENCING FOR SEXUAL ASSAULT AS WELL AS PROMPT DNA AND HIV TESTING IN CASES OF SEXUAL ASSAULT AND ABUSE.

THE MARICOPA COUNTY ATTORNEY'S OFFICE, LOCATED IN PHOENIX, ARIZONA, EMPLOYS MORE THAN 350 PROSECUTORS WHO PROSECUTE MORE THAN 40,000 FELONIES EACH YEAR. AS A 23-YEAR VETERAN OF THE OFFICE AND AS THE CHIEF ASSISTANT, I HAVE PROSECUTED DOMESTIC VIOLENCE AND SEXUAL CRIMES AND CURRENTLY OVERSEE THE SPECIALIZED BUREAUS THAT FOCUS ON THOSE CRIMES.

SEXUAL VIOLENCE CAUSES LASTING TRAUMA TO VICTIMS BEYOND OUTWARD PHYSICAL INJURY. IN MANY CASES, THESE CRIMES GO UNREPORTED DUE TO THE FEAR AND TRAUMA ASSOCIATED WITH SEXUAL VIOLENCE - FEAR OF RETALIATION FROM THE OFFENDER AND FEAR OF PUBLIC SCRUTINY. IN OUR EXPERIENCE, IT IS NOT UNCOMMON FOR A SEXUAL OFFENDER WHO IS FINALLY CAUGHT TO ADMIT TO OTHER SEXUAL ASSAULTS THAT WERE NEVER REPORTED. IN A 2004 STATEWIDE STUDY IN ARIZONA, IT WAS ESTIMATED THAT ONLY 16% OF ALL SEXUAL ASSAULTS EVER CAME TO THE ATTENTION OF LAW ENFORCEMENT.

WITH RESPECT TO THE FEAR OF PUBLIC SCRUTINY, THE VALUE OF EDUCATION CANNOT BE UNDERESTIMATED. THE DISSEMINATION OF ACCURATE INFORMATION ABOUT SEXUAL OFFENDERS AND THEIR VICTIMS IS ESSENTIAL TO CHANGE PUBLIC ATTITUDES TOWARD THESE CRIMES SO THAT VICTIMS DO NOT SUFFER EMBARRASSMENT OR HUMILIATION WHEN THEY REPORT SEXUAL ABUSE. ONE MESSAGE THAT SHOULD BE CLEAR IN ANY STATUTORY SCHEME AND THAT SHOULD BE PART OF ANY EDUCATIONAL EFFORT IS THAT SEXUAL VIOLENCE IS ONE OF THE MOST SERIOUS OF CRIMES. THE PUNISHMENT ASSOCIATED WITH

SEXUAL VIOLENCE SHOULD BE COMMENSURATE WITH THE DAMAGE IT INFLICTS. A MANDATORY MINIMUM SENTENCE OF INCARCERATION SENDS THAT MESSAGE.

WITH RESPECT TO THE FEAR OF RETALIATION, VICTIMS SUFFERING THE PHYSICAL AND EMOTIONAL TRAUMA OF SEXUAL ABUSE AND ASSAULT NEED TO KNOW THEY ARE SAFE FROM THE PERSON WHO HURT THEM. THEY NEED A TIME TO HEAL. FOR AT LEAST SOME PERIOD OF TIME. VICTIMS NEED TO KNOW THAT THE OFFENDER CANNOT RETURN TO INFLICT MORE PAIN OR PUNISH THEM FOR REPORTING THE CRIME TO AUTHORITIES. A MANDATORY MINIMUM SENTENCE OF INCARCERATION SENDS THAT MESSAGE.

ARIZONA'S STATUTORY SCHEME SENDS THAT MESSAGE. SEXUAL ASSAULT IS A CLASS 2 FELONY, THE STATE'S SECOND HIGHEST CLASS FELONY. A PERSON CONVICTED OF SEXUAL ASSAULT IS NOT ELIGIBLE FOR PROBATION AND IS EXPOSED TO A PRESUMPTIVE SENTENCE OF 7 YEARS IN PRISON. IF MITIGATING FACTORS EXIST, THE SENTENCE MAY BE REDUCED TO A MINIMUM OF 5.25 YEARS. IF AGGRAVATING FACTORS EXIST, THE SENTENCE MAYBE INCREASED TO A MAXIMUM OF 14 YEARS. IN EVERY CASE, A VICTIM MAY EXPECT THE OFFENDER TO BE IN PRISON FOR AT LEAST 5 YEARS. THAT 5-YEAR WINDOW OF SAFETY NOT ONLY ENCOURAGES REPORTING AND PARTICIPATION IN COURT PROCEEDINGS, IT ALSO GIVES THE VICTIM TIME TO HEAL WITHOUT FEAR OF RETALIATION.

IN 2005, ARIZONA MOVED AWAY FROM CLASSIFYING SEXUAL ASSAULT OF A SPOUSE AS A LESSER CRIME THAN SEXUAL ASSAULT. AS PART OF THE DEBATE ABOUT THAT CHANGE, I WAS ASKED BY OUR LEGISLATURE TO PROVIDE INFORMATION ABOUT THE EFFECT SUCH A CHANGE MIGHT HAVE ON REPORTING. SOME LEGISLATORS WERE CONCERNED THAT THE HIGHER PENALTIES MIGHT DISCOURAGE REPORTING. IN LOOKING AT THE PAST REPORTED CASES, THE CRIME OF SEXUAL ASSAULT OF A SPOUSE WAS OFTEN ACCOMPANIED BY REPORTS OF CRIMES THAT WERE HIGHER CLASS FELONIES - KIDNAPING, A CLASS 2 FELONY AND AGGRAVATED ASSAULT, A CLASS 3 FELONY. THE BELIEF THAT A LOWER PENALTY WOULD ENCOURAGE REPORTING FOR SEXUAL ASSAULT OF A SPOUSE (OR THAT A HIGHER PENALTY WOULD DISCOURAGE REPORTING) WAS NOT SUPPORTED BY THE EVIDENCE.

ANOTHER IMPORTANT COMPONENT IN DEALING WITH THE CRIMES OF SEXUAL ASSAULT AND SEXUAL ABUSE IS BIOLOGICAL TESTING. ALONG WITH THE NEED TO KNOW THAT THEY ARE SAFE FROM RETALIATION FROM THE OFFENDERS, VICTIMS NEED TO KNOW THAT THEY ARE SAFE FROM ANY DISEASES THAT OFFENDERS MAY HAVE TRANSMITTED. THERE ARE SEVERAL ARGUMENTS FOR EARLY BIOLOGICAL TESTING OF SUSPECTS. ALTHOUGH I AM NOT A MEDICAL EXPERT, PROSECUTORS GENERALLY ACCEPT THAT IF A VICTIM REPORTS SIGNIFICANT EXPOSURE DURING A SEXUAL ASSAULT WITHIN 72 HOURS OF THE ASSAULT, DOCTORS CAN PRESCRIBE A 28-DA7 REGIMEN OF DRUGS TO HELP

PREVENT THE CONTRACTION OF HIV. THE SOONER THIS REGIMEN IS BEGUN, THE MORE EFFECTIVE IT IS.

THE MEDICATION TO PREVENT HIV INFECTION IS EXPENSIVE, AND IT MAY CAUSE SERIOUS SIDE EFFECTS. VICTIMS WHO DO NOT KNOW WHETHER THE ATTACKER HAD HIV ARE FORCED TO CHOOSE BETWEEN THE RISK OF HIV INFECTION AND THE RISK OF SIDE EFFECTS LIKE LIVER ENLARGEMENT OR BONE MARROW SUPPRESSION. INFORMATION FROM PROMPT OFFENDER TESTING WOULD ALLEVIATE THE UNCERTAINTY IN MAKING THIS CHOICE. INFORMATION THAT THE OFFENDER DID NOT HAVE HIV WOULD ALLOW THE VICTIM TO FEEL SAFE AND BEGIN TO HEAL.

IN ADDITION TO BIOLOGICAL TESTING TO ENSURE THE SAFETY OF THE VICTIM, ANOTHER KIND OF TESTING PLAYS A VITAL ROLE IN SEXUAL VIOLENCE INVESTIGATION AND PROSECUTION. DNA TESTING OF SUSPECTS ENSURES THAT SUSPECTS ARE IDENTIFIED AS EARLY AS POSSIBLE. AS I MENTIONED PREVIOUSLY, MANY SEXUAL ASSAULTS BY THE SAME SUSPECT GO UNREPORTED. OTHERS ARE REPORTED BUT THE SUSPECTS ARE UNKNOWN. SEXUAL OFFENSES ARE OFTEN REPETITIVE CRIMES. THE ABILITY TO LINK CRIMES TO SPECIFIC INDIVIDUALS AND TO SPECIFIC GEOGRAPHIC AREAS HELPS LAW ENFORCEMENT TO PUT AN END TO SERIAL OFFENSES SOONER.

SEXUAL OFFENDERS ARE OFTEN LINKED TO OTHER TYPES OF CRIMES LIKE BURGLARY, CRIMINAL TRESPASS, OR OTHER LESSER FELONIES. DNA EVIDENCE IS IMPORTANT TO CREATE AN ACCURATE CRIMINAL HISTORY FOR SUSPECTS. IT ALSO ELIMINATES SUSPECTS SO THAT LAW ENFORCEMENT RESOURCES ARE NOT WASTED.

DNA SAMPLING AND TESTING ALSO BRINGS RELIEF TO VICTIMS WHO HAVE LIVED FOR YEARS WITHOUT KNOWING THE IDENTITY OF THEIR ATTACKERS OR WHETHER THEIR ATTACKERS COULD RETURN. LEARNING THAT THE SUSPECT IS INCARCERATED FOR OTHER CRIMES IN ANOTHER JURISDICTION MAY PROVIDE SOME RELIEF FOR THAT KIND OF UNCERTAINTY.

VICTIMS OF SEXUAL VIOLENCE NEED TO BE SAFE, AND OUR NATION'S LEGISLATION NEEDS TO WORK TO PROTECT THEM.