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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bills 1351 and 1362

* * * * *

Stenographic report of hearing held
in Room 418, Minority Caucus Room,
Main Capitol Building, Harrisburg, PA

Thursday,
September 26, 1991
12:00 noon

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crimes
and Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Gregory C. Fajt	Hon. David J. Mayernik
Hon. James Gerlach	Hon. Jeffrey E. Piccola
Hon. Lois S. Hagarty	Hon. Robert D. Reber
Hon. David W. Heckler	Hon. Karen A. Ritter
Hon. Frank LaGrotta	

Also Present:

Hon. Peter J. Daley
David Krantz, Executive Director
Galina Mlahov, Research Analyst
Ken Suter, Republican Counsel

Reported by:
Ann-Marie P. Sweeney, Reporter

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123 pg
attached

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1 CHAIRMAN CALTAGIRONE: We'll start the
2 public hearing on the legislation which bans the
3 publishing of sexual crime victims' names and we're
4 dealing with House Bill 1362 and House Bill 1351. I'm
5 Chairman Tom Caltagirone from the city of Reading,
6 county of Berks, and if the other members of the panel
7 and staff will please introduce themselves for the
8 official record. We'll start at my right and work
9 over.

10 MR. KRANTZ: David Krantz, Executive
11 Director, House Judiciary Committee.

12 REPRESENTATIVE MAYERNIK: Dave Mayernik,
13 State Representative, Allegheny County.

14 MR. SUTER: Ken Suter, Republican
15 Counsel.

16 REPRESENTATIVE REBER: Bob Reber,
17 Montgomery County.

18 REPRESENTATIVE GERLACH: Jim Gerlach,
19 Chester County.

20 MS. MILAHOV: Galina Milahov, Democratic
21 Research Analyst.

22 CHAIRMAN CALTAGIRONE: And we'll start
23 off with Representative Mayernik, who would like to
24 make a few statements for the record.
25

1 REPRESENTATIVE MAYERNIK: Thank you, Mr.
2 Chairman.

3 I welcome and I applaud you for having
4 this meeting today on Representative Daley's bill and
5 my own, House Bill 1362, so that we could get input
6 from the public regarding our proposals.

7 My reason for introducing this was
8 similar to one that was spurred from the Smith incident
9 in Florida, and that was releasing the individual's
10 name to the news media, and I realize that we cannot
11 restrict the news media under freedom of press of
12 taking away the name or not releasing the name, but
13 what we can do, and that's what my intent of the bill
14 is, is to prohibit the law enforcement agencies from
15 releasing the name of the victim unless they requested
16 that the name be released. And this would only be
17 until a prima facie case is established, and it's
18 basically to protect from notoriety or scandal, and
19 that's the basic premise behind this legislation.
20 Now, it's still in its infantile stages and I look
21 forward to comments so that we can further mold this
22 and help bring it to law, and I look forward to working
23 with Representative Daley.

24 Also, at this time I would like to
25 apologize to some of the witnesses because I'll be

1 leaving shortly, since I thought the meeting was
2 originally at 11:00 I have a meeting scheduled in my
3 district, so if you see me get up and walk out it's not
4 because I don't want to hear your testimony, it's
5 because of the time schedule for our trip to
6 Pittsburgh. So again, I would like to thank the
7 Chairman for permitting me to have the bill brought
8 forward today and I will be reviewing the testimony at
9 a later date.

10 Thank you.

11 CHAIRMAN CALTAGIRONE: Thank you.

12 Representative Daley for some comments.

13 REPRESENTATIVE DALEY: Thank you, Mr.

14 Chairman.

15 I have with me Joseph Riccardo. He's on
16 our legislative staff here and helped me to put
17 together this legislation and also the subsequent
18 amendment that we're going to talk about today. I do
19 have some prepared notes and I don't know if I'm going
20 to quite use those since I feel that this matter may be
21 better presented extemporaneously than with prepared
22 text.

23 Again, I want to thank you,
24 Representative Caltagirone, for having this hearing. I
25 think it's of vital concern. The constitutional

1 requirements of and privilege of freedom of the press
2 and freedom of speech is something that inherently is
3 guaranteed in our Constitution by our forefathers and
4 it is one of what we consider the 10 initially most
5 important rights that we have in the Bill of Rights,
6 the first 10 amendments. But those constitutional
7 rights are not unlimited. The freedom of the press and
8 the freedom of speech are not unlimited rights. They
9 are limited when they intrude upon someone else's
10 fundamental freedoms and rights.

11 As Representative Mayernik stated,
12 probably the catharsis for our legislation was now what
13 is being considered a very notorious case involving
14 William Kennedy Smith in the State of Florida in which
15 the State of Florida has a law that does not permit
16 anyone from disclosing the name or identity or address
17 or any information whereas can identify the name or
18 address or identity of that individual. Now, we know
19 that what had happened, and I guess maybe if it wasn't
20 a Kennedy maybe national attention would have not have
21 been focused, but the New York Times and NBC and one of
22 the national tabloids decided in their lust to get the
23 story first, what we now consider the hard copy
24 mentality of some of the media, and that's not all the
25 media, to print the story first, went to great lengths

1 to find out the name of this particular individual. I
2 have talked to a number of women, a number of women's
3 groups throughout Pennsylvania concerning this issue,
4 and the women of Pennsylvania that are intimately
5 involved with this issue and have dedicated their lives
6 to try to extinguish some of the problems and the
7 stigmatism that are attached to the rape issue feel
8 that the American women and the Pennsylvania women were
9 raped twice - allegedly raped by Mr. Smith and then
10 raped once again by the media.

11 House Bill 1351 is a response to that.
12 It's a first step. It's a small step. And
13 Representative Mayernik's bill is also another step.
14 We feel it's necessary to protect victims through this
15 process with confidentiality until the institution of
16 criminal proceedings begin. This restriction applies
17 to law enforcement officials and prosecuting attorneys
18 and excludes individuals subject to the investigation
19 or to the attorney of that individual.

20 Basically, this was a balance - personal
21 privacy, personal privacy rights versus constitutional
22 freedoms of the press. The general attitude of the
23 media has been, and I've read editorials throughout our
24 fruited plain that states that if it ain't broke, don't
25 fix it. And as a matter of fact, whether Dave and I

1 introduced our legislation many of the rape groups in
2 Pennsylvania said, well, we don't really know or
3 believe that there might be a problem out there. But
4 as this situation unfolded we found out that indeed it
5 was a problem because a number of small papers
6 throughout Pennsylvania decided to take it upon
7 themselves not to identify the woman involved in a rape
8 situation but to give her home address or her business
9 address where she worked. Now, we find that sort of
10 the old Statute of Liberty play, and of those of us who
11 play football know that's when the quarterback goes
12 back and holds the ball back and someone does the old
13 end run, and that's basically what we had here with the
14 media. We think this is wrong.

15 The media tends to say that it's a First
16 Amendment right to put into the paper and let the
17 public know what it feels the public should know. The
18 constitutional argument of freedom of the speech and
19 press is something that the media generally tend to
20 fall back on. Cases in point, I think it was U.S. vs.
21 Ginsberg, and U.S. vs. New York Times. Editorial
22 boards establish these policies, that's what we hear.
23 Editorial boards and publishers and those people in the
24 decisionmaking capacity have an unwritten rule. The
25 unwritten rule is not to print the name. But editorial

1 boards change, publishers change, editors change,
2 writers change, and society changes. And we're at the
3 point now where this society is changing. An unwritten
4 policy may not be good enough.

5 If you ever asked a member of the media,
6 where did you get your information, they will
7 immediately surround themselves with the First
8 Amendment, in fact, to protect the name and disclosure
9 of their sources. But isn't that ironic that they want
10 to disclose the name of a woman that's raped or an
11 individual that is sexually abused?

12 In consultation with a number of groups,
13 we've decided to take a larger step forward and we're
14 going to present to the committee an amendment,
15 Amendment 2439, that makes a bold step forward. It
16 amends Title 18.

17 You're going to hear a long litany of
18 constitutional arguments why we should not do this, why
19 it's not in the best interest of the people to not stop
20 or place into the law restrictions on the dispensement
21 of names of individuals such as this. However, a
22 number of states now are seriously considering changing
23 State law, and a number of States have subsequently
24 changed their State law to protect the privacy rights
25 of these individuals.

1 We do not believe a double standard
2 should be applied. We know, all of us know that a rape
3 is a horrendous situation. Sexual abuse is a
4 horrendous situation. I can speak from this on a
5 personal level. A few years ago as a child a member of
6 my family was raped and there was a decision made by
7 people in my family that it was imperative that she
8 would not go forward, this member of my family, to
9 disclose the name of the rapist and also to even come
10 forward to charge the individual, simply because my
11 family was in a position where our name was so well
12 known in the community and the stigma that would place
13 upon my family that if this information became public.
14 That was a decision that was made when I was a very
15 small boy by other people in my family that had that
16 position to make that decision. I am dedicated to make
17 sure that people do not hide and people do not fear by
18 coming forward their name will be made public.

19 A number of publications, the USA Today,
20 I think it's Newsweek, have done a number of surveys
21 since the Smith Kennedy situation, Kennedy Smith
22 situation, and without a doubt, the figures and
23 percentages of women that now feel less willing to come
24 forward fearing that her name will be made public and
25 the stigma that will be attached. I think this is a

1 balancing test. This is a balancing test between
2 personal privacy rights and constitutional freedoms.
3 No one says that we should impinge upon the
4 Constitution, but no one says we should take away
5 personal privacy rights. I really, truly believe in my
6 heart that we cannot leave these types of issues up to
7 a willy-nilly "we'll do what we like," "the editorial
8 boards will decide," "it's an unwritten policy" type of
9 mentality. We have progressed too far in our society
10 to let these types of decisions to be rendered to a
11 small group of people that may change their minds to,
12 quote, "get the story first."

13 Thank you.

14 CHAIRMAN CALTAGIRONE: Questions from the
15 members?

16 REPRESENTATIVE LaGROTTA: Pete, I have a
17 couple questions.

18 The Amendment A2296 is the amendment that
19 would prohibit -- of course, Dave, you can answer too
20 since -- no, that's Pete's bill, would prohibit or make
21 it a misdemeanor if a newspaper or radio station were
22 to broadcast or reveal the name, is that correct?

23 REPRESENTATIVE DALEY: That's right.

24 REPRESENTATIVE LaGROTTA: What happens,
25 and I wanted to preface my question by just saying that

1 I'm opposed to the relation of any rape or any sexual
2 abuse victim's name, but what happens if a newspaper,
3 say the Youngstown Vindicator, which services my
4 district but is based in Youngstown, Ohio were to print
5 the name as they're not subject to Pennsylvania law,
6 and then the New Castle News were to repeat the article
7 or reprint or quote from the Youngstown Vindicator, not
8 having revealed but just simply having repeated? I
9 mean, we obviously can't regulate the Vindicator,
10 they're not based in Pennsylvania, but would that be
11 the same misdemeanor for the New Castle News?

12 REPRESENTATIVE DALEY: Well,
13 Representative Reber probably can answer this
14 constitutionally better than I, but I think that you
15 can prosecute them. They are servicing and selling
16 their goods and services in Pennsylvania, so they come
17 within the purview of Pennsylvania law.

18 Representative Reber.

19 REPRESENTATIVE REBER: Well, it's a
20 criminal act, so, I mean, if someone from Youngstown,
21 Ohio comes in and commits murder and goes back across
22 the line, it's the same logically essential argument.

23 REPRESENTATIVE LaGROTTA: But they just
24 sell their paper, Bob, in Pennsylvania. They print
25 them in Youngstown. They sell their paper in

1 Pennsylvania.

2 REPRESENTATIVE MAYERNIK: They're doing
3 business in Pennsylvania as an entity. It doesn't
4 matter.

5 REPRESENTATIVE REBER: They're doing
6 business.

7 REPRESENTATIVE LaGROTTA: Okay. I guess
8 that's the only question I have.

9 Except, Dave, maybe I can ask you one
10 question. The language in your legislation on line 14
11 says "News media should refrain from publishing...." I
12 would assume then that Pete's language with amendment
13 would supersede that?

14 REPRESENTATIVE MAYERNIK: Yeah, it's
15 something that Pete and I both have to work that out.
16 We both have the same intent not revealing the name of
17 the rape victim or sexually abused individual unless
18 they consent to it, but it's a matter of how we go
19 about it. If you look at his bill, he's amending Title
20 42 initially. I'm amending Title 18. Plus, I haven't
21 provided for penalties yet and I'm working on a penalty
22 section. Also, the reason why I say that they should
23 refrain is because I'm, as Pete said, it's a balancing
24 test of constitutionality of freedom of speech, so I'm
25 concerned about that and that's why I say "should

1 refrain." That's why the restriction in my legislation
2 is placed on the agencies and not on the newspapers,
3 because you can regulate the agencies but you can't
4 regulate the newspapers, and that's the balance in the
5 freedom of speech that I'm concerned about. That's my
6 way of addressing it.

7 REPRESENTATIVE LaGROTTA: Mr. Chairman, I
8 don't want to belabor this point, but I need to ask
9 another question and either Bob or Pete or Dave or
10 anybody can answer this. I used a newspaper as an
11 example in my first question. Use a radio station in
12 Ohio whose air waves would cross into Pennsylvania and
13 the name of a victim would be revealed. What happens
14 then if one of my newspapers or one of your newspapers
15 or one of your radio stations repeats, because then the
16 news story becomes that WOHO in Ohio has revealed the
17 name of a rape victim. That's what happened with the
18 Kennedy rape. The news story became that the New York
19 Times and Tom Brokaw revealed the name, not the name.
20 What happens then? I mean, are we then saying to our
21 media outlets, you can't cover news? Ohio radio
22 station reveals the name of a rape victim and that
23 becomes news but Pennsylvania media outlets can't cover
24 news? And that's what concerns me about this, about
25 prior restraint.

1 REPRESENTATIVE REBER: The only other
2 example I could give you is that same outfit in Ohio
3 sets up a SCUD missile and lops them over into Du Bois
4 and kills some people. Does that, again, mean that
5 they're not going to be criminally prosecuted? As I
6 understand it, you're proposing a criminal sanction, is
7 that correct?

8 REPRESENTATIVE LaGROTTA: Yeah, but Bob,
9 how can we criminally prosecute a radio station that's
10 licensed in the State of Ohio?

11 REPRESENTATIVE REBER: Well, they're
12 going to go after corporate individuals. I think there
13 has to be some refining of that. But I'm looking at it
14 at first blush.

15 REPRESENTATIVE LaGROTTA: But in Ohio
16 it's legal. They're allowed to do it. And if it
17 crosses over the State line in the airwaves, you
18 can't--

19 REPRESENTATIVE REBER: But they subject
20 themselves to our jurisdiction when they do that or
21 enter into an activity that would, with all
22 reasonableness, be within the confines of that
23 particular jurisdiction.

24 REPRESENTATIVE LaGROTTA: Can we regulate
25 interstate radio air waves? I thought that was up to

1 the FCC. I mean, I don't think we have any
2 jurisdiction to regulate radio broadcasts or television
3 broadcasts.

4 REPRESENTATIVE DALEY: Frank, I think
5 your argument was that if another station in
6 Pennsylvania picks up that story.

7 REPRESENTATIVE LaGROTTA: Well, if
8 another station reports or if a newspaper reports that
9 the station in Ohio reported. You understand? I mean,
10 the constitutional complications here are infinite.

11 REPRESENTATIVE DALEY: Well, I mean, it's
12 like Radio Free Europe broadcasts something. I mean,
13 my God, I mean, where is it going to end? You know,
14 what we're concerned about are stations or newspapers
15 printing or publishing or disseminating information
16 inside Pennsylvania, Pennsylvania owned and operated.

17 REPRESENTATIVE LaGROTTA: Okay. Thank
18 you, gentlemen.

19 CHAIRMAN CALTAGIRONE: Jim.

20 REPRESENTATIVE GERLACH: I have a question
21 about the amendment as well, 2296, and it deals really
22 with the language starting under subsection (a) on the
23 second line, "A person commits a misdemeanor of the
24 third degree if the person, in any manner, shall
25 receive, furnish or reveal, or cause to be received,

1 furnished or revealed the name...of the victim."

2 What's the purpose for the word
3 "received"? In other words, a criminal penalty would
4 be imposed for receiving information, and I take it
5 that may also mean unintentionally receiving that
6 information, but under this language could potentially
7 be prosecuted under this section.

8 MR. RICCARDO: When I originally worked
9 on the language of the amendment, "received" is
10 originally meant proactively seek the information with
11 the use of intent to publish the name. That maybe is a
12 word that we're going to have to, Dave Mayernik, Pete
13 Daley will have to look at and consider possibly
14 rewording, but by using the word "receive," we mean
15 with abuse of intent seek the name for the purpose of
16 publishing or broadcasting.

17 REPRESENTATIVE GERLACH: Okay. I think
18 there may need to be some clarification of that word
19 only to the extent that it also would allow, under this
20 plain language, allow someone that may be standing in a
21 building or standing near police officers or somebody
22 where the name of the victim is then talked about and
23 that person receives that audibly or sees it in writing
24 before that person without any other clarifying
25 language may be potentially committing a crime under

1 this current language. So just a thought about the
2 technical language, that's all.

3 Thank you.

4 MR. RICCARDO: Okay.

5 CHAIRMAN CALTAGIRONE: Bob.

6 REPRESENTATIVE REBER: Thank you, Mr.
7 Chairman.

8 Pete, under I think both particular
9 pieces of legislation we're dealing with the sexual
10 abuse line of victims. I think from the standpoint of
11 interrogating you, if you will, or asking a question,
12 it's as much for that purpose but I think even more for
13 the committee's consideration that when we're talking
14 about protection of victims, I always become somewhat
15 concerned and many times almost incensed that we look
16 to a very selective tunnel vision as to what in fact is
17 a victim, what is the psychological, mental, and in
18 many cases the physical trauma that a victim of crime
19 endures as a result of whatever might have gone on.
20 And I'm just wondering if this committee, in the course
21 of reviewing this concept, assuming we want to adopt
22 this, and I'm not suggesting some of the points and
23 concerns aren't well taken that we might not want to
24 move in this direction, but if we do, I think it's only
25 fundamentally fair that we take a look at victims being

1 victims of simple assault, aggravated assaulted,
2 victims of burglarizations of their households where
3 from these type of events, attempted murders, whatever
4 you want to get into, there can be as much, if not
5 more, not minimizing, and I emphasize that, not
6 minimizing a particular type of crime that you're
7 relating to, but I just wonder if we're going to go
8 this route we should be looking at it in a more generic
9 sense as far as victims are concerned. And then of
10 course you run into the primordial position that the
11 First Amendment is placed and the problems that you
12 have there.

13 What are your thoughts on that? Has
14 there been any research into that? Has there been any
15 statutory enactments or pronouncements of other States
16 to deal with victims in a broader sense without
17 infringing upon the constitutional balance as you heard
18 them?

19 REPRESENTATIVE DALEY: Yeah. Obviously,
20 I cannot answer your question as to the research or the
21 statutory requirements in other States. What we have
22 tried to do is ratchet this concept down specifically
23 to these types of victims. Now, in the good judgment
24 of the committee if you wish to expand that scope I
25 think that the committee should do that.

1 REPRESENTATIVE REBER: I'll tell you, the
2 reason that I say that, and it comes to mind every time
3 we discuss some remediation to the Crime Victim's
4 Compensation legislation, there's always the monetary
5 reasons, certainly, why certain things are not done,
6 but I always have some concern about the fact and
7 having been involved with victims in different senses
8 on different magnitudes and victims of various types of
9 criminal acts, whether they be Misdemeanor III's or in
10 the felony areas, those kind of things always bother me
11 that we become very selective with the high profile,
12 glitzy type things that are going to get all the
13 notoriety but yet you do have psychological and mental
14 and physical traumas that are interjected into other
15 victims of crime, maybe even more so than a rape
16 victim, if that's possible. Now, again, I'm not
17 minimizing, obviously, the situation vis a vis a sexual
18 abuse victim or a rape individual per se.

19 REPRESENTATIVE DALEY: Our whole effort
20 here, if it takes that direction that's laudable and
21 that's something the committee would have to decide;
22 however, our effort is to identify and to single out
23 the stigma that results from sexual abuse victims and
24 their names being disseminated publicly. I think
25 that's really the emphasis that we're trying to do.

1 Again, now, if the committee wishes to protract that
2 review, I mean, that's of course quite up to you.

3 REPRESENTATIVE REBER: Doesn't it really
4 come down to a general balance that the news media has
5 to take into considering when they're reporting a
6 story? And the reason I say that, you take someone
7 that has their home burglarized and they have X amount
8 of artifacts and monetary things taken, if you will,
9 and all of a sudden this is open up and inventoried in
10 the course of a news article and frankly stigmatizes
11 them, subjects them, opens them up to potential targets
12 for other types of crime. Now, there has to be a
13 balance in there somewhere. I think there has to be a
14 responsible reporting and there has to be the concern
15 for the health, safety, and welfare of that individual
16 after the crime takes place, and it's those kind of
17 things that always bothered me when we tread on these
18 kind of waters, and I'm just wondering if there has
19 been that consideration given to the balance of crime
20 victims in a more generic sense as opposed to the
21 specific crime victim that you're relating to.

22 REPRESENTATIVE DALEY: We are trying to
23 identify those individuals that suffer from tremendous
24 trauma emotionally, not saying that someone gets their
25 house burglarized and they steal all their artifacts

1 and worldly possessions may be less trauma than someone
2 that gets their person violated, but we have heard from
3 those individuals more. The outcry has been greater
4 societally from those types of individuals that have
5 been victimized and traumatized through rape. Again,
6 if the committee wishes to expand that review, I mean,
7 that of course is within the purview of the committee.

8 REPRESENTATIVE REBER: Thank you, Mr.
9 Chairman.

10 CHAIRMAN CALTAGIRONE: Jeff.

11 REPRESENTATIVE PICCOLA: Thank you, Mr.
12 Chairman.

13 Pete, I apologize for coming in late. I
14 didn't hear your initial explanation and I'm curious as
15 to why you are -- I guess you're basically proposing
16 that we gut the bill and replace it with this
17 amendment, and I'm asking I guess why you think that's
18 necessary. I didn't have any real major problem with
19 your original bill, but I see a number of pitfalls with
20 this proposed amendment. Could you just explain, maybe
21 repeat why you're proposing to do that?

22 REPRESENTATIVE DALEY: Well, you're going
23 to probably hear from others to testify, I think next
24 from the Pennsylvania Coalition Against Rape that has
25 been a party in this process, and we felt that maybe

1 what we ought to do is come in with a stronger
2 amendment and sort of refine it down to some point
3 where there's a happy medium. Everybody was not happy
4 with either Dave Mayernik or my piece of legislation.
5 They felt that the pendulum wasn't swinging far enough
6 and maybe the amendment swings it, in some people's
7 minds, the other way. However, we want to offer enough
8 so that the committee can review both sides, review
9 that there may be a happy medium here, a common ground.
10 So what we we're doing is offering this amendment as a
11 beginning point in terms of negotiation and discussion.

12 REPRESENTATIVE PICCOLA: But don't you
13 think when you're swinging that pendulum, and I agree
14 with Representative Reber, I mean, I empathize for
15 victims of all crime, and particularly sexually related
16 crimes, but don't you think that pendulum slams right
17 into the First Amendment at some point in time? And
18 you can't compromise with the First Amendment, can you?

19 REPRESENTATIVE DALEY: What we have
20 stated before you were here that there are no
21 constitutional rights that are unlimited. They are
22 limited when they encroach upon someone else's rights,
23 constitutional rights. And what we're saying here
24 basically is that in many situations the shield has
25 been held out by many of those in the media that this

1 constitutional right is absolutely unlimited and they
2 have the right to do what they want to do any way they
3 want to do it through written policies and unwritten
4 rules, and we're simply saying that no, it doesn't work
5 that way. James Madison and Thomas Jefferson and the
6 framers of the Constitution through the Federalist
7 papers and Guy de Mond Pouissant and some of the
8 Founding Fathers of our idea of democracy never really
9 meant that the freedom of press was supposed to have
10 unlimited freedoms. They were limited within social
11 policy, and that's all we're saying.

12 REPRESENTATIVE PICCOLA: Well, I would
13 agree that it does not mean that, in other words, in
14 your original bill says that we're simply not going to
15 release information, that the authorities are going to
16 keep things classified. I have no problem with that
17 whatsoever. I don't think the press does have
18 unlimited access to information, and I think government
19 can make a policy decision, and has, and I think the
20 courts have ruled on that, that the press does not have
21 unlimited access to things that are within the purview
22 of the government. But what I don't understand is how
23 you can, once the name is in the public domain, once
24 you're in open court and we have -- I don't think we're
25 proposing we eliminate the idea that these trials be

1 held in the open. I think that would also present
2 constitutional questions. Once it's in the public
3 domain, as much as I would like to see the press
4 restrain itself, I don't see any court, Federal or
5 local, permitting a restraint on the press from
6 printing it. I just, I mean, they print, and I'm not
7 even talking about the responsible press, but what the
8 courts have held to be protected by the First Amendment
9 is a lot trashier than simply revealing the name of a
10 victim of a crime, and, you know, as much as I would
11 like to see the restraint, I just don't know how we
12 constitutionally overcome that, and you've got a whole,
13 a whole litany of cases, a whole line of cases in that
14 area, and I guess you're in law school now, maybe
15 you're more familiar with those than I am, Pete, but
16 I'd prefer seeing you go back to your original bill and
17 just say, you know, until the criminal proceedings
18 begin, this is something that law enforcement must keep
19 confidential, perhaps give the victim a civil cause of
20 action for damages if they violate that prohibition,
21 but I just don't know how you get over that First
22 Amendment. You know, I sympathize and empathize, but I
23 just don't see how you get over it.

24 Thank you, Mr. Chairman.

25 CHAIRMAN CALTAGIRONE: Lois.

1 misdemeanor it looks like applies only to those two
2 sections of the Crimes Code. I'm not reading that
3 correctly?

4 MS. MILAHOV: It says sexual violence
5 victim, the last line of.

6 REPRESENTATIVE GERLACH: "Under this
7 chapter." So anything under that chapter.

8 REPRESENTATIVE HAGARTY: In the amendment
9 you're looking at?

10 MS. MILAHOV: Yes.

11 REPRESENTATIVE GERLACH: Yeah.

12 REPRESENTATIVE HAGARTY: Well, wait. As
13 I read this section, the misdemeanor, a person commits
14 a misdemeanor if in any manner, and then the only two
15 sections it refers to are these two specific sections.

16 REPRESENTATIVE GERLACH: The question is,
17 what section does that chapter encompass? If it goes
18 beyond just--

19 REPRESENTATIVE HAGARTY: It says "under
20 this chapter," and then it specifically says two
21 sections is what's troubling me. So I would certainly,
22 if I were interpreting that, I would interpret that
23 under statutory interpretation to simply apply, it
24 names the sections. Well, anyway, I guess the real
25 question is not how it's drafted, because we can change

1 that.

2 REPRESENTATIVE DALEY: Right.

3 REPRESENTATIVE HAGARTY: It is your
4 intent then to apply this to all victims of sexual
5 abuse?

6 REPRESENTATIVE DALEY: Yeah. We felt
7 that we did draft it that way but if it needs to be
8 clarified we will by including that language of this
9 chapter, but if that doesn't specify, we will change
10 the language.

11 REPRESENTATIVE HAGARTY: So is your goal
12 then, because in addition to the two offenses
13 enumerated and in addition to the offense of rape would
14 it also be your goal to apply it to victims of, you
15 know, indecent exposure, for example, the lesser crimes
16 under that chapter?

17 REPRESENTATIVE DALEY: (Indicating in the
18 affirmative.)

19 Gail Rawlings, with the Pennsylvania
20 Coalition Against Rape, has helped us. Gail, do you
21 want to come up with us? Can you help clarify?

22 REPRESENTATIVE HAGARTY: Well, I think
23 they're testifying and I'm happy to wait for their
24 testimony.

25 REPRESENTATIVE DALEY: Okay.

1 REPRESENTATIVE HAGARTY: I was just
2 trying to determine the intent of the bill.

3 REPRESENTATIVE DALEY: We feel that this
4 would be included, yes.

5 REPRESENTATIVE HAGARTY: Okay, thank you.

6 CHAIRMAN CALTAGIRONE: Representative
7 Ritter.

8 REPRESENTATIVE RITTER: Thank you, Mr.
9 Chairman.

10 This is a real difficult issue for me.
11 Obviously, I am very much of a civil libertarian. I'm
12 also very concerned about victim's rights. I just want
13 to play a little devil's advocate here because I agree
14 with you, having dealt with or worked with some of the
15 rape crisis groups and so on, what we would like to
16 see, obviously, is that rape is no different from any
17 other crime, that there's no shame involved and all of
18 that. Unfortunately, we're not at that point in our
19 society, so I can understand the desire to treat this
20 crime a little differently in terms of the
21 confidentiality.

22 My question, though, has to deal with,
23 and what I was just saying here to Representative
24 Piccola, my feeling is perhaps we shouldn't, and I
25 don't want to limit it to the press, I don't want to

1 put penalties on the press for printing information
2 that they come across. I prefer also the original
3 method of prohibiting the release of the information,
4 putting that burden on the law enforcement folks. But
5 I'm not sure what purpose it serves society to have any
6 listings of any arrests or any victims of having that
7 information made public prior to the event of a court
8 trial as well, because certainly while the rape victim
9 or other sexual offenses victim his or her life is
10 going to be dramatically affected by the release of
11 that information and should be a decision that he or
12 she should make for himself or herself.

13 The same is true, I think, of the person
14 accused of rape until that person would be found guilty
15 or not guilty, and that I was on a panel with an
16 attorney who took the other side in terms of the debate
17 we were having which was do victims have too many
18 rights in our system, and he said they have too many
19 rights and I said they don't. But his point was
20 whenever he has someone come in to him to be
21 represented in a rape case, he tells that person,
22 generally a man, but he tells the person that comes in
23 to him who's accused of that crime that no matter what
24 happens, you are always going to be considered a
25 rapist, no matter what happens, because once the arrest

1 is made, the stigma applies for the rest of your life,
2 and I think that that seems to be true. And so in the
3 rare number of cases where the person who is accused is
4 later found not guilty, the damage has already been
5 done to that person's life as well.

6 Have you given any thought to perhaps, as
7 someone said earlier about including other victims of
8 crime in this protection, of including the accused
9 under this cloak of confidentiality as well?
10 Obviously, until it gets to the public court
11 proceedings, and I agree with Representative Piccola,
12 at that point I don't think that you can prevent that
13 information anymore, but I'm not sure that I see the
14 information of arrests and victims' names and so on
15 being public information prior to the point of a trial
16 being scheduled. What do you think of that?

17 REPRESENTATIVE DALEY: I'm trying to sift
18 through the montage of statements that you made and
19 trying to come up with an answer to your last comment.

20 That was not the intent of this
21 legislation or this amendment to shotgun the societal
22 ills in terms of releasing anyone's name that's charged
23 with a crime. I guess all good legislation, I guess
24 that's an oxymoronic point, I guess all good
25 legislation should try to correct a societal ill some

1 way, and what we're trying to do is develop a public
2 policy statement addressing a particular social ill,
3 and that's the stigmatization that's placed upon women
4 that are raped and then names are brought forward and
5 being ostracized publicly and being tried twice - being
6 tried as to her past, as to her personal relationships
7 with people, and this is before going to trial, being
8 tried as to her family, what her mother does, what her
9 father does, what she did, if she had sex in high
10 school or went to the prom or whatever. And we all
11 believe that society should be beyond that, but society
12 is not beyond that. And all we're saying is there's a
13 social ill here that needs to be corrected, we're
14 trying to look to a way of correcting that, and if it
15 takes a shotgun to kill a fly, then fine. But what
16 we're trying to do is we're trying to kill the fly.
17 We're trying to focus ourselves on that one point.

18 REPRESENTATIVE RITTER: Well, I can see
19 that, but I guess my point is once we start down that
20 road, then where do we stop? Then isn't it better, if
21 we're going to end up at that point anyway, to look at
22 the situation as a whole? Is this something that we
23 should do? I mean, do we close juvenile proceedings to
24 the public? Is that appropriate or not, whatever,
25 that's what we do? I mean, so we can close some of

1 these things, I would presume. But I have a real
2 problem with saying that we're going to prevent the
3 media from releasing information that they have come
4 across somehow. I think that has a very chilling
5 effect and definitely goes at the heart of the First
6 Amendment.

7 REPRESENTATIVE DALEY: I agree with you.
8 I think, and maybe I can be corrected if I'm wrong, in
9 Florida, the media had actually paid people in the
10 district attorney's office or the sheriff's office for
11 that release of that information. There was a
12 conspiracy to release that information. And that's
13 appalling. I mean, it's like we got to get the story
14 out first regardless of whose toes we step on or whose
15 lives we trample or whose names that we tread on. I
16 may be wrong in that but that was my understanding that
17 that's how that all developed.

18 REPRESENTATIVE RITTER: Well, I can see,
19 you know, I can see what you're saying, but to me the
20 penalty should be put on the folks within the system
21 who violated the law. And perhaps the media was
22 overzealous in their pursuit of knowledge and their
23 pursuit of their craft and that may be so, but I think
24 in that situation if that's the case, the folks within
25 the system who were charged with maintaining this

1 information as confidential are the ones who should be
2 punished for that, and so that I still think we can
3 accomplish the same thing pretty much by focusing our
4 attention on whether or not the information should be
5 released from the criminal justice system in some way,
6 because I don't think otherwise in Pennsylvania I've
7 seen that this was a problem in the State. I think
8 most of the newspapers and so on that we have here are
9 generally attempting to be responsible about that. So
10 I just -- it's a very difficult issue, it's not as
11 simple as it looks. I think when you're trying to
12 balance the rights of one citizen against another.

13 Thank you.

14 CHAIRMAN CALTAGIRONE: Are there other
15 questions?

16 (No response.)

17 CHAIRMAN CALTAGIRONE: I thank you, and I
18 don't believe the media -- this is an editorial from
19 Tom Caltagirone -- is completely accurate, always
20 accurate, or ever accurate. And I will get into some
21 things when I get the board of editors up here and I
22 have some questions to ask of them as they will of us.

23 Thank you, Representative Daley.

24 REPRESENTATIVE DALEY: Thank you, Mr.
25 Chairman, thank you.

1 And also, there will be people here that
2 will be able to answer some of your questions next that
3 are much more schooled in the subject than I, so I
4 appreciate your patience and tolerance.

5 CHAIRMAN CALTAGIRONE: Thank you.

6 Victoria Brownworth, victim/survivor and
7 nationally known writer and editor on women's issues,
8 could not be here, but we are submitting her testimony
9 for the record, and we would like to let the members be
10 made aware of that.

11 (See Appendix for submitted testimony of
12 Ms. Brownworth.)

13 CHAIRMAN CALTAGIRONE: We will next go to
14 Pam Morris-Smith, Director of the Rape Crisis Center,
15 Incorporated, of Brookville, Pennsylvania. Please come
16 forward.

17 MS. MORRIS-SMITH: Thank you. I am
18 Pamela Morris-Smith, the Executive Director of the Rape
19 Crisis Center, Incorporated, located in Clarion and
20 Jefferson Counties.

21 The Rape Crisis Center was formed in 1980
22 stemming from the needs of sexual violence victims who
23 at the time had no place to turn for support. Our
24 center provides crisis intervention, short-term
25 individual and group counseling, legal and medical

1 advocacy, as well as community and school education
2 awareness programs. The Rape Crisis Center is a member
3 of the Pennsylvania Coalition Against Rape, PCAR. As
4 executive director of this center, I serve on PCAR's
5 Board of Directors and the PCAR Legislative Public
6 Policy Committee.

7 I wish to thank Representative
8 Caltagirone and members of the committee for giving me
9 the opportunity to present testimony on House Bills
10 1351 and 1362.

11 From the moment the media was aware of a
12 Palm Beach Florida's woman's accusation that she had
13 been raped by William Kennedy Smith, she became a
14 figure of public notoriety and scrutiny. The woman's
15 name, picture, and the intimate details of her life
16 became public knowledge due to the concerted efforts of
17 NBC News, the New York Times, and supermarket tabloids.
18 The incident in Palm Beach has rekindled debate
19 regarding the public's right to know and the privacy of
20 sexual violence victims. The media, victim advocates,
21 attorneys, and the general public are struggling with
22 this issue in an attempt to balance the needs of sexual
23 violence victims and the freedom of the press.

24 Just this past summer, New York joined
25 with 20 other States to prohibit the release of a rape

1 victim's name to a limited degree. The Pennsylvania
2 Coalition Against Rape and its member centers have
3 always maintained that the name of a sexual violence
4 victim should never be released to the media without
5 the victim's consent. Historically, it has been our
6 experience that Pennsylvania media has respected this
7 position and chose not to divulge the identity of a
8 sexual assault victim without the individual's consent.
9 As long as this continued to be the case, there did not
10 appear to be a need for legislation. However, soon
11 after the media disclosed the name of the woman in the
12 Florida case, newspapers in Pennsylvania began printing
13 names of rape victims. Even more disturbing was that
14 these newspapers were located in small, rural
15 communities. To our dismay, newspapers choosing not to
16 print the victim's name opted instead to print other
17 identifying information such as the victim's address or
18 place of employment. As a result, Pennsylvania's Rape
19 Crisis Centers began to rethink their position on the
20 need for a legislative response.

21 The intent of the legislation introduced
22 by Representatives Mayernik and Daley is to offer some
23 sort of remedy to this problem. This legislation, like
24 that of many other States, prohibits the release of
25 victim's names by specific groups in specific

1 situations. The Rape Crisis Center, Pennsylvania
2 Coalition Against Rape, and its member centers support
3 the intent of House Bills 1351 and 1362 and commend
4 Representatives Mayernik and Daley on their efforts to
5 protect the privacy of sexual violence victims. In
6 practicality, however, both bills fall short of their
7 intended purpose. Neither bill applies to the release
8 of identifying information such as the victim's
9 address, place of employment, or the familial
10 relationship between the victim and perpetrator and so
11 on. Neither bill prohibits supportive personnel
12 working in conjunction with individuals responsible for
13 criminal investigation and prosecution, medical
14 treatment or counseling from releasing the victim's
15 name.

16 The bills' provisions do not apply to
17 victims of sexual offenses which are listed in chapters
18 43, 59 and 63 of Title 18. The bills do not require a
19 criminal penalty or fine for those individuals guilty
20 of violating the provisions of the proposed law.
21 Neither bill restricts the media from releasing such
22 information once obtained, nor do the bills create a
23 cause of action for the sexual violence victim. In
24 essence, the bills will do little to protect the
25 privacy of sexual violence victims.

1 Representing the positions of the Rape
2 Crisis Center and the Pennsylvania Coalition Against
3 Rape, I ask that these bills be amended to expand their
4 scope, strengthen their intent, and provide for
5 accountability. Before addressing our specific
6 recommendations or the merits of the amendment being
7 offered by Representative Daley, I wish to address the
8 argument surrounding the protection of the sexual
9 violence victims' privacy.

10 When a woman, child, or a man is sexually
11 victimized, the individual experiences a range of
12 emotions - fear, confusion, anguish, isolation,
13 self-doubt. Control over one's life has been stripped
14 away. Critical to the healing process is that the
15 ability to begin to exercise control over one's life
16 through decisionmaking start as soon as possible. The
17 victim must have the right to decide whether or not to
18 disclose to the media the sexual assault, to disclose
19 the sexual assault to the media, authority, friends,
20 family, or anyone. Speaking to the media about one's
21 own experience should aid not hinder the healing
22 process.

23 The media has argued that their role is
24 disseminating information not suppressing information,
25 and that names and facts add credibility. According to

1 Michael Gartner, President of NBC News, "Names and
2 facts are news....They give the viewer or reader
3 information he or she needs to understand issues, to
4 make up his or her own mind about what's going on."
5 Gartner further stated, "...I oppose...the general
6 belief that we should only print the name of rape
7 victims who volunteer their names. In no other
8 category of news do we give the newsmaker the option of
9 being named."

10 However, the media's routine practice of
11 printing stories in which they do not identify their
12 information source or the players involved directly
13 contradicts Gartner's contentions. There are a number
14 of reasons why media chooses not to identify these
15 individuals, but primarily it is for the reason of
16 self-protection. Clearly, the printing of the names is
17 not necessary to lend credibility to a news report.

18 One of the roles of the media is to
19 inform, and that includes destroying incorrect
20 impressions and stereotypes. By not naming names, the
21 media contends it will perpetuate the conspiracy of
22 silence. Clearly, the media does have the power to
23 inform public and to influence opinion, yet unbalanced
24 and biased reporting represents a misuse of this power.
25 This was demonstrated by the New York Times coverage of

1 the Palm Beach case. The Times felt compelled to tell
2 the reader that the alleged victim was: One, had a
3 child out of wedlock; number two, frequented bars in
4 the Palm Beach area; number three, had a wild streak in
5 high school; number four, had a number of unpaid
6 traffic violations; and finally, that her mother had
7 been married twice. What bearing do these facts have
8 on whether or not the rape took place? This type of
9 reporting does not break the conspiracy of silence, it
10 perpetuates the myths and the misconceptions held
11 regarding sexual violence by placing responsibility for
12 the assault on the victim's behavior and not on the
13 action of the perpetrator.

14 The Governor's Task Force on Rape and
15 Sexual Assault in New York State conducted a survey of
16 750 daily and weekly newspapers, radio stations and
17 television stations located in their State.
18 Unfortunately, only 68 surveys were returned. However,
19 they were surprisingly consistent. The findings of
20 this survey were published in April 1990. An
21 overwhelming majority of the respondents reported that
22 they did not have a written policy for the reporting of
23 sexual violence crimes but instead opted to have some
24 type of informal policy. The respondents outlined the
25 following premises of their informal policies:

1 Number one, the victim's name is not
2 reported unless that person is murdered.

3 Number two, the victim's age and gender
4 are to be reported.

5 The victim's race, residence and
6 education are generally not reported.

7 The victim's employment status and
8 occupation may or may not be reported, depending on the
9 case.

10 The relationship between the victim and
11 the alleged assailant is usually reported. Exceptions,
12 however, may be made to this rule if there is a
13 familial relationship.

14 Rapes and sexual assault of children and
15 adults are reported in the same manner.

16 Details such as whether the victim was
17 injured, the relationship between the victim and the
18 alleged assailant and the events surrounding the case
19 were viewed as relevant to the reporting of these
20 crimes.

21 And finally, as much information about
22 the alleged attacker that can be gathered is usually
23 reported. One-third of the respondents would report
24 the attacker's name even if one could ascertain the
25 identity of the victim.

1 The response of this survey reflects an
2 inconsistency in editorial policy which in turn leads
3 to inconsistency when reporting sexual violence. The
4 media is known to make exceptions to their policy of
5 not naming rape victims if the case is one of national
6 interest.

7 Three cases that have generated enormous
8 public interest are the Central Park gang rape, the
9 Palm Beach case, and the Mike Tyson case. The Palm
10 Beach case was the only one in which the victim was
11 named.

12 The consequences of printing any
13 information which may identify the sexual violence
14 victim can be devastating. The myths and
15 misconceptions that still dominate the public's opinion
16 regarding sexual violence subjects the victims to
17 ridicule, condemnation, and stigmatism. Judgment is
18 passed regarding the individual's lifestyle, economic
19 status, relationship with the offender, and so on. No
20 other crime victim is made to feel guilty until proven
21 innocent. The release of such information may also put
22 the victim and other family members at risk,
23 jeopardizing their personal safety.

24 Fear for personal safety and fear of
25 public ridicule exasperates the victim's level of

1 trauma. Already sexual violent crimes are
2 underreported. In all likelihood, the uncertainty of
3 whether the media will print identifying information
4 will make victims even more reluctant to report the
5 crime to authorities. In a poll conducted by Newsweek
6 this April, 86 percent of the respondents felt that if
7 a woman knows the media will make her name public, she
8 will be less likely to report the crime. An April 18th
9 poll conducted by U.S. Today found that 46 percent of
10 the women polled would be less likely to report if they
11 knew their names would become public. 57 percent of
12 the respondents of the Newsweek poll felt that people
13 tend to think negatively about rape victims. The
14 Newsweek poll also showed that 77 percent of all
15 respondents believe that the press should not print the
16 names of rape victims.

17 While the majority of all debate
18 surrounding this issue is focused on the responsibility
19 of the press, we must keep in mind that the media must
20 obtain the name of the victim and the details of the
21 assault through some means. The majority of the
22 information reported by the media is obtained from
23 personnel within the criminal justice system. The
24 reality is if you restrict access to such information
25 through one system the media can obtain the information

1 from another system, another person. Shouldn't the
2 person or persons releasing the information share the
3 responsibility in protecting the privacy of sexual
4 violence victims and be made accountable for their
5 actions as well?

6 The amendment being proposed by
7 Representative Daley addresses the need to adopt public
8 policy that will protect the privacy of sexual violence
9 victims. Its provisions would uniformly apply to all
10 persons having access to information that when
11 disclosed would reveal the identity of the victim. The
12 amendment also provides penalty for violating the
13 provisions of this legislation. More importantly, it
14 recognizes that sexual violence victims should be the
15 ones making the decision regarding disclosure.

16 The Supreme Court of the United States
17 has heard a number of cases in recent years that have
18 pitted privacy rights and the First Amendment. In the
19 case of the Florida Star vs. B.J.F., the victim had
20 sued the newspaper for printing her name, in violation
21 of Florida law that prohibits the publication of a rape
22 victim's name. While the Supreme Court ultimately
23 ruled in favor of the newspaper, the opinion written by
24 the court does provide direction regarding the issue of
25 the State's interest in protecting the names of rape

1 victims.

2 Calling upon the court's ruling in Cox
3 Broadcasting, the court reiterated that if there are
4 privacy interests to be protected, the State must
5 respond by a means which avoid public documentation or
6 other exposure of private information. While the State
7 does have the right to further public interest such as
8 protecting the identity of sexual violence victims, it
9 must demonstrate its commitment by applying
10 prohibitions evenhandedly. Writing for the majority,
11 Justice Thurgood Marshall stated, "Our holding is
12 limited. We do not hold that truthful publication is
13 automatically constitutionally protected or that there
14 is no zone of personal privacy within which the State
15 may protect the individual from intrusion by the press,
16 or even that the State may never punish publication of
17 the name of a sexual violence victim."

18 Printing the names and addresses of
19 sexual violence victims does not serve the public
20 interest. While the framers of the Constitution wish
21 to protect our freedom of speech as well as that of the
22 press, the First Amendment should not be called upon to
23 defend irresponsible and potentially dangerous actions.
24 Our reading of the Daley amendment appears to take into
25 consideration points voiced by the Supreme Court ruling

1 of the Florida Star vs. B.J.F. We contend that to
2 truly protect the identities of sexual violence victims
3 and the State's interest, a statute must be formulated
4 that is inclusive. To do less will not further the
5 State's interests, nor will it protect the victim.

6 CHAIRMAN CALTAGIRONE: Questions?
7 Representative Heckler.

8 REPRESENTATIVE HECKLER: Thank you, Mr.
9 Chairman.

10 BY REPRESENTATIVE HECKLER: (Of Ms. Morris-Smith)

11 Q. Have you had an opportunity to review Ms.
12 Brownworth's testimony?

13 A. I just received her testimony a short
14 time ago. No, I haven't.

15 Q. Okay. This is a difficult, troublesome
16 issue, it seems to me. The examples, and frequently
17 we're called upon to enact legislation because of what
18 I characterize as horror stories, unfortunately, very
19 real horror stories, but isolated examples.

20 Let me just offer a premise or my thought
21 on this and then I'd welcome your reaction. It is my
22 perception that probably no force or body of ideas has
23 changed the view of American society more in the last
24 say two decades than the women's movement. I am very
25 much troubled by the idea that we would treat, and I

1 was very much interested in Ms. Brownworth's testimony,
2 which seems to be to this effect, that we would treat
3 crimes involving sex and sexual victimization
4 differently than we would any other crime, given at
5 least my perception that the victim is just as much a
6 victim as if he or she were the victim of a robbery or
7 a burglary or an assault, or drunken driving for that
8 matter. And are we ever going to change society's
9 perceptions, which is really the bottom line problem,
10 if we engage in this process which has the effect of
11 suppressing information, suppressing the truth to some
12 extent, and aren't we buying into exactly the backwards
13 kind of thinking that creates the problem to begin
14 with?

15 A. Well, I feel that sexual violence victims
16 are already treated differently in the court system
17 than the victim of any other crime, and I think that,
18 you know, I used it as an example in my testimony, but
19 the information that was made public about the woman in
20 the Palm Beach case, I don't understand how any of that
21 information about her life is germane to the issue
22 about whether or not she was raped, and we see that
23 quite frequently even in local centers, what type of
24 information is needed in order to bring charges and
25 whether or not it is even brought for charges,

1 especially in our area. So what your question is that
2 you think that this might not reverse--

3 Q. My perception is that dealing with the
4 victims of sexual crimes differently than other crimes
5 is simply perpetuating those backwards ideas, you know,
6 that if a woman is raped she must have somehow invited
7 it, that there is some moral cloud that goes with being
8 the victim of a crime of this sort. And if we could
9 draw a distinction, you're saying, I mean, obviously
10 the Kennedy Smith case is a case where everything about
11 people of that sort is extremely high profile and, you
12 know, the same tabloid mentality that has me waiting in
13 the grocery store line reading about three-headed
14 people and visits from Mars, you know, prevails.
15 Everybody wants to read about it.

16 CHAIRMAN CALTAGIRONE: That's responsible
17 reporting.

18 BY REPRESENTATIVE HECKLER: (Of Ms. Morris-Smith)

19 Q. Yeah, well, clearly it's not responsible
20 reporting. So that you're going to get a certain
21 amount of that. I'm troubled by your suggestion that
22 the criminal justice system deals with these crimes
23 differently. Systemically I hope that that's not the
24 case. Individually certainly to the extent that
25 individuals within the system have the same backwards

1 mindset that some parts of society do and therefore are
2 going to look with disbelief upon a woman who says
3 she's raped unless she's also, you know, got severe
4 injuries to go along with it and so forth. Isn't that
5 part and parcel of the same problem, that we're never
6 going to change if we treat rape as something that the
7 victim should be ashamed of?

8 A. No other crime is the victim made to
9 defend themselves against their accusations. If one is
10 robbed, they don't have to defend their lifestyle, but
11 that's the case in the case of a victim who has been
12 sexually abused, and I think that it is a different
13 crime and I think it's been my experience that it is
14 treated differently in the courts. And even in my own
15 county our district attorney says that in order for him
16 to prosecute a case like this he wants to see scratches
17 and bruises and some kind of evidence that there was a
18 struggle because he doesn't feel that it can be
19 prosecuted otherwise. So it is. But the victim of a
20 burglary doesn't have to have those same scratches and
21 bruises in order to be validated as a victim.

22 Q. But isn't the issue that what that
23 district attorney is saying is that juries tend to be
24 skeptical, more skeptical of a woman claiming that
25 she's been raped, let's say, than a woman who claims

1 that she's been robbed, but isn't that part of the
2 problem that has to be addressed? Are we ever going to
3 solve that problem? Are we ever going to get people in
4 society who happen to make up juries to understand that
5 rape is a crime whether or not there's resistance? Are
6 we ever going to have that happen if we in essence
7 subscribe to that mentality by saying that rape victims
8 have a valid reason to, in essence, have something to
9 be ashamed of because and therefore we're going to
10 suppress their identification?

11 A. I think that that, in briefly looking
12 over -- I don't remember--

13 Q. Brownworth, I think.

14 A. --Ms. Brownworth's testimony, I think
15 that that is her feeling and I think that there had
16 been other examples. In Iowa there was a woman who
17 came forward and talked about her experience, and yes,
18 it may well help to turn the tide. However, our
19 feeling is that it should be the victim's choice
20 whether or not these very private matters are exposed
21 in the public because it isn't just the circumstances
22 surrounding the assault but it's the circumstances
23 surrounding her entire life that come under public
24 scrutiny.

25 Am I answering your question?

1 Q. You are, but the -- I guess I'm less than
2 persuaded because my reaction is the only reason that
3 circumstances, the circumstances of her life, her
4 background, other issues of that sort come to become an
5 issue of discussion is because people are wrongheaded
6 to begin with. You're right. None of this garbage
7 about the victim in the Kennedy Smith case has anything
8 to do with the issue of whether a rape occurred or not,
9 and I doubt any of them will be admissible at trial.
10 The issue of trying a case in the press is another
11 issue, happily it occurs rather rarely.

12 Well, I don't know that I have any other
13 specific questions but I just am troubled not only by
14 the issue of prior restraint but by the issue that the
15 women's movement in general has been very successful,
16 conspicuously successful in turning around peoples'
17 perceptions of women, their role in the world, and it
18 just seems to me that this is another area in which
19 people's consciousness has to be expanded, even if in
20 individual cases perhaps that right now it represents a
21 more painful confrontation with the world than they
22 would experience otherwise.

23 Thank you.

24 CHAIRMAN CALTAGIRONE: Are there any
25 other questions?

1 (No response.)

2 CHAIRMAN CALTAGIRONE: Thank you very
3 much.

4 Since we're going to have the media, I
5 guess, for the next four witnesses, if we could I'd
6 like to have all four witnesses join us at the panel
7 and then they can go one, two, three, four, if you
8 would like to. If we could have a couple more chairs
9 pulled up, please. I guess it's William Northrup,
10 Stephanie Grubert, James Kevlin, and John Bull.

11 I guess William Northrup, if you'd like
12 to go first and just introduce yourself for the record.

13 MR. NORTHRUP: Okay. My name is Bill
14 Northrup, and I'm co-publisher of the Observer Reporter
15 in Washington, Pennsylvania.

16 First of all, I apologize, I don't have a
17 written testimony, didn't get that done, and also I
18 wanted to kind of get an idea what others were going to
19 say before I did, so I hope I don't ramble. I have
20 some notes.

21 Second, I am familiar with the rape
22 crisis sexual assault rather firsthand. My wife works
23 with a local center. She's working on her Master's
24 degree now, and so I hear of these cases firsthand
25 quite often and sometimes it obviously conflicts with

1 information we should or should not have. She is very
2 concerned with the release of the names of the victims
3 of assault. At the same time, she is concerned about
4 whether government controls that release. She also
5 knows as practical experience many of those cases turn
6 out to be noncases, some are borderline, some aren't.
7 But as Pam Smith said, it's also very clear that the
8 victims of rape or sexual assault have deep emotional
9 scars from this. There isn't any question about that,
10 and this is a very sensitive area.

11 However, what I want to do here is first
12 of all thank you for having the chance to openly debate
13 issues like this in an open society so that we can all
14 talk about this and get our views across, just like the
15 women's movement has been able to use the press very
16 nicely and the media getting their views across,
17 pointing out all these things occur, but I would like
18 to raise this to a little different level away perhaps
19 from not about rape and sexual assault or even about
20 the media and how good it is or irresponsible or
21 responsible, et cetera, to look at it on a broader
22 philosophical sense maybe that talks and maybe discuss
23 this issue in the context of open government, open
24 courts and open records. In other words, preservation
25 of the sunshine, so to speak, so that our system can

1 continue to move on with all its irregularities and all
2 its faults and all its misinformation and factual
3 information.

4 I point out, too, that no one has spoken
5 here of the accused. Perhaps an accusation of rape is
6 second only to an accusation of murder, at least it is
7 my personal feeling. I happen to regard rape as that.
8 So do we create a class of people, particular class of
9 people who are immune from any kind of public
10 disclosure? This does concern me. Do they have a
11 special privilege? Are they free to accuse at will
12 with no protection for the defendant? In other words,
13 what we talk about in this bill and maybe other
14 discussions is that it kind of looks like when we say
15 sexual assault and we say rape, we're presuming their
16 guilt per se before we even get there. That guilt is
17 only determined in a trial at the end of that trial.

18 And I will discuss that a little bit more specifically
19 in cases that we've had in Washington, Greene Counties,
20 et cetera.

21 As an aside, I just in the last couple
22 years have toured the countries of Bulgaria, Rumania
23 Hungary, Russia, Cuba, Estonia, Latvia, Lithuania, and
24 particularly I returned last week from Lithuania where
25 we were celebrating the second anniversary of a

1 newspaper there that started in 1989 under the guns of
2 the Russians, now has its own printing press for the
3 first time. Those issues are very real there about
4 government suppression of facts, factfinding,
5 irresponsible reporting. For instance, my friend
6 reported that the prime minister was a KGB informant.
7 He was at this meeting, by the way, at the dedication
8 in spite of that. The fact is that the independent
9 government of Lithuania has tried to take away his
10 newspaper, has tried to restrict his reporting because
11 it isn't proper, it's not in the interest of Lithuania,
12 et cetera, et cetera.

13 If you go around to all of those
14 countries, which I have in those two years, you'll find
15 individuals, not just newspaper people but reformist
16 government people very, very concerned by the
17 restriction of facts from government. That is their
18 biggest concern. That is what has happened. They
19 don't know what happened when and how. The Chernobyl
20 accident, it turns out there's now one larger than that
21 occurred several years ago. They don't know whether
22 their loved ones were whisked away or what charges were
23 filed against them. All of those are very, very real
24 and they are now more real than ever, and they may not
25 survive. The free press and free and open government

1 may not survive in those countries. It is still very
2 fragile. But when you talk to the people that care and
3 feel they were victimized, they were totally victimized
4 by that system, which puts government totally in
5 control. So I use that as an overdrop, backdrop here.

6 Getting a little bit more specific. The
7 Florida case I think is kind of an unusual case, and I
8 would submit that regardless of whether the media
9 released that name of that victim, the Kennedy clan
10 would have certainly made certain everybody knew who
11 she was, what she did. They've had investigators all
12 over. They're filthy rich, they can do anything they
13 want and they have done it and they're still doing it,
14 and I think you will find that that would be the case
15 in that kind of an approach, and I think that whole
16 case skews everything that we do, and I would hate to
17 see us in Pennsylvania consider every case on the level
18 that we consider that one.

19 I am concerned also if we close off the
20 information that is now available, you're going to
21 create an atmosphere of distrust between the police,
22 the media, the public. When that occurs, now when you
23 have, we hear there was a rape or maybe you have
24 someone arrested for it or accused of it, I think you
25 say but we aren't releasing any information, we don't

1 know who it is. I will tell you, I've had 11 years on
2 the beat, newsroom abounds with rumors, and they come
3 from the courts, they come from everybody outside, the
4 people in the community, the neighborhoods where this
5 happened, and so all of a sudden you find yourself
6 looking at, boy, maybe this was a false accusation.
7 Maybe it was a set-up deal. So you begin to look into
8 it. And every time there's any squelching of
9 information, that is the pressure you get from the
10 public and the pressure you get in your newsroom to do
11 it. I could possibly see this backfiring into where
12 the news media would feel pressure to publish the name
13 because there is no trust that this is a legitimate
14 effort, because there is no way of looking at the
15 record and it is closed. So that is one of my
16 concerns.

17 I look at the bill and the amendments, I
18 see prior restraint, presumption of guilt. I see that
19 even the defendant is restricted to investigate. If
20 you have to go out and find out about the plaintiff,
21 you certainly have to ask people and use the name,
22 address, et cetera. You have to go about and
23 investigate it to protect yourself. I see that the
24 civil action section presumes also damages and sets up
25 a terribly chilling effect on anybody who should

1 release that information.

2 The written consent, I might feel a
3 little bit so-so about that one, but it is cumbersome
4 and I think that people who want to disclose what
5 happened would probably might want to do that more on
6 the basis of, well, I'll talk to somebody about it, I
7 don't want to set any legal document.

8 So I want to throw a few individual real
9 life situations that come up in there that come up on
10 the moment in a newsroom or in the public that are a
11 concern for me. For instance, what about a person who
12 is murdered and raped? How do we handle that? Also,
13 if a woman is kidnapped by a known rapist and there is
14 a search and they are looking at a description of the
15 woman, et cetera, do you not do this? What about when
16 there are multiple charges - terroristic threats,
17 arson, the woman perhaps has been beaten, is in
18 critical condition, you're reporting on that. Is this
19 person to be an unknown person? And do you cover up
20 what one of the charges was against the person but only
21 use the other, then you find out later in court it's
22 that what if the husband has done the raping and
23 spousal assault? How do you handle that if by
24 definition she gets identified? What if one person
25 where the husband was murdered and the wife was a

1 survivor and raped and beaten, that name just by
2 definition on the identification that will be out
3 there. What about the rape by the ex-husband? What
4 about when the defendant is found innocent?

5 Now, these have all, by the way, occurred
6 in Washington County at one time or another, and a
7 defendant was innocent two days ago where after a very
8 quick trial, now the woman's name had never been used,
9 but I have real problems with that myself. Is she
10 raped? Certainly, there was a penetration, that was
11 all substantiated, but it was not proven it was a rape
12 and the man went free. He is not the traditional
13 rapist type, you know hardened criminal. Should the
14 woman's name be withheld and restricted from ever being
15 used? What about names on search warrants, criminal
16 complaints, preliminary hearings, et cetera? What
17 about if the woman comes forward with a private
18 complaint that the police won't touch?

19 We had a case going on now in Pittsburgh
20 in which a woman and husband gave their 15-year-old
21 child up for sexual play with other couples, et cetera,
22 and they were all arrested for it and to protect the
23 child no one has released the names of the parents.
24 The problem is, one of those parents is an elementary
25 teacher at Mt. Lebanon Elementary School. Now, if I

1 were a parent and had a kid in that school, I'll darn
2 well want to know the name of that teacher, and I'm not
3 about to sit still and have them not release that.
4 Now, the newspaper has not released that.

5 I see here in Harrisburg yesterday that a
6 woman was sentenced to 20 to 30 years in jail, a big
7 fight in the hall about whether she should have gotten
8 that rough sentence. She's the one that held her
9 8-year-old down and raped by her boyfriend. Her name
10 has not been in the paper, to protect the child. These
11 are very questionable things. Should it or shouldn't
12 it be known? I don't know. I don't know if they
13 should be sealed completely.

14 Also, one final thing. Does this bill
15 cover sexual harassment in the workplace? I think you
16 raised that issue, is this all-encompassing and what do
17 we do about that?

18 So I thank you very much for the
19 opportunity to speak and I can pass it on to whomever
20 you want.

21 CHAIRMAN CALTAGIRONE: Stephanie, you're
22 on.

23 MS. GRUBERT: Good afternoon. My name is
24 Stephanie Grubert, and I am the incoming president of
25 the Pennsylvania Newspaper Publishers Association. I

1 am the editor and publisher of the Mountain Top Eagle,
2 a 3,000 circulation weekly up in Luzerne County.

3 I would like to take this opportunity to
4 explain the position which PNPA has taken on the two
5 bills before this committee - House Bills 1351 and
6 1362. The Pennsylvania Newspaper Publishers
7 Association is opposed to House Bills 1362 and to 1351
8 as originally introduced and amended. We're opposed to
9 these bills for two reasons: First, we believe that
10 both bills constitute an indirect prior restraint upon
11 newspapers. Second, we believe that both bills are
12 unnecessary because we are aware of no newspapers
13 within the Commonwealth of Pennsylvania which currently
14 publish the names of rape victims without their
15 consent, and the police can already deny the press
16 access to any information which is the subject of an
17 ongoing investigation.

18 With respect to our first concern that
19 the bills are an indirect prior restraint upon
20 newspapers, I would like to remind the committee that
21 courts have held that all prior restraint measures are
22 subject to strict judicial scrutiny because they
23 challenge the very essence of the First Amendment
24 freedoms that we hold so dear. Although these bills as
25 originally introduced do not directly restrain the

1 press, they attempt to do so indirectly by limiting
2 those with access to the information from releasing
3 this information to the public and to the press.

4 Now, I'm diverting slightly from my
5 prepared text. As amended, however, House Bill 1351
6 represents a direct prohibition upon publishers of
7 potentially newsworthy information which the U.S.
8 Supreme Court has ruled as unconstitutional. In fact,
9 Federal and State courts have held that the press plays
10 an important role in making information available to
11 the public.

12 Members of the public are not usually
13 able to attend such important government activities
14 such as jury trials, legislative meetings, or executive
15 branch rulemaking proceedings. It is only through the
16 press that the public can learn what has occurred at
17 such events. After all, the presence of the press here
18 today is evidence that we are conveying the activities
19 of this committee to a much broader audience. Thus,
20 when the government attempts to limit in any way the
21 amount of information which the press conveys to the
22 public, we are naturally concerned that such an attempt
23 may violate our First Amendment rights. In this
24 instance, we are concerned that the police will be
25 further limited in providing full information to the

1 press.

2 We are also concerned about the language
3 in lines 14 through 16 of House Bill 1362 which
4 provides that the news media should refrain from
5 publishing or broadcasting victims' names to protect
6 them from notoriety or scandal. Although this language
7 does not require us to refrain from publishing this
8 information, it represents a strong statement from the
9 State government about what the press should and should
10 not publish, in direct contrast to the freedom of the
11 press contained in the First Amendment.

12 In addition to our constitutional
13 concerns about these bills, we believe that they are
14 unnecessary for two reasons: First, no Pennsylvania
15 newspapers that I am aware of publish the names of rape
16 victims without their consent. Second, under the
17 current Open Records or Right to Know Act, the police
18 can deny the press any information which is the subject
19 of an investigation. Thus, the police can deny this
20 information to us during the initial stages of an
21 investigation before any court action takes place.

22 Because the measures are not necessary, I
23 hope that the sponsors of this legislation, as well as
24 the Judiciary Committee members assembled here, will
25 tell us why they have drafted this legislation which we

1 believe represents an attempt by State government to
2 interfere in our freedom of the press.

3 Thank you in advance for responding to
4 our concerns.

5 CHAIRMAN CALTAGIRONE: Thank you.

6 James Kevlin.

7 MR. KEVLIN: Yes. Thank you for allowing
8 me to speak to you today. My name is Jim Kevlin. I'm
9 the editor of the Pottsville Republican, a 30,000
10 circulation daily newspaper in Schuylkill County. I am
11 here on behalf of the Pennsylvania Society of Newspaper
12 Editors, which includes 185 editors throughout the
13 State, and on behalf of our readers.

14 Bills 1351 and 1362 are clearly efforts
15 to muzzle citizens, and in the case of 1362 impose
16 prior restraints on people who report the news. To say
17 we're concerned or very concerned is too mild. These
18 bills are a first step, a big first step, down a
19 slippery slope. What I hope to give you is the
20 grassroots perspective of a country editor in touch
21 with his readers who would have to live with Bills 1351
22 and 1362 if they were to become law. As such, I have
23 several objections to the impact and potential impact
24 of the bills.

25 On a practical level, Bills 1351 and 1362

1 serve no purpose. They are a solution in search of a
2 problem. No newspaper or broadcast outlet in
3 Pennsylvania is routinely reporting the names of rape
4 victims. Beyond that, the issue is evolving in the
5 other direction, as it should be. Rape victims, even
6 in Pottsville, PA, are seeking to tell their stories.
7 They are refusing to accept the stigma society places
8 on them. Admit it, we still blame the victim. And
9 Bills 1351 and 1362 would enshrine the stigma in law.

10 We are all familiar with the celebrated
11 story of Nancy Ziegenmeyer that's been referred to
12 previously today, the rape victim who broke the silence
13 and told her story in great detail to the Des Moines
14 Register. But there are Nancy Ziegenmeyers much closer
15 to home.

16 Let me tell you a story. In the little
17 borough of Schuylkill Haven, which is four miles from
18 Pottsville, a young wife and mother was raped in her
19 home a year ago last March while her husband was
20 working the night shift. The Pottsville Republican, as
21 is our practice, withheld her name in the initial
22 report. That summer, however, Mrs. Mindy Adams
23 approached us. She was angry at feeling guilty and
24 humiliated. She had done nothing wrong, she told us.
25 She wanted to tell her story, to tell people she was

1 not ashamed because she had nothing to be ashamed of.
2 We published her story last September. She said, "If
3 people don't hear the victim's name, they say -- it
4 happens, but why think about it?" She said, "It can't
5 happen in a small town -- that's what you hear. But it
6 does happen in a small town. Anyone out there is a
7 potential victim." She said, "Just a little common
8 sense could prevent you from becoming a victim. Things
9 could have been different." That's Mindy Adams, a rape
10 victim, arguing the benefits of full disclosure,
11 contrary to the thinking behind Bills 1351 and 1362.

12 The restrictions in Bills 1351 and 1362
13 are proposed in a difficult public information climate
14 than we work with every day. The State's Freedom of
15 Information and Sunshine laws are already little help
16 in guaranteeing that police departments routinely and
17 consistently release information on crimes. Bills 1351
18 and 1362 feed that unhealthy environment. Crime
19 information is information people need to know. Mindy
20 Adams' neighbors needed to know that there had been a
21 rape on their block and that the rapist was still at
22 large. Right now in Pennsylvania there's no guarantee
23 that a local police department will even tell people
24 that a rape or any other crime has occurred in their
25 neighborhood. This is not only a disservice to all

1 Pennsylvanians, it also creates an environment where
2 corruption can grow.

3 If anything, the law should be moving in
4 the other direction, away from 1351 and away from 1362.

5 Let me tell you another story. Last
6 year, a local restaurant owner was arrested for selling
7 cocaine. He called me and said, I don't want the
8 arrest in the paper. What can I give you -- you name
9 it -- to keep it out? So I said to him, anything? And
10 he said, anything. So that was a very tempting offer.
11 Police officers no doubt get many such offers over the
12 course of their careers.

13 Sunlight is the best disinfectant.
14 Newspapers and broadcast outlets provide that sunlight
15 by reporting crime news. If a crime is reported, the
16 case just can't go away. Bills 1351 and 1362 are a
17 step in the wrong direction.

18 In community journalism, newspapers, be
19 they the Pottsville Republican or the Claysville Weekly
20 Recorder, are in close touch with readers. There's no
21 secretary screening our calls. There's no armed guard
22 at the front door. If readers are unhappy, they let us
23 know, and bluntly. There is no anonymity in a town
24 like Pottsville, or Blossburg, or California, PA, like
25 there is in Pittsburgh or Philadelphia. If readers

1 aren't unhappy, they let us know in a supermarket line,
2 at a lunch counter, at the little league game. In
3 community journalism, if a newspaper stays 10 feet
4 ahead of it's reader, it's the leader. If it gets 100
5 feet ahead, it's the enemy.

6 This applies very directly to such gut
7 issues as naming rape victims across the board. Even
8 if we wanted to, which we don't, our readers wouldn't
9 tolerate it. We don't need Bills 1351 and 1362 to
10 protect your constituents or our readers. They are
11 very able to protect themselves and their neighbors.

12 So let me conclude with a couple of
13 quotes. The first is from a recent piece by Susan
14 Estrich, a law professor in California. She was
15 national manager of the '88 Dukakis campaign. She is
16 also a rape victim, the very person Bills 1351 and 1362
17 purport to defend. She is not a particularly big fan
18 of the press, so she writes:

19 "In the end, the real question is not
20 whether the press is good or bad, whether it does its
21 job well or poorly, whether we're fans or not.

22 "The real question is whether we want the
23 press policing itself or whether we want the government
24 doing it. I'll take a bad -- but free press -- any
25 day," unquote. Thank you, Susan Estrich.

1 The second quote is from an editorial in
2 my favorite newspaper, the Pottsville Republican:

3 "These (bills) throw the baby out with
4 the bathwater.

5 "The media should continue to exercise
6 restraint. Rape victims and women's advocates should
7 continue to battle society's prejudices. And lawmakers
8 should stay clear."

9 Thank you.

10 CHAIRMAN CALTAGIRONE: John Bull.

11 MR. BULL: Thank you, Mr. Chairman.

12 I will not read my statement because I
13 know you have it, but there's a lot of stuff in there
14 so maybe I can summarize it and expand upon it in these
15 opening remarks, if that's permissible.

16 As it says, I am representing four press
17 associations, no one individual newspaper or broadcast
18 station. We feel that, as has been said repeatedly,
19 there is no need for this legislation because there are
20 no abuses that it would correct. I can tell you that
21 despite comments you've heard today from Ms.
22 Morris-Smith and Representative Daley, we and the
23 groups that I represent know of no instance in this
24 Commonwealth where a broadcaster or a newspaper has not
25 withheld the name of a rape victim or victims of other

1 sexual abuses. If there are some, I would like to know
2 about it.

3 To use the New York Times case as the
4 touchstone to see a need for legislation I think skews
5 the whole equation. The New York Times case is so
6 unique and so rare that it has attracted a lot of
7 attention by the very simple fact that it is indeed
8 unusual for a newspaper or broadcast station to
9 identify the name of a rape victim. I don't see the
10 need for passing legislation based on one or two
11 instances when a newspaper has exercised its right.
12 You also ought to be reminded I think that even though
13 the New York Times disclosed the name of a rape victim,
14 the alleged rape victim in the Palm Beach case, no
15 other paper or broadcaster in Pennsylvania picked that
16 up. Many of us subscribe to the New York Times
17 service, many of us had that very story in our hands
18 that was printed in the New York Times and we
19 voluntarily, as we always do, chose not to print that.
20 Many people in Pennsylvania read the New York Times. I
21 mean, it's a shock to me from the Philadelphia
22 Inquirer, but it happens to be a fact of life.

23 REPRESENTATIVE HAGARTY: Only Sunday.

24 MR. BULL: I wish that were true.

25 Nonetheless, even though we knew that a lot of people

1 in our area knew the name of the victim by reading it
2 in the New York Times, that did not compel us to be
3 competitive to the extent that we ourselves would then
4 print the name. We believe we should not print the
5 names, and we do not, even in the face of competition.
6 People always talk about this whole shibboleth that the
7 press is so competitive that if one violation occurs
8 everybody will fall into it with lockstep, and that is
9 not true.

10 The second overriding concern that my
11 organizations have with these bills is that they come
12 perilously close to imposing legislatively journalistic
13 ethics that are already in existence at newspapers and
14 broadcasters. Representative Daley talked repeatedly
15 about the fact that there are no written policies
16 regarding the use of publication of sex victims' names.
17 That is absolutely not true. To the contrary, almost
18 every newspaper and broadcaster has its own set of
19 in-house regulations in writing which can be cause for
20 dismissal and firing of employees if violated. Every
21 newspaper and broadcaster belongs to a professional
22 organization, each of which has its own separate codes
23 of conduct or ethics and each of which say you shall
24 not print the names of sex crime assaults. There is
25 ethics in this profession. The very fact that we

1 voluntarily, and I stress voluntarily, withhold the
2 names of victims would indicate that there is certainly
3 some kind of ethics that play in this case.

4 The bills also threaten to impede the
5 free flow of information to the public. In the
6 specific instances of these bills, I don't have any
7 particular quarrel with the way in which it's done or
8 proposed, anyway, because you are going to the source
9 of the information, which is the prosecutors and the
10 police. That situation already exists. That is not
11 new. We have all lived with that and we can survive
12 under those circumstances. Philosophically, I'm not
13 sure it's a great idea to impede information going to
14 the public, but I don't quarrel with it all that
15 deeply.

16 I'll avoid the compelling temptations to
17 flyspeck the legislation as it's been drafted, but
18 that's already been done, at least when Representative
19 Daley spoke, and we can get into that if you really
20 want to. But the overriding concerns that we have are
21 that this is inappropriate, it is, while
22 well-intentioned, I have no doubt it is approaching the
23 whole problem in a very simplistic manner. Some of the
24 issues that newspapers and broadcasters deal with on a
25 day-to-day basis are enormously complex and they

1 involve what Representative Daley called balancing. We
2 are balancing the rights of the individual and the
3 privacy concerns and the sensitivity to victims of
4 crimes with societal needs. Do neighbors need to know
5 that their whole neighborhood has been robbed or
6 burglarized in the last month so that they can protect
7 themselves? I think yes. There are needs, and we can
8 discuss them if you need to, why information is of
9 public benefit. Only an informed society can decide
10 what kinds of laws are needed. If you cut off the
11 flow, if you do not have an educated society, you're
12 operating in a vacuum. We suggest that these bills
13 should not be adopted.

14 Thank you, Mr. Chairman.

15 CHAIRMAN CALTAGIRONE: Will you all stand
16 for questions?

17 Okay, I have a few of my own.

18 MR. BULL: I thought you would.

19 CHAIRMAN CALTAGIRONE: I am very, very
20 interested in one of your statements about journalistic
21 ethics. Let me give you a couple scenarios, and I
22 would like to find out what these journalistic ethics
23 comprise.

24 City editor -- we're talking about people
25 -- city editor involved in four or five drunk driving

1 situations, one involving an accident with a car,
2 because he's so friendly with the local police is never
3 arrested, although other reporters and other people on
4 the staff know that this has occurred. What would you
5 do if this was a member of your staff?

6 MR. BULL: Personally, I would fire the
7 son of a bitch. I would demand that the police
8 exercise their responsibilities under the law, and I
9 would publish all of that on page one of the next day's
10 newspaper.

11 CHAIRMAN CALTAGIRONE: How about a
12 reporter that almost O.D.s on cocaine and is taken to
13 the hospital and it's not reported? What would you do
14 then?

15 MR. BULL: If it's not reported to
16 authorities?

17 CHAIRMAN CALTAGIRONE: Yeah.

18 MR. BULL: I would not publish that.

19 CHAIRMAN CALTAGIRONE: You would not
20 publish that?

21 MR. BULL: There's no basis--

22 CHAIRMAN CALTAGIRONE: Would you keep
23 them on your staff?

24 MR. BULL: Yes.

25 CHAIRMAN CALTAGIRONE: You would keep

1 them on your staff?

2 MR. BULL: If he was charged with a
3 crime, I would suspend him pending the outcome of the
4 trial.

5 MR. NORTHRUP: May I add that probably
6 under the new Disabilities Act you're going to have to,
7 regardless of whether you want to, but you might handle
8 it in a number of ways. It would depend on the
9 circumstances, but I think you might be looking to for
10 getting him some help. Depends on whether it's
11 affected his reporting. If it affects his reporting,
12 he's out of there.

13 CHAIRMAN CALTAGIRONE: How about if
14 there's a member of the staff of a newspaper that's
15 selling cocaine right within the building where the
16 publication is being released?

17 MR. NORTHRUP: I'd have the police come
18 in and arrest him. I would have no problem.

19 MR. BULL: Summary execution.

20 REPRESENTATIVE HAGARTY: That's what the
21 legislature wants to do.

22 CHAIRMAN CALTAGIRONE: Well, I'm leading
23 to a point, as you well know, dealing with this
24 legislation and the situations we're talking about
25 because what I'm telling you right now have been actual

1 cases. I'm not pulling things out of the air. This
2 has been going on. Because of the relationship in many
3 of our small communities, and even in the larger
4 communities, with the police and the reporters that
5 cover those beats, they get privileged information all
6 the time. And if a reporter happens to throw a naked
7 woman out of his house and the police come and that
8 goes unreported, and if he gets involved in an
9 altercation abusing a woman and/or pregnancy or
10 whatever else, it seems like there are a lot of double
11 standards, but we in public life and others, women that
12 are involved in assaults and/or rapes, are exposed to
13 the full gamut of the "sunlight," okay. Somebody
14 mentioned that sunlight and I found that interesting,
15 and also the sunlight that is best if there's
16 disinfectant used, and I think to myself, are we
17 operating on a double standard here? I mean, the media
18 types have more public recognition than any of us on
19 this panel, any of us on this panel.

20 MR. NORTHRUP: I don't disagree with
21 that, although just as you would consider yourself an
22 individual legislator, and each one of you is, I don't
23 think you would want to be labeled all of the
24 legislators would be labeled because of the conduct of
25 one of you. We are individual newspapers with many

1 different backgrounds and absolutely I could not say
2 100 percent pure in each individual.

3 CHAIRMAN CALTAGIRONE: How do you protect
4 the individual rights when they've been besmirched and
5 how do you make a person whole after they've been
6 wronged by the media? Tell me that. What's the way
7 that you handle that with your medias?

8 MR. NORTHRUP: Okay, let me add one thing
9 to this, that we're talking about media rights, et
10 cetera.

11 CHAIRMAN CALTAGIRONE: Oh, yes, that's
12 what this is--

13 MR. NORTHRUP: But they are not media
14 rights.

15 CHAIRMAN CALTAGIRONE: Well, you also
16 have individual rights, and I daresay this, with my
17 background of early American history and of what this
18 country and the Revolution was all about, the
19 individual rights are what precipitated the
20 Revolutionary War in this country and the writing of
21 the Constitution. The individual rights are the most
22 sacred rights that we hold. Nonsense on all the other
23 community stuff that goes on. The individual rights
24 should be paramount.

25 MR. NORTHRUP: Right, and under those

1 First Amendment, you as an individual have the right to
2 freedom of speech, freedom of the press. You can start
3 your own paper, you can pass it out, you can mail it.

4 CHAIRMAN CALTAGIRONE: Oh, I hear that.

5 MR. NORTHRUP: You mail out whatever you
6 want as a legislator, at public expense too, so you
7 have that opportunity, and that is where that accrues.

8 CHAIRMAN CALTAGIRONE: The media is
9 filthy rich and there are so many overlapping--

10 MR. BULL: Some are, some aren't.

11 Excuse me.

12 CHAIRMAN CALTAGIRONE: --there are so
13 many overlapping enterprises within the media itself
14 that own television, radio, newspaper and everything
15 else, you know. Some of my colleagues may or may not
16 want to jump in on some of this because it doesn't
17 matter to me, you know. I've had my time with the
18 media, but I'll tell you this, there's a responsibility
19 that you have, too, that I think you say you take very
20 dearly and carefully, and sometimes I wonder just how
21 dearly and carefully you take that when it concerns
22 your own. You talk about policing everything else
23 under the sun, and I wonder how you police your own and
24 where are the ethics?

25 MR. BULL: Mr. Chairman, you're using a

1 scattershot blunderbuss approach here which is very
2 difficult--

3 CHAIRMAN CALTAGIRONE: Well, that's
4 exactly what you have been doing here with us and this
5 committee today.

6 MR. BULL: We have? I thought we were
7 rather specific in our concerns with these bills, but
8 maybe you didn't get a chance to read my statement yet.

9 CHAIRMAN CALTAGIRONE: I listened to you
10 very intently.

11 MR. BULL: I have suggested to you
12 already some way, in answer to your first question of
13 how we would police our own house. In the examples
14 that you then gave you hypothesized that in each case
15 involving the reporter selling cocaine, et cetera, they
16 were unreported instances. How can we in the world
17 report something which is unreported when there is no
18 police action, when there is no legitimate basis for
19 reporting it? Why would you want us to take a reporter
20 who we may have heard gossip wise in the office had
21 done something illegal or unethical or whatever, how
22 could we justify publishing that when we would not do
23 the same thing for a private individual? The press
24 can't make this stuff up out of thin air, as you seem
25 to suspect that we can.

1 CHAIRMAN CALTAGIRONE: No, no, no, no,
2 no. I didn't say that.

3 MR. BULL: There is no double standard.

4 CHAIRMAN CALTAGIRONE: No, I didn't say
5 that.

6 MR. BULL: If the crime is reported, Mr.
7 Chairman, if it's reported, which is not your
8 hypothesis, we will report it as well. If we don't,
9 then we have a real problem, an ethical problem within
10 our own industry, which I submit does not exist.

11 CHAIRMAN CALTAGIRONE: I think there is
12 an ethical problem, and I'll tell you why. The
13 relationship with police beat reporters and many of the
14 editors and many of the other reporters in the smaller
15 communities, and it may even happen to an extent, and
16 I'm not saying every reporter, I didn't indicate that.

17 MR. BULL: I didn't say you did.

18 CHAIRMAN CALTAGIRONE: But because of
19 those relationships, things do not get reported when it
20 involves the media types.

21 MR. BULL: My answer to you is twofold.
22 It is two parties' fault, if that is the case.

23 CHAIRMAN CALTAGIRONE: It has been
24 happening.

25 MR. BULL: Then it is the fault of the

1 police for not filing charges, and they damn well
2 should, and if they do file them, they should be
3 reported and they will be reported. But you can't
4 report a charge that isn't filed.

5 CHAIRMAN CALTAGIRONE: That's called
6 suppressing evidence, suppressing information, and I'll
7 tell you how it works, if you don't know. Because of
8 the relationship with certain police officials keeping
9 IOU's in files on certain selected individuals
10 throughout a community or communities, it is then used
11 for whatever advantage whenever it's needed. And it
12 doesn't go on?

13 MR. BULL: Not that I know of.

14 You talk about suppressing evidence.
15 What are you doing? If you know about these things,
16 why don't you come forth?

17 CHAIRMAN CALTAGIRONE: Um-hum.

18 MR. KEVLIN: Mr. Chairman, may I speak to
19 that point?

20 CHAIRMAN CALTAGIRONE: Go ahead.

21 MR. KEVLIN: I think that I have two
22 reactions. One is, I think it's clear that ethical
23 standards vary from publication to publication, and I
24 remember at one point working for a paper where if
25 anyone was involved in any sort of police activity, the

1 report was published on the front page, and I remember
2 it because I had a Ford Torino with a V8 engine at the
3 time which I ended up -- I assumed it was the last V8 I
4 would own, and I ended up in a river and ended up with
5 a story on the front page of our newspaper. Beyond
6 that, I think, you know, obviously the standards are
7 different from publication to publication, and I think
8 competition is the best way to combat cover-ups by any
9 particular publication.

10 Now, in our situation, happily we have
11 competition from a little paper called The Shenandoah
12 Herald up the road which would be delighted to report
13 if our city editor was arrested for drunk driving. And
14 I think looking down the road all sorts of different
15 types of media are coming to the fore. FAX newspapers
16 are starting to show up, cable TV channels are starting
17 to put on their own news reports, and I think we can
18 hope that in the next several years that we're going to
19 see this type of healthy competition which is going to
20 provide more self-regulation within the industry. So I
21 think that as I said in my prepared remarks, that
22 things are going in the other direction. And so that
23 these particular bills are not the answer to your
24 concerns.

25 CHAIRMAN CALTAGIRONE: Well, I

1 respectfully disagree because I think that what was
2 testified to here today shows cause for concern amongst
3 many women that have been abused sexually and otherwise
4 that need a degree of protection, that need some
5 anonymity, and that, you know, you get the information
6 in court anyway at some particular point in time. I
7 don't understand the necessity or the overzealousness
8 of certain types of information, you know, when certain
9 people feel a need to know, a need to know. And where
10 is that balanced in the public good?

11 Questions?

12 Bob.

13 REPRESENTATIVE REBER: Thank you, Mr.
14 Chairman.

15 Sitting here listening to your comments,
16 and I can't necessarily disagree with the concepts that
17 are being talked about but also the principles that are
18 of concern to you that may be infringed upon with
19 legislation in the form that's here, but let me ask you
20 this from the standpoint of looking to some process
21 that might protect the best of all worlds for all
22 parties concerned. What are your thoughts on a
23 situation which would in essence put an initial
24 statutory or legalized restraint upon the news media
25 from making the disclosure but providing a mechanism in

1 the statute which would allow you, for whatever
2 concerns would necessitate at that time when there is
3 that feeling that apparently existed with NBC to have
4 the statutory procedure set up where you could go in,
5 if you were the initiating paper could go into the
6 court, petition the district attorney where the
7 prosecution is pending, go into an in camera proceeding
8 with a judge and put everything on the table as to why
9 you feel, NBC, that this has to be made known? Do you
10 think that particular kind of concept, obviously off
11 the top of my head, not refining it out, is a way that
12 there could be an appropriate balancing without
13 infringing upon the so-called primordial position that
14 is afforded to the First Amendment?

15 MR. BULL: I would view that as a very
16 good faith attempt to try to resolve a difficult
17 problem. Unfortunately, I think it puts the judiciary
18 in the position of being the editor or news director of
19 a broadcast station, a role which I think is
20 unsuitable. I also think it's unconstitutional. I am
21 not comfortable with going to you as a judge, or
22 Representative Caltagirone if he's a judge, and saying,
23 can I print this? The principle is a bad principle.

24 REPRESENTATIVE REBER: Can I interrupt
25 you a second?

1 MR. BULL: Sure.

2 REPRESENTATIVE REBER: Is this any
3 different than the powers that we confer upon the
4 judiciary to make a determination whether to
5 statutorily be the one who has to make a determination
6 to pull the plug or not on a person who is in a coma,
7 on life support? We convey that kind of consideration
8 with them all the time. Day in, day out we convey that
9 to the judiciary to make the determination in custody
10 disputes, determination of parental rights, in granting
11 adoptions and what have you. There's just a plethora,
12 in my mind, of calls they have to make, decisions they
13 have to make that frankly are as equal to, or in my
14 mind even more difficult than the one that we're just
15 discussing.

16 I guess what I'm trying to do is find
17 some common ground that is fundamentally fair. I mean,
18 there are other tests besides the balancing test, and
19 that's the decision. If any of you or anyone else
20 would have any thoughts along those kind of lines, you
21 know, I'd appreciate hearing from you because if in
22 fact this ever comes before the full committee for a
23 vote, believe me, what you see here today and what we
24 are talking about today certainly will not be the way
25 that it travels out of this committee, if it travels

1 out at all.

2 And shifting gears, and I do appreciate
3 the Chairman for calling this hearing on these
4 particular bills because I've been here 11 years and
5 I've never had the opportunity to have representatives
6 of such a diverse media group in front of us. I have
7 something that I would like to ask you, sort of
8 editorializing now myself, as to some extent the
9 Chairman was doing.

10 What are your thoughts upon requiring the
11 editorial page, the editorial writer to simply put his
12 name on each and every editorial written in a newspaper
13 in Pennsylvania when he writes about someone,
14 identifying someone, holding that person out to
15 legalized ridicule for whatever purpose but yet hides
16 behind a blanket column without a name or without a
17 face? I would like your thoughts on why an editorial
18 writer, and some editorial writers do do it, and my
19 concern is why don't they all do it?

20 MR. BULL: I think historically the
21 editorial page was viewed as the opinion of the paper.

22 REPRESENTATIVE REBER: But I have editors
23 tell me that that's not true when you asked them why
24 did you do this number, you know, on Joe Smith, they
25 say, well, that's Johnny Jones on our staff. That's

1 not the paper.

2 MR. BULL: I say that, too.

3 REPRESENTATIVE REBER: Well, then why did
4 you publish it? Well, he gets 85 pops a year.

5 MR. BULL: I think historically that is
6 the case. In this day and age when in many, many
7 papers the news department is independent and separate
8 from the editorial page, they obviously do not
9 represent my news department when they write editorials
10 in the Philadelphia Inquirer. I don't, frankly,
11 personally care what position they take on issues
12 because it will not affect the way my reporters cover
13 and write and photograph the news. So whatever their
14 opinion is is independent.

15 I think the anonymity came from the fact
16 that it was supposedly the newspaper's voice. I think
17 that's a fiction which no longer exists. I don't think
18 there's any prohibition against putting your name on an
19 editorial if you write it. Most times when it's done
20 it's done as an op ed page column and their name
21 appears on there or they have their own column.
22 There's nothing wrong with publishing their name and I
23 don't have any problem with that. I do have a problem
24 with legislatively mandating what we do within the
25 newspapers' newsrooms, however, so I would object to

1 legislation, but I don't care if anybody puts their
2 name on an editorial.

3 MR. NORTHRUP: As a family newspaper
4 owner, been in the family 80-some years and almost all
5 of us came up through the newsroom and we do determine
6 the editorial policy, and while we don't have signed
7 editorials, right above it it has my name and my
8 brother's name. I'm listed in the phone book. I don't
9 have a secretary screening my calls, they come directly
10 to me. I write a column on the side on which I express
11 personal views that would be maybe different than, a
12 different approach than I would do editorially. I
13 write some of the editorials, some of my staff write
14 the others. Basically, the policy is set by us and
15 it's known in the community. We've been there 183
16 years, and if people don't know where that editorial
17 comes from, they obviously aren't newspaper readers.

18 REPRESENTATIVE REBER: In that 183 years,
19 has anyone other than the brother or yourself or who's
20 ever name dating back in the ancestry written an
21 editorial other than those people?

22 MR. NORTHRUP: In 83 it really has been
23 in the family. Yes, they have.

24 REPRESENTATIVE REBER: See, right there,
25 that causes me some concern right off the bat.

1 MR. NORTHRUP: Remember, they're writing
2 the editorial not as dictated but, you know, in the
3 smaller family paper we have continuity. We have
4 people that have been there 20 and 30 years. If they
5 haven't figured out the policy by then, we've got some
6 mental problems with them.

7 REPRESENTATIVE REBER: I don't have as
8 much a problem with that but a lot of newspapers these
9 days, and some of us here on the panel have a hard time
10 without a score card on a week-to-week basis who's
11 calling the shots anymore because of the evolution and
12 change.

13 MR. NORTHRUP: Call up and ask. Call up
14 and ask. You know--

15 REPRESENTATIVE REBER: I'm not worried.
16 I can find out or know or will find out, but, you know,
17 a lot of people like to read and consider the source,
18 and it would just be nice if they knew that, and I
19 apologize for taking the time, Mr. Chairman.

20 MR. NORTHRUP: Corporately and libel, the
21 newspaper is responsible for those editorial opinions.
22 You get sued along with, if the writer wrote it, the
23 guy who wrote it. I get sued at the same time, you
24 know, all of that kind of stuff.

25 REPRESENTATIVE REBER: I understand.

1 MR. NORTHRUP: I get sued by whatever
2 the reporters write, also.

3 REPRESENTATIVE REBER: I think a lot of
4 times they won't even sue the home paper, maybe just
5 the individual who perpetrated--

6 MR. NORTHRUP: No, they all sue the
7 newspaper.

8 MR. BULL: Would that were true.

9 CHAIRMAN CALTAGIRONE: Representative
10 Gerlach.

11 REPRESENTATIVE GERLACH: Thank you, Mr.
12 Chairman.

13 I found this testimony here today very
14 fascinating. It really is interesting to hear the
15 arguments pro and con on this issue, and I guess with
16 any tough issue that's what makes it tough is that
17 there's valid points on each side and it's difficult to
18 weigh those many times and you do it based on your own
19 experiences and your own values and your own judgments.

20 I guess it's almost a schizophrenic
21 situation here to the extent that the proponents of
22 this say that we need to have in place a statute which
23 prohibits the revelation of the name of a sex crime
24 victim and you have yourselves on the part of the
25 media, newspaper and radio, et cetera, saying and we

1 don't do it. We don't publish it. We know of no case
2 in Pennsylvania where that's done. So there seems to
3 be agreement there between the two, but yet when it
4 comes to the word "statute," that's where the
5 divergence occurs, the one group saying we must have a
6 law and your group saying we'd like to do it ourselves.

7 My first question is, why do you think it
8 is in Pennsylvania, based on your knowledge, that media
9 does not publish the identity of the rape victim? Why
10 do you think even though the media believes strongly in
11 the First Amendment and freedom of speech and press and
12 the need to get news and information out to those
13 readers and those listeners, why don't you do it then?

14 MR. BULL: I think, if I could answer, I
15 think it's because that we, ourselves, are humans. We
16 are sensitive. We have families of our own. We're not
17 machines sitting up there putting out a newspaper. We
18 have compassion just as anyone else does. We have an
19 obligation in the back of our mind to pass news on to
20 the public. But we are not monsters. We are sensitive
21 to the needs and the desires and the trauma that
22 victims go through. So we voluntarily do that.

23 This is not unique to Pennsylvania. This
24 is unique to every State in the country. Even in Des
25 Moines, which won a Pulitzer Prize for reporting the

1 difficulty that that rape victim went through, that
2 story was written only because the victim herself came
3 forth and said, I want to erase the stigma. I want my
4 story told, and the Register-Tribune hesitated, and
5 they said, well, okay I guess we'll go along with that,
6 and they did. But to this very day their policy
7 remains we will not publish the names of rape victims.

8 REPRESENTATIVE GERLACH: Okay.

9 MR. NORTHRUP: I was going to say, many
10 newspapers also are very sensitive on suicide and won't
11 publish them unless it's done in a public manner that
12 creates news. If it's kept very closely, you know,
13 within the family, this is not done.

14 I would add to John's point that perhaps
15 we operate politically as you do. We sense what our
16 public wants and can tolerate and feel. Pictures of
17 dead people in accidents or in war on the front page,
18 for instance. I can give a very good argument for
19 picturing a dead body in an automobile accident.
20 Absolutely horrible. We kill 30,000 people a year and
21 we should be talking about this and show how horrible
22 it is, but when we do that, and even glimpse of a body
23 in our very conservative area - Washington, Greene
24 County - people just go bonkers. It hardly is worth
25 the hassle. And I think that there is some response on

1 that level, too. As I said, I have some problems of
2 withholding some of these names in certain
3 circumstances. It gives me some fits of conscience
4 because of the accused.

5 REPRESENTATIVE GERLACH: But you're
6 saying in Pennsylvania to the best of your knowledge,
7 collectively, that no newspaper or radio has
8 intentionally published the name of a rape victim.
9 Let's deal with the sex crime victims, because that's
10 what this legislation bringing us here today is about.
11 You know of no instance where the media has published
12 the name of the victim?

13 MR. NORTHRUP: Two instances in our own
14 county. The victim of a rape that occurred, she was a
15 courthouse employee, she was raped by a trustee, her
16 name was not revealed, but she turned around and sued
17 the county for civil damages and her name appeared in
18 the paper--

19 REPRESENTATIVE GERLACH: That's a
20 different story. She impliedly then consents to put
21 her name out to the public when she files suit, which
22 is a public record.

23 MR. NORTHRUP: Number two, there was a
24 jailhouse rape of a male inmate who was in there for a
25 DUI 90 days and his name was used because I think that

1 it came out initially as assault and battery or some
2 other kind of disturbance and then later evolved that
3 he was raped by the other inmates. In those cases
4 those names were used and we saw no way out of that.
5 And so -- we do use the -- well, we may use the
6 father's name in an incest but we will not identify,
7 we'll say a child. Now, that's border line, but
8 that's--

9 REPRESENTATIVE GERLACH: Okay. But I
10 guess what I'm getting to in my questioning is by you
11 telling me in your testimony that that's the situation
12 in Pennsylvania, and again, maybe that's the way around
13 the rest of the country but let's deal with
14 Pennsylvania, what you're saying is you as the
15 decisionmakers as to what news ought to go out there to
16 the public, the consuming public, you've made the
17 determination that while you do strongly believe in the
18 right to disseminate the information, you've made a
19 value decision in this particular kind of case that
20 you're not going to do it, and you're doing that
21 voluntarily as a result. So if that's the case, isn't
22 it not then the fact that you've decided yourselves
23 that the public's want or need, depending upon what
24 word you want to use, to know is outweighed by the fact
25 that the victim of the rape or the sex crime should not

1 be known? Is that what you're saying?

2 MR. BULL: I guess in effect, I might
3 throw out the caveat that societal interests change,
4 and so while we today may have this position because we
5 mostly are reacting to public considerations I think,
6 that may change.

7 REPRESENTATIVE GERLACH: In other words,
8 your compassion may change as to what you testified to?

9 MR. BULL: Well, I'll give you an
10 example. When I started in this business 30 years ago,
11 it was very rare you would ever see cancer listed as a
12 cause of death. It was voluntary, we could have
13 published that, but it was viewed as very, very
14 sensitive and you never did that. That's long since
15 gone. Until very recently you never saw HIV virus
16 given as a cause of death. It now is, and now, in my
17 paper at least, even now we see demands from survivors
18 that they want that as the cause of death, and we have
19 a hesitation so now we finally say, well, if you really
20 insist, we'll print it. So society interests change
21 and we might some day sit here and say, everybody
22 thinks we should publish the names of victims. If you
23 follow Ms. Brownworth's logic, if that becomes popular,
24 as you were asking back there, if that becomes the
25 popular society view of rape that all names should be

1 published, I'm sure we would go along with that.

2 REPRESENTATIVE GERLACH: Okay.

3 MR. BULL: But the rules that we are --
4 we do basically what the victims wish us to do.

5 REPRESENTATIVE GERLACH: Okay. Well,
6 understanding that then, just trying to again put all
7 this together where you seem to have so much agreement
8 on the issue in principle but the question is whether
9 or not to have a statute or not over it.

10 MR. BULL: That's it.

11 REPRESENTATIVE GERLACH: It then comes
12 down, I guess, to that question, whether or not we as a
13 legislative body ought to create a statutory principle
14 as compared to a voluntary principle that most it seems
15 of those in your business follow anyhow. And if that's
16 the case then, I guess what I have to come down in my
17 remarks or my questioning is, why should there not be a
18 statute, if it is the democratic will of the people
19 that elect us to have such a statute, why should that
20 not take precedence over one particular slice of our
21 community being the media's voluntary principle not to
22 disclose these names and whatever?

23 MR. KEVLIN: If I could speak to that
24 from a slightly different perspective.

25 Our view in not printing the names of

1 rape victims is purely practical. It is one of the
2 most underreported crimes in the country, and we don't
3 want to be part of the problem, and if by withholding
4 the names we can assist the judicial process, then
5 we're willing to do so. I think that one of the things
6 that's of concern to us is that this is one of a type
7 of dilemma that we deal with all the time. But, for
8 instance, the other day the family of -- an inmate
9 committed suicide in our county jail. The family came
10 in, they were all in a sweat saying that apparently in
11 our initial report we had identified this fellow as a
12 former prison guard from Kansas, and their belief was
13 that because of this identification, he was subjected
14 to harassment by the other inmates and ended up
15 committing suicide. So the question is, we start with
16 rape. Well, now, do we get into how much we identify
17 about people who are admitted to prisons?

18 Another issue that was quite hotly
19 debated and we got a lot of fairly negative reaction
20 to, there was a marijuana crop seized down around Pine
21 Grove. The task force went in, they were attacked by
22 dogs, they shot a couple of dogs. This little girl
23 comes running out of a house, "You shot my dog," in
24 tears. The parents show up, are taken away in
25 handcuffs, and the girl, we identified her by name.

1 Now, we got a lot of negative reaction from parents.
2 All right, so what's the next step? Should we then
3 prohibit newspapers from using the names of people
4 unrelated to a crime who happen to be on a crime scene?
5 So in the course of the editing process, you have the
6 reporter who has one idea of what the story should be,
7 the copy desk has another, the editor has another, the
8 publisher has another, and probably all of them are
9 partly right and partly wrong. Do you really want to
10 get into the middle of that? Should you get into the
11 middle of that? It's just a tip of the iceberg as far
12 as the enormous--

13 REPRESENTATIVE GERLACH: I agree, and you
14 raised good points there and I don't doubt that in fact
15 earlier I guess it was Representative Reber raised the
16 question of why take rape or sex crime victims and
17 separate them out with other crime victims, and I think
18 that's a whole other issue to explore and I think it's
19 a perfectly valid one to explore, but just trying to
20 keep the questioning and the testimony and the focus of
21 the hearing on this particular legislation dealing with
22 sex crime victims, rape victims, I just, and I guess
23 you pointed to it in your testimony, you saw that there
24 may be a need to put out there the name of the rape
25 victim for purposes of letting, say, neighbors know

1 that there was a crime committed in that neighborhood
2 and that that rapist is still on the loose. You know,
3 conceivably maybe that is a reason to do it, but it
4 seems to me you could also present the story in a way
5 without using the actual name saying, you know, a rape
6 was committed in the brown section of that city, and
7 you're still knowing it's in that area, you still are
8 saying the rapist is out there but you're not
9 identifying the victim.

10 MR. KEVLIN: That's right. And I don't
11 mean to be misunderstood. In the initial report we
12 said something like the Parkway section of Schuylkill
13 Haven and we didn't say, you know, such-and-such
14 address.

15 REPRESENTATIVE GERLACH: Particular
16 street or house number, yeah. Okay.

17 MR. BULL: Can I give a quick summary?

18 REPRESENTATIVE GERLACH: Yeah, you can.
19 I'm otherwise finished, Mr. Chairman, but thanks so
20 much for your--

21 MR. BULL: I think there are two reasons
22 why we would oppose legislation of any sort.

23 Number one, I think it would be
24 unconstitutional. Number two, I don't think -- I will
25 not concede the principle that legislation can be used

1 to run a newspaper or a broadcast station.

2 REPRESENTATIVE GERLACH: Well, it does
3 already in our defamation law, for example.

4 MR. BULL: That's right. That's right.

5 REPRESENTATIVE GERLACH: We have a
6 statute which does not allow you to say anything you
7 want at any time about anybody. You're restricted, so
8 the principle is already there and it's
9 constitutionally upheld.

10 MR. BULL: The principle is there when
11 you make error.

12 REPRESENTATIVE GERLACH: Yeah.

13 MR. BULL: And so I can live with that
14 because if we make error, we should be punished, and I
15 don't quarrel with that at all.

16 REPRESENTATIVE GERLACH: Well, it's more
17 than just error, to the extent that the statute
18 provides that if you are recklessly disregarding or
19 whatever, recklessly indifferent or whatever, the
20 statute says what your error is, it's not a voluntary
21 determination of what is an error, it's the court
22 determining whether or not ultimately, and perhaps a
23 jury, whether or not you have exceeded the bounds of
24 even what the Constitution has said what the free press
25 is or is not.

1 MR. BULL: The difference comes in that
2 you are reacting to what has already been in papers.
3 And as the Pentagon Papers case shows, the Doctrine of
4 Prior Restraint shows, we'll take the heat and the
5 responsibility for what we publish, but we don't
6 recognize anyone else having the right under our
7 Constitution to make the decision for us as to what we
8 shall or shall not print, because some day we may have
9 to print that he's not a Republican or Democrat, and
10 that's--

11 REPRESENTATIVE GERLACH: No, that's a
12 good distinction that you make. I agree with you
13 there.

14 MR. NORTHRUP: Can I? Once again, you go
15 to a little higher level on that and I think the
16 concern here is that power of government over anything.
17 The government, after all, it's not -- well, our
18 restriction is voluntary. If the name is still on the
19 record, it is open to the rest of the public for
20 whatever reason, they are still accessible. When the
21 government closes down, it is closed down. The
22 government has the right to police, the right to write
23 laws and the right to tax. Those are huge powers that
24 individuals and institutions do not have. That is why
25 I feel that government infringement, government power,

1 and government control must always be tempered, and I
2 think that's the issue, to me, rather than the
3 specifics of all the different reasons.

4 Excuse me. Thank you.

5 REPRESENTATIVE GERLACH: Well, thank you.
6 It's very interesting. I appreciate your comments.

7 Thanks, Mr. Chairman.

8 CHAIRMAN CALTAGIRONE: Representatives
9 Fajt, Heckler, Reber and Hagarty, in that order,
10 please.

11 REPRESENTATIVE HAGARTY: I'll leave
12 before then. It wasn't that erudite.

13 REPRESENTATIVE FAJT: Stick around, Lois.
14 I'm not going to talk long.

15 I just have a real quick comment to make.
16 After listening to all the information, I want to thank
17 all the people who participated today. From the
18 members of the media, I think it was Mr. Kevlin who
19 probably made the most poignant comment, at least to my
20 ears, today when you said something to the effect that
21 this really was legislation searching for a problem and
22 that I am very concerned about overgovernment
23 regulation. I know that sounds more Republican than
24 Democrat, which I am a Democrat, but I do have a
25 problem with that issue, and I have been tuned in to a

1 lot of the sexual assault crimes that Mr. Northrup
2 alluded to. He mentioned Mt. Lebanon School District
3 who has had some problems. That is a school district
4 in my area, and the media, in my opinion, has been
5 very, very responsible in reporting those crimes or
6 alleged crimes and keeping the victims' names out of
7 the newspaper, and I really am concerned about
8 overregulation of the media and thank you for bringing
9 your side of the argument to the table today.

10 Thank you.

11 REPRESENTATIVE HECKLER: Thank you, Mr.
12 Chairman.

13 I also have made my speech for the day,
14 so Lois, I think I'll be short.

15 I would like to comment, Mr. Chairman,
16 however that since we've wandered into some other
17 areas, perhaps if we could schedule a second hearing
18 and invite each of the local editors of our area
19 newspapers, this might be a very fruitful discussion.

20 MR. BULL: They are being held, I think,
21 in various sections of the State, I believe.

22 MR. NORTHRUP: I think that is planned.

23 MR. BULL: Through the PNPA, I think.

24 REPRESENTATIVE HECKLER: Oh, with regard
25 to this particular legislation?

1 MR. BULL: No, on general matters.

2 REPRESENTATIVE HECKLER: Great.

3 MR. BULL: But they are setting up
4 luncheon meetings or something throughout the State.

5 REPRESENTATIVE HECKLER: Well, I've
6 certainly chatted with my editors from time to time.
7 Somehow, the idea of having them in this context is
8 appealing, but whatever.

9 MR. BULL: If they have the switch here.

10 REPRESENTATIVE HECKLER: And since I have
11 a reporter from our local paper, and I'm sure that it
12 will get back, but at any rate, I'm being frivolous
13 here.

14 Two points did occur to me. One, we've
15 got one of those rare situations where we have an issue
16 of fact which has been raised in the testimony we've
17 heard as opposed to issues of opinion, which is
18 generally the case in legislative matters, and I'm
19 wondering, at the risk of messing up the court reporter
20 here, if I see that Ms. Morris-Smith is still present,
21 could you share with us any specifics that you have
22 with regard to newspapers or other broadcast media who
23 have violated the restraint which of course the
24 representatives of the press are indicating is uniform?

25 MS. MORRIS-SMITH: One concern that I

1 thought of as the members were presenting their cases
2 is that names have not been routinely divulged in the
3 media; however, other identifying information about the
4 victim, such as where they are employed. In fact, I
5 think that happened in this area quite recently, where
6 they were employed is where the alleged attack took
7 place. Information such as where they live.

8 REPRESENTATIVE HECKLER: When you say
9 where they live, by street address or general--

10 MS. MORRIS-SMITH: It can be very general
11 and it can also be very specific. And the information
12 in and of itself will identify who the victim is. So
13 that's a concern that we have.

14 REPRESENTATIVE HECKLER: I understand
15 that as a general principle, but I'm wondering, I mean,
16 frankly, and I'm not a newspaper--

17 MS. MORRIS-SMITH: Am I aware that it's
18 happened?

19 REPRESENTATIVE HECKLER: I'm wondering
20 about specific newspapers. Specific--

21 MS. MORRIS-SMITH: Yes. The Patriot.

22 MS. RAWLINGS: Well, the Patriot is the
23 incident where the employment was reported, where the
24 alleged attack took place. In Clinton County, I do not
25 have the name of the newspaper, I do have a copy back

1 in the office that I could share with you. Initially,
2 they listed the individual's name separately in the
3 report. Before it was all over with the name and the
4 address appeared in the report in the police blotter in
5 the paper.

6 Last night on WGAL, which I understand
7 one of the cases was mentioned here today where the
8 woman was, justifiably so, got a very long sentence for
9 helping her 8-year-old daughter to be raped, the
10 Patriot chose not to print the names because it would
11 identify the daughter, WGAL last night at the 11:00
12 o'clock news did identify the woman. So you then knew
13 what the daughter's name was and plus she has five
14 other kids.

15 So those are the kinds of concerns that
16 we have. Those are just a few off the top of my head.

17 REPRESENTATIVE HECKLER: Okay. And, I
18 mean, it occurs to me that for instance if a crime of
19 this sort occurs in a workplace that it might, I'm no
20 newspaper editor but that it might be very relevant or
21 appropriate to report that an employee of a particular
22 establishment. Now, if the establishment has two
23 employees and only one of them is a woman, that pretty
24 well pins it down. But if the establishment has 200
25 employees, I think that's just like a rape occurred in

1 your neighborhood.

2 MS. RAWLINGS: Exactly, and you're right.
3 And unfortunately, this was an establishment, a
4 convenience store, it was late at night when there was
5 one lady on duty. So, I mean, it doesn't take -- but
6 yes, those are judgment calls, but that's where the
7 difficulty comes in with, inconsistency with reporting
8 because there are not clear written guidelines and
9 policies. And while some victim survivors do want
10 their name published and they can deal with that and
11 they choose to, there's a lot of people who can't, and
12 I know the one instance in Clinton County where the
13 woman's address was printed, she had young children,
14 she was attacked not by somebody that she was
15 acquainted with, it was a stranger. By doing what they
16 did in the paper, they identified where she lived,
17 where her children lived, and he was still out. They
18 hadn't picked him up yet. That was the information I
19 had. Now, I know that's more rare than is the rule. I
20 admit that. But when those kinds of mistakes happen
21 they're devastating and have really serious
22 consequences.

23 REPRESENTATIVE HECKLER: Well, when you
24 say really serious consequences, the emotional impact--

25 MS. RAWLINGS: The emotional impact --

1 this individual left. Nobody could find her because
2 she left because she feared for her safety, which I can
3 certainly understand. With an investigation, do you
4 drop charges because of them not wanting to pursue it?
5 I mean, those are the other kinds of other risk factors
6 that come into play, and I am not saying all newspapers
7 do it in Pennsylvania or they do it as a rule, but it
8 does happen.

9 MR. NORTHRUP: May I, please?

10 REPRESENTATIVE HECKLER: Yes, please.

11 MR. NORTHRUP: I just want give a very
12 real situation that occurred when I was living over in
13 a suburb of Pittsburgh, a very small suburb, only 800
14 people there. There was a rapist loose and he raped
15 one person and nothing was said, the police didn't
16 report it, there were very small weeklies in there and
17 they could keep that down. Another person was raped.
18 We didn't, as residents, find out until later, and yet
19 all during this time my 14-year-old daughter was
20 walking back and forth at night through this same area.
21 I was absolutely livid. The potential for damage there
22 was much higher. We needed to have known right then
23 and there a rapist was loose, where that rape took
24 place, it was right at a church. And they needed to
25 know that. And that did not occur. Fortunately,

1 nothing more, but that one girl was raped because
2 nobody let it be known that there was somebody out
3 there. And plus no description, you know. The whole
4 bit. It was closed. So there are some other dangers,
5 too, that come back, just to remind it's not one-sided.

6 REPRESENTATIVE HECKLER: One other point
7 I'd like to explore briefly.

8 Mr. Kevlin, you mentioned specifically
9 Mindy Adams, a woman who was a rape victim in your area
10 of circulation. I assume, and we've actually had
11 several allusions now to the issue that we haven't
12 specifically articulated, which is the circumstances
13 surrounding the rape. I assume that Ms. Adams had no
14 prior acquaintance with the perpetrator of this crime.
15 Is that accurate?

16 MR. KEVLIN: That's right. That's right.

17 REPRESENTATIVE HECKLER: All right. I
18 think that we need to acknowledge, you know, having
19 been an advocate for the other point of view, that one
20 of the difficulties here is that that type of rape is
21 much less likely to carry any of the stigmas that the
22 victims are concerned about. The rapes, unfortunately,
23 that are bound up with all of this societal judgment
24 are the Kennedy type situation, the situation in which
25 there is some, if you will, some credibility or

1 possible credibility to the idea of consent, some
2 relationship which then immediately has everybody
3 wanting to try this case in the newspaper as opposed to
4 waiting until a jury gets it, if indeed there's
5 ultimately a dispute on the issue of consent.

6 So that I do think we need to bear in
7 mind, again, apparently for the most part at least that
8 kind of sensitivity is shown. But I think that there
9 is a big difference in the perspective of a victim who
10 has been, you know, raped while jogging in the park by
11 somebody who jumps out from behind a bush than a coed
12 on a college campus who is accusing her date for the
13 evening of having forcibly had relations with her.

14 I don't welcome any response, but I think
15 that point sort of speaks for itself.

16 Thank you, Mr. Chairman.

17 CHAIRMAN CALTAGIRONE: Representative
18 Reber.

19 REPRESENTATIVE REBER: I yield to the
20 lady from Montgomery.

21 CHAIRMAN CALTAGIRONE: Representative
22 Hagarty.

23 REPRESENTATIVE HAGARTY: As everybody
24 else was commenting and I hadn't commented on my
25 position on this, I am first pleased to hear that it is

1 the policy of the Pennsylvania news media not to report
2 the names of victims of rape. Although I think it is
3 heartening to think that the women's movement has made
4 such significant advances as to think that people do
5 not blame or judge a victim, I think that in individual
6 instances we need, where the victim wants to continue
7 to protect her name because society has not generally
8 moved to that purpose, I'm always concerned that we
9 philosophically kind of leap ahead of what can cause
10 harm to individuals, you know, in the rush to be where
11 we want to be, and so I am very pleased to hear that
12 policy.

13 And I came into this hearing thinking,
14 because I feel so strongly about the privacy of the
15 type of invasion that sexual assault is, that it is so
16 important to allow that anonymity to victims, I came in
17 favorably disposed to this statute. I became very
18 persuaded, though, and concerned about the
19 constitutional issue that you have alluded to, and as I
20 say, I'm heartened if there is not actually a problem.

21 My question as to the constitutionality,
22 though, is do you find it to be a constitutional
23 violation the way that the bill is drafted where it
24 applies to law enforcement and our not allowing them to
25 disclose information?

1 MR. BULL: (Indicating in the negative.)

2 REPRESENTATIVE HAGARTY: You're
3 indicating that is not a constitutional problem?

4 MR. BULL: I don't think so.

5 REPRESENTATIVE HAGARTY: I mean, that's
6 my reaction.

7 MR. BULL: I think the State has the
8 right to control, as the court has the right to
9 control, prosecuting and the State can control and the
10 police. I don't have any problem with that.

11 REPRESENTATIVE HAGARTY: It was my
12 reaction when I looked at this, and I was pleased to
13 see that that's what this bill did, because I don't
14 think that we should put or can put, the real issue was
15 whether or not we can put prior restraints on a
16 newspaper.

17 MR. BULL: The top pen said the same
18 thing. Right. If you really have to do something, if
19 you think there's a need to do it, then you do it with
20 the prosecutors and you leave the press out of it, and
21 then I don't think there's any problem with that.

22 REPRESENTATIVE HAGARTY: And I guess then
23 my question is, do you have any difficulty with our
24 barring prosecutors from releasing the names of sexual
25 assault victims?

1 MR. BULL: Not really. Not really.

2 REPRESENTATIVE HAGARTY: And I guess the
3 reason, and in some ways you made the argument yourself
4 for why I'm persuaded that perhaps we should consider
5 that favorably, and that is perhaps it ought to be our
6 judgment of changing societal views and not yours when
7 it comes to determining what law enforcement are to
8 release. And it was clear to me, as it should be, and
9 I find no criticism with that, that you're indicating
10 that it is in part a societal view, in large part, just
11 as it's a societal view that persuades me that we
12 should not release victims' names, and therefore
13 perhaps it is our obligation to determine, as the
14 elected officials, what standard we want on this issue,
15 just as you have determined it for yourselves.

16 Yes. I have two other comments.

17 MR. NORTHRUP: No, I would disagree with
18 John. I would have problems with it anyway.

19 REPRESENTATIVE HAGARTY: Well, I'm glad I
20 live in the Inquirer region then and not in Washington
21 County.

22 MR. NORTHRUP: I come back to my more
23 basic view. I'm concerned about the withholding of
24 information by prosecutors. The more information that
25 is withheld, the greater problem we generally have down

1 the line for favoritism, whether it's about editors and
2 reporters or whether it's about politicians or ordinary
3 citizens, and all of those kinds of things. So I have
4 some problems. I like to restrict -- I like to keep as
5 much open as possible in an open forum. I think it's
6 fairer and safer all the way around.

7 MR. KEVLIN: My concern about both bills
8 is the direction in which they're going. Now, for
9 instance, we depend on people to give us information,
10 and, you know, our newspaper isn't my newspaper or the
11 publisher's newspaper, it's the newspaper of everybody
12 in our community, so if something is going wrong within
13 the confines of county government or the prosecutor's
14 office, I want people to feel free to approach us and
15 give us that information. Now, certainly there are
16 policies of governing what information can be released,
17 but, you know, I would hate to think that anyone faces
18 some type of criminal sanction for approaching the
19 press and speaking to the press.

20 And I'll give you a for instance, again
21 in our neighborhood. There was a situation where a
22 doctor in Allentown was thought to be the source of all
23 the heroin addiction in the county. Apparently, he was
24 writing prescriptions to addicts and had been doing so
25 for 10 years. Now, we had a local police officer who

1 was very frustrated about this and the chief told him,
2 shut up, sit down. The task force told him, you know,
3 we'll handle it. The State Medical Board said they'd
4 handle it. He finally came to us and laid out the
5 whole situation and we went ahead and reported a story
6 on this, and the result was that the doctor has been
7 put out of business and is now facing prosecution.

8 Now, you know, I would not want that
9 police officer to then face -- as it is, you know, the
10 police chief has it in for him, the drug task force has
11 him targetted, and I wouldn't want him to face criminal
12 sanctions because he felt as a matter of conscience he
13 had to approach the press.

14 REPRESENTATIVE HAGARTY: You know, we
15 make judgments, though, in all kinds of instances about
16 the release of information. I mean, when I think about
17 the child abuse area, just an area that I'm familiar
18 with, I mean, we prohibit, I think, in some instances
19 with consequences to children, we prohibit the release
20 of information from Child Protective Service people to
21 law enforcement because of those privacy rights. I
22 mean, you know, we do it in so many arenas that I guess
23 the issue that we're debating, and I think it's a
24 proper debate, is the policy issue of whether we ought
25 to do it in this arena. But I don't think that we can

1 jump from saying because we've decided that rape
2 victims deserve special protection that that means that
3 there is some other category out there whom we're going
4 to protect next. The categories are all there. I
5 mean, this is not new that we prohibit disclosure of
6 certain information that we consider particularly
7 sensitive because it's a particularly vulnerable
8 population.

9 And so I think the policy debate is do we
10 want to do it in this area, not so much, you know, what
11 might come after this, because I think, and unlike, I
12 guess, some of the other members of the panel who've
13 said if we do it for victims of this crime we should do
14 it for other victims, we should do it for the accused,
15 I don't share any of those views. I think the reason
16 we're debating this is because we all recognize that
17 victims of sexual abuse have been victimized in a very
18 special way, with much more, you know, potential
19 judgment by others and much more potential emotional
20 damage, and so we are considering and I think only
21 ought to be considering this very special case.

22 MR. BULL: That's exactly right, and when
23 Representative Daley talked about extending this to all
24 other crime victims, that's real scary.

25 REPRESENTATIVE HAGARTY: I agree with

1 that.

2 MR. BULL: If I could clarify my earlier
3 answer, your question I thought went to whether or not
4 I considered it constitutional for you to try to impose
5 restraints upon police officers and prosecutors, not
6 the press.

7 REPRESENTATIVE HAGARTY: That was my
8 question. We did move to policy.

9 MR. BULL: Right. And my answer is yes.
10 I mean, like Bill Northrup, I'm not crazy about the
11 idea.

12 REPRESENTATIVE HAGARTY: I understand
13 that.

14 MR. BULL: But we certainly have a right,
15 in my view, to do that. You don't have a right to tell
16 newspapers how to run their newspapers. I think that's
17 the distinction.

18 REPRESENTATIVE HAGARTY: And I share that
19 distinction and that was my question because I guess in
20 my evolving thinking on the issue, I think if we're
21 going to determine the policy, clearly I want to be
22 voting in the way that's constitutional.

23 The only other comment I couldn't resist,
24 as probably a former prosecutor just to respond to
25 something you said, because you indicated your concern

1 about publishing the names of the accused, and the only
2 thing that went through my mind is I think there is a
3 distinction. An accused, and I guess it depends on
4 what point you're talking about, but the fact that the
5 police have made an arrest, we do empower our police to
6 have, if they are lawfully exercising their duties,
7 some level of evidence before that arrest is made, and
8 so I don't think we ought to equate, and I become
9 concerned when we confuse an accused and his or her
10 name being published and a victim, because there was
11 police conduct, and no, that doesn't mean he's guilty,
12 but yes, it does mean there was something that
13 occurred, and there's nothing that we should assume
14 that victim did.

15 MR. NORTHRUP: Very good. You pointed
16 that out.

17 REPRESENTATIVE HAGARTY: I couldn't
18 resist, as my former prosecutor self.

19 MR. NORTHRUP: I concur.

20 REPRESENTATIVE HAGARTY: Thank you.

21 CHAIRMAN CALTAGIRONE: We have one other
22 very quick, urgent question.

23 REPRESENTATIVE HECKLER: Right. I can
24 take a hint.

25 This is urgent to one extent. It occurs

1 to me that I have recently received mail from various
2 folks involved with the media about another piece of
3 legislation which may be coming before the committee
4 about--

5 CHAIRMAN CALTAGIRONE: It will be.

6 REPRESENTATIVE HECKLER: --about
7 confidential informants, and it just occurs to me that
8 if we indeed--

9 MR. BULL: What's the date for that
10 hearing?

11 CHAIRMAN CALTAGIRONE: You will be called
12 again.

13 REPRESENTATIVE HECKLER: Well, maybe I
14 will get my wish. It occurs to me that if let's say we
15 were to enact the legislation, some form of this
16 legislation, which you folks agree would be
17 constitutionally permissible especially that imposed a
18 criminal sanction on someone who discloses the identity
19 of the rape victim, let's say, it's not hard to
20 envision the scenario in which we then this name is
21 disclosed in the, you know, whatever newspaper, and the
22 reporter is asked, where did you get that information,
23 and obviously the response is going to be that is
24 privileged.

25 I assume that your view would be that

1 even if we do go forward in criminalizing the
2 disclosure of this information, that you would
3 certainly not want, you folks or your reporters, to be
4 called upon to disclose the source if it were
5 published.

6 MR. BULL: That's a fair assumption. If
7 that happens, you better appropriate more money for
8 jail cells because a lot of us are going to be on the
9 other side of the bar, and it ain't going to be the
10 Supreme Court.

11 MR. NORTHRUP: You have a basis in the
12 juvenile laws, but to give you a practical application
13 there, Tuesday night I got a call from one of the
14 Juvenile Masters that said, hey, Bill, you know, the
15 football star that you saw he didn't play, I hear you
16 guys are doing a story on why he didn't play and can
17 you keep that out of the paper? And I said, gee, I was
18 just thinking why hadn't we written a story already
19 about it, and I said no, I really can't withhold that
20 story. And he said, well, I can't tell you any of the
21 details. I said, I respect that, and I didn't ask it,
22 but I walked in the office the next morning and my
23 editor had all the details, all the background of why
24 he had been arrested, why he wasn't going to play, et
25 cetera.

1 Now, we did not use the whole background.
2 We just used that he had had a criminal violation and
3 the violation and parole and that's why he wasn't going
4 to play in the next three games, because he had been a
5 big star and it was all over. But this is the juvenile
6 law which you're basically protecting, but as far as
7 the information, it was all out there and I didn't get
8 it from the Master because he's specifically prohibited
9 and I didn't want to push that. So this information
10 comes out in a natural way, and in this case, do you
11 run the story about a juvenile because he's 16 years
12 old but he's the football star and everybody is saying,
13 where is he? And the answer is, well, you really can't
14 avoid that.

15 REPRESENTATIVE HECKLER: Thank you.

16 CHAIRMAN CALTAGIRONE: Gentlemen, I thank
17 you, and we'll conclude the hearing with the hope that
18 we can see you all here again when we have the shield
19 law.

20 MR. BULL: Oh, the shield law. I thought
21 you said confidential sources.

22 (Whereupon, the proceedings were
23 concluded at 2:45.)
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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