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TESTIMONY PRESENTED BY

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THE RAPE CRISIS CENTER, INC.

BEFORE

THE HOUSE JUDICIARY COMMITTEE

ON

HOUSE BILLS 1351 and 1362
THE RELEASE OF SEXUAL VIOLENCE VICTIMS' NAMES

SEPTEMBER 26, 1991

I am Pamela Morris-Smith, Executive Director of the Rape Crisis Center, Inc. located in Clarion and Jefferson counties. The Rape Crisis Center was formed in 1980 stemming from the needs of sexual violence victims who, at the time, had no place to turn for support. We provide crisis intervention, short-term individual and group counseling, legal and medical advocacy as well as community and school education/awareness programs.

The Rape Crisis Center is a member center of the Pennsylvania Coalition Against Rape (PCAR). As executive director of the center, I serve on PCAR's Board of Directors and the PCAR Legislative/Public Policy Committee. I wish to thank Representative Caltigirone and the members of the Committee for giving me the opportunity to present testimony on House Bills 1351 and 1362.

From the moment the media became aware of a Palm Beach, Florida woman's accusation that she had been raped by William Kennedy Smith, she became a figure of public notoriety and scrutiny. The woman's name, picture and the intimate details of her life became "public knowledge" due to the concerted efforts of NBC News, The New York Times and supermarket tabloids.

The incident in Palm Beach has rekindled the debate regarding the public's right to know and the privacy of sexual violence victims. The media, victim advocates, attorneys and the general public are struggling with this issue in an attempt to balance the needs of sexual violence victims and the freedom of the press. Just this past summer, New York joined with 20 other states to prohibit the release of rape victim's name to a limited degree.

The Pennsylvania Coalition Against Rape and its member centers have always maintained that the name of a sexual violence victim should never be released by the media without the consent of the victim. Historically, it has been our experience that the Pennsylvania media respected this position and chose not to divulge the identity of a sexual violence victim without the individual's consent.

As long as this continued to be the case, there did not appear to be a need for legislation.

However, soon after the media disclosed the name of the woman in the Florida case, newspapers in Pennsylvania began printing names of rape victims. Even more disturbing was that these newspapers were located in small, rural communities. To our dismay, newspapers choosing not to print the victim's name opted instead to print other identifying information such as the victim's address or place of employment. As a result, Pennsylvania's rape crisis centers began to rethink their position on the need for a legislative response.

The intent of the legislation introduced by Representatives David Mayernik and Peter Daley is to offer some sort of remedy for this problem. This legislation, like that of many other states, prohibits the release of the victim's name by specific groups in specific situations. The Rape Crisis Center, Inc., PCAR and its member centers support the intent of House Bills 1351 and 1362 and commend Representatives Mayernik and Daley on their efforts to protect the privacy of sexual violence victims. In practicality, both bills fall short of their intended purpose.

Neither bill applies to the release of identifying information such as the victim's address, place of employment, the familial relationship between victim and perpetrator, etc. Neither bill prohibits support personnel working in conjunction with individuals responsible for criminal investigation and prosecution, medical treatment or counseling from releasing the victim's name. The bills' provisions do not apply to victims of sexual offenses which are listed in Chapters 43, 59 and 63 of Title 18. The bills do not require a criminal penalty or fine for those individuals guilty of violating the provisions of the proposed law. Neither bill restricts the media from releasing such information once obtained. Nor do the bills create a cause of action for the sexual violence victim. In essence, the bills will do little to protect the privacy of sexual violence victims.

Representing the positions of the Rape Crisis Center and PCAR, I ask that these bills be amended to expand their scope, strengthen their intent and provide for accountability. Before addressing our specific recommendations or the merits of the amendment being offered by Representative Daley, I wish to address the arguments surrounding the protection of sexual violence victims' privacy.

When a woman, child or man is sexually victimized, the individual experiences a range of emotions - fear, confusion, anguish, isolation, self-doubt. Control over one's life has been stripped away. Critical to the healing process is that the ability to begin exercising control over one's life through decision making start as soon as possible. The victim must have the right to decide whether to disclose the sexual assault to authorities, friends, family or the media. Speaking to the media about one's own experience should aid, not hinder, the healing process.

The media has argued that their role is disseminating, not suppressing information and that names and facts add credibility. According to Michael Gartner, President of NBC News, "Names and facts are news. ...They give the viewer or reader information he or she needs to understand issues, to make up his or her own mind about what's going on." Gartner further stated, "...I oppose...the general belief that we should only print the names of rape victims who volunteer their names. In no other category of news do we give the newsmaker the option of being named." However, the media's routine practice of printing stories in which they do not identify their information source or the players involved directly contradicts Gartner's contentions. There are a number of reasons the media chooses not to identify these individuals but primarily it is for the reason of self-protection. Clearly, the printing of names is not necessary to lend credibility to a news report.

One of the roles of the media is to inform and that includes destroying incorrect impressions and stereotypes. By not naming names, the media contends it will perpetuate a conspiracy of silence. Clearly, the media does have the

power to inform the public and influence opinion; yet unbalanced and biased reporting represents a misuse of this power. This was demonstrated by the New York Times coverage of the Palm Beach case. The Times felt compelled to tell the reader that the alleged rape victim: 1) had a child out of wedlock; 2) frequented bars in the Palm Beach area; 3) had a "wild streak" in high school; 4) had a number of unpaid traffic tickets; and 5) that her mother had been married twice. What bearing do these facts have on whether the rape took place or not? This type of reporting does not break the conspiracy of silence. It perpetuates the myths and misconceptions held regarding sexual violence by placing responsibility for the assault on the victim's behavior and not the action of the perpetrator.

The Governor's Task Force on Rape and Sexual Assault of New York State conducted a survey of 750 daily and weekly newspapers, radio stations and television stations located in their state. Unfortunately, only 68 surveys were returned. However, these were surprisingly consistent. The findings of this survey were published in April 1990.

An overwhelming majority of respondents reported that they did not have a written policy for the reporting of sexual violence crimes but instead opted to have some type of informal policy. The respondents outlined the following premises of their informal policies:

- 1) The victim's name is not reported unless the victim is murdered.
- 2) The victim's gender and age are to be reported.
- 3) The victim's race, residence and education are generally not reported.
- 4) The victim's employment status and occupation may or may not be reported depending on the case.
- 5) The relationship between victim and the alleged assailant is usually reported. Exceptions, however, may be made to this rule if there is a familial relationship.
- 6) Rapes and sexual assaults of children and adults are reported in the same

manner.

7) Details such as whether the victim was injured, the relationship between the victim and the alleged assailant, and the events surrounding the case were viewed as relevant to reporting these crimes.

8) As much information about the alleged attacker that can be gathered is usually reported. One third of the respondents would report the attacker's name even if one could ascertain the identity of the victim.

The responses of the survey reflect an inconsistency in editorial policy which it turn leads to inconsistency when reporting sexual violence. The media is also known to make exceptions to their policy of not naming rape victims if the case is one of national interest. Three cases that have generated enormous public interest: the Central Park gang rape, the Palm Beach case and the Mike Tyson case. The Palm Beach case was the only case in which the victim was named.

The consequences of printing any information which may identify the sexual violence victim can be devastating. The myths and misconceptions that still dominate the public's opinion regarding sexual violence subjects the victim to ridicule, condemnation and stigmatism. Judgement is passed regarding the individual's lifestyle, economic status, relationship with the offender, etc. No other crime victim is made to feel "guilty until proven innocent." The releasing of such information may also put the victim and other family members at risk jeopardizing their personal safety.

Fear for personal safety and fear of public ridicule exasperates the victim's level of trauma. Already sexual violence crimes are underreported. In all likelihood, the uncertainty of whether the media will print identifying information will make victims even more reluctant to report the crime to authorities. In a poll conducted by Newsweek this April, 86% of the respondents felt that if a woman knows the media will make her name public she will be less likely to report the crime. An April 18 poll conducted by USA Today found that 46% of the women polled would be less likely to report if they knew their names would become public.

Fifty-seven percent of the respondents of the Newsweek poll felt that people tend to think negatively of rape victims. The Newsweek poll also showed that 77% of all respondents believe that the press should not print the names of rape victims.

While the majority of all debate surrounding this issue has focused on the responsibility of the press, we must keep in mind that the media must obtain the name of the victim and the details of the assault through some means. The majority of the information reported by the media is obtained from personnel within the criminal justice system. The reality is, if you restrict access to such information through one system, the media can obtain the information from another system, another person. Shouldn't the person or persons releasing the information share responsibility in protecting the privacy of sexual violence victims and be made accountable for their actions as well?

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

The Supreme Court of the United States has heard a number of cases in recent years that pitted privacy rights and the First Amendment. In the case The Florida Star v. B.J.F., the victim had sued the newspaper for printing her name in violation of Florida law that prohibits the publication of rape victim's names. While the Supreme Court ultimately ruled in favor of the newspaper, the opinion written by the Court does provide direction regarding the issue of a state's interest in protecting the names of rape victims.

Calling upon the court's ruling in Cox Broadcasting, the Court reiterated

that "if there are privacy interests to be protected, ...the States must respond by means which avoid public documentation or other exposure of private information." While the state does have the right to further a public interest such as protecting the identity of sexual violence victims, it must demonstrate its commitment by applying prohibition evenhandedly. Writing for the majority, Justice Thurgood Marshall stated, "Our holding is limited. We do not hold that truthful publication is automatically constitutionally protected, or that there is no zone of personal privacy within which the State may protect the individual from intrusion by the press, or even that a State may never punish publication of the name of a sexual violence victim."

Printing the names and addresses of sexual violence victims does not serve the public interest. While the framers of the Constitution wished to protect our freedom of speech, as well as that of the press, the First Amendment should not be called upon to defend irresponsible and potentially dangerous actions.

Our reading of the Daley amendment appears to take into consideration the points voiced by the Supreme Court ruling of The Florida Star v. B.J.F. We contend that to truly protect the identities of sexual violence victims and the state's interests, a statute must be formulated that is inclusive. To do less will not further the state's interest nor will it protect victims.