

HB 2255: EXPERT TESTIMONY IN SEXUAL ASSAULT CASES

September 8, 2010

Good Morning Chairman Caltagirone, members of the Judiciary Committee, law enforcement partners (i.e. District Attorney's office) and victim advocates.

I have been asked, and am pleased to attend this hearing as a representative of the Philadelphia Police Department. My name is John Darby, a Captain, in my 30th year on the police force. I currently am the Commanding Officer of the Special Victims Unit, a position that I have held since early 2002.

If I may contribute some background, the PPD's Special Victims Unit was formed and centralized in 1980 to provide a dedicated, specialized response to and investigation of all allegations of sexual assault and related crimes citywide, as well as child physical and sexual abuse by caretaker(s). Formerly known as the Sex Crimes Unit, the name was changed to the Special Victims Unit in 1998 to reflect the sensitive, personal and invasive nature of these crimes.

The purpose of this specialized Unit is to enable the Police Department to offer minimally threatening intervention by specially trained and motivated police investigators. The focus of adult sexual assault/child sexual abuse investigations is to establish all facts, evidence and supporting statements relevant to the case. Special Victims investigations are intense and emotionally charged. Fact-finding is conducted by a thorough and careful assembly of the case from the primary account of the incident(s) provided by the victim, as well as all collateral and corroborative sources of information.

Physical evidence, photographs, DNA/biological material, clothing, fingerprints, records and journals are collected to provide objective background to the allegation.

After assembling the facts of the case and establishing probable cause, the case is referred to the District Attorney's Family Violence and Sexual Assault Unit for review and approval.

The Special Victims Unit investigates approximately 5,000 cases annually.

From my perspective, as well as independent sources, statistically and otherwise, there clearly exists unique challenges to the successful investigation and prosecution of these cases. The Pennsylvania Coalition Against Rape cites probability of arrest at just over 50% of reported rapes.

The challenges begin with the alarmingly low rate of reporting. The U.S. Department of Justice estimates that only 36% of completed rapes, 34% of attempted rapes and 26% of other sexual assaults occurring between 1992 and 2000 were actually reported to police. At the same time, national crime victims surveys reflect that persons aged 12 years and older experienced, on average, over 400,000 such crimes annually. Many founded rapes go unreported to police because of fears, distrust- yes, including distrust of the police; self-blame and personal relationships. Some victims, especially but not exclusively children, are unaware that a crime has been committed against them.

A majority of rapes and related sexual assaults are not perpetrated by strangers, but rather by a current or former domestic/family member or partner, friend or acquaintance. National statistics, similar to our local breakdown at SVU, indicate that 32% of reported rapes and related sexual assaults are committed by a stranger/unknown offender; 68% by someone that the victim knows. The closer the relationship between the victim and offender, the more likelihood of no report.

For the victims who do report, there is an incredible burden placed upon them. In the case of the “stranger” rape, identification of the perpetrator becomes the focus. The advancement in DNA technology, where evidence is present, has greatly enhanced our search for and positive identification of the perpetrator. On the other hand, in cases of known or acquaintance rape of an adult, identification is a non-issue; however, consent is. Rape is looked upon as a different kind of crime; the only crime in which the victims must prove their innocence. As a result of cultural myths/misconceptions and stereotypes, there is a marked contrast between the “real rape” versus the “righteous rape”. Unfortunately, juries carry into the courtroom these preconceived attitudes as they judge their peers; both the accused and the victim.

Historically, legislative changes have been, in hindsight, reflective of society’s reluctance to focus on the victim.

Under Pennsylvania law, prior to 1990, statute explicitly excluded a spouse from being capable of a rape by another spouse. In 1991, Spousal Sexual Assault was introduced; however, the victim was required to report within 90 days. In the case of what could be termed a “date rape”, prior rape language required “force”. Lack of consent is now sufficient to arrest and prosecute.

Any discussion regarding victims of sexual assault, in my experience and opinion, has to include the devastating emotional impact of the crime. We at Special Victims witness, daily, complainants, i.e. victims of all ages whose demeanor, whose affect is unpredictable or seems inappropriate. Our watchword is “Don’t be fooled”. We have seen the agitation (sometimes directed at the investigator), the hysteria (including uncontrolled giddiness and laughter), the blank affect, the poor recall of the events, the anxiety, the fear, the mood swings, the denial. The details and disclosure of a sexual assault is not a one time event- it is a process. The emotional trauma, is often manifested/exacerbated by the actual report. Delayed reporting, then, is, no doubt, common.

Appropriately, the seemingly unusual behavior exhibited by victims of sexual assault should not be held against them. Additionally, jurors should be provided with all pertinent, relevant information in their role as decision makers; information professionally supplied by expert testimony.

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

Thank you, Chairman, for the opportunity to comment, as well to all the members of the Committee, for your time today.