

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 09-2210

**SARA REEDY,
Appellant,**

v.

**FRANK EVANSON, individually and in his official capacity as Police Officer
of the Township of Cranberry; STEVE MANNELL, individually and in his
official capacity as the Public Safety Director of the Township of Cranberry;
KEVIN MEYER, individually and in his official capacity as a Police Officer in
the Township of Cranberry,
Appellees.**

On Appeal from the United States District Court
For the Western District of Pennsylvania Case No. 2:06-cv-1080

**BRIEF *AMICI CURIAE* OF THIRTY-NINE ORGANIZATIONS
DEDICATED TO IMPROVING THE CRIMINAL JUSTICE
SYSTEM'S RESPONSE TO VIOLENCE AGAINST WOMEN
IN SUPPORT OF APPELLANT AND REQUESTING REVERSAL**

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A WOMAN'S PLACE CIVIL LEGAL ASSISTANCE PROGRAM
ALLE-KISKI AREA HOPE CENTER, INC.
ALICE PAUL HOUSE
AMERICAN CIVIL LIBERTIES UNION AND
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
BERKS WOMEN IN CRISIS
CALIFORNIA WOMEN'S LAW CENTER
CITIZENS AGAINST PHYSICAL, SEXUAL & EMOTIONAL ABUSE, INC.
CONNECTICUT WOMEN'S EDUCATION AND LEGAL FUND
CRIME VICTIM CENTER OF ERIE COUNTY
CRIME VICTIMS' CENTER OF CHESTER COUNTY, INC.
DAY ONE
END VIOLENCE AGAINST WOMEN INTERNATIONAL
FEMINIST MAJORITY FOUNDATION AND
THE NATIONAL CENTER FOR WOMEN AND POLICING
HAVIN, INC. (HELPING ALL VICTIMS IN NEED)
HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE
HUNTINGDON HOUSE
LEGAL MOMENTUM
LEGAL VOICE
NATIONAL CENTER FOR VICTIMS OF CRIME
NATIONAL CRIME VICTIM LAW INSTITUTE
NATIONAL WOMEN'S LAW CENTER
PASSAGES, INC.
PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE
PENNSYLVANIA COALITION AGAINST RAPE
PENNSYLVANIA NOW
PITTSBURGH ACTION AGAINST RAPE
SOUTHWEST WOMEN'S LAW CENTER
VICTIM RIGHTS LAW CENTER
VICTIMS' INTERVENTION PROGRAM
VICTIMS RESOURCE CENTER
WOMEN AGAINST ABUSE
WOMEN ORGANIZED AGAINST RAPE
WOMEN'S CENTER, INC.
WOMEN'S LAW CENTER OF MARYLAND, INC.
WOMEN'S LAW PROJECT
WOMEN'S WAY
YWCA OF LANCASTER

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are thirty-nine non-profit organizations dedicated to improving the criminal justice system's response to women and children who are victims of violence. They include organizations that provide direct services to individuals, ranging from crisis intervention and counseling to intervention with law enforcement and court accompaniment. Many engage in policy advocacy to improve institutional responses to violence and reduce the incidence of sexual assault. These efforts include law reform, as well as education and training programs designed to raise the awareness of the public, police, and courts about the realities of sexual assault and the harmful myths that continue to prevent victims from obtaining justice.

Amici have special expertise in the impact of sexual assault on survivors and in the legal reforms that Pennsylvania has enacted over the past several decades. They submit this brief to aid the Court in evaluating whether the district court erred in holding that the arrest of Ms. Reedy was reasonable, in light of current knowledge about sexual assault that any well-trained police officer should be expected to know.

The individual statements of interest of the *amici curiae* are contained in the appendix to this brief.

SUMMARY OF ARGUMENT

Plaintiff-appellant Sara R. Reedy, a nineteen-year-old convenience store clerk, was sexually assaulted at gunpoint by a serial sex offender. She promptly reported the crime to the police, underwent a forensic exam, and gave detailed and consistent statements about the assault to hospital and law enforcement authorities. Rather than help her, defendant-appellee Frank Evanson, the detective assigned to her case, immediately doubted Reedy's claim that she was sexually assaulted and then ignored the obvious similarity of Ms. Reedy's assault to an almost identical unsolved crime assigned to him shortly thereafter. Months after the assault, Detective Evanson charged Ms. Reedy with false reporting, charged her with the theft that her assailant committed, and imprisoned her for five days. The charges against her were dropped only when Ms. Reedy's assailant, after being arrested in a third assault, confessed to sexually assaulting her and to committing the theft for which she had been erroneously charged.

In preparing the Affidavit of Probable Cause that led to Ms. Reedy's arrest, Detective Evanson knowingly omitted crucial exculpatory facts. He called Ms. Reedy's credibility and honesty into question, relying on myths about how women are expected to react to sexual assault and following antiquated rules for assessing victims' credibility that the Pennsylvania legislature has rejected. The district court decision granting defendants-appellees' motion for summary judgment in this

action concluded that defendants had probable cause to arrest her and were entitled to qualified immunity because, as a matter of law, there was enough “inculpatory” evidence to support the issuance of an arrest warrant. App. 31a-40a. The inferences the district court drew from the purportedly “inculpatory” facts, however, are no more than long-discredited beliefs about sexual assault that distort the criminal justice system’s response to sex crimes against women and girls. Because the district court treats gender-biased myths about female sexual assault victims as fact, undermining decades of legal reform, the district court’s ruling is clear error and should be reversed.

ARGUMENT

I. THE DISTRICT COURT ERRONEOUSLY RELIED UPON MYTHS ABOUT FEMALE SEXUAL ASSAULT VICTIMS TO SHORE UP THE PURPORTED REASONABLENESS OF DETECTIVE EVANSON’S ARREST OF A VICTIM OF CRIME.

The district court relies on a broad array of “facts” to support its conclusion that Detective Evanson had probable cause to charge Ms. Reedy with crimes she did not commit and was entitled to qualified immunity. The primary “facts” cited by the court, among others¹, include Ms. Reedy’s perceived reluctance to cooperate

¹ The court regarded Ms. Reedy’s failure to note the direction of her assailant’s escape and how he had arrived at the gas station as inculpatory. App. 32a, 33a. At the same time, the court found that Ms. Reedy’s knowledge of the precise time the cash register was opened was also inculpatory. App. 33a. Ms. Reedy is in a classic “catch-22”: guilty for noticing and remembering details about the assault, and guilty for not noticing or not remembering details about the assault.

with police, “failure” to press the panic alarm, and “refusal” of victim services. The court’s conclusions drawn from these allegations rely on and promote myths about sexual assault.

Rape myths are “attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women.” Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review*, 18 *Psych. of Women Quarterly*, 133-64, 134 (1994). Many of these myths blame the victim, trivialize the seriousness of sexual assault, excuse the assailant’s behavior, or assume the victim’s untruthfulness. *See, e.g.,* Martha R. Burt, *Rape Myths and Acquaintance Rape*, in *Acquaintance Rape: The Hidden Crime* 27 (2001). These myths are tied to biased stereotypes about women and the notions of how they should behave before, during, and after rape. *See, e.g.,* Kristine M. Chapleau et al., *How Ambivalent Sexism Toward Women and Men Support Rape Myth Acceptance*, 57 *Sex Roles* 131-136 (2007) (suggesting that sexist beliefs towards women and men support rape myth adherence). Current police training curricula and model policies focus on the critical damage that such myths can create during an investigation. As a result, they focus on debunking these myths and educating officers on the real dynamics of sexual assault.² *See, e.g.,* Diane

² For example, the Pennsylvania Coalition Against Rape’s (PCAR) training curriculum to assist law enforcement in responding to sexual assault crimes debunks several myths, including “Victims falsely report sexual assault to serve

Monti-Catania & Mary Ann Conway, *Police Response to Crimes of Sexual Violence: A Training Curriculum for Pennsylvania Law Enforcement* 1-3, 1-7 (1997).

The district court focused heavily on Ms. Reedy's behavior after the attack, holding, *inter alia*, that Evanson's "inference of [Reedy's] reluctance to be available" for further questioning by police, despite clear evidence of cooperation, constituted "inculpatory information" available to Evanson. App. 31a-33a. This conclusion rests on nothing more than a myth that a "genuine" sexual assault victim cooperates with law enforcement authorities and pursues criminal charges against her assailant to the utmost, concluding that any failure to fully cooperate suggests that the assault did not really occur. The court's inference that such "reluctance" or "indecisiveness" constitutes inculpatory evidence is also based on the assumption that such behaviors are more likely to be seen among those falsely reporting a sexual assault, rather than those who have been actually victimized. These assumptions are unwarranted; in fact, a considerable body of research documents that this type of behavior is extremely common among victims of sexual assault.

their own purposes" and "All victims of sexual assault have a similar, predictable response to the trauma." Monti-Catania, *supra*, at 1-3, 1-7; *see also*, International Association Chiefs of Police (IACP) Nat'l Law Enforcement Policy Ctr., *Investigating Sexual Assaults: Concepts and Issues Paper* (2005) [hereinafter *Concepts and Issues Paper*]; IACP Nat'l Law Enforcement Policy Ctr., *Investigating Sexual Assaults: Model Policy* (2005).

Decades of research has documented the fact that the vast majority of sexual assault victims do not report their sexual assault to police. *See, e.g.,* Dean G. Kilpatrick, et al., Nat'l Victim Ctr. & Crime Victims Research and Treatment Ctr., *Rape In America* 5 (1992); Shannan Catalano, Bureau of Justice Statistics, U.S. Dep't of Justice, *Criminal Victimization, 2005* 91 (2006). Some of the most common reasons that victims give for not reporting are their fears that their report will not be taken seriously, they will not be believed, or they will be seen as responsible for their own assault. *See* Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey, Nat'l Inst. of Just. Special Report* 35 (2006). This particular case provides an example of how such fears may be reasonable and unfortunately based in the reality of the “second assault” that victims may experience when they report a sexual assault.

There are many reasons why a sexual assault victim might decline to pursue criminal charges against her assailant or shrink from repeated questioning by law enforcement authorities. Patricia L. Fanflik, Am. Prosecutors Research Inst. (APRI), Nat'l Dist. Attorneys Ass'n, *Victim Responses to Sexual Assault: Counterintuitive or Simply Adaptive?* 7 (2007) [hereinafter APRI]. A victim may appear reluctant to cooperate as a result of the psychological trauma of rape; sexual violence leaves a profound psychological impact on victims, which is exacerbated

further by the prevalence of societal rape myths that denigrate victims. Shirley Wang & Elizabeth Rowley, Sexual Violence Research Initiative, *Rape: How Women, the Community, and the Health Sector Respond 2* (2007). Victims may withdraw from participating in the criminal justice system if it becomes clear that their report of a sexual assault is not being taken seriously and that they are being treated as a suspect rather than a victim. Research has documented the additional negative impact on victims' well-being that results from mistreatment experienced during the law enforcement investigation, forensic examination, and criminal prosecution. See Rebecca Campbell *et al.*, *Community Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma?*, 67 J. of Consulting & Clinical Psychol. 847, 855 (1999). It is therefore not surprising that many victims choose to disengage from the system that is inflicting this additional harm.

The district court also viewed Ms. Reedy's "failure" to push the panic alarm while a gun was being held to her head as inconsistent with the behavior of a "genuine" rape victim. See App. 34a n.7, 37a, 38a (drawing negative inferences from Ms. Reedy's "failure" to press the panic alarm). This inference is based on the assumption that victims should engage in active forms of resistance during their sexual assault. See, e.g., *State in the Interest of M.T.S.*, 609 A.2d 1266, 1277 (N.J. 1992) (discussing assumptions historically made by courts). This is not true.

Nor is it legally permissible, Pennsylvania having eliminated the resistance requirement three decades ago. *See* Act of May 18, 1976, Pub. L. 120, No. 53, §§ 1-2 (codified at 18 Pa. Cons. Stat. § 3107); *see, e.g., Catchpole v. Brannon*, 42 Cal. Rptr. 2d 30, 300 (Cal. Ct. App. 1995) (reversing judgment against a woman who had sued her employer because her supervisor sexually assaulted her on the ground that the judge’s finding that the woman lacked credibility because she had not objected, resisted, or screamed for help rested on stereotypes about women, an “unrealistic and gender-biased standard of reasonableness,” and a resistance requirement removed from the law).

A review of ten years of research on the subject clearly reveals that active forms of physical resistance are used by only a minority of women (20-25%) who are sexually assaulted. Sarah E. Ullman, *A 10-Year Update of Review and Critique of Empirical Studies of Rape Avoidance*, 34 *Crim. Just. & Behav.* 411, 413-14 (2007). Physical resistance during a rape is particularly unlikely among women who have been sexually assaulted in the past. *Id.* This response to sexual assault is both understandable and more than reasonable.

Many victims do not fight back during a sexual assault because they are terrified of being beaten or killed. Studies reveal that almost half of sexual assault victims fear serious injury or death. *See, e.g.,* Dean G. Kilpatrick et al., *supra*, at 4; Tjaden & Thoennes, *supra*, at 27. In addition, the trauma that is associated with

sexual assault causes many victims to “freeze with fright” during the assault and experience a state of paralysis in which they are unable to actively resist the attacker. Galliano et al., *Victim Reactions During Rape/Sexual Assault: A Preliminary Study of the Immobility Response and Its Correlates*, 8 J. of Interpersonal Violence 109, 110 (1993). Both fear and trauma explain why most sexual assault victims do not engage in active physical resistance, such as kicking, hitting, or biting their assailant. *See* Ullman, *supra*, at 414-15; *People v. Barnes*, 721 P.2d 110, 118-21 (Cal. 1986). Thus, while Evanson and the district court viewed Ms. Reedy’s “failure” to press the panic alarm as a sign of deception (even though she had a gun to her head), Ms. Reedy’s response is common and not at all uncharacteristic of rape victims. *See* App. 34a n.7, 37a.

The district court further buttressed its decision by accepting as inculpatory evidence the fact that Reedy did not access counseling services. *See* App. 32a, 34a n.7 (drawing negative inferences from Ms. Reedy’s choice to forgo rape crisis counseling). Yet again, the research documents that this behavior is consistent with the behavior of many sexual assault victims. Empirical evidence suggests that a sizeable portion of victims do not access mental health services. *See* Dean G. Kilpatrick et al., *Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study* 56 (2007).

The district court also inappropriately implied that involvement in illegal or socially unacceptable behavior renders an alleged rape victim incredible. A positive drug test—without regard to its relevance to the investigation—contributed to Detective Evanson’s doubt of Ms. Reedy’s allegations, subjecting her to a guilty-until-proven-innocent presumption that is not made about victims of other crimes. The court condoned the detective’s suspicion of Ms. Reedy based on drug test results, finding that her recent drug use was an appropriate fact to support the detective’s arrest warrant and commenting that “a negative screening may well have assuaged his belief that Plaintiff was implicated in the theft.” App. 38a, 42a. Using drug test results to assess the veracity of rape victims adds nothing of value to the investigation but instead reinforces yet another archaic rape myth that only “pure” victims can pursue a rape complaint, and adds to the mistrust between victims and law enforcement. *See* Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* 16 (1992) (describing two related myths, “Women Deserve Rape” and “Only ‘Loose’ Women Are Victimized.”).

II. THE VALIDITY OF A RAPE REPORT CANNOT BE BASED ON THE BEHAVIOR OF A STEREOTYPICAL OR “MODEL” VICTIM.

Each victim of rape will behave differently based on her unique personal characteristics and circumstances. The district court’s opinion dangerously ignores this reality and imposes a standard for how a rape victim “should” act, lest she face criminal prosecution for falsifying her claim.

After an attack, sexual assault victims often suffer a variety of physical, psychological and emotional symptoms, including anxiety, anger, and dissociation. Wang & Rowley, *supra*, at 2. Intermediate and long-term effects of rape trauma may include “heightened fear, anger, anxiety, guilt, self blame, loss of trust, flashbacks and [post-traumatic stress disorder], depression, dissociation, phobias, panic disorder, and obsessive compulsive disorder.” *Id.* A rape survivor may experience all, some, or none of these reactions. APRI, *supra*, at 5.

Therefore, while there are some common responses to trauma, “there is tremendous variability in the extent to which women are affected.” *Id.* (quoting Patricia Frazier, *The Role of Attributions and Perceived Control in Recovery from Rape*, 5 J. of Pers. & Interpersonal Loss 203, 204 (2000)). In addition, victims often have great difficulty making sense of what happened to them. As explained in a publication by the American Prosecutors Research Institute:

The person is unable to effectively answer questions regarding how and why the event happened and what meaning and implications the event has for a person’s life. This disequilibrium causes the person to experience a sense of crisis that lasts as long as the person needs to organize and develop a coherent meaning system in relation to the assault.

Id. (quoting Victoria E. White Kress et al., *Responding to Sexual Assault Victims: Considerations for College Counseling*, 6 J. of C. Counseling 124, 125 (2003)).

During this period of crisis, a victim’s behavior may appear counterintuitive, but in fact is merely a normal expression of the victim’s unique strategy for coping with

the overwhelming stress of the assault. *See* Jennifer Gentile Long, American Prosecutors Research Institute, *Explaining counterintuitive victim behavior in domestic violence and sexual assault cases*, 1 *The Voice* 1 (2006).

Survivors of rape may use a number of avoidance strategies to manage the negative impact of their victimization, which may be misperceived by others as deception. Avoidance strategies include denying that the event occurred and avoiding thinking about it. APRI, *supra*, at 15. A victim may be more likely to use avoidance strategies if she is overwhelmed by the stressor and engages in self-blame or was subjected to physical force during the assault. *Id.* Survivors of child sexual abuse who are re-victimized as adults may be particularly likely to blame themselves and use negative coping mechanisms like avoidance and withdrawal. Diane Daane, *Victim Response to Sexual Assault*, in *Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System* 88 (Frances Reddington & Betsey Kreisel eds., 2005) (citing Catalina Arata, *Coping With Rape*, 14 *J. of Interpersonal Viol.* 62 (1999)). Ms. Reedy's past experience as a survivor of childhood sexual abuse may have affected her coping strategies and therefore contributed to her decision to decline victim counseling.³ *See* App. 24a. (noting Ms. Reedy's past history of sexual abuse).

³ The International Association of Chiefs of Police advises officers conducting victim interviews that victims may decline services, including the victim advocate. *Concepts and Issues Paper*, *supra* note 2, at 6.

Furthermore, the Court found that any reasonable jury could draw only one conclusion from Ms. Reedy's statements, "I just want to drop the whole thing" and "I just want this whole thing to go away"—that is, that she had "a guilty conscience about the matter." App. 30a. On the contrary, a reasonable jury could draw at least two other, far more plausible conclusions from these statements: (1) Ms. Reedy accurately understood that Detective Evanson did not believe her and in fact intended to arrest her, and therefore she wished that the "whole thing" would go away; or (2) like many sexual assault survivors, Ms. Reedy may have been using avoidance strategies to cope with the sexual assault. Indeed, given the re-victimization she experienced during the hostile police investigation, these innocent reactions are far more plausible than the one the district court accepted as the only possible explanation for her comments.

III. POLICE MISTRUST AND MISTREATMENT OF RAPE VICTIMS CREATE SEEMINGLY UNCOOPERATIVE VICTIMS, FEED THE MISPERCEPTION THAT UNCOOPERATIVE VICTIMS ARE LYING, AND DISCOURAGE FUTURE VICTIMS FROM REPORTING RAPE.

Any reluctance to cooperate with the investigation Ms. Reedy may have shown is especially reasonable in light of Detective Evanson's evident hostility toward her as he repeatedly accused her of lying both at the hospital and at the police station. *See* App. 396a-399a, 447a-450a, 456a-457a, 462a, 500a. The police are the victim's introduction to the criminal justice system, often within

hours or minutes of the assault. This initial contact sets the tone for the entire criminal process. Gary LaFree, *Rape and Criminal Justice: The Social Construction of Sexual Assault* 66 (1989). As Wang and Rowley state, “For survivors, validation and belief [are] central to recovery but they often face disbelief and suspicion from the criminal justice system.” Wang & Rowley, *supra*, at 4. This response from the criminal justice system and society at large affects how victims behave after a rape.

Rape victims experience re-victimization when they report the crime to police if the police presume they are lying, subject them to confrontational tactics, harsh interrogation techniques, and even polygraph examinations—ultimately failing to investigate the rape thoroughly. Detective Evanson not only accused Ms. Reedy of lying from the outset, but also failed to undertake any effort to investigate her report of a sexual assault, instead focusing his entire investigation on proving that Ms. Reedy was the criminal. He made no attempt to find the assailant. App. 350a-359a, 386a-399a, 462a.

Critically, police officers who adhere to rape myths handle rape cases differently from the way they handle other types of crimes by immediately assuming victims who report rape are liars. See Susan Caringella, *Addressing Rape Reform in Law and Practice* 115 (2009). As Caringella highlights, “Even in cases of theft where insurance would cover losses, victims are not presumed to

have consented to the theft ... Ulterior motives, like financial benefit in the case of insurance, do not automatically arise when someone reports a theft.” *Id.* In rape cases, however, victims may find themselves doubted and re-victimized by having their entire lives closely scoured for information which could be inculpatory, even before the police begin investigating the rape allegations. Detective Evanson, for example, drew a connection between the theft and Ms. Reedy’s rental of a mobile home while apparently failing to connect the assault of Ms. Reedy to *the only other sexual assault in his township in that year*, a mere 91 days after Ms. Reedy’s sexual assault, involving substantially similar circumstances less than two miles away. This mishandling of rape cases puts victims at a unique disadvantage in the criminal justice system, decreasing the rate of reporting rape and increasing the rate of claims withdrawn by victims. *See* Tjaden & Thoennes, *supra*, at 35 (listing among the reasons victims did not report the crime, “police would not believe me or would blame me.”).

Police officers who do not believe the victim from the beginning are unlikely to investigate the case properly and thus more likely to code it as “unfounded,” indicating that the report was either false or baseless.⁴ According to Latts and Geiselman,

⁴ PCAR’s training includes extensive information on how to understand the victim’s perspective, explaining that a victim may sometimes be reluctant to share

If the police do not believe the victim, they may directly or indirectly make this known to her, perhaps by excessive questioning that focuses on the absence of obvious injury or some delay in reporting the incident. The victim may in turn become upset and withdraw cooperation. Though the woman may have been an actual survivor of rape, her lack of cooperation is itself considered sufficient grounds for marking a case as unfounded in most jurisdictions.

Mara G. Latts & R. Edward Geiselman, *Interviewing Survivors of Rape*, 7 J. Police and Crim. Psych. 8, 8 (1991).

Thus, police officers who do not believe the victim create a self-fulfilling prophecy through interactions with victims that the victims perceive as hostile. In particular, polygraph testing of rape victims, as Detective Evanson sought to accomplish with Ms. Reedy, clearly communicates a message of police mistrust, especially because the polygraph examination is almost never used with victims of any other type of crime. See Kristen Houser & Emily Dworkin, Nat'l Sexual Violence Resource Ctr., *The Use of Truth-Telling Devices in Sexual Assault Investigation*, 8 (2009). The practice can therefore have a devastating impact on the rapport between sexual assault victims and law enforcement personnel that is critical to a successful investigation. In addition, specific concerns with the reliability and validity of the polygraph examination with sexual assault victims have led the United States Congress, many state legislatures, and coalitions of law enforcement professionals and victim advocates to discourage or outright prohibit

information with police especially if she is concerned that the officer will think she is lying. Monti-Catania, *supra*, at 5-1, 5-2.

polygraph testing of sexual assault victims. Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C.S. § 3796gg-8 (2009) (conditioning grants under VAWA on certification that sexual assault victims will not be polygraphed); Doug Beloof et al., Center for Law & Public Policy on Sexual Violence, *A Criminal Justice Guide: Legal Remedies for Adult Victims of Sexual Violence*, Project of the National Crime Victim Law Institute at Lewis & Clark Law School 102 (2005); *Concepts and Issues Paper*, *supra*, at 13.

Overall, police mistrust and interrogation of rape victims create seemingly uncooperative victims, feed the misperception that uncooperative victims are lying, and discourage future victims from reporting rape. The district court acknowledged Detective Evanson's "predisposition towards Plaintiff's potential fabrication," and then ignored it by stating that such a predisposition "does not change the inculpatory information concerning Plaintiff's indecisiveness about any follow-up meeting." App. 31a. In reality, Detective Evanson's "predisposition" likely *caused* Ms. Reedy to appear "indecisive," making her behavior reasonable, not inculpatory.

IV. THE INFECTION OF THE DISTRICT COURT'S ANALYSIS BY MYTHS AND MISCONCEPTIONS RENDERS ITS GRANT OF QUALIFIED IMMUNITY ERRONEOUS.

The court acknowledged that the right to be free from unreasonable arrest is "clearly established," was "essentially concede[d]" by defendants, and is not

genuinely in dispute here. App. 36a. However, in assessing whether Detective Evanson was entitled to qualified immunity based on whether his conduct was “objectively reasonable,” the court failed to apply the proper test identified in its opinion. That test, as set forth in *Orsatti v. New Jersey State Police*, 71 F.3d 480, 483 (3d Cir. 1995), requires assessing the conduct of a “reasonably well-trained officer.” App. 36a. Applying this test, it was not “objectively reasonable under the circumstances” for Detective Evanson to believe there was probable cause for arrest, because a “reasonably well-trained officer” would not have applied for the warrant under the circumstances.

The facts on which the district court relied in finding qualified immunity are founded in rape myths rather than appropriate police training and protocol. *See* App. 37a-38a; Monti-Catania, *supra*, at 1. First, the fact that Detective Evanson waited roughly six months before filing the final Affidavit does not show diligence or thoughtful consideration of the matter, as the district court claims, but rather reveals that Detective Evanson had ample time to consider the possible relationship of the sexual assault committed 91 days later, in close geographic proximity, and with a similar *modus operandi* to the Reedy assault, yet failed to and instead fixated on Ms. Reedy’s post-sexual assault behavior. Second, for reasons described *supra*, the facts that “Plaintiff did not report attempting to press the panic alarm,” and “Plaintiff declined professional counseling by a victim’s rights group”

are not appropriate bases for probable cause under professional police standards.

Drawing an inference of guilt from these facts indicates that the court gave credence to myths about how rape victims should act before and after a rape.

Third, Ms. Reedy's "reluctance to further meet and discuss the matter with the police," and "statements suggesting she had a guilty conscience" are not objectively reasonable indicia of probable cause but rather subjective impressions of Ms. Reedy's state of mind. To the extent Ms. Reedy developed any "reluctance" to cooperate, such was likely prompted by Detective Evanson's own hostile approach towards her.

A jury could conclude that "no reasonably competent officer" would find the above constituted probable cause. Rather, the facts relied on by the district court demonstrated that Detective Evanson's investigation was biased against Ms. Reedy from the beginning by rape myths.

V. THE DISTRICT COURT'S RULING CONTRAVENES DECADES OF LEGAL REFORM AND UNDERMINES PUBLIC TRUST IN THE JUSTICE SYSTEM'S RESPONSE TO SEXUAL ASSAULT.

In legitimizing and revitalizing gender-based myths about sexual assault, the district court's analysis repudiates the clear trend of the past several decades in Pennsylvania and nationwide to eliminate these myths from the legal system. Historically, rape laws were based on the false belief that rape is rare and women are likely to lie about it. *See, e.g.,* 3 S. Greenleaf, Evidence § 212 (15th ed. 1892)

(citing Lord Hale’s observation that rape is “an accusation easily made, hard to be proved, and still harder to be defended, by one ever so innocent.”); *see id.* (victim’s credibility should be measured by “whether she is a person of good fame”; “whether she made complaint . . . without any inconsistent delay”; “whether her person or garments bore token of the injury done to her”); *see also* 3A J. Wigmore, Evidence § 924a, at 737 (Chadbourn rev. ed.1970)) (recommending mandatory psychiatric evaluation for all rape complainants to assess whether the victim “suffers from some mental or moral delusion or tendency . . . causing distortion of the imagination in sex cases”). Special evidentiary rules and burdens of proof imposed only in sexual assault cases severely disadvantaged and stigmatized rape complainants and rendered a successful prosecution extraordinarily difficult. Legal reforms included elimination of corroboration requirements, prompt complaint requirements, and resistance requirements by statute or through case law. Caringella, *supra*, at 13. These legal reforms have rightly shifted the focus of rape cases from the victim’s behavior to the defendant’s conduct. *See, e.g., State in the Interest of M.T.S.*, 609 A.2d at 1277. The district court’s opinion stands rape law reform on its head by upholding as a matter of law multiple rape myths.

In a series of reforms since 1972, the Pennsylvania legislature dramatically changed the laws surrounding sexual assault. The legislature eliminated the requirements of prompt complaint, independent corroboration, and resistance. *See*

Act of May 18, 1976, Pub. L. 120, No. 53, §§ 1-2 (codified at 18 Pa. Cons. Stat. §§ 3105, 3106, and 3107, respectively). The legislature abolished consideration of the victim's prior sexual history, except in limited circumstances. *Id.* (codified at 18 Pa. Cons. Stat. § 3104 (a)). The legislature eliminated cautionary jury instructions requiring special care in evaluating testimony of rape victims. *Id.* (codified at 18 Pa. Cons. Stat. § 3106). In 1995, after public outcry over the controversial decision in *Commonwealth v. Berkowitz*, the legislature dramatically changed its rape laws again, further eliminating rape myths in the law by adopting a broader definition of forcible compulsion, eliminating differential treatment of spousal rape, and upgrading the felony status of non-consensual sexual contact.⁵

Commonwealth v. Berkowitz, 641 A.2d 1161, 1164 (Pa. 1994) (reversing a rape conviction due to lack of evidence establishing forcible compulsion, where the court focused on the woman's perceived failure to attempt to escape the assailant, even though Pennsylvania statutory law did not include a resistance requirement).

Recognizing the nature of sexual assault and the impact on victims, the legislature intended to remove archaic common law barriers to the prosecution of

⁵ This controversial decision in *Berkowitz* prompted the Pennsylvania General Assembly to reform Pennsylvania's rape laws, resulting in a new offense titled "Sexual Assault," criminalizing commission of "engage[ing] in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent" as a second degree felony. 18 Pa. Cons. Stat. § 3124.1; *see Commonwealth v. Kelley*, 801 A.2d 551, 557 n.6 (Pa. 2002) (noting how *Berkowitz* provided the impetus for legislative rape reform).

rapists and reduce the trauma rape victims experience in the criminal justice system. As State Representative Karen Ritter stated when introducing the legislation leading to the 1995 reforms, “The bill is intended to see to it that sexual offenders are adequately punished, and that their victims are not subjected to further victimization by the criminal justice system.” Hearings on H.B. 160 Before the House Judiciary Comm., Sess. of 1993-94 (1993) (statement of Rep. Ritter). Senator Stewart Greenleaf remarked upon the need to reform sexual assault laws to accomplish justice for victims:

[T]he statistics we have seen over the years indicate that many of these crimes are not reported, and if they are reported, they are not successfully prosecuted, and therefore, many victims in Pennsylvania and many women in Pennsylvania do not report these offenses and their assailants are not convicted, and therefore, are free to pursue other victims in the future because of escaping their just punishment for their acts.

4 Sen. Legis. J., 220-21 (Jan. 31, 1995) (statement of Sen. Greenleaf).

The district court’s opinion undermines these reforms. It perpetuates many of the rape myths the legislature attempted to expel from the law and makes it more likely that victims will be “subjected to further victimization by the criminal justice system.” Ritter statement, *supra*. In addition to the examples outlined *supra*, the district court attempts to revive the antiquated resistance requirement, noting that “the fact [that Ms. Reedy] did not attempt to press the panic alarm at any time during the events happening..., while susceptible of innocent explanation, add[s] to the quantum of information supporting a finding of probable cause.”

App. 34a n.7. According to the district court's erroneous logic, it was reasonable for Detective Evanson to presume Ms. Reedy was lying because she did not press a panic alarm while the rapist held a gun to her head. Such an unreasonable interpretation of Ms. Reedy's perceived failure to resist in the face of such an unambiguous threat of force is a *de facto* reinstatement of the resistance requirement and a step backwards by re-focusing rape law on the victim's, rather than the attacker's, behavior. Similarly, the expectation of full cooperation with police harkens back to the rescinded prompt reporting requirement. The justifications offered for Detective Evanson's suspicion of Ms. Reedy revive the requirement that special consideration be paid to evaluating the testimony of rape victims. The legislature has eliminated these requirements. For the public policy reasons outlined above, the district court should not have condoned a police officer's reinstatement of elements of sexual assault which were expressly rejected by the Legislature.

Detective Evanson's spurious assertion of probable cause and the district court's acceptance of it exacerbate the stigma many victims of rape already feel. It discourages future victims from coming forward for fear of baseless prosecution. It threatens traumatized survivors with the improper use of drug testing results and polygraph examination. It increases the likelihood that those who come forward to report a crime will be re-victimized by the criminal justice system. The district

court's approval of biased police behavior against victims predicated not on rational police technique but rather on gender stereotypes and rape myths undermines public trust and confidence in the courts and will impair the future administration of justice.

CONCLUSION

For all of the foregoing reasons, *amici* respectfully request that this Court reverse the entry of summary judgment, clarifying that victims of sexual assault should not be charged with false complaints and other crimes based on gender-biased myths about victims, and remand for further proceedings.

Respectfully submitted,

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Date: September 28, 2009

APPENDIX

INDIVIDUAL STATEMENTS OF INTEREST OF *AMICI CURIAE*

A WOMAN’S PLACE CIVIL LEGAL ASSISTANCE PROGRAM

A Woman’s Place Civil Legal Assistance Program of Bucks County provides *pro bono* legal representation in family law matters to victims/survivors of domestic abuse who reside in Bucks County. Through the Civil Legal Program, victims and survivors can achieve safety, autonomy, and economic justice for themselves and their children.

ALLE-KISKI AREA HOPE CENTER, INC.

The Alle-Kiski Area HOPE Center, Inc. (HOPE) is an organization of social change whose mission is the safe elimination of domestic violence through intervention, prevention, and collaboration. With more than 30 years of experience serving the communities of northern Allegheny and Westmoreland counties, HOPE serves survivors of domestic violence and family violence, while also focusing on violence prevention through prevention education, intervention training and public awareness events. HOPE offers a broad array of free and confidential services including 30-day emergency shelter, one-year transitional housing, 24-hour emergency hotline, legal advocacy and accompaniment, crisis intervention counseling, self-sufficiency programs, and related services. Annually, HOPE provides services to approximately 3,500 direct victims of domestic violence each year in a service area that contains a population of approximately 300,000 people. Through its other services, HOPE touches the lives of nearly 20,000 individuals each year.

ALICE PAUL HOUSE

Located in Indiana, Pennsylvania, the Alice Paul House provides services to victims of domestic violence, sexual violence and other crimes. The mission of the Alice Paul House is to provide safety to victims of domestic violence and sexual assault, to assist and empower all victims, and to promote public awareness of these issues. Alice Paul House provides a 24-hour crisis hotline, counseling, advocacy, court accompaniment, shelter for domestic violence victims and services to victims of juvenile offenders.

AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA

The American Civil Liberties Union (“ACLU”) is a national, nonpartisan public interest organization of more than 500,000 members, dedicated to protecting the constitutional rights of individuals. Through its Women’s Rights Project, founded in 1972 by Ruth Bader Ginsburg, the ACLU has been at the forefront of legal battles to ensure women’s full equality. The ACLU Women’s Rights Project has taken a leading role at the local, state, and national levels to combat violence against women through litigation, policy advocacy, and public education. The ACLU of Pennsylvania is the local affiliate of the ACLU, with 16,000 members statewide, and regularly provides counsel in women’s rights and other discrimination matters arising in the Commonwealth of Pennsylvania. The ACLU has battled the invidious effects of sex discrimination and gender stereotyping in its advocacy on behalf of survivors of sexual assault and domestic violence. The proper resolution of this case is, therefore, a matter of substantial interest to the ACLU and its members.

BERKS WOMEN IN CRISIS

Berks Women in Crisis (BWIC) is the leading organization in Berks County for assisting victims of domestic and sexual violence. Its mission is to provide supportive services to victims and eliminate domestic and sexual violence in Berks County. BWIC raises awareness of domestic and sexual violence and promotes safety for women and all served by providing an immediate safe haven and on-going support system. The goal of BWIC is to improve the quality and safety of victims’ lives by providing comprehensive services in a safe and secure setting including hotlines in both English and Spanish, emergency shelter, specially trained staff members to accompany victims to local hospitals and the courthouse, support and advice for individuals applying for protection from abuse orders (PFA), attorney representation at final PFA hearings in court, and a vast range of support and advocacy services for victims of sexual assault.

CALIFORNIA WOMEN’S LAW CENTER

The California Women’s Law Center (CWLC) is a statewide, nonprofit law and policy center specializing in the civil rights of women and girls. CWLC’s issue priorities are violence against women, sex discrimination, women’s health, race and gender, exploitation of women and women’s economic security. Since its inception, CLWC has placed a particular emphasis on eradicating all forms of

discrimination and violence against women and has authored numerous *amicus* briefs, articles and legal education materials on sexual violence. This case will have an enormous impact on the rights of women and girls to be free from the terrible consequences of discrimination, harassment and violence.

CITIZENS AGAINST PHYSICAL, SEXUAL & EMOTIONAL ABUSE, INC.

Citizens Against Physical, Sexual & Emotional Abuse, Inc. (CAPSEA) is a private nonprofit organization that provides life-saving services to victims of sexual violence, domestic violence, serious crimes and homelessness in Elk and Cameron counties in western Pennsylvania. CAPSEA's experience serving victims of sexual violence indicates that many of these victims experience long-term suffering not only from their perpetrators but from professionals and community members who are quick to blame the victim, instead of holding perpetrators accountable for their actions and providing support to the victims.

CONNECTICUT WOMEN'S EDUCATION AND LEGAL FUND

The Connecticut Women's Education and Legal Fund (CWEALF) is a nonprofit women's rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF defends the rights of individuals in the courts, educational institutions, workplaces and in their private lives. Since 1973, CWEALF has provided legal education and advocacy and conducted public policy work to advance women's rights.

CRIME VICTIM CENTER OF ERIE COUNTY

The Crime Victim Center of Erie County, Inc., was established in 1973 as the Erie County Rape Crisis Center, a nonprofit organization dedicated to assisting sexual assault victims and their families and friends. The goal of the agency's programs and services is to lessen the impact of crime through counseling, education and advocacy. Services include a 24-hour hotline, crisis intervention, supportive counseling, assistance filing claims for crime victims' compensation and/or restitution, accompaniment to criminal justice proceedings, information and referral, and community education. Last year, the Center served 5,234 victims, family members, and witnesses to crimes.

CRIME VICTIMS' CENTER OF CHESTER COUNTY, INC.

The Crime Victims' Center of Chester County, Inc. (CVC) was established in 1973 as The Rape Crisis Council of Chester County, Inc. and in 1976 became a comprehensive victim services center handling all types of crimes. CVC is a private, nonprofit comprehensive victim service agency whose purpose is to support adult and child victims of crime as they work toward recovery. As the sexual assault center for Chester County, CVC is very concerned about the myths surrounding sexual assault victims that persist among some members of the law enforcement community.

DAY ONE

Day One is the sexual assault coalition and direct services provider for the state of Rhode Island. Its mission is to reduce the prevalence of sexual abuse and violence and to support and advocate for those affected by it. Day One provides services to victims of sexual assault, domestic violence, and other violent crimes and educates the public throughout Rhode Island. Services include a 24-hour victims of crime helpline, crisis intervention, individual and group counseling for children and adults, legal advocacy through sexual assault response teams ("SART"), law enforcement advocacy and prevention education.

END VIOLENCE AGAINST WOMEN INTERNATIONAL

End Violence Against Women (EVAW) International is a nonprofit organization working to improve the response of the criminal justice system and community professionals to violence against women. EVAW provides education, training, and research, and promotes multidisciplinary collaboration which enables responding professionals to better support victims and hold offenders accountable. EVAW also fosters effective prevention programs and public education, all toward the vision of eliminating violence against women.

FEMINIST MAJORITY FOUNDATION AND THE NATIONAL CENTER FOR WOMEN AND POLICING

The Feminist Majority Foundation, (FMF), founded in 1987, is dedicated to women's equality, reproductive health, and non-violence. In all spheres, FMF utilizes research and action to empower women economically, socially, and politically. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing projects,

leadership training and development programs, and participates in and organizes forums on issues of women's equality and empowerment. A division of the Feminist Majority Foundation, the National Center for Women and Policing promotes increasing the numbers of women at all ranks of law enforcement as a strategy to improve police response to violence against women, to reduce police brutality and excessive force, and to strengthen community policing reforms.

HAVIN, INC. (HELPING ALL VICTIMS IN NEED)

HAVIN, Inc. (Helping All Victim's In Need) is a sexual assault/domestic violence program located in Armstrong County, Pennsylvania. HAVIN provides crisis counseling, support and advocacy for victims of sexual violence. Particularly within the criminal justice system, it is critical that victims of sexual assault do not experience re-victimization based a lack of understanding of sexual violence.

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

The Hawaii State Coalition Against Domestic Violence (HSCADV) is a statewide coalition of domestic violence programs whose mission is to ensure the safety and protection of women in intimate relationships by coordinating domestic violence prevention and intervention services, affecting public policy, and establishing coordinated and consistent procedures and actions by the civil and criminal justice systems in Hawaii. The purpose of HSCADV is to coordinate efforts to end family violence in Hawaii. HSCADV provides education and training on family violence to service providers, collects resource materials and serves as a clearinghouse, provides technical assistance on family violence matters, and provides facilitation when requested by member agencies. HSCADV is deeply committed to a criminal justice response that provides meaningful protection to victims of domestic violence.

HUNTINGDON HOUSE

Huntingdon House is the only provider of services to victims of domestic violence, sexual assault, other crimes and homelessness in Huntingdon County. The program is committed to ensuring that victims receive necessary safety assistance, support, and advocacy as they work towards healing from their wounds. Huntingdon House advocates that victims' voices be heard when systems and institutions oppress, pass judgment, and re-victimize them.

LEGAL MOMENTUM

Legal Momentum is the nation's oldest legal defense and education fund dedicated to advancing the rights of all women and girls. Founded in 1970 as NOW Legal Defense and Education Fund, Legal Momentum has long engaged in efforts to eliminate gender-motivated violence, including sexual assault, and has a longstanding commitment to addressing inequality and gender bias in state and federal judicial systems. Legal Momentum was instrumental in drafting and passing the Violence Against Women Act in 1994 and its subsequent reauthorizations in 2000 and 2005. The organization has served as counsel and joined *amici curiae* in numerous cases to support the rights of victims of sexual assault and other forms of gender-motivated violence. The National Judicial Education Program (NJEP), a project of Legal Momentum in cooperation with the National Association of Women Judges, has developed several award-winning judicial education curricula and training DVDs about sexual assault, including *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault*, in use across the country since 1994. NJEP's Director has written frequently on sexual violence, including: Lynn Hecht Schafran, *The Importance of Voir Dire in Rape Trials*, TRIAL (August 1992) at 26; *Writing and Reading About Rape: A Primer*, 66 ST. JOHN'S L. REV. 979 (1993); *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, 20 FORDHAM URBAN L. J. 439 (1993); *Credibility in the Courts: Why Is There a Gender Gap?*, JUDGES' JOURNAL (Winter 1995), at 5. Most recently, NJEP created a Web course on the intersection of sexual abuse and domestic violence, *Intimate Partner Sexual Abuse: Adjudicating this Hidden Dimension of Domestic Violence*, www.njep-ipsacourse.org. The NJEP Director's article about this topic, *Risk Assessment and Intimate Partner Sexual Abuse: the Hidden Dimension of Domestic Violence*, is forthcoming in JUDICATURE in late 2009/early 2010.

LEGAL VOICE

Legal Voice (formerly known as the Northwest Women's Law Center) is a regional nonprofit public interest organization that works to advance the legal rights of all women through litigation, legislation, education and the provision of legal information and referral services. Since its founding in 1978, Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country and is currently involved in numerous legislative and litigation efforts. Legal Voice has been a regional leader in combating all forms of violence against women and has a strong interest in this case because it raises important questions about the treatment of survivors of sexual assault.

NATIONAL CENTER FOR VICTIMS OF CRIME

The National Center for Victims of Crime (National Center), a nonprofit organization based in Washington, DC, is the nation's leading resource and advocacy organization for all victims of crime. The mission of the National Center is to forge a national commitment to help victims of crime rebuild their lives. Dedicated to serving individuals, families, and communities harmed by crime, the National Center, among other efforts, advocates for laws and public policies that create resources and secure rights and protections for crime victims. The National Center is particularly interested in this case because of its commitment to survivors of sexual assault, armed robbery and workplace violence.

NATIONAL CRIME VICTIM LAW INSTITUTE

NCVLI is a nonprofit educational organization located at Lewis & Clark Law School in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; technical assistance to attorneys; promotion of the National Alliance of Victims' Rights Attorneys; research and analysis of developments in crime victim law; and provision of information on crime victim law to crime victims and other members of the public. In addition, NCVLI actively participates as amicus curiae in cases involving crime victims' rights nationwide.

NATIONAL WOMEN'S LAW CENTER

The National Women's Law Center is a Washington, D.C. based nonprofit advocacy organization dedicated to the advancement and protection of girl's and women's legal rights. Since 1972, the Center has worked to eradicate the harmful effects of sex discrimination. The Center's work has included opposing the discriminatory gender-based stereotypes of how female victims of sexual harassment should properly respond to such harassment. The Center therefore supports Ms. Reedy's appeal of the district court's finding of summary judgment, which was based on antiquated gender-based perceptions regarding the appropriate behavior of victims of sexual assault.

PASSAGES, INC.

PASSAGES, Inc. (Prevention And Service for Sexual Assault through Guidance, Empowerment, and Support) was founded in 1980 as The Rape Crisis Center, and is dedicated to the provision of free and confidential services to the victims/survivors of sexual assault throughout Clarion, Clearfield and Jefferson counties. Whether a person is violently raped or touched inappropriately, PASSAGES can offer supportive counseling services to meet their immediate physical and emotional needs. Beginning with a toll-free 24-hour crisis hotline, staff and volunteers can help people make the journey from victim to survivor of sexual assault. Individual and/or group counseling, as well as medical accompaniment and legal advocacy are available to all victims/survivors and their family members or friends. PASSAGES is committed to working for the elimination of all forms of sexual violence through education, prevention and advocacy for the rights and needs of survivors.

PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE

The Pennsylvania Coalition Against Domestic Violence (PCADV) is a private nonprofit organization that provides services and advocacy on behalf of victims of domestic violence and their minor children. The first state domestic violence coalition in the nation, PCADV was established in 1976 when a handful of grassroots women's groups in the state joined together to lobby for legal protections and to develop a network of services for victims of domestic violence. Over thirty years later, PCADV has grown to a membership of 61 organizations across Pennsylvania providing shelters, hotlines, counseling programs, safe home networks, legal and medical advocacy projects, and transitional housing projects for battered women and their dependent children. PCADV believes that every crime victim, including victims of domestic abuse and sexual assault, deserves respect and dignity, and deserves to be taken seriously by law enforcement.

PENNSYLVANIA COALITION AGAINST RAPE

The Pennsylvania Coalition Against Rape (PCAR) is a private nonprofit organization. Founded in 1975, PCAR is the oldest anti-sexual violence coalition in the country and is widely respected at both the state and national levels for its leadership to prevent sexual violence. Over the past 35 years, PCAR has successfully worked as an agent of change--educating society about the severe and long-lasting impact of sexual violence, confronting victim-blaming attitudes, challenging injustice, and advocating for policies for victims of sexual violence to

provide them with the compassion, privacy and dignity they deserve. PCAR joins this *amicus* brief to dispel the myth that noncooperation with a police investigation is a reliable indicator that a sexual assault victim is lying about the incident.

PENNSYLVANIA NOW

Pennsylvania NOW, Inc. is a statewide grassroots, nonprofit volunteer organization with over 13,000 contributing members. Pennsylvania NOW is the state-level chapter of the National Organization for Women, which is based in Washington, DC. Nationwide, there are over 500,000 contributing members. NOW members are women and men, young and old, all colors, classes, and backgrounds, working together to bring about equal rights for all women. Through grassroots organizing efforts, Pennsylvania NOW works to eliminate all forms of discrimination against women, including discrimination based on race, economic status, age, sexual orientation, religious affiliation, ethnic origin, and/or disability. Over the years, Pennsylvania NOW has been a strong advocate for enforcement and improvement of laws governing sexual assault.

PITTSBURGH ACTION AGAINST RAPE

Pittsburgh Action Against Rape (PAAR) is a private nonprofit organization founded in 1972 by the Pittsburgh Chapter of the National Organization of Women (NOW) in response to a series of rapes and growing public concern. PAAR's Mission is to respond to survivors of sexual violence with crisis intervention and counseling, educate the community to prevent sexual violence, and advocate for systems to respond to and prevent sexual violence. In its daily work, PAAR interacts with the courts and with police officers. As Allegheny County's rape crisis center, PAAR is greatly concerned with systemic responses that demean, stereotype, degrade and further traumatize the victim. Trauma victims react to their situation in a wide variety of ways, some of which can appear to be combative or non-cooperative toward law enforcement. This behavior in no way indicates that the victim is lying and certainly would not justify bringing criminal charges against the victim.

SOUTHWEST WOMEN'S LAW CENTER

The Southwest Women's Law Center is a nonprofit women's legal advocacy organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by eliminating gender discrimination, helping to lift women and their families out of

poverty, and ensuring that women have control over their reproductive lives. The Southwest Women's Law Center is committed to eliminating gender discrimination in all of its forms, including where inappropriate gender stereotypes further victimize survivors of sexual assault and domestic abuse.

VICTIM RIGHTS LAW CENTER

The Victim Rights Law Center (VRLC) is a nonprofit legal organization based in Boston, Massachusetts with a satellite office in Portland, Oregon. The VRLC's mission is to provide legal representation to victims of rape and sexual assault to help rebuild their lives and to promote a national movement committed to seeking justice for every rape and sexual assault victim. VRLC was the first—and remains one of the few—nonprofit legal agencies in the country devoted to serving victims of sexual assault. It is the *only* legal victim services organization in the country dedicated to providing free legal representation of victims of non-intimate partner sexual assault. The VRLC has helped to represent thousands of sexual assault survivors. The VRLC is also a nationally recognized expert on civil, non-tort legal remedies for victims of non-intimate partner sexual assault. Through our direct representation and national legal technical assistance projects, the VRLC is all too familiar with the myths and biases that are employed against rape victims.

VICTIMS' INTERVENTION PROGRAM

Victims' Intervention Program is a nonprofit organization that provides services to victims of domestic violence, sexual assault and other serious crimes in Wayne County, Pennsylvania. Victims' Intervention's mission is to educate the community on the issues of domestic and sexual violence, empower victims to make the best choices for their individual situations, and invite the community to envision a world free from violence. Victims' Intervention provides services to women, men and children age five and up. Services include a 24-hour crisis hotline, crisis intervention, individual and group counseling, legal and medical advocacy and accompaniment, emergency shelter assistance, emergency food vouchers, relocation assistance, information and referral, emergency transportation, risk reduction programs, and training programs. Its extensive experience with many victims of rape and sexual assault makes clear that every victim of rape reacts differently. Non-cooperation with a police investigation is not a reliable indicator that a sexual assault victim is lying.

VICTIMS RESOURCE CENTER

Victims Resource Center (VRC) has been providing services to victims of sexual violence since 1974. With offices in Luzerne, Carbon, and Wyoming counties, VRC offers a broad spectrum of services to victims of crime, as well as family members and friends affected by the incident. These services include a 24-hour telephone hotline, 24-hour response to medical request for support to domestic violence victims, accompaniment to hospitals, police stations and court proceedings, education programs for students, professionals and community groups, and advocacy for victims' rights, including educating local and national legislators about the importance of protecting the rights of victims. VRC is committed to dispelling myths that impair the criminal justice system's ability to fairly investigate and prosecute crimes of sexual violence.

WOMEN AGAINST ABUSE

Women Against Abuse (WAA) is one of the largest domestic violence programs in Pennsylvania. WAA serves more than 10,000 individuals a year through emergency housing, legal services, hotline counseling, education and advocacy. WAA operates the only shelter in Philadelphia that specifically serves victims of domestic violence and founded the nation's first legal center to address issues of domestic violence. Women Against Abuse Legal Center attorneys represent victims of domestic violence in family law cases and advocate for victims within the criminal justice system. Last year, Women Against Abuse provided criminal advocacy to over 1,000 victims of domestic violence. From its work with domestic violence victims, WAA understands that the criminal justice system does not always believe victims because they exhibit traumatized behavior and may be reluctant to cooperate with an investigation. It is vital that the law enforcement and justice systems understand the barriers to victim cooperation, recognize the effects of trauma on victims, and allow each victim to determine his or her own way of coping with the trauma. To do otherwise has a chilling, dangerous effect on victims of violence who would otherwise seek the protection offered by the justice system.

WOMEN ORGANIZED AGAINST RAPE

Women Organized Against Rape (WOAR) is the only rape crisis center in Philadelphia. WOAR's mission is to end all forms of sexual violence through advocacy and education. Each year, WOAR provides professional counseling and court and medical accompaniment to an average of 5,000 victims of sexual

violence and reaches more than 65,000 children and adults in the Philadelphia community with educational programs about sexual assault and abuse. WOAR knows from experience that individuals respond to the trauma of assault differently and that an individual's failure to seek immediate services or cooperate with law enforcement does not mean the assault did not happen. WOAR is committed to advocating for the fair and equitable treatment of sexual assault victims.

WOMEN'S CENTER, INC.

The Women's Center, Inc. of Columbia/Montour provides direct services for victims of sexual assault and domestic violence, as well as prevention activities, advocacy, and leadership to the community aimed at eradicating domestic violence and sexual assault. The Women's Center's services include a 24-hour hotline, emergency shelter for battered women and children, individual and group counseling, medical advocacy, support groups, safety planning, and advocacy and accompaniment to police, hospital, legal appointments, court, and social service agencies. The Women's Center's education department provides prevention education to the community about the impact that domestic violence and sexual assault has on our lives.

WOMEN'S LAW CENTER OF MARYLAND, INC.

The Women's Law Center of Maryland, Inc. is a nonprofit membership organization with a mission of improving and protecting the legal rights of women, particularly regarding domestic violence, sexual assault, family law and employment law. Through its direct services and advocacy, the Women's Law Center seeks to promote the legal rights of women and girls and to protect their safety by assisting them to access the remedies and protections available through the civil and criminal legal system.

WOMEN'S LAW PROJECT

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, the WLP engages in high-impact litigation, advocacy, and education. The core values of the WLP are a belief in the right of all women to bodily integrity and personal autonomy; dedication to listening to women and being guided by their experiences; and commitment to fairness, equality, and justice. The Law Project is committed to ending violence against women and children

and to safeguarding the legal rights of women and children who experience sexual abuse. To that end, the Law Project has provided counseling to victims of violence through its telephone counseling service, engages in public policy advocacy work, and participates in *amicus curiae* briefs which seek to improve the response of the legal system to victims of sexual assault and violence. The WLP led a reform effort that improved the Philadelphia Police Department's handling of sex crimes and conducts a yearly review of unfounded and open cases.

WOMEN'S WAY

WOMEN'S WAY is the country's oldest and largest women's funding federation. Its mission is to raise money and public awareness to fight for and achieve women's equality, safety, self-sufficiency and reproductive freedom through women-centered funding, advocacy and education. WOMEN'S WAY provides funding to agencies that provide serve women and girls and that advocate across the spectrum of women's issues, including rape crisis intervention and domestic abuse counseling. WOMEN'S WAY also effectively advocates for and creates public awareness of the larger, systemic changes that will continue to advance women's progress. One of WOMEN'S WAY's advocacy priorities is working to end violence against women.

YWCA OF LANCASTER

The YWCA of Lancaster has been serving the Lancaster, Pennsylvania community since 1889. Since 1990, the YWCA has been designated by the Pennsylvania Coalition Against Rape as Lancaster County's sexual assault center. The YWCA's Sexual Assault Prevention and Counseling Center provides direct services to 900-1,000 individuals annually, in addition to prevention education programs to 7,000 people. The YWCA's interest in this case arises out of its work with sexual assault survivors and the trauma and secondary victimization some rape victims experience as a consequence of their interaction with the legal system.

CERTIFICATE OF IDENTICAL COMPLIANCE AND VIRUS CHECK

I hereby certify that the foregoing Brief of *Amici Curiae* electronically filed with the Court is identical to the brief served upon counsel electronically and is identical to the brief filed with the Court in paper format, and has been virus checked with the program Symantec Anti-Virus Corporate Edition, version 10.0 and no viruses found.

Date: September 28, 2009

/s/Terry L. Fromson
Terry L. Fromson

CERTIFICATE OF BAR MEMBERSHIP

I, Terry L. Fromson, hereby certify that I am admitted to practice before the United States Court of Appeals for the Third Circuit, and that I am currently a member in good standing.

Date: September 28, 2009

/s/Terry L. Fromson
Terry L. Fromson

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

**Certificate of Compliance With Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and R. 29(d) because:

This brief contains 5675 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 Point font Times New Roman style.

Date: September 28, 2009

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CERTIFICATE OF SERVICE

I hereby certify that this 28th day of September, 2009, I served the Brief of Amici Curiae on the persons and in the manner indicated below:

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