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RAPE IN THE UNITED STATES: THE CHRONIC FAILURE TO REPORT AND INVESTIGATE RAPE CASES

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

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RAPE IN THE UNITED STATES: THE CHRONIC FAILURE TO REPORT AND INVESTIGATE RAPE CASES

TUESDAY, SEPTEMBER 14, 2010

U.S. SENATE,
SUBCOMMITTEE ON CRIME AND DRUGS,
COMMITTEE ON THE JUDICIARY,
WASHINGTON, DC.

The Subcommittee met, pursuant to notice, at 2:25 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Subcommittee, presiding.

Present: Senators Specter, Cardin, and Klobuchar.

Also Present: Senator Franken.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Good afternoon, ladies and gentlemen. The Criminal Law Subcommittee will now proceed with the hearing on the subject of rape.

This hearing has been requested by the Women's Law Project following an extensive series of articles by newspapers in many leading United States cities commenting about the inaccuracies on reports of rape, raising serious questions as to whether there are adequate steps being taken by police departments to catalogue the complaints, to investigate them, and to make the determination when rape, in fact, occurred.

The statistics are staggering. Over 20 million women, or 18 percent of all women in the United States, have been victims of rape, and each year approximately 1,100,000 more women are victims of rape. The statistics show that 28 percent of the forcible rapes have victims under the age of 12, and 27 percent of forcible rape victims are in the ages of 12 to 17. Reportedly, only 18 percent of forcible rapes are reported to the police.

When I took a look at these statistics, I wondered how they were gathered and how accurate they were on a subject this sensitive. And I am advised that the studies conducted in 1990 and the year 2005, the National Women's Study and the National Women's Study Replication, are reliable statistics following state-of-the-art survey techniques when interviewing women that are markedly more sensitive and accurate than used in other surveys, including the Government's National Crime Victimization Survey.

There have been a series of articles in the major United States newspapers: the Philadelphia Inquirer, the Baltimore Sun, the St. Louis Post-Dispatch, the New York Times, the New Orleans Times-

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Picayune, the Village Voice, and This American Life on National Public Radio. The Philadelphia experience showed that there were approximately one-third of all sex crimes reported in Philadelphia which were not investigated by the police, that there was an audit conducted, and it showed that some 2,300 sexual assault cases had been incorrectly handled. The Philadelphia Police Department changed their approach to bring in women's advocacy groups to review the files using transparency and requiring that, before a matter was reported as unfounded, it be filed by two police officers.

As I have taken a look at these statistics, I found that times have not changed very much since the days when I was an assistant district attorney some years ago. And when I was elected district attorney in 1965, I instituted a change in procedures and established a special rape unit. At that time rape complainants were interviewed in a regular detective room where they had a series of a dozen or more desks. Witnesses were interviewed within hearing range of many, many other people, not very conducive to telling about an incident like being the victim of a rape. And I changed that policy to have interviews privately conducted.

At that time there were no photographs taken to preserve evidence of trauma, no brushings on the issue of pubic hair, and a great many changes were undertaken. And it looks to me like it is still a big, big issue, so we are moving ahead with this hearing this afternoon to focus public attention to see what is going on and to see what changes ought to be made.

For starters, I note that the definition of rape which is being used by the FBI is antiquated, not inclusive as where it ought to be.

I will turn now to our first witness who is the Director of the Department of Justice's Office on Violence Against Women. In this role, she serves as liaison between the Department and Federal and State governments on crimes of domestic violence, sexual assault, dating violence, and stalking. She likes to be called director as opposed to judge, but she is the supervisory judge of the New Hampshire Judicial Family Branch and has been since 1996, a member of the Governor's Commission on Domestic and Sexual Violence, and chaired New Hampshire's Domestic Violence Fatality Review Committee; a graduate of the University of Wisconsin and DePaul University College of law.

Welcome, Director Carbon. The floor is yours for 5 minutes.

STATEMENT OF HON. SUSAN B. CARBON, DIRECTOR, OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. CARBON. Good afternoon, Senator Specter. It is an honor to be here this afternoon. I would like to thank you and I would like to thank the Committee for conducting this hearing today to draw attention to the dehumanizing issue of sexual assault and how this dangerous crime is treated in our country.

As the Committee knows well, sexual assault is a complex crime that affects every sector of our society. Children—girls and boys—are molested by family members; college freshmen are date raped; and the elderly are attacked in their homes. Sexual assault knows

no gender, geographic location, race, ethnicity, sexual orientation. None of us is immune, but all of us are responsible to end it.

The challenge that we face is to meet the needs of an incredibly diverse population of victims while at the same time prosecuting offenders for these heinous crimes. A fundamental obstacle to addressing sexual assault is the reluctance to talk about it. We are uncomfortable talking about incest or thinking that our grandmothers could be raped. Myths and misconceptions abound, not the least of which is that real rape is committed only by strangers wielding weapons in dark alleys. To the contrary, most victims know their attackers, no weapons are used, and alcohol and drugs are frequently involved.

These misconceptions do not stop at the doors of the police department, the prosecutor's office, or the courtroom. They impact the way that all of us respond to sexual violence, and this must be changed.

To bring justice for victims and accountability for perpetrators, we must move the national conscience through meaningful dialog. Today's hearing is a step in the right direction, and we commend the U.S. Congress for its leadership toward this moral imperative.

In my testimony today, I hope to provide a broader context for the scope of sexual assault and our collective responses to it.

First, it is difficult to quantify the crime. Studies use different definitions of rape and different data collection methods. Some include only forcible rape or only rape that is reported to law enforcement.

Our terminology is confusing as well. Sometimes we talk about rape, sometimes sexual assault, other times sexual violence. That being said, researchers estimate that about 18 percent of women in the United States report having been raped at some point in their lives.

For some populations, rapes or sexual violence are even higher. Nearly one in three—and I repeat, nearly one in three—American Indian or Alaska Native women will be sexually assaulted in her lifetime.

Sexual assault is also one of the most underreported crimes in America. The Bureau of Justice Statistics reports that the majority of rapes and sexual assaults of women and girls between 1992 and 2000 were not reported to law enforcement. Reasons for not reporting included fear of not being believed, a lack of trust in the criminal justice system, fear of retaliation or embarrassment, being too traumatized to report, or self-blame and guilt.

Second, there are dramatic differences in the way that police departments, prosecutors' offices, and even courts respond to this crime across the country. Some communities have highly trained, coordinated teams of primary and secondary responders from health, law enforcement, legal, and victims services sectors. However, as you are going to be hearing from subsequent panels this afternoon, in other places victims are subjected to humiliating interrogations and are treated with suspicion by law enforcement. Collected evidence may sit for months or even years without being analyzed. In some areas of the country, there simply are no services.

It is a matter of absolute national integrity that we improve the criminal justice response to sexual violence. But let me be clear when I say so. We cannot simply focus on one element of the criminal justice system, whether it be law enforcement, prosecution, courts, or juries, and expect to fix the problem. Instead, we must examine what about our system it is that keeps victims from reporting these crimes.

When the Violence Against Women Act was passed 16 years ago, sexual violence was included, but it took a back seat to domestic violence. It is time that we devote the same intense level of public awareness, services, and training to address this insidious problem as we have with domestic violence. Victims of sexual assault deserve no less.

With support from Congress, OVW is funding for its second year the Sexual Assault Services Program, the first Federal funding stream solely dedicated to providing direct services to survivors of sexual assault. We have awareness and prevention campaigns and programs on campuses across the country. We also have law enforcement training programs, and we are working to provide protocols and training for sexual assault nurse examiners and training in tribal communities as well. We are training advocates, prosecutors, and judges as well, but much remains to be done.

When I started at OVW 5 months ago, I came with a list of priorities that I hoped would be embraced by our office and the Department, and they have been. At the top of our list are prevention and ending sexual violence. We are committed to creating a culture where victims are safe to report the crime, where they will be treated with respect by all those with whom they come into contact, and where perpetrators will be held accountable.

I want to thank the Committee for being at the forefront of ensuring that the devastating crime of sexual assault receives the serious attention that it deserves. Thank you for your time this afternoon.

[The prepared statement of Ms. Carbon appears as a submission for the record.]

Chairman SPECTER. Well, thank you, Director Carbon.

When you talk about reasons for not reporting rape and you comment that people are uncomfortable talking about rape, why do you think that is so? In our society, where there is so much generalized talk about sex and so much that is pervasive even in the public media, why should that persist, people being embarrassed to talk about this subject?

Ms. CARBON. You are absolutely right. The subject of sex is talked about a lot, but the concept of sexual violence is not discussed. People have a hard time understanding the nature of sexual violence, and we have a tendency when we talk about it to blame the victim for having caused it.

We have a culture in which in many respects we condone violence, and women——

Chairman SPECTER. Pause for a moment on the issue of concern by the victim that the victim would be charged with having caused it. Why should that be the case?

Ms. CARBON. Let me share, if I may, a story that I recall from my days in Wisconsin many years ago. There was a trial of a young

woman, 18 years old, on the college campus of the University of Wisconsin at Madison, and she accused an individual of raping her, and the trial ensued, and the judge—the judge—accused the woman of inviting the rape because at that time she was wearing a short skirt. And this judge, it turns out, happened to be recalled, which is a very unusual process. Many States do not even provide for it. But this judge was recalled by the Wisconsin electorate because of their outrage that the judge was blaming the victim for what she was wearing.

That story has resonated with me ever since, and this is probably 35 years ago. We tend to look at victims and hold them responsible. Did they walk somewhere they should not have walked? Did they have a drink at a bar? Did they go home with somebody they should not have gone with? And we look at what the victim did. We do not look at what the perpetrator did.

Chairman SPECTER. Let me move on to your comment about concerns about prevention of sexual violence. That, of course, is an entirely different phase from reporting and investigating and prosecuting. What ideas would you have on the subject of prevention?

Ms. CARBON. In my view, when I talk about sexual violence, I talk about the trilogy, if you will: the need for prevention, effective prevention; effective intervention when we provide services; and then treatment. We have talked so much over time about the appropriate services when we intervene in a crime, but I think that it is time that we rewind that script and come back to start preventing sexual violence so that we will prevent victims from ever becoming victims.

We have a number of prevention programs through some of our grants, through the Rural grant, for example——

Chairman SPECTER. Tell us about your ideas on how you prevent sexual violence.

Ms. CARBON. I think we need a broad-based public awareness and education campaign to begin with. I think we need to change the cultural mores and the cultural values and our attitudes.

Chairman SPECTER. Awareness of what? People are aware of what rape means, and people are aware that it is violent and antisocial. So how do you prevent it?

Ms. CARBON. We prevent it by educating people about the fact that rape is a crime and about sexual assault being a crime. People get very confused with mixed messages that we send when we look at the media, when we look at sports, when we look at entertainment, and we see women in very degrading roles. We assume then that women are inviting this when indeed they are not.

Chairman SPECTER. In the limited time I have remaining, let me move to another subject, and that is, the role of women's organizations in checking on police practices. We are going to hear from the Philadelphia Police Commissioner later that they have programs of transparency, where women's groups come in and review files to make an independent determination.

Now, there is nothing like oversight to have people on their toes in the discharging of their official duties. How would you fashion a program where a women's organization, which we have in all of the big cities, many small towns, structure a program of working

with the police department and having women take a look at the files to comment?

Ms. CARBON. I believe you soon will be hearing in more detail from those organizations which are doing it this afternoon. But I can relate from a perspective from a court standpoint. I have not been privy to how they have actually run the program with law enforcement. But by opening our records, the principle of having open access to our files without violating confidentiality is an important way that we as public officials, whether we are in the court system or law enforcement, can be held accountable for what we do. And by reviewing the files, by assessing the testimony—not the testimony but the evidence that is in the files to determine whether there is a basis for prosecution is one good way.

Through all of the work that we do under the Violence Against Women Act, we talk about a coordinated community response. So anytime we can bring in partnerships to help improve the work, bring in advocates to work with those professionals, I think we get a better outcome and more safety for victims.

Chairman SPECTER. The red light went on during your answer, so I will turn now to Senator Cardin.

Senator CARDIN. Well, first, Chairman Specter, I want to thank you for holding this hearing. I think one of the most important functions of our Committee is to oversee what is happening on the enforcement of our laws. And, yes, while most of the prosecutions and investigations for sexual assaults will be done at the State and local level; it is important that the Senate provide the oversight to make sure our laws are being handled in an appropriate manner.

I am convinced that sexual assaults prosecutions are at a much lower number than other criminal activities, and that we are not doing an appropriate job nationwide on helping those that are victimized in reporting the incident, investigating it, and prosecuting it. And when you look at the numbers, there is reason to be concerned.

In Baltimore, we had the highest rate of unfounded cases in the Nation. Now, when you determine at the police level there is an unfounded case, it generally means that you do not believe the victim. And there is really no evidence to support the numbers that we had in Baltimore.

The Baltimore Sun put a spotlight on this. As a result, there was action and attention was paid, and all of a sudden, the number of cases have gone up dramatically in Baltimore—not because there are more cases, but because they are now treating it the way it should be, at least starting to do that.

So I guess my question for you is: What are you doing in order to try to see whether we can get accurate information nationwide, that we have a common set of information as to the number of cases that are being followed up, that there is adequate training through local police to handle this, how you are helping set up the response teams that are necessary to help victims during these extremely difficult times, so that we have a common set of numbers nationwide in order to be able to set up the right programs here at the national level to assist local law enforcement to help those who have been victimized through sexual assaults, and to make sure those who are perpetrators are held accountable?

Ms. CARBON. Those are great questions, and this is obviously the subject of the hearing here today. We have at OVW many different technical assistance providers and many training programs for all of the various professions, but in particular on law enforcement, we have a number of programs that are designed to educate sort of both tiers, from the top down and the bottom up. We have training programs for police chiefs through the International Association of Chiefs of Police, IACP. We have other programs through Ending Violence Against Women and many other technical assistance providers that have training curricula, whether it is online or live training, to teach line officers about how to investigate cases and how to report, understanding how to conduct interviews, understanding how to clear cases.

One of the most important things we can do is to have a common understanding around terminology, because different States and different police departments define different crimes in a different way. So I would urge that there be some common terminology so that we can compare apples and apples and oranges and oranges as we go through. That is one of the challenges we have that it would be helpful to be addressed.

Senator CARDIN. I think that is a recommendation we need to take a very close look at, because I understand that in some jurisdictions they might take a sexual assault and classify it as just an aggravated assault. It may be at different levels, and there one different definitions that are used, and that is something we need to have a better understanding of. But what concerns me is whether we have the numbers as to how police departments record unfounded reports they do not follow up on. Do you have any statistical information that could help us as to whether certain jurisdictions are just dismissing out of hand complaints that are being filed on a very arbitrary basis? Do we have any information to be able to take a look at what is happening? There are so many cases in which the police are brought in and they are not even sent out to investigate. They are not even sending cases over to a detective or to the prosecutors; decisions are being made by the responding police officer not to take it any further.

Now, in Baltimore, they are requiring reports to be filed, so now we are at least getting second looks at these cases to make sure that there is a follow-up. I am concerned that in other areas of this Nation that they may not be hitting the radar screen.

Ms. CARBON. There is research to suggest that the number of truly unfounded cases is somewhere between 2 and 10 percent or 2 and 7 percent. So the number of truly unfounded is very small. Some of the steps that they are taking in law enforcement agencies around the country are to do what you are suggesting, and that is, No. 1, that we document that there is a report of every incident, instead of just holding the case and not report anything. We found it very helpful to require that law enforcement officers document the event, that they report what has actually happened, and that they then have a supervisor review the report to ensure that there either is evidence to go forward or not, but what additional steps would need to be taken.

So with those additional reporting requirements coupled with much more intensive training, we are going to get a better out-

come. And kudos to the departments that are willing to do this, because by doing so you are undoubtedly going to see a rise in the numbers that are reported. There may not be a difference in the crime rate because we are actually disclosing what has been happening but has been hidden from public view.

Senator CARDIN. Well, I agree with that. I think it is very important. I think we have to have a common set of numbers. We have to know what is happening. And unless there is a consistent interpretation of these reports as to whether they should be investigated and recommended for prosecution, then we really do not have a good grip on what is happening nationwide.

Ms. CARBON. You are exactly right.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Cardin.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman, for organizing this very important hearing and for allowing me to attend. I am not on the Subcommittee, but you opened it to every member of the Judiciary Committee.

Director Carbon, I want to talk about rape kits. As you mentioned in your written testimony, when Congress passed VAWA in 1994, it tried to make sure that victims would not bear the cost of the forensic exams that victims receive after an assault or rape kits. The problem is that some jurisdictions are still billing victims for the rape kits and leaving it to the victims to get reimbursed by insurers or victims' funds, and without objection, Mr. Chairman, I would like to add to the record four articles from the National Center for Victims of Crime, U.S. News and World Report, Pro Publica, and Human Rights Watch that document this.

Chairman SPECTER. Without objection, they will be made a part of the record.

[The information appears as a submission for the record.]

Senator FRANKEN. But to me, the real problem is that this practice is actually legal. Under Federal law, it is legal to bill a victim for her rape kit, and the law just says that the State needs to fully reimburse her. In the past, the Office of Violence Against Women thought that it was a bad policy. An FAQ, Frequently Asked Questions, that your office issued in 2007 says that the Office on Violence Against Women strongly encourages States to not require victims to file a claim to their insurers. It explains that when the States do this, they may inadvertently inform a victim's family of an assault, or spouse or children, when they get a statement from their insurer in the mail.

Can you elaborate on this? Is it a good idea to allow victims to be billed for their rape kits even if they get fully reimbursed later?

Ms. CARBON. In my view, I think not. I would like to share with you an amendment——

Senator FRANKEN. I am glad to hear you say that.

Ms. CARBON. [continuing]. For the Committee's benefit. When VAWA was reauthorized in 2005, in part to address that, there was a concern that many victims may have been raped a long time ago and they may not want that information shared. They may have elected not to prosecute for whatever reason. But in 2005, when the

Violence Against Women Act was reauthorized, the certification was changed to allow States to pay and use their VAWA funds or their STOP funds to pay for the examination. But that was conditioned on a couple of things, and one is that the victim not be required to submit it to her insurance carrier and that the examination be done by a trained professional.

Having a victim—the loophole is there which you identify. We are doing training, and we have screened all of the jurisdictions to ensure that they are in compliance with the law; but that is not to say that we cannot do a better job or that perhaps the statute could not be strengthened to prevent any possible exposure for a victim. And even though the statute has improved from 2005 over 2000, I think we are always looking for ways to do the job better, and if there is a way that we can protect victims better——

Senator FRANKEN. You said it is sort of a loophole in the law, but even the good part of the law is not followed. The law says that victims should get a free rape kit or be totally reimbursed for it.

Ms. CARBON. Correct.

Senator FRANKEN. But, again, I have seen reports of victims having to pay insurance deductibles for their rape exams or paying what is left after a Crime Victims Fund, which I think is what you are referring to, maxes out.

Here is one new clip from last May which, without objection, I would also like to add to the record.

Chairman SPECTER. It will be made a part of the record, without objection

[The information appears as a submission for the record.]

Senator FRANKEN. The relevant part says, "The police department made one payment toward the single mother's hospital"—this was a rape victim—"but when she submitted the $1,847 worth of remaining bills to the Crime Victims Fund, she received a denial letter telling her that law enforcement should have paid."

Director Carbon, enforcement of this law does fall under the Department of Justice's jurisdiction. Can you assure me that you will make sure that rape victims are not directly or indirectly having to pay for their rape exams?

Ms. CARBON. I will absolutely look into that, Senator. They should not have to pay for their exams—that is clear—under their condition of receiving their STOP money.

Senator FRANKEN. Thank you so much.

Ms. CARBON. Thank you.

Senator FRANKEN. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Franken.

Thank you very much, Director Carbon. We now move——

Senator KLOBUCHAR. Senator Specter, hello. I just came in.

[Laughter.]

Chairman SPECTER. Welcome, Senator Klobuchar.

Senator KLOBUCHAR. Thank you, Mr. Chairman.

Chairman SPECTER. The floor is yours.

Senator KLOBUCHAR. I have been in the impeachment hearing, and it is kind of nice to leave the State of Louisiana for a little bit and come here, so thank you. All right. Thank you.

Chairman SPECTER. You have the floor.

Senator KLOBUCHAR. And I do apologize. We have this very——

Senator FRANKEN. We all love Louisiana, though.

Senator KLOBUCHAR. Well, we do, but, you know, we have been talking a lot about things that I did not know went on there, so it is good to be here.

Ms. CARBON. It is nice to see you again. Thank you.

Senator KLOBUCHAR. Thank you very much. I know that you have focused on that there has been progress made in addressing this crime in metropolitan areas. I saw it myself as chief prosecutor in Hennepin County, which includes Minneapolis, 45 suburbs. Could you talk about what is going on in rural areas? As I began to get out in my State and represent the entire State, I saw this vast difference between the resources and the knowledge and the tools that rural jurisdictions have compared to metropolitan areas.

Ms. CARBON. Certainly. Thank you. Having just returned from a trip to Alaska, I can talk to you about rural jurisdictions.

Senator KLOBUCHAR. Senator Begich refers to his State as "extreme rural." That is a different category.

Ms. CARBON. Just for your benefit, I had never appreciated the extent to which it is so rural. Alaska is two and a half times the size of Texas, half the population of New Hampshire, about the population of Vermont. And so when you have most of the State that is not accessible and parts of the State that have no services at all, it truly is a desperate state of affairs.

But in response to the more general question about rural programs, there are many programs that we fund that provide services in rural communities, and one is the Rural Sexual Assault, Domestic Violence, Dating Violence and Stalking Assistance Program, so that we can provide services that are sexual assault specific services in those communities.

There is also a new program, a new demonstration program which we are funding called the Sexual Assault Demonstration Initiative that we are about to roll out in a couple weeks that will be designed to provide enhanced services for dual coalitions that have traditionally not been providing sexual assault services but will provide enhanced services in rural communities. And so there will be five sites around the country funded for that.

In addition, we are looking to, as Vermont has, have specialized sexual assault units in the local police departments, and these are very effective tools so that we train local agencies to be able to respond to sexual assault cases, giving them the enhanced training and understanding how to inquire of victims in the way that Senator Specter was speaking of earlier, the need to be sensitive to victims and not put them in a position where they are going to then feel as though they have assumed responsibility for the crime.

So this kind of training that we do as well, through our Rural Programs, our STOP Programs, also our Campus Programs and many others, help to support the need for services. Our SAS program itself, Sexual Assault Services Program, is the first funding stream, as I mentioned earlier, that is dedicated solely to sexual assault victims services, and those apply in rural areas as well. It is extremely important that we have appropriate advocacy and counseling services in rural areas and that they work with local law enforcement and prosecution as well.

Senator KLOBUCHAR. OK. In your testimony, your written testimony, you acknowledge that 10.5 percent of high school girls and 4.5 percent of high school boys report some kind of rape or forced sexual intercourse. What is your office doing to better address the problems of rape at the high school level and on to college?

Ms. CARBON. Assault of teenagers and on college campuses is one of the most serious problems that we have. The more that we look at what is going on and we study, we learn that assault is happening at earlier and earlier ages. Sixteen years ago, when the first Violence Against Women Act was adopted, we did not even contemplate teen violence. We talk about teen dating violence, for example, but it is really not dating violence because kids do not date. It is really sexual assault in those relationships.

We have a program that OVW is funding in partnership with the Ad Council and the Family Violence Prevention Fund called ThatsNotCool.com. It is a website where teens can go online and they can talk peer to peer to learn about how to address what may be happening in their relationships so that they can be safer and who they can turn to to get help so that they can avoid any further sexual assault.

On college campuses, we have a number of technical assistance providers as well, including one which we have here, the Security at Campus Program. We are doing lots of training on college campuses, and, in fact, the Department of Justice just completed a campus tour in March to highlight what is going on around college campuses in the country and the importance of starting new programs.

Back in my home State of New Hampshire, we are funding a program, the Bystander Intervention Program, so that college campuses and college students can learn what they can do to intervene safely when they observe on college campuses an incident about to happen or one which may have happened. College students there have developed their own campaign ads to post on all of the buses going around campus, their own billboards saying watch out if this happened or do you know about this, or whatever it may be.

Senator KLOBUCHAR. I do not mean to cut you off, but the cyber issue, have you looked into that? I have a bill with Senator Hutchison, and that also has House authors, and we have been working actually with Erin Andrews, the ESPN reporter who was stalked and her video was put all over the web. I suggest you guys look at this bill. I think it is good for going after cyber stalking. But have you looked at the cyber issue and how that relates to sexual assault issues in colleges and in high schools with kids?

Ms. CARBON. It is a big part of that.

Senator KLOBUCHAR. That is what I thought.

Ms. CARBON. The kids are using technology that in my day and age we never had, and it is really a very important piece of the overall puzzle, because, regrettably, parents are not aware of some of the ways in which their kids are being assaulted or stalked. And so having information about that is important. It is part of our training programs which we have.

Senator KLOBUCHAR. All right. Thank you very much.

Chairman SPECTER. Thank you, Senator Klobuchar.

Thank you very much, Director Carbon.

Ms. CARBON. Thank you, Senator.

Chairman SPECTER. We move now to the next panel: Carol Tracy, Commissioner Ramsey, Ms. Sara Reedy, Julie Weil, Ms. LaWanda Ravoira.

Our first witness is Ms. Carol Tracy, the executive director of the Women's Law Project in Philadelphia. She is a lecturer at the University of Pennsylvania and Bryn Mawr School of Social Research, a graduate of the University of Pennsylvania, and a law degree from Temple University.

We have a very large number of witnesses, nine in total, so we are going to have to observe the time limits very closely.

Ms. Tracy, the floor is yours for 5 minutes.

STATEMENT OF CAROL E. TRACY, WOMEN'S LAW PROJECT, PHILADELPHIA, PENNSYLVANIA

Ms. TRACY. Thank you, Senator Specter, and thank you for responding to my request to have this hearing, and I thank other members of the panel for being here.

We believe it is critically important that Congress address the claims that are being made that police departments throughout the United States are mishandling rapes and other sex crimes. We think it is essential that this Committee review the serious inadequacy of the Federal Bureau of Investigation's Uniform Crime Report both in its definition of rape and in the assessment of the quality of the rape data reported by local law enforcement agencies.

The Women's Law Project first became involved in addressing police mishandling of sex crimes in the fall of 1999 when the Philadelphia Inquirer published an investigative series which you described earlier, Senator Specter. Massive reforms have taken place in Philadelphia since that time, including an invitation for advocacy groups to review case files. Ten years later, we and other advocates continue to conduct an annual case review. A very strong collaborative reform effort put in place by then-Commissioner John Timoney continues under the able leadership of Commissioner Ramsey. We all recognize the need for constant vigilance and cooperation. We believe that we have a successful partnership in Philadelphia.

Because of the role that we have played in this, journalists from all over the country have contacted me. My full testimony is replete with information. I will just highlight a couple to try to get through this in 5 minutes.

The Baltimore Sun reported that, since 1992, the number of Baltimore rape cases reported to the FBI has declined by 80 percent; since 1991, the percentage of unfounded rape cases has tripled. From 2003 through 2010, police wrote reports in only 4 in 10 rape calls, signifying that patrol officers were rejecting cases prior to investigation.

Each of these papers—St. Louis Post Dispatch, the Times-Picayune, the New York Times, the Village Voice—all report data like this.

The translation of this data to real life presents some horrifying details. The Cleveland Plain Dealer reported that a Cleveland victim was found to be "not credible" after she filed a complaint that she had been sexually assaulted by a man who had spent 15 years

in prison for a rape charge, was a registered sex offender. Her complaint was unfounded even though she was bleeding when she flagged down a police cruiser and provided the police with detailed information about the assailant. Police eventually found the remains of 11 women at Anthony Sowell's home, six of whom were murdered after police failed to pursue the complaints of these women. In Milwaukee and Baltimore and Philadelphia, we have all heard stories like that.

Initially I thought the reports of egregious police conduct were isolated incidents. However, it is clear that we are seeing chronic and systemic patterns of police refusing to accept cases for investigation, misclassifying cases to non-criminal categories so that investigations do not occur, and "unfounding" complaints by determining that women are lying about being sexually assaulted. Victims are interrogated as though they are criminals, are presumptively disbelieved, are threatened with lie detector tests and/or arrest, and are blamed for the outrageous conduct of perpetrators.

I want to move now to the Uniform Crime Report. The UCR defines, analyzes, and publicizes the incidence of sex crimes. The UCR is supposed to be the authoritative source of nationally represented information on crime. The data are used by policymakers, the media, and researchers to describe and understand crime and police activity. In addition, Congress allocates Federal funds to States and localities based on these data.

Criminologists have informed me that this data is so inaccurate on rape, unlike other data that the UCR reports, that it cannot be used.

Not only is the crime of rape not properly reported, but the definition is totally inadequate. "Forcible rape" is defined in the UCR as "the carnal knowledge of a female, forcibly and against her will." This definition, unchanged since 1927, is exceedingly narrow and does not reflect how America has significantly expanded its understanding of rape, and States have revised their laws accordingly.

Many State criminal laws and the public at large now recognize that all forms of non-consensual sexual penetration, regardless of gender, relationship, or mode of penetration, are as serious as the criminal conduct included in the UCR crime. Yet the narrow definition continues.

We wrote to the FBI in the year 2001, sadly in September 2001, asking them to change the definition of rape. Over 90 organizations signed on to our request. At that time, of course, the FBI's attention was directed to the events of 9/11. We have never received a response, and we believe that both the crisis that is being reported in the papers and this hearing will bring about the necessary change.

Rape is a heinous crime, second only to murder in severity. Sexual assault survivors who have come forward to report the crime are entitled to be treated fairly and with dignity. If police do not regard complaints of rape as crimes, then there is no investigation or arrest, thus further endangering the public as sexual predators remain free to continue to rape other victims, and in some cases murder them.

Chairman SPECTER. Ms. Tracy, how much longer will you need?

Ms. TRACY. Pardon?

Chairman SPECTER. How much longer will you——

Ms. TRACY. I am at the end.

We recommend the following steps: Please direct the UCR program staff to update the definition of rape; charge the UCR program staff to undertake a nationwide audit of police practices to ensure that local law enforcement agencies are recognizing and investigating crimes; and continue the support of the Office of Violence Against Women.

We are grateful for the opportunity to be here, and we just want to make a note that we should all be grateful to the press, because if it were not for the press reporting these, we would not be here today.

Thank you.

[The prepared statement of Ms. Tracy appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Ms. Tracy.

We turn now to Commissioner Ramsey, Police Commissioner of the city of Philadelphia, fourth largest in the country, some 7,500 employees, was for 8 years the Police Commissioner of Washington, D.C.

Thank you for joining us, Commissioner Ramsey, and we look forward to your testimony for 5 minutes.

STATEMENT OF CHARLES H. RAMSEY, COMMISSIONER, PHILADELPHIA POLICE DEPARTMENT, PHILADELPHIA, PENNSYLVANIA

Commissioner RAMSEY. Thank you and good afternoon, Senator Specter, Senators Franken and Cardin, and invited speakers and guests. I want to thank you for the opportunity to appear here today before this Committee to talk about this critically important issue.

I would like to begin by thanking a trusted colleague, tireless advocate, and friend Carol Tracy, who testified before me and summarized the incidents in Philadelphia in 1999 that led to dramatic changes in the department. I firmly believe that partnerships between law enforcement agencies and our social service, prevention, and victim advocacy counterparts are absolutely essential in addressing some of the most pressing issues that confront us.

I will be brief in this testimony and share with you the most relevant lessons learned from our history in the Philadelphia Police Department on how rape has been reported and investigated. The deliberate downgrading of rape cases in the Philadelphia Police Department in the late 1990s, brought to light by the excellent investigative work of the Philadelphia Inquirer, exposed a widespread hidden practice. There was no one person or unit responsible; it was a pervasive and systemic failure. Consequently, it took a comprehensive and relentless approach to address this failure. Under then-Police Commissioner, John Timoney, many important corrective actions were taken at all levels: from training, report writing, and interviewing, to coding and follow-up investigation. It also required changing leadership, adjusting staffing levels, accepting oversight, and establishing partnerships with advocacy groups.

The department has had the same commander of the now Special Victims Unit, or SVU, since the year 2000, at which time a number

of seasoned investigators were also transferred into the unit to increase our staffing levels. Our partners have also remained in their positions in the advocacy groups. Carol Tracy has been with the Women's Law Project since these changes were implemented, and once a year, she and her peers from other organizations come to the SVU office and pore over between 300 to 400 cases selected at random. They have complete access to our files and our personnel. This is just the formal component of their annual review, but on a daily basis, these organizations are in constant communication with police personnel from SVU. They have established a long-term relationship, one that is built on trust and confidence in what was a broken system. I credit all the personnel in SVU and our advocacy groups for their persistence and their dedication to their jobs, and to the thousands of people they have helped deal with this traumatic crime. I cannot overstate the importance of this collaboration in charting a new course of direction in how rape was and is now reported and investigated by our department.

The Philadelphia Police Department put measures into place that thus far have been helpful in re-establishing trust and promoting a culture that treats victims of rape with dignity and respect. There will always be room for improvement, but we are committed to continuous improvement as a core principle for how we will move forward in the future.

Fostering collaboration amongst governmental organizations, police departments, courts, and advocacy and prevention groups is critical in ensuring that we work with victims of rape and sexual assault in a manner that is compassionate and under a process that is transparent. We must all be advocates for anyone who has been impacted by this kind of violence. If there are lessons to be learned from our department, I would urge others to focus on this aspect of how we report and investigate rape and sexual assault. Do not do it alone. Invite your stakeholders to be a part of this process and work together in treating rape and sexual assault from a holistic perspective. Our partnerships have strengthened every part of the process, from reporting each case of sexual assault, irrespective of the circumstances, to a thorough investigation by well-trained specialized detectives, and finally to working with our medical and mental health providers in minimizing the trauma experienced by victims of this heinous crime.

A crisis is often a catalyst for real and systemic change, such as was the case in Philadelphia. Police departments can also learn from each other, and organizations like the Police Executive Research Forum can facilitate that transfer of knowledge. And I am pleased to announce today, as the president of PERF, that we will convene an executive session in early 2011 for police leaders, medical and mental health professionals, and advocacy groups to discuss the current state of sexual assault reporting and investigations. Based on the results of this session, we will make recommendations on how police agencies can partner with their social service and advocacy colleagues and identify best practices in the investigative process.

Thank you, sir, for your time here today, and I look forward to answering any questions you might have.

[The prepared statement of Commissioner Ramsey appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Commissioner Ramsey.

We turn now to Ms. Sara Reedy, who had an extraordinary experience, having been raped at the age of 19 by a serial offender, not believed by the police, jailed, later exonerated when the serial rapist was caught in other similar situations, and engaged in significant litigation which was upheld by the Court of Appeals for the Third Circuit.

Ms. Reedy, thank you for joining us, and for 5 minutes we want to hear what happened to you.

STATEMENT OF SARA R. REEDY, BUTLER, PENNSYLVANIA

Ms. REEDY. Thank you, and thank you for having me here.

On July 14, 2004, I was working a 3 to 11 shift at the Cranberry Gulf Station on Route 19 by myself. At about 10:40 p.m., a man came into the store. He proceeded to walk through the store and then approached the counter, where he pulled a gun out and pointed it at me. He demanded that I sit on the floor in the corner, and he came behind the counter where the register was located. He questioned me about how to open the register drawer. After removing the cash, he came and stood directly in front of me where he held a gun to my left temple and demanded that I give him oral sex, saying "if you do not swallow, then I will shoot you." After the assault, he told me to go into the back office and rip out the phone lines, and then said to me to wait in the back office for 5 minutes after he left.

Following the assault, I went next door to Jordan's, an automotive shop. I had one of the employees call 911 and reported the crime. I stayed at the shop where several officers showed up, and I gave them a description of the attacker and my account of the assault. Shortly afterward, I was taken to Cranberry Passavant Hospital, where I first met Detective Evanson.

When I arrived in the emergency room, I was put in a small office, where I begin to retell the night's events to Detective Evanson. At one point he asked me how many times a day I used heroin. I was then soon moved to an examination room. Detective Evanson came inside the room several different times asking me to retell the attack, and soon his attitude became very aggressive toward me.

He asked me countless times where I had put the money or where the money was. He told me if I confessed things would go a lot easier for me. At one point I got very upset and was crying, and he told me that my "tears would not save me." I stayed at the hospital for 3 hours before I was allowed to leave to go home.

The next day, I went to the Cranberry police station with my mother and stepfather to give a written statement as asked by Detective Evanson. When I arrived at the police station, I was put in a small conference room by myself to write my statement, and Detective Evanson took my parents into another room where he questioned them about me. After finishing my written statement, Detective Evanson came into the room and began to question and accuse

me about the theft. At one point I responded that I just wanted it all to go away.

After only meeting Detective Evanson two times, I had lost hope of my attacker being caught because of Detective Evanson's unwillingness to believe my story.

Two months after I was assaulted, another woman was sexually assaulted within 2 miles of my attack. Detective Evanson was assigned to this case. This woman gave almost the same exact description of her attacker and his M.O. as I had. Unfortunately, Detective Evanson was unable or just refused to make the connection between the two assaults, because he still accused me of fabricating my story.

Detective Evanson even showed up at my residence where he called a marked police car for backup. He stood outside my house asking me to change my written statement and to confess to the crime and they would go easy on me. After almost 45 minutes at my house, the only thing he managed to do was embarrass me in front of my neighbors and revictimize me.

On Sunday, January 14, 2005, a warrant for my arrest was issued for theft, receiving stolen property, and filing a false police report. On Thursday, January 18th, I went to the Cranberry magistrate and turned myself in. I was given a $5,000 straight cash bond because, according to Detective Evanson, I was a flight risk. I spent the next 5 days in jail waiting for a bond reduction hearing and a bondsman so I could be released. This all happened while I was 4 months pregnant with my first child.

While awaiting trial, I had contacted a statewide tip line for a serial rapist. I talked to an officer and made him aware of the fact that I was assaulted and that I believed it was the same man they were looking for. I also explained that I reported the crime and my complaint was not taken seriously and I was arrested for the crime.

Over 13 months after I was assaulted, a statewide search for a serial rapist ended. A man by the name of Wilbur Brown was caught in the act of sexually assaulting a gas station attendant in Brookville. After being placed under arrest, Wilbur Brown confessed to 12 different sexual assaults. One of those assaults happened to me.

Thanks to a local news reporter, I was notified of that fact. I was able to call my lawyer who in return called Detective Evanson who confirmed that there was a confession and my charges would be dropped.

After this experience, it left me concerned if I would ever be able to rely on an officer to do his job. Because of Detective Evanson's uncooperative attitude and unwillingness to believe me, the victim, a serial rapist was allowed to continue attacking and assaulting other women.

Thank you.

[The prepared statement of Ms. Reedy appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Ms. Reedy, for sharing that experience with us.

Our next witness is Ms. Julie Weil, also a rape victim in Florida. In 2002, she was attacked by the so-called day-care rapist while picking her children up from a school in Miami-Dade County, beat-

en and later reported her crime and appeared on "America's Most Wanted."

Thank you for joining us, Ms. Weil, and the floor is yours for 5 minutes.

STATEMENT OF JULIE WEIL, JUPITER, FLORIDA

Ms. WEIL. Thank you very much. Good afternoon, Chairman Specter and distinguished members of the Committee. Thank you for the invitation to participate in today's hearing. I am humbled to share my experience with you, and I hope that it empowers all of you to help all rape victims get the support they need to heal and to fight the injustice of the crime.

Improving the reporting and the investigation of rape will happen only when we are committed to providing victims with comprehensive support services—from that first 911 call all the way through to sentencing. My story demonstrates this: The support services I received sustained me through the longest, most grueling years of my life, a time when giving up seemed like the best thing to do.

As mentioned, my name is Julie Weil. I was raised in Miami, Florida, graduated from the University of Virginia, and then spent a brief time here in Washington working for the Department of Justice. After graduate school, I got married, and my husband and I chose to settle down in the same small town in South Miami where I had grown up. And this is where my story begins.

On a beautiful, hot October morning in 2002, my 8-month-old son Peter and I went to pick up my 3-year-old daughter Emily from the church pre-school around the corner from our house. When we got back to our minivan, my daughter jumped inside while I buckled my son into his car seat. As I was doing this, I was ambushed from behind and hit on the head. As my daughter screamed for her life and fought to escape the van, my assailant stripped the car keys from my hand and held a knife to my neck. He closed the door behind me, locked us in, turned up the radio, and drowned out the sounds of my children's cries. As he pulled out of the church parking lot he turned to me and said, "Ma'am, do you believe in God?" And when I said yes, he said, "Good. Then you are going to forgive me for what I am about to do to you and your two children."

He then drove my children and me as far away as he could to an area in the Everglades, parking our van on a canal bank surrounded by tall sawgrass. The hours that followed were the most terrifying of my life. The assailant beat me, held a knife to my neck, and raped me four times. Each time I was violently raped, he forced both of my children to watch every moment of his crime. My daughter was forced to sit just inches from me as I screamed in pain during the brutal sexual assault. When he was done with me, he drove me to two ATM machines and asked me to withdraw money. He then returned our van to the church, parked it behind some shrubs, and told me to wipe down all the surfaces of the car with my underwear to erase the fingerprints. He then laid me naked on the floor of the van and stuck the knife at the base of my neck one last time. He made my daughter beg for my life. The fear in my daughter Emily's tiny voice as she pleaded for him not

to kill me still haunts me today. Then he casually opened the van door and walked away.

I immediately drove to my parents' house and limped inside. Half naked and bleeding, I sobbed while my parents begged me to call 911. Although I was afraid of what my rapist might do to my family if I reported the crime, I soon called the police. The compassionate and professional responding officer and the SVU detective who arrived at my house that night, set the tone for how I would feel about my experience with law enforcement from that point on. Without that encouraging beginning, my story might have ended quite differently.

Eventually, they took me to the rape crisis center at Jackson Memorial Hospital in Miami. Thankfully, the police and the nurses at the rape crisis center were all veterans in dealing with the unique needs of rape victims. The exam was horrible and very painful. Being poked, prodded, and photographed was almost too much to take, but the forensic nurse who stuck by my side helped me through the pain.

The next few months were torture on my family. The police found no fingerprints, and the rape treatment center uncovered no DNA on my body. This was extremely disheartening news. However, a few days after the rape, I received a call informing me that a tiny speck of DNA had been recovered on my clothing. The DNA matched the DNA from another crime, but, unfortunately, the information was not in the system. In a city of millions of people, my attacker could be anyone. I was terrified.

The Miami-Dade police force put everything they had into looking for this man. My relationship with the detectives in this case served as a source of strength for me in the agonizing months after my rape. Because they communicated with me and checked in on me, I felt like they were personally invested, and this gave me the strength I needed to continue forward.

By a stroke of luck and some good police work, my rapist was finally identified months later. He was caught beating up his pregnant girlfriend at a motel. He was printed and swabbed for DNA, and 3 weeks later, the DNA tests came back as a match. I now knew who my attacker was: Michael Thomas Seibert. I finally thought to myself it was over, but I did not know that the real endurance test was just beginning.

After his arrest, the State Attorney's office in Miami-Dade took over the case. I was thrown headfirst into the complex legal system that was totally foreign to me. The first 18 months after my rapist's capture were filled with a great deal of confusion, delay, and disappointment, and I started to feel hopeless. Then my case ended up on the desk of Assistant State Attorney Laura Adams. Her team was amazing. They promptly returned my phone calls and communicated with me about everything. They empathized with my concerns and helped me to see the bigger picture, which was justice for my family.

In October 2006 my trial began. It took more than 4 years of work to get to this point. Facing my rapist in court was extraordinarily difficult, not just for me but for my family. The compassionate care of the wonderful counselors from the State Attorney's

office was invaluable to my family, and especially to my mother as she prepared to testify.

Finally, after many days, I took the stand. For nearly 2 hours, just feet from my rapist, I relived the horrendous crime in graphic detail. I endured degrading testimony from defense attorneys and recited all the despicable details to a room full of strangers.

The jury deliberated for 2½ hours. I held my breath as they returned their decision: guilty on three counts of armed kidnapping, guilty on four counts of rape in the first degree with a deadly weapon, and guilty on one count of robbery. Sentencing came 5 weeks later. I told the judge how the rapist had destroyed the life I wanted for my family. I told him he forced us to leave the city, home, friends, and family we loved because we no longer felt safe. The judge saw fit to sentence Michael Seibert to an astounding seven consecutive life sentences plus 15 years for the crimes that occurred against my family.

Chairman SPECTER. Ms. Weil, how much longer will you need?

Ms. WEIL. I am just wrapping up.

There is immense power in seeing a case through to the end. The justice system can work when victims are provided with the support we need. Without that support, my rapist may still be free and victimizing others. That is why organizations like RAINN must be provided with the funds necessary to run their website and their hotlines that provide emotional support for families.

Seven years ago, I was lying on the floor of my van, in the presence of my two children, naked and bleeding. I never would have imagined being able to come here to Washington to speak to you as a survivor activist. So now I continue to share my story with law enforcement training, State Attorney meetings, and medical personnel. The power that a positive experience with law enforcement and the legal system can have on a life and on public safety is enormous. The safest and the healthiest communities acknowledge the severity of rape as a crime and begin by respecting all victims, providing specialized training to law enforcement and health care professionals, and not downplaying the prevalence or the seriousness of rape.

Thank you so much for your time and for inviting me to speak on this important topic.

[The prepared statement of Ms. Weil appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Ms. Weil.

The final witness on this panel is Dr. LaWanda Ravoira, the founding director of the National Council on Crime and Delinquency, Center for Girls and Young Women, in Jacksonville, Florida. Dr. Ravoira has an extensive educational background with a bachelor's, master's, and doctorate in public administration.

Thank you for joining us, and we look forward to your testimony for 5 minutes.

STATEMENT OF LAWANDA RAVOIRA, PH.D., DIRECTOR, NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CENTER FOR GIRLS AND YOUNG WOMEN, JACKSONVILLE, FLORIDA

Ms. RAVOIRA. Thank you, Chairman Specter and members of this Committee, for inviting the NCCD Center for Girls and Young Women to testify on this very important subject.

Chairman SPECTER. Ms. Ravoira, before you proceed, I would like to recognize Senator Franken, who has another commitment at 3:30, for a question.

Senator FRANKEN. Thank you for your indulgence, Mr. Chairman, and, Dr. Ravoira, thank you for your work, and I did read your testimony last night. And I also want to thank Ms. Tracy and Commissioner Ramsey for your work, and your work, too, Ms. Weil. What happened to you and to Ms. Reedy is simply horrific, and I am just sorry about this, but I do have to go. And I just wanted to ask one question, and that is to Ms. Reedy.

I would like to know what happened to Detective Evanson. I know that you have sued him and that was thrown out, and then that was overturned and that will either be going on or has gone on. But is he still on the force? Was he retained on the force?

Ms. REEDY. Yes, he is still a detective.

Senator FRANKEN. OK. That to me is pretty amazing. I want to thank you and Ms. Weil again for your courage being here today and for all the other witnesses and Ms. Weil, and you, Ms. Reedy, for the work that you do.

Ms. REEDY. Thank you.

Senator FRANKEN. Thank you, Mr. Chairman, for your indulgence.

Chairman SPECTER. Dr. Ravoira, you may proceed.

Ms. RAVOIRA. Thank you, Chairman.

On behalf of the NCCD Center for Girls and Young Women, my work is about providing a voice for girls and young women to ensure that there are gender-appropriate responses to the treatment of girls and women. Today I would like to give voice to a young girl named Gabby. She is a 14-year-old girl, who is from Florida, who was not lucky enough to get a police officer who was willing to hear her story.

You have heard the statistics throughout this hearing where one in six women will experience a rape or an attempted rape in her lifetime. More than half of these rape victims will be raped before their 18th birthday. But the statistics do not tell the whole story. Rape, as you have heard, is one of the most severe of all traumas. Think for a moment: The scene of the crime is the body of the survivor.

One survivor's story paints a haunting picture of the long-term impact of rape. Her name is Gabby. Gabby is a 14-year-old young woman who I have had the pleasure of knowing and learning from her courage. She is the daughter of a migrant family who lives in Florida. She was alone sleeping in her bedroom when the rapist came through the window, threatened her, took her out into the fields, and brutally raped her. She made her way back home to her mother, who did the right thing. She went to the local police department and asked for help. The police response was: What did you do to provoke this?

She was sent home without support or referrals for treatment. She was terrified. For months, she did not leave her house, and she slept with her mother. Gabby was charged then for truancy for not going to school. Her mother convinced her to start sleeping again in her bedroom, but Gabby, when everybody would go to bed at night, would take her pillow and sleep on the floor outside of her mother's door because she was terrified.

When she did return to her room sometime later, the rapist returned and raped her again. This time, when the mother reached out for help, the police did take a report, but little was done to find the rapist. But at least Gabby was referred to a program for girls and young women. Here she began to tell her story. She was terrified to leave because she did not know what the rapist looked like and she felt like he knew who she was and could be anywhere.

This trauma continues to haunt her. The staff knew that she was the classic case of post-traumatic stress disorder. She was depressed and hopeless. She was a victim twice in what some people call "a secondary rape." When she told the police, she was not believed.

Gabby's story is the story of hundreds of girls and young women in this country. When girls make a decision to go to the police and report the rape, the response of the police is critical not only to the girl but to her family.

There are pervasive attitudes and beliefs by the police that inhibit their ability to stop this horrible crime.

First, there is a belief that if it is not a stranger rape that it is not as serious. There is also a belief if a weapon is not involved that it is not as serious. This is most disturbing when what we know is 80 percent of sexual assaults happen by someone who knows the victim. It is also quite disturbing when we know that control tactics do not always involve a weapon. That was certainly the case of Gabby. She was simply threatened and terrified.

Also, what we see is law enforcement will discourage victims from reporting, sometimes portraying the personal cost to pursue prosecution, like repeated court trips, cross-examinations that can be humiliating, or simply they do not believe the victim.

Police may also threaten the victim about being charged for the crime if there is inconsistency in their story, and certainly the advocates that I work with feel the most egregious thing that continues to happen is that victims are asked to sign a waiver of prosecution when there is an acquaintance rape, which means the rape does not even get reviewed by the State Attorney. We hear consistently that it is just too hard to prosecute. What we believe is that the police officers are not trained to conduct an appropriate investigation.

Chairman SPECTER. Dr. Ravoira, how long will you——

Ms. RAVOIRA. I just have a few recommendations.

The Center for Girls and Young Women is calling for an examination of the police culture and practices to improve the response to girls and young women. First, we believe, in addition to the things that you have already heard, that there should be consequences for police officers who unfairly detain and who treat victims of sexual violence as criminals. We also believe that there

should be funding for more research for services for the missing voices and experiences of the highly marginalized——

Chairman SPECTER. Dr. Ravoira——

Ms. RAVOIRA [continuing]. And vulnerable population.

Chairman SPECTER [continuing]. How long will you need? How much longer will you need?

Ms. RAVOIRA. About 10 seconds. Thank you.

And these victims include immigrants, individuals from rural communities, lesbian, gay, bisexual, and transgender victims, survivors with disabilities, as well as homeless women, and girls and women who are living in institutions and prisons. There also needs to be special attention to the rape and sexual assault of women in the military.

We believe that it is vital that we collect accurate information about sexual assaults and the impact of police practices. It is our belief that no one should have to go through what Gabby went through and what she endured and continues to deal with. She deserves better, and so do all of the other women.

Thank you.

[The prepared statement of Ms. Ravoira appears as a submission for the record.]

Chairman SPECTER. Ms. Reedy, how have you fared since this terrible experience?

Ms. REEDY. I am sorry. Could you repeat that? I am sorry. Could you repeat that? I did not——

Chairman SPECTER. How have you been after being the victim of the terrible circumstances you describe? How are you now?

Ms. REEDY. Things are getting better. It has been a long road. I have been lucky to have a great family to support me and help me.

Chairman SPECTER. How can you account for that police officer still being on the force?

Ms. REEDY. I find it insulting, not only to me but to the people in the community.

Chairman SPECTER. Ms. Weil, how are your children?

Ms. WEIL. Thank you for asking. My son was only 8 months old. He was too small to really understand what was happening. With him, it was more the 4 years that passed I was very distracted and not able to really be the Mom to him I wanted to be. My daughter struggles a lot still to this day with an eating disorder and an anxiety disorder, because although the incident happened on a single day, she was questioned repeatedly by police and by the State Attorney's office, so she was forced to relive it for a long time.

Chairman SPECTER. How are they now?

Ms. WEIL. To see them, on the surface we are all doing a lot better. We have moved to a new community, and we are all getting counseling, and the future looks brighter than it did for sure 7 years ago.

Chairman SPECTER. Dr. Ravoira, how is Gabby?

Ms. RAVOIRA. Gabby is doing much better. She is going to school, and she is moving forward with her life. But the scars are really deep.

Chairman SPECTER. Did they ever catch the fellow?

Ms. RAVOIRA. They did not.

Chairman SPECTER. Ms. Tracy, you tell about the FBI not responding. You have pinpointed a very serious problem about the definition, which is antiquated. I am sorry the FBI has not responded to your letter. I will let you know when they respond to mine. The Subcommittee will take this up with the FBI.

[Laughter.]

Ms. TRACY. Thank you.

Chairman SPECTER. We will keep you posted.

Commissioner Ramsey, your practices of involving the stakeholders, as you have put it, is a very good idea. Nothing like having oversight by the victims' advocates. Tell us a little more about exactly how that works. You make those records available to the women's group, and they review them and give you their judgment as to whether something else should be done?

Commissioner RAMSEY. Yes, sir. Let me again say that John Timoney deserves the credit for having begun this, but I agree wholeheartedly with this approach and will continue to refine it and make it even better.

But, yes, at least once a year, 300, 400 cases are chosen at random, and they spend a few days actually going over these cases, and particularly unfounded or exceptionally cleared cases, and they will find some cases where it is felt that there are some investigative leads that were not followed up on and so forth. We get it back and go out and complete the investigation.

There are sometimes active cases that are ongoing where either we need their assistance or they have some questions for us. And, again, I think it is a good check and balance, and I think that it is the way to go. I think that no matter how good your system may be internally, if you do not have someone from the outside that can review and critique what it is you are doing and always working toward helping to make it better, then I think that it is always going to be subject to some, you know, doubt as to whether or not you are thoroughly investigating these crimes.

Our job is to take the report. It does not matter what you may feel about the victim. Take the report. Let the investigation reveal whether or not it is founded, unfounded, what needs to happen. Let the investigative process take hold.

Chairman SPECTER. Commissioner, I have only got 47 seconds left.

Ms. Tracy, as a Pennsylvanian, you are one of my employers, and as a Philadelphian, you are one of Commissioner Ramsey's employers. Is he doing a good job on this subject?

Ms. TRACY. Absolutely, both on this subject and we are also working very intensively with them on domestic violence and stalking, and we are, in fact, putting a whole new protocol in place for dealing with domestic violence. We have a really good partnership, and we can take complaints to them, and the defensiveness is not there. Just we have got a problem, we are going to talk about it, and we move forward. But they have been incredibly responsive to the advocacy community.

Chairman SPECTER. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman, and let me thank this panel.

We hear the statistics, we hear the numbers, and I really want to thank particularly Ms. Reedy and Ms. Weil for being here to put a face on the issue. Numbers can be cold, but when you hear the testimony of people who have been victimized, you realize how many families have been involved and affected by the policies, the laws we pass, and the way that they are implemented. So I really want to thank you. I know it is not easy to appear before us, and I thank both of you for being here to help us understand a little bit better the seriousness of what we are dealing with.

Ms. Tracy, and also Mr. Ramsey, you talk about the statistical information. Unless we have good statistics, we cannot plan how to deal with this. You cannot allocate the resources. You do not know how many—how the police have to allocate their resources, local governments, the State's Attorney, and, of course, here at the national level. And we do not have good statistical information on sexual assaults. We just do not have it. We need to get beyond just the current way that it is reported.

I know that you mentioned the Uniform Crime Report. I think we need to get to a National Incident Based Reporting System which gives a lot more information and detail so that we can develop a uniform understanding of what is happening around the Nation. I know in my own State of Maryland, we are moving forward to implement the National Incident Based Reporting System. It is more costly, and we are going to need to see whether we need to do policies nationally to make sure we have this accurately done for sexual assault cases.

But then you need to have a way in which you have some uniform and accountable system for evaluating and referring the incidents that occur. It cannot rest with the responding police officer. I am sure they are doing incredible work, but you need to have independent, accountable reviews of what is happening for the proper referral and for providing the proper assistance to the victim. You could not have two dramatically different stories than the two people who are before us, both suffering from a horrible incident, one finding the system that responded—4 years is too long, but that is our justice system, and sometimes it takes a long time to get where we need to. In your case, the results were what it should have been. Obviously, we did not want this to happen at all. We want to prevent it. But in Ms. Reedy's case, it was horrible. You were abused twice, and that should never have happened.

So I think the lesson learned from this panel, Mr. Chairman, is that we really need to get better statistical information as to what is happening, and we need to make sure that there is a consistent policy in the way that reports are handled and that there is an accountable system for reviewing the way that they are referred for investigation and prosecution so that we can properly evaluate what we need to do to be a partner here at the Federal level to make sure this is handled properly.

Just speaking, Ms. Tracy, to your point about the Philadelphia Inquirer and what happened in the Baltimore Sun papers, when you put a spotlight on it, people respond. Unfortunately, there are so many things that people are doing that this has become not a priority in too many jurisdictions around the Nation. We want to

make sure this is a priority in every jurisdiction around the country.

Ms. TRACY. And it should not just be the responsibility of investigative reporters to look at this, because in addition to the UCR not having the appropriate definition, they are not exercising their audit responsibility. When 45 cities with populations over 100,000 have unfounded rates of rape over 20 percent, there is something very wrong with those cities. Some cities have more unfoundeds than they have reported rapes.

So the FBI's Uniform Crime Report really needs to examine both its definition and its audit responsibilities, and I think we would all be happy if NIBRS were implemented throughout the country. Part of the reason that we wrote the letter we did in 2001 is that we just saw it was not moving as quickly or at all.

Senator CARDIN. I agree completely.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Cardin.

We now turn to our next panel: Dr. Kilpatrick, Scott Berkowitz, Eleanor Smeal, and Professor Dempsey.

Our first witness on this panel is Dr. Dean Kilpatrick, Professor of Clinical Psychology at the Medical University of South Carolina, director of the National Crime Victims Center. While they are departing, I want to thank very much our first panel: Ms. Tracy, Mr. Ramsey, Ms. Reedy, Ms. Weil, and Dr. Ravoira.

We begin with you, Dr. Kilpatrick. Regrettably, the number of witnesses we have had and the number of questions have prevented our moving into as much detail analytically as I would have liked, and as we have done at most hearings. But there are other commitments shortly after 4, which has required us to keep on a very tight schedule.

We look forward to your testimony, Dr. Kilpatrick. The floor is yours for 5 minutes.

STATEMENT OF DEAN G. KILPATRICK, PH.D., DISTINGUISHED UNIVERSITY PROFESSOR, VICE CHAIR FOR EDUCATION, DEPARTMENT OF PSYCHIATRY, DIRECTOR, NATIONAL CRIME VICTIMS RESEARCH & TREATMENT CENTER, MEDICAL UNIVERSITY OF SOUTH CAROLINA, CHARLESTON, SOUTH CAROLINA

Mr. KILPATRICK. Thank you, Mr. Chairman, and the Commerce Department, and I appreciate the opportunity for being able to address the Committee. I have submitted a lot of written material which would tell you more than anyone ever wanted to know about rape statistics, and so I am not going to go into that in any depth at all.

What I would like to say is that I think statistics are important because it provides policymakers with information that will allow us to know whether things are changing, whether they are getting better or worse, and where the problems lie so that we can document really what needs to be done.

I have been in this field for a long time, since 1974, when I helped establish the first rape crisis center in the State of South Carolina. And I would like to say that I think things have gotten

better in some ways, and in some ways things have not changed at all.

One of the things that has not changed significantly is improvements in the way that particularly the FBI Uniform Crime Report documents and commands to law enforcement agencies about how the data are collected. And so I would just like to associate myself with the remarks of several other people who say that there is really no excuse now not to change the way that the FBI Uniform Crime Report addresses the issue of rape.

I would also like to talk about two studies briefly that my colleagues and I have done that had the advantage of occurring over 15 years apart, and so they do provide some information using contemporary, state-of-the-art measurement in terms of a victimization survey of actually what has happened to the prevalence of rape, meaning the proportion of women who have ever been raped, as well as more recent cases.

To make a long story very short, what we have found is basically that over that 15-year period there has been no improvement at all in terms of the proportion of adult women in the United States who have been victims of forcible rape. In fact, it has gone up over 25 percent. So, in fact, the burden of rape on women in America is actually greater now than it was 15 years ago.

Second, we have not found any increase, substantial increase in terms of the proportion of rape cases that are reported to law enforcement. Everything you have heard about today has been cases that law enforcement knew about and then mishandled in many cases. But most of the cases—in fact, over 80 percent of the cases still go unreported. And so basically no law enforcement agency, no criminal justice system can address the issues of those victims if women are reluctant to come forward.

Third, my testimony, my written testimony, outlines concerns that rape victims had. The big one is being believed by other people, people finding out about my name, and over 60 percent of the victims are still saying that they are very concerned about being believed and about what happens to victims after they report. The concerns of the women in America who have been raped are the same now as they were 15 years ago, so there has been absolutely no progress on that.

Finally, we found that being the victim of rape increased substantially the risk of post-traumatic stress disorder, major depression, suicide attempts, and alcohol and drug abuse problems. And so most of the people who had those problems still have them, suggesting that most victims are not getting effective mental health care.

So, in conclusion, let me just say that I really do think that the time has come for the Senate to demand that the Justice Department change not only the FBI Uniform Crime Reporting system for rape, but that it also engages in an updating of the National Crime Victimization Survey, which woefully under-measures rape. And so without better data on that, we will not have information about whether things are getting better or not without the type of independent studies that I told you about today.

Thank you and I would be happy to answer questions.

[The prepared statement of Mr. Kilpatrick appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Dr. Kilpatrick.

We now turn to Mr. Scott Berkowitz, founder and president of the Rape, Abuse and Incest National Network, an organization with affiliates in all 50 States. It has a hotline that receives approximately 9,500 calls per month and reportedly has helped over 1 million individuals since the founding of the organization in 1994.

The floor is yours for 5 minutes, Mr. Berkowitz.

STATEMENT OF SCOTT BERKOWITZ, PRESIDENT AND FOUNDER, RAPE, ABUSE, AND INCEST NATIONAL NETWORK (RAINN), WASHINGTON, DC

Mr. BERKOWITZ. Thank you, Mr. Chairman. Thanks for holding this hearing and including me.

In the U.S. today, rape is a crime without consequence—except for the victim. The Justice Department's most recent estimate is that about 60 percent of victims never report their rape to the police.

Here we go.

Chairman SPECTER. You are on.

Mr. BERKOWITZ. Sorry. And since many reports do not lead to an arrest and many arrests do not lead to a conviction or prison time, the bottom line is that only about one out of every 16 rapists will ever spend even a single day in prison. Just one. As long as rapists have about a 94-percent chance of escaping punishment, they are not likely to be deterred.

So putting more rapists in jail is the single most effective rape prevention tool that has ever existed. To accomplish that is going to require a sustained and focused effort to increase both reporting and conviction rates.

A generation ago, the reasons that victims most often gave for not reporting I think spoke vividly of the way society viewed the crime. They feared not being believed. They feared being interrogated about—and blamed for—their own behavior, from what they were wearing to why they gave the perpetrator the opportunity to commit the crime. In short, they feared that they would be the one on trial.

Today, the perception of many victims has evolved along with greater public understanding of the crime, and the reasons that we hear commonly now are along the lines of: they do not want their loved ones to know what happened. They are ashamed about what happened or blame themselves. Or they just want to put the whole thing behind them.

Fear, or at least skepticism, of how they might be treated by police does still exist, but it has moved down the list of reasons for not reporting. And so while we need more training for law enforcement on treating victims appropriately, we also need efforts that speak to—and educate—victims about the importance of reporting.

Research also indicates that victims of sexual violence who receive counseling are significantly more likely to report the crime to police.

I want to talk briefly about law enforcement and prosecution. And the good news is: I think many police agencies have improved

their handling of sex crimes in recent years. But there are still many problems in addition to the UCR and coding problems that others have discussed today.

One problem is that many agencies deal with so few sexual assault cases each year, which makes it difficult to establish the specialized skills to investigate rape cases. One of the most important things Congress can do is to help local law enforcement tap into the expertise they need to successfully investigate and prosecute these cases.

Skilled investigators operate to a great extent on instinct and perception, which most of the time is a good thing. But it can cause problems when it is based on misinformation or false impressions. Impressions like: a large percentage of rape reports are false, when the FBI tells us that is just not true.

Or—and this is a big one that we still hear a lot—DNA does not matter unless the attacker was a stranger or unless we have a suspect identified. In fact, as the best DAs will tell you, having DNA evidence in hand is crucial for any prosecution these days. Juries expect it. It corroborates the victim's story. And, increasingly, it helps identify patterns of serial rapists, even acquaintance rapists.

However, the data we have is insufficient for our needs and impedes our ability to understand the barriers to reporting, and why so few rapists end up in prison. For example, we would like to see DOJ and the States better track rape cases, from initial report all the way through ultimate disposition.

Based on what we do know, there are few things that Congress can do right now.

First, they can pass the SAFER Act, just introduced in the House, which would create a national registry of forensic evidence from sexual assault cases. The SAFER Act would provide crucial information to policymakers and rape victims, and for the first time open up data to the media so that we could have investigative reports like those that have helped us see what is going on in Baltimore and elsewhere. SAFER would also allow us to track the status of evidence testing by jurisdiction. It would help us eliminate the DNA testing backlog once and for all.

In the upcoming reauthorization of the Justice For All Act, Congress should increase the percentage of Debbie Smith Act funds that are spent directly on DNA testing and analysis, incorporate the registry requirements of the SAFER Act, and set best practices standards for the prompt testing of all sexual assault crime scene evidence.

We also need Congress' support to gather real, solid, in-depth data about the problems I have discussed today. And then we need your support to help fix them.

Overall, as Congress moves forward with the Violence Against Women Act and other crime legislation over the next year, we would like to see the overarching question be: What will this bill do to improve the reporting and conviction rates of rape cases? At the moment, 94 percent of rapists are escaping any form of punishment. So this should be the main focus of policymakers.

Because today, violent criminals will sexually assault another 657 Americans. And if history is any guide, 616 of those criminals

will wake up tomorrow morning—and every morning thereafter—free to start all over again.

[The prepared statement of Mr. Berkowitz appears as a submission for the record.]

Chairman SPECTER. Thank you, Mr. Berkowitz.

We turn now to Ms. Eleanor Smeal, president of the Feminist Majority Foundation, former president of the National Organization for Women.

The floor is yours for 5 minutes, Ms. Smeal.

STATEMENT OF ELEANOR CUTRI SMEAL, FEMINIST MAJORITY FOUNDATION, ARLINGTON, VIRGINIA

Ms. SMEAL. Thank you very much, Mr. Chairman, and thank you for holding this hearing that affects the health and safety of millions of women and girls in the United States.

I am president of the Feminist Majority Foundation, which one of its major goals is to reduce violence against women. In 1995, the center established the National Center for—the foundation established the National Center for Women and Policing, which is a division of the Foundation. The center promotes increasing the numbers of women at all ranks of law enforcement, both to promote equality for women and to improve police response to violence against women.

I am going to summarize my testimony, and I would like to submit the whole testimony in the record.

Chairman SPECTER. Without objection, it will be made a part of the record.

Ms. SMEAL. Thank you very much.

I am going to skip over the prevalence of rape since so much has been said about it, but I want to underscore what was just said by Mr. Berkowitz about the fact that so few are incarcerated—rapists. In fact, according to one study, it is less than 1 percent. So let us just keep that in mind.

Not only that, but the undetected rapists tend to be serial rapists. Two shocking studies revealed that essentially for rapes being committed, the undetected rapists were serial rapists. Most rapists are serial rapists, and they were committing the bulk of the rapes, between 91 and 95 percent. This is why rape kits are so important, and it is so important that they are processed. And I know this is not the feature of this hearing, but it shows—it is just one indicator of the need to further investigate rape, because if you process the kits, and because of the nature of serial rape, you would be finding people who are now going undetected and who will rape again.

Another major point is that 75 percent of rapes are done by people—probably about 75 percent—that are acquaintance rapes. But that is not to be minimized because, again, there are patterns and these are women who have been singled out, they will single out other women.

Research shows that the vast majority of rapes today involve both subduing the victim by alcohol or drugs. Now, the reason I am pointing out all these things is that it will tie into our recommendations of what should be done with the Uniform Crime Re-

port. I want to, though, specialize in talking about the need to recruit more women in policing.

Studies show that, in fact, there is a culture in the police departments that must be changed toward women. And I have worked on this problem for nearly four decades, and we have just not made much progress. Women are still only, according to the latest reports, about 12 percent of police departments overall and 15 percent of the largest police departments.

I am now going to skip, because time is running out, to our recommendations. The Uniform Crime Report should include things it currently does not on rape. In fact, it is carnal knowledge, so it is omitting oral rape, anal rape. It is omitting rapes facilitated by drugs and alcohol. It is omitting when the victim is unconscious. And, I mean, it is almost ridiculous what it is omitting. It does not include men. It does not include homosexual rapes.

Now, let us go on to the victimization study. It does not include children under the age of 12, and that is a large category of rapes, about 25 percent. Federal guidelines also should be issued on how you determine unfounded cases. It is very definite what is an unfounded case, but we know that police are essentially calling something as unfounded, which then, if the person is found to be a serial rapist, it is harder to prosecute them for the ones that are unfounded because it is believed that it was baseless or that the victim was lying. And so this actually compounds the problem.

I believe and we believe that one of the most important things is Federal guidelines and Federal programs should encourage the recruitment of women police officers, and there are many ways of doing it, and also encourage the recruitment of police officers with specialized training in nursing, social work, and in dealing with sexual assault.

And, of course, we think that the Violence Against Women Office should be—the funding should be increased, especially in the last——

Chairman SPECTER. How much more time will you need?

Ms. SMEAL. I am ending right now. Especially in the last 8 years, funding has been decreased.

So we know many changes should occur, but we have got to start with changing the definition of rape, which is contributing to an under-allocation of resources.

[The prepared statement of Ms. Smeal appears as a submission for the record.]

Chairman SPECTER. Dr. Kilpatrick, you mentioned the issue of suicide, the only person to do so. Can you amplify your concerns there? To what extent is that a problem with rape victims?

Mr. KILPATRICK. Well, women who have been a victim of rape are about 10 times more likely——

Chairman SPECTER. Dr. Kilpatrick, I have to turn to Professor Dempsey. I was so busy reading her background, I left her out. A very distinguished background.

Ms. DEMPSEY. Thank you, Senator.

Chairman SPECTER. Associate professor at Villanova, University Lecturer in Law and Tutorial Fellow at Oxford University, tutor at the University College in London, and teaches courses involving

feminist legal theory. We will come to that, but first your testimony, Professor Dempsey, for 5 minutes.

STATEMENT OF MICHELLE MADDEN DEMPSEY, ASSOCIATE PROFESSOR OF LAW, VILLANOVA UNIVERSITY SCHOOL OF LAW, VILLANOVA, PENNSYLVANIA

Ms. DEMPSEY. Thank you, Senator Specter, and thank you for convening this hearing. Going last after so many distinguished and experienced witnesses leads me to a position where first I want to say I agree, and I am going to try to say something that perhaps we have not touched on quite as much.

Before addressing specific issues, however, I wish to place our discussion into the larger context of the criminal justice system as a whole. The failure to report and investigate rape cannot properly be understood in isolation from issues of failure of prosecutors to charge rape cases and to take them to trial, failures of juries to convict, and the failure of judges to impose adequate sentences upon conviction. Each step in the criminal justice system is directly related to the next: Survivors will fail to report if they believe their cases will not be taken seriously by police; police will fail to properly investigate if they believe prosecutors will not aggressively pursue charges in court; prosecutors will not aggressively pursue charges if they believe juries are unlikely to convict. Moreover, the entire system—and, indeed, the entire culture in which the system operates—will take rape less seriously when the sentences passed by judges do not reflect the true gravity of the offense.

So all of this is to say that the topic of conversation here, the chronic failure to report and investigate rape, takes place within a broader culture and a systemic failure not only of the criminal justice system but of our culture as a whole surrounding rape.

I will not touch on the issue of victims failing to report rape because I believe that has adequately been covered. I would, however, like to discuss the issue of investigation. I think as Judge Carbon rightly noted, the model that is going on in Philadelphia right now is a wonderful model, not only because it increases accountability and it obviously assists victims to obtain justice, but because it respects the rule of law. This is a matter of the principle of legality, that the State should be accountable to the people. And I think what is going on in Philadelphia is not only outstanding in Philadelphia—and I am proud to be a Pennsylvanian and delighted that that is happening—but it is a model for the rest of the country. I really think that needs to be exported as aggressively as possible.

With respect to the issue of police misclassifying rape and other sex crimes as non-crimes, I would like to differentiate two issues we have discussed here today. One is the question of the UCR definition of rape, which, as I think we can all agree, is ridiculous. It is archaic, it is old-fashioned, it is insulting. And it does not capture the broad majority of rapes. So that is one issue. Obviously, we are all in agreement and singing from the same hymn sheet that the UCR definition of rape needs to be changed.

In addition to that, as I commented in my written testimony—and I would hope that could be offered into evidence as well—there are real problems with the handbook of the UCR. The only illustrations of rape provided are stranger rape and gang rape. There are

no illustrations provided to police to reflect the reality of acquaintance rape or intimate partner violence. And that suggests that not only the definition needs to be changed but that the handbook needs to be rewritten for this century. So that is one issue, the definition and the illustrations in the handbook.

There is another issue with respect to coding, and this comes to the fourth issue we have been asked to consider, which is the problem of police unfounding rape cases. Now, this is the problem of coding with the UCR, and quite simply, the UCR program actually encourages police officers to unfound cases. It does this by limiting the range of categories available to police officers in recording case dispositions. There are only three options available to recording a case disposition under the UCR program: one is unfounded, which is to say by definition no crime has occurred; the other is cleared by arrest, which, again, by definition is to say that an arrest has been made and the case has been forwarded for prosecution; and the third option is cleared by exceptional means, which is by definition circumstances which preclude prosecution, for example, the death of the defendant or an inability to extradite the defendant from a foreign jurisdiction.

There are two major problems with the coding under the UCR that I would like to call to our attention, and I would ask that perhaps this be added to your letter to the FBI so that they can take this into consideration as well, and that is, one, with respect to the issue of clearing a case by exceptional means, we cannot include the fact that the victim has withdrawn her cooperation from the case as a reason to clear a case by exceptional means. Victim noncooperation in prosecutions does not legally preclude the State from going forward. The State prosecutes crime, not the victims. The UCR sends exactly the opposite message to local law enforcement by allowing that to be one of the ways in which a case can be cleared.

Secondly, I think it is worth considering the possibility of adding a third way of disposing of a case, adding a case disposition which reflects that the case is founded but was rejected for prosecution based on inadequate evidence.

Now, I think that is something that is worth further debate, but I think that the problem with unfounding cases is not only a problem of police misconduct but is also a problem of the structure of the UCR program in the way that it encourages officers to unfound cases in order to clear them.

Thank you.

[The prepared statement of Ms. Dempsey appears as a submission for the record.]

Chairman SPECTER. Thank you, Professor Dempsey.

Dr. Kilpatrick, I was on the question of suicide, and the question to you is: To what extent is that a problem for rape victims?

Mr. KILPATRICK. Well, it is difficult to look at completed suicides in the type of research that we do because we are talking to people, you know, who are still alive. But if you look at attempted suicide, you know, in both of the studies that we have done with national probability——

Chairman SPECTER. Well, how about a correlation between people who commit suicide and those who have been rape victims?

Mr. KILPATRICK. Well, unfortunately, most rape goes undetected for the reasons that we have talked about today so that we do not know about a lot of women——

Chairman SPECTER. Well, how about the rapes which are detected? Is there any sequence, if not a causal connection?

Mr. KILPATRICK. Well, people who have post-traumatic stress disorder, as the military is finding out, are more likely to make suicide attempts. Rape victims are much more likely to make suicide attempts than comparable women who have not been raped. And so it is a huge risk factor. My professional opinion as a clinical psychologist is that there is some correlation there, and that——

Chairman SPECTER. Ms. Smeal, you talk about changing the culture. How do you do that, the culture of police departments?

Ms. SMEAL. One, I think that you change the educational requirements, and I do think that people who are trained in sexual assault, who are social workers, nurses, people who——

Chairman SPECTER. How do you do that with police budgets?

Ms. SMEAL. Well, unfortunately, social workers do not get paid that much, do they? So I do not think it would hurt the——

Chairman SPECTER. You are talking about education.

Ms. SMEAL. Oh, well, what I mean is that, as I said, a graduate of a social work class does not get paid that much. But I also think increasing the percentage of women——

Chairman SPECTER. How do you influence——

Ms. SMEAL.—is imperative.

Chairman SPECTER.—police culture along the line you suggest? You talk about social workers, and is that realistic, given police department budgets?

Ms. SMEAL. Yes, I do. I think it is very realistic, because I do not think the average social worker in the United States even makes as much as the average police officer today. And I also think that we have to do something about recruiting more women into policing. We in the women's rights movement have been suing, as have individual women, with the pervasive patterns of sex discrimination in policing for 40 years, and we are still only—what is it?—12 percent of police officers of the United States.

Chairman SPECTER. A couple more questions. Mr. Berkowitz—sorry to move on, but——

Ms. SMEAL. Sure, I understand.

Chairman SPECTER.—time is very limited.

What would your recommendation be about trying to get more sensitivity with the interviewers, the police officers? How do we do that in a practical sense given the limitations of police budgets and it is so difficult to recruit people who have a vast educational background in this kind of matter?

Mr. BERKOWITZ. I think the training already exists. I think that a lot of police departments have made tremendous progress on that and have implemented good training and improved the way they handle this. There is a lot of existing training that the International Association of Chiefs of Police and others offer.

Chairman SPECTER. Professor Dempsey, I note among your courses, you teach feminist legal theory. What is feminist legal theory?

Ms. DEMPSEY. You should come to my class. We would be honored to have you. It is one of the main issues we discuss. The way that we——

Chairman SPECTER. Do you meet on weekends?

[Laughter.]

Ms. DEMPSEY. We would have a special session if you wanted to attend. It is a question of basically evaluating existing law, legal doctrine, not only the positive law on the books, as we say, but also law in the broader sense, the things that we should see to when organizing our world, whether it has been made part of positive law or not. So we both evaluate existing laws, and consider normative arguments for improving those laws from a feminist point of view.

Chairman SPECTER. What would your advice be to women's organizations to persuade police commissioners, other than Commissioner Ramsey, to allow for transparency and allow for stakeholders to be involved in reviewing these cases?

Ms. DEMPSEY. I think there needs to be a context in which these people can sit down together. I think that literally just being in the same room and talking face to face begins to break down some of the myths that each side holds against the other.

I am an unusual bird because I am both a feminist activist and a former prosecutor, and I married a police officer. So I know you can bring these groups together, and they can—in my own experience as a prosecutor, we were very successful in getting the police on board with more aggressive domestic violence and sexual assault charging and prosecution simply because we took the time to meet together and sat down and talked about our concerns and educated the advocates regarding the law and educated the lawyers and the police officers regarding the advocates' concerns.

Chairman SPECTER. Thank you very much, Dr. Kilpatrick, Mr. Berkowitz, Ms. Smeal, Professor Dempsey.

This is a subject of enormous importance, and I regret that we have not had more time today to do it justice. We have not begun to scratch the surface. We had very distinguished panels. It is insufficient to say you have 5 minutes, insufficient totally. Senators interrupt because we only have a few minutes to question you, but that happens to Supreme Court nominees as well as you folks here today. It happens to everybody.

It is my hope that we will stimulate some interest by police departments in this subject. There are a couple of things we can do. I think we can get the FBI to change its definition. We can get the FBI to change its survey. We have oversight on the FBI from this Committee, and I think the Director will respond.

There is a lot more to rape than is in that FBI definition. It totally eliminates the issue of what is going on in jails today across the country on same-sex rape. And the issue of training, it would be good to get some Federal funding incentives to police departments. I commend what you have done, Commissioner Ramsey, and I would like to see more police departments do what you do, and I would like to see more women's organizations knocking on the doors—knock on their doors. Knock on their doors. And if they do not respond, knock on the mayor's door. And you do not have to knock on my door. You can just tap on it.

Thank you all very much.

[Whereupon, at 4:17 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 4, 2010

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Susan Carbon, Director, Office on Violence Against Women, before the Committee on September 14, 2010, at a hearing entitled "Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases."

Please do not hesitate to call upon us if we may provide additional assistance regarding this, or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Member

Senate Judiciary Committee
Subcommittee on Crime
9-14 Hearing Entitled "Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases"
Questions for the Record for Susan Carbon (OVW)

1. **Do you agree with several other witnesses at the September 14, 2010, Crime Subcommittee hearing that the current definition of rape in the FBI Uniform Crime Reports (UCR) should be updated? Do you agree that the new definition should include rape committed against the victim's will without force, statutory rape, rape of males, oral or anal penetration, or penetration with a foreign object? Are there other changes to the definition of rape in the UCR that you would support?**

ANSWER: I agree that the current definition of rape in the FBI's historical Summary Reporting System (SRS) does not fully reflect the reality of sexual assault in the United States. In contrast, the National Incident-Based Reporting System (NIBRS) offers greater technological flexibility and more current substantive content than SRS, including a broader definition of rape and an increased number of sexual assault categories. Unfortunately, a lack of resources has prevented many states from moving from SRS to NIBRS. It may therefore be unproductive to ask states to invest resources to implement a changed SRS definition of rape when, ideally, SRS should be replaced entirely by NIBRS. The issue bears further examination, and the Office of Violence Against Women (OVW) stands ready to work with the FBI to assess the collection of rape statistics and determine whether there are methods to improve and strengthen the information currently collected.

2. **What steps should be taken to update the UCR Handbook to ensure that the Handbook does not perpetuate misconceptions about rape within law enforcement and the community?**

ANSWER: The UCR supporting handbooks provide law enforcement with guidance on reporting offenses of rape for the UCR Summary and National Incident-Based Reporting Systems (the latter of which does include an expanded definition of rape). These handbooks are not intended to educate law enforcement or the community at large on the nature and dynamics of rape and would be poor vehicles for doing so. In our experience, the best way to end misconceptions about rape within law enforcement and the broader community is through targeted and effective training. For example, the Office on Violence Against Women (OVW) has funded the International Association of Chiefs of Police (IACP) to develop tools and policies to assist law enforcement in responding effectively to sexual assaults and other crimes. As a part of this project, IACP has recently released sexual assault guidelines, which include a supplemental report form for use by police departments. It also contains guidelines for case documentation, effective interview techniques for both victim and perpetrator interviews, and a pocket "tip" card for officers who may respond to a sexual assault. IACP is currently developing a training video on investigating non-stranger sexual assaults, which will be disseminated across the country. OVW has also supported Ending Violence Against Women International's on-line training institute for successfully investigating and prosecuting sexual assault. This course permits smaller and more rural law enforcement agencies to access training for their staff without incurring the expense and burden of sending officers to out-of-state training.

3. **Professor Michelle Dempsey testified at the hearing that the coding scheme employed by the UCR creates incentives for law enforcement to classify reported rapes as "unfounded." What can be done about this problem? Should an additional classification be added? If so, what classification(s) would you recommend be added?**

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ANSWER: We do not agree that the FBI's UCR program creates incentives for law enforcement to classify a reported rape as "unfounded," but we do agree that the SRS requires law enforcement to "unfound" some offenses, such as nonforcible sex offenses, that are reportable under NIBRS but not under SRS. The SRS permits the reporting of only four violent crimes: homicide, forcible rape, robbery, and aggravated assault. So, if a forcible rape is reported in SRS but investigation indicates that no force was used, that rape must be coded as "unfounded" even if a related crime, such as statutory rape of a minor, occurred. This is one of the major disadvantages of SRS, which does not permit the reporting of any type of rape other than forcible rape. NIBRS, on the other hand, includes several different types of rape and would permit the "deleting" or "unfounding" of the originally reported forcible rape, and the reporting of the statutory rape of the minor.

4. **Concerns also were raised about the DOJ National Crime Victimization Survey (NCVS). Professor Dean Kilpatrick, citing a 2000 study by Fisher, et al., testified that the screening questions used by the NCVS are approximately 11 times less sensitive than the National Women's Survey and the National Violence Against Women Survey. What can be done to improve the sensitivity, and thereby the accuracy, of the NCVS?**

ANSWER: The measurement of rape and sexual assault represents one of the most serious challenges in the field of victimization research. Rape remains a sensitive subject, and one difficult to ask about in the survey context. The questions now used in the National Crime Victimization Survey (NCVS) administered by the Department's Bureau of Justice Statistics (BJS) were developed in the early 1990's with the assistance of Professor Kilpatrick within the constraints of the survey's design parameters. Because the NCVS is administered to people as young as 12 years of age, it was not deemed acceptable to incorporate the sexually explicit wording used in the National Women's Survey (NWS) and the National Violence Against Women Survey (NVAWS). These surveys were administered to people age 18 and older. Moreover, these surveys devoted the overwhelming majority of their screening questions to detecting crimes like rape and domestic violence that disproportionately affect women. In contrast, the NCVS is required to allocate a much greater proportion of screening questions to crimes like burglary and robbery that do not disproportionately involve women. The sheer number of cues devoted to a specific type of crime in the screening interview is a major determinant of the number of events of each type that will be reported.

The BJS recognizes the issues related to the current NCVS rape screening questions and its responsibility to develop an accurate, reliable measure of this offense. Towards this end, as part of ongoing efforts to improve its national crime victimization statistical programs, BJS is convening a meeting of experts in April of 2011 to explore the development of a comprehensive screening protocol for rape and sexual assault that can better serve as a standard for the field.

5. **Testimony at the hearing established that approximately 25% of rape victims are under 12 years old but that the NCVS does not include such rapes within its survey. Should the NCVS be reformed to include child rape? If not, please explain how the Department of Justice can gather accurate and reliable data on child rape?**

ANSWER: The NCVS is not the proper survey vehicle to measure child rape. The complexity of measuring rape in the adult population, mentioned in response to question 4 above, is compounded in the case of younger children. Sexually explicit questions would likely be offensive to younger children and their parents and thus a higher non-response rate could be expected as a result. Although children are presumed competent to testify under federal law (18 U.S.C. § 3509(c)), some observers are concerned that certain younger children may not be cognitively competent to report accurately on sexual assaults and rape.

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Finally, having young children report on rape in the household context is complicated by the possibility that the offenders may be other members of the household. Threats and fear also affect children's ability to report rape. For example, they may not report if they have been threatened in some way by the abuser to remain silent, or if they fear reporting will cause harm to, or anger, someone else in the family. Alternatively, they may not perceive that such conduct is "abuse" if perpetrated by a family member or friend who has conditioned them to perceive such conduct as non-abusive. The data, therefore, are potentially quite unreliable. Thus, while the NCVS is a valuable tool for informing the Nation on the extent and characteristics of certain forms of violent and property crimes, because of these issues, it is not the optimum vehicle for assessing the rape of young children.

As part of its ongoing efforts to improve national crime victimization statistics, BJS is exploring the use of other data collection vehicles for obtaining reliable information on crimes that are currently excluded or poorly measured in the NCVS, such as elder abuse and the victimization of disabled persons. In terms of the measurement of child rape, any refinement of current screening protocols or survey collections will be supported by ongoing research and evaluation efforts which examine and monitor the impact of the issues mentioned in the response to Question #4 that affect the reliability of survey data collected from this population.

6. Director Carbon, you discussed successful Office on Violence Against Women (OVAW) programs on university campuses. How many programs are there currently in place? What level of financial and programmatic support does the OVAW provide to these existing programs?

ANSWER: OVW administers the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence and Stalking on Campus Program (Campus Program). Under this program, OVW awards grants to colleges and universities to establish coordinated campus and community-based responses to violence against women and to improve coordination among campus entities, local criminal justice agencies, and nonprofit, non-governmental victim services agencies. Campus Program funds support efforts to develop comprehensive education programs for the prevention of violent crimes against women, the development and expansion of student codes of conduct, and services for victims. Campus Program grantees are required to train campus law enforcement or public safety personnel as well as members of campus disciplinary boards to respond effectively in domestic violence, dating violence, sexual assault and stalking cases. Currently, OVW has 93 active Campus Program awards, totaling $37,939,656.

OVW also supports the work of our Campus Program grantees through training and technical assistance. For example, OVW has a cooperative agreement with the California Coalition Against Sexual Assault (CALCASA) to provide technical assistance to these grantees. CALCASA coordinates and conducts semi-annual technical assistance institutes, moderates an electronic listserv, hosts webinars, distributes information packets, and provides one-on-one technical assistance as requested by grantees and OVW staff.

7. Are such programs adaptable to high schools and/or middle schools as a means of addressing the prevalence of rape of victims who are under 18 years old? What can the OVAW do to educate children under 18 about rape and how to prevent it?

ANSWER: To some degree, successful Campus Program-funded college and university programs can serve as models for developing strategies for high schools and middle school programs to prevent and respond to these serious and devastating crimes. Nonetheless, OVW is aware that a prevention model needs to be tailored to the age of its target audience. Congress also recognized the need for targeted prevention

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programs for children and youth in authorizing OVW's Supporting Teens through Education and Protection (STEP) Program. OVW is currently developing the first solicitation for the STEP Program, which received its first appropriation in Fiscal Year 2010.

The STEP program will award grants to middle and high schools to partner with domestic violence and sexual assault experts to train school personnel on the needs and concerns of student victims of domestic violence, dating violence, sexual assault, and stalking. The program will support the development and implementation of school policies and procedures for appropriate responses to these crimes, victim services for students, prevention and educational efforts, mentoring programs, and evaluations of funded activities. OVW looks forward to supporting schools' efforts to meet the needs of the student victims and to providing schools with the resources, tools, and training they need to engage in meaningful prevention activities.

8. Director Carbon, in your written statement you said that an effective model for coordinated community response teams to sexual violence includes the use of a Sexual Assault Response Team, also known as SART, and Sexual Assault Nurse Examiners (SANE nurses).

a. How many SART / SANE programs are there in the United States? Are there any in Pennsylvania?

ANSWER: According to the International Association of Forensic Nurses (IAFN), which keeps a voluntary registry of Sexual Assault Nurse Examiner (SANE) programs, there are over 450 SANE programs in the United States, of which 29 are in Pennsylvania. According to the Pennsylvania Coalition Against Rape (PCAR), 49 hospitals in Pennsylvania have SANE programs. It is more difficult to measure SARTs because it is less clear how to define a SART. There are many different models of "SARTs," and many communities have coordinated responses that do not call themselves a "SART"—i.e. some coordinated sexual responses teams identify as councils, committees or coalitions . That being said, according to PCAR, 26 counties in Pennsylvania have a SART but many more are trying to start one.

b. What is being done to increase the participation of communities in these effective programs as a response to sexual assaults?

ANSWER: OVW uses our grant program solicitations as our primary means to encourage and promote particular activities. In Fiscal Year 2010, we included SANEs and SARTs or other coordinated community responses as priority areas for funding in our Rural Sexual Assault, Domestic Violence, Dating Violence, and Stalking Assistance Program (Rural Program) and in our Community-Defined Solutions to Violence Against Women Program solicitations. For the Rural Program, 21 grantees in 2010, or one-third, included SANE and or SART programs. Under the STOP Violence Against Women Formula Grant Program, each grantee State makes the funding determinations, within the statutory parameters. According to the State STOP Administrator for Pennsylvania, half of their STOP subgrants include initiatives related to SANEs and/or SARTs.

Moreover, OVC is revising the rules for its VOCA Victim Assistance Program to reflect changes in OVC Policy, needs of the crime victim services field and VOCA. OVC anticipates that the updated rules will address funding and support for coordination activities, including crisis response teams and other multidisciplinary response to crime victims.

The Department has additionally promoted *A National Protocol for Sexual Assault Medical Forensic Examinations (Adult/Adolescent)* (the SAFE Protocol) and its companion products, the National Training Standards and the Virtual Practicum. These products encourage the use of trained examiners such

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as SANEs and coordinated community responses such as SARTs. Since 2005, OVW has funded the IAFN to provide technical assistance on the SAFE Protocol across the country, including regional trainings and web-based trainings.

c. Do the SART / SANE program models work for rural areas? If so, what can be done to increase the availability of such programs in rural communities? If not, are there alternative models that would work for rural areas?

ANSWER: The Office for Victims of Crime (OVC) also has several initiatives designed to promote the use of SANEs and SARTs. One such product, available at http://www.ojp.usdoj.gov/ovc/publications/infores/WVA_Mobile_SANE_guide/welcome.html, is a guide on implementing mobile SANEs in rural communities. Through this project, the West Virginia Foundation for Rape Information and Services (FRIS) implemented on-call SANEs to serve multiple hospitals in four counties in north-central West Virginia. Under a current OVW Rural Program grant, FRIS is working to develop SARTs across West Virginia, including through the hiring of a statewide project coordinator who will assist advocates and SARTs throughout the State.

OVC has also developed an online *National Toolkit: Resources for Sexual Assault Response Teams*, which provides resources for communities to build or enhances SARTs. The toolkit addresses the special needs of rural, remote, tribal, military, and campus communities. In addition, OVC has a SANE-SART initiative specifically to address the needs of American Indian and Alaska Native victims. The goal is to support efforts in Indian Country that address the needs of sexual assault victims through the development of several comprehensive demonstration projects.

Since 2001, OVC has supported the National Sexual Assault Response Team training conference. This year OVC is funding the Sexual Assault Response Team (SART)-Sexual Assault Nurse Examiner (SANE) Resource Service to work throughout 2010-2011 to coordinate, develop, and administer state-of-the-art, multidisciplinary training at *Sixth National Sexual Assault Response Team Training Conference*, May 25–27, 2011, in Austin, Texas. The conference provides 3 days of training for SART professionals. An additional concentration has been added to expand on our response to sexual assault survivors in Indian Country. The training will help practitioners in Indian Country consider how to best facilitate healing and justice for Native victims, and ultimately help meet the goal of sustainable and high-functioning SANE/SART programs in tribal communities.

Finally, we recognize that a lack of resources may put SANEs and SARTs beyond the reach of some rural or tribal communities. To address this gap, OVW has provided funding to the Southwest Center for Law & Policy (SWCLAP) to work in partnership with the IAFN to address the issue of collecting and preserving sexual assault evidence in rural and geographically isolated tribal communities. This joint project is known as SAFESTAR Project and highlights the use of community-based lay health care providers, such as traditional midwives, medicine people, and community health aides, to collect and preserve forensic evidence in sexual assault cases. SWCLAP and IAFN have developed a 40-hour training curriculum to train lay health care providers on how to collect and maintain forensic evidence, and have also created a companion training curriculum for tribal victim advocates, healthcare professionals, law enforcement officers, and prosecutors on their role in responding to sexual assault cases. The Tohono O'odham Nation has agreed to test pilot the curricula.

d. What, if anything, can Congress do to help expand the use of SART/SANE programs?

ANSWER: As Congress considers the reauthorization of VAWA next year, it could be useful to explore ways to create incentives for state, local, and tribal jurisdictions to expand the use of these programs.

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Testimony by:

Scott Berkowitz

President and Founder, RAINN

September 14, 2010

Good afternoon Chairman Specter, Ranking Member Graham, and distinguished members of the Subcommittee on Crime and Drugs. Thank you for the invitation to participate in today's hearing on the failure to report and investigate rape cases.

My name is Scott Berkowitz, and I am the founder and president of the Rape, Abuse & Incest National Network, or RAINN. RAINN, the nation's largest anti-sexual violence organization, founded and operates the National Sexual Assault Hotline. The hotline is a partnership of 1,100 local rape crisis centers across the U.S., and has provided free, confidential counseling and support to more than 1.4 million victims of sexual violence. We also run the National Sexual Assault Online Hotline, a secure web-based service that provides help to victims who are more comfortable seeking help online than via telephone. RAINN also educates more than 120 million Americans each year about sexual assault prevention and recovery, and the importance of reporting and prosecuting this violent crime.

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In America today, rape is a crime without consequence — except for the victim. The Justice Department estimates that 60% of victims never report their rape to police. And since many reports don't lead to an arrest, and many arrests don't lead to a conviction or prison time, the bottom line is that only one out of every 16 rapists will ever spend even a single day in jail. *One*.

Let me put that another way: 15 out of every 16 rapists in America will walk free. Even after all the progress we've made — and we have made significant strides in getting more victims to report and improving policing and prosecution — even after years of effort, 15 out of 16 rapists face no consequences for their actions. Not only do they escape any punishment for the crime they've just committed, they're emboldened to commit another rape, and many more after that.

Not surprisingly, rapists have figured this out. Because, perhaps contrary to perception, they're professionals. Professional criminals, that is. And like most professionals, they go about their business with planning and method. Recent research, such as that by Dr. David Lisak, shows us this. Just like, say, bank robbers, these professional rapists select their target, they observe behavior, they plan the how, the when, and the means of escape. Because they know that, unless they're caught in the act, they're almost certainly going to escape punishment.

And as long as rapists have a 94% chance of escaping punishment, they're not likely to be deterred.

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The news isn't all dire. It's important to note that sexual violence has decreased dramatically in the last 17 years — by half, in fact. That's partly due to an increase in victims reporting; this has increased by one-third in recent years, to about 41%. And policing has improved, as has prosecution. And DNA has been the best thing ever to happen to rape prosecutions — at least in those cases in which the DNA evidence is quickly analyzed and properly used.

But still: considering the fact that 94% of rapists face no punishment, it's hard to conclude anything other than that the system remains broken in too many ways. I wish the answer were as simple as just pointing a finger at a single trouble spot; it would make finding a solution infinitely easier. Unfortunately, that is not the case. The reality is that the problem is systemic. Hundreds of factors play into the end result: factors big and small, practical and psychological, well-meaning and nefarious. And, to make things worse, we don't even have enough concrete data to figure out how to diagnose and fix the problems.

But as long as rape remains a crime without consequence, it will remain a crime without end. Putting more rapists in prison is the single most effective rape-prevention program that has ever existed. To accomplish that will require a sustained and focused effort to increase both the reporting and conviction rates. We need to convince a greater percentage of sexual violence victims to report their attack to police. And we need to ensure that every reported crime is properly investigated and leads to a conviction and prison sentence.

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Reporting

Let's start at the beginning. According to the Justice Department, six out of every ten victims don't report their attack to police. A few years ago, that number was seven out of ten, so at least we are headed in the right direction. In addition, DOJ tells us that reporting of acquaintance rapes (which account for about two-thirds of sexual assaults) has increased over the past 20 years.

The reporting behavior of rape victims has important implications. Why do six out of ten victims still decline to report to police? And, how can we get more victims to report?

In general, victims will only report when they perceive that the benefits associated with reporting are greater than the costs, and the costs of reporting can be substantial. Victims tend to weigh lots of factors in this calculation: the odds of success, the risk of continued trauma, the opportunity cost of delaying other life pursuits, the satisfaction of helping to prevent future attacks by the same perpetrator, and the reward of seeing justice done are just a few of the variables.

Unfortunately, there is limited research into the reasons why so many victims choose not to report the crime, so we are left to rely on small studies and anecdotes. The only statistically significant factors that research has found that lead to higher reporting are when a weapon is used or the victim sustains external physical injuries. However, since most rapes take place without a weapon or additional injury, this information is of little use in policy-making.

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A generation ago, the reasons most often cited by victims spoke vividly of the way society viewed this crime. They feared not being believed. They feared being blamed. They feared being interrogated about their own behavior, from what they were wearing to why they gave the perpetrator the opportunity to commit the crime. In short, they feared that they would be the one on trial.

Clearly, many victims' perception of the treatment they will receive has evolved along with greater societal understanding of the crime. Now, common reasons cited for not reporting are: they don't want their friends and family and coworkers to know what happened. They're ashamed. They don't think it's serious enough to pursue. They want to put the whole thing behind them. Fear, or at least skepticism, of how they might be treated by police still exists, but it has moved down the list of reasons for not reporting.

Research shows that police officers and doctors underestimate the impact they have on rape victims and the extent to which their statements or actions following an attack affect victims. Victims have reported significantly more "post-system-contact" distress than service providers thought they were experiencing. Victims often left feeling responsible for the assault, distressed, depressed, disappointed, and reluctant to seek further help. While rape victims and law enforcement officials and medical personnel most often agree on what was discussed and the services that were offered, police officers and medical personnel were often not aware that victims were distressed by the interaction.

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This "post-system-contact" distress is noteworthy, because the quality of the initial contact that a victim has with law enforcement and medical personnel has the potential to impact whether or not that victim proceeds through the criminal justice system. In fact, according to the NYPD Academy, the role of the first response uniformed police officer is not investigative; it is primarily to provide aid to the victim. Its Recruit Training Section Student Guide explains that the first police officer on the scene of a sex crime plays an important part in simultaneously minimizing the trauma and in maximizing the chances of successful prosecution.

Ultimately, more training on how to treat victims sensitively and appropriately will lead to higher reporting rates and more successful prosecutions. In a study by the New York City Alliance Against Sexual Assault, for example, victims cited the need for more specialized training of medical and law enforcement personnel, better communication between victims and law enforcement, referrals to other support services, and more information about the process, particularly from district attorneys' offices.

Research also indicates that victims of sexual violence who receive counseling are significantly more likely to report the crime to police, and more likely to follow through with prosecution. The National Sexual Assault Hotline and Online Hotline, and more than 1,100 community rape treatment centers, answer the questions of thousands of victims each day, helping to demystify the criminal justice system and increase the victims' willingness to report their attack.

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Still, there's a great deal we do not know about victims' attitudes and perceptions, and there's a great deal of research, qualitative and quantitative, that we need to do in order to develop effective public awareness campaigns to educate victims on the benefits of reporting. We need an in-depth understanding of personal barriers to reporting — psychological, family-related, career-related, economic and other factors — so that we can create effective responses and then educate victims that the barriers are coming down. We also need to fully understand the roadblocks the justice system creates that deter more victims from reporting. And, we need to change the conversation, from helping the public understand the seriousness of the crime to creating a dynamic in which victims are honored for helping to take professional criminals off our streets.

Convicting

That covers the victim part of the equation. Next is law enforcement and prosecution. Let's start with the good news: many police agencies have dramatically improved their handling of sex crimes in recent years. Some cities have even established dedicated sex crimes units. Overall, training has expanded and improved, and the treatment of victims has evolved. It's important to note the strides law enforcement agencies have made.

But problems remain. One problem is that many agencies deal with so few sexual assault cases each year. Investigating rape cases requires specialized skills — skills that are hard to establish when dealing with just a couple such cases each year. One of the most important things Congress can do is to help local law enforcement, particularly the smallest and most geographically isolated agencies, tap into the expertise they

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need to successfully investigate and prosecute sexual assault cases, including educating police on the best way to interview and document victims' statements.

Skilled investigators operate to a great extent on instinct and perception. Most of the time, that's a good thing. But it can cause problems when it's based on misinformation or false impressions, and a number of these false impressions seem to still be held by a critical minority of agencies. Ideas like: a large percentage of reports are false — a perception that is clearly contradicted by FBI data and can create a toxic environment and affect the initial treatment of victims. Or that being raped by an acquaintance or family member is any less devastating than being raped by a stranger.

Or — and this is a big one — that DNA doesn't matter unless the attacker was a stranger and unless you have a suspect identified. In fact, as the best district attorneys will tell you, having DNA evidence in hand is crucial for any prosecution these days. Juries expect it. It can corroborate a victim's story, and prove without a doubt that a suspect had sexual contact with the victim. And, increasingly, it helps identify patterns of serial rapists, particularly acquaintance rapists. More training and education can mitigate these problems.

Another area in need of attention is the documenting and classifying of reported rapes. According to Joanne Archambault, the former head of the sex crimes for the San Diego Police Department, we could avoid a lot of problems just by requiring all police officers to write up a full, comprehensive report about all

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sexual assault calls; the report would then be sent for a secondary review by a supervisor. In her experience working with police agencies around the country, many cases are not documented in any way, without the knowledge of the victim, guaranteeing that those cases will not be pursued. Then there is the larger issue of properly classifying reported rapes under the Uniform Crime Reports, which several of my colleagues have discussed today.

We'd like to see Congress move more of the nation to adopt the National Incident Based Reporting System. NIBRS, created by the FBI in the 1980s, captures a much broader, and more accurate, array of sex crimes than is currently possible with UCR. Unfortunately, since its creation, only 13 states and approximately 20% of law enforcement agencies report their data using the NIBRS system.

You may have noticed a consistent theme here: the data we have is insufficient for our needs and impedes our ability to understand why so few rapists end up in prison. In addition to lacking comprehensive data on what can be done to increase reporting, we lack reliable or comprehensive disposition data — how quickly was DNA processed; exactly how many cases led to an arrest; how many convictions were there, and how many of those were pleaded down to misdemeanors? How much prison time did the rapist actually serve? That means that it is nearly impossible to understand the progression of cases, to know where, and how, the system is breaking down.

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It's difficult to piece together this data on the national level, much less state-by-state and city-by-city. Even the statistic I led with today — that 15 out of 16 rapists will never spend a day in prison — is an estimate cobbled together from a variety of DOJ reports. To identify the systemic problems, and fix them, we need much more current, reliable and thorough data. As Dr. David Lisak suggests in an upcoming paper, we would like to see DOJ conduct a nationwide study to track rape cases from the initial report through to the ultimate disposition of the case.

Based on what we do know, here is what Congress can do:

Congress can pass the SAFER Act, which would create a national registry of forensic evidence from sexual assault cases and enable victims to receive a confidential code that allows them to check on the testing status of evidence from their own case. The SAFER Act would provide crucial information to policymakers, rape victims and the media, and allow us to track the progression of evidence testing by jurisdiction. It would help us eliminate the DNA testing backlog once and for all.

Continuing with DNA policy, the upcoming reauthorization of the Justice For All Act should increase the percentage of Debbie Smith Act funds that are spent on DNA testing and analysis; incorporate the registry requirement of the SAFER Act; set best practices standards for the prompt testing of all sexual assault crime scene evidence; and set a goal of eliminating the DNA backlog within the next several years.

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The upcoming reauthorization of the Violence Against Women Act gives us a great opportunity to increase reporting and convictions. In fact, we believe VAWA must have an intense focus on increasing the rape reporting and conviction rates. In addition to extending its many important victim service programs, VAWA can have the biggest impact with a laser-like focus on preventing sexual violence. And there is no more effective prevention program than putting more rapists in prison.

Through VAWA or another vehicle, we need Congress' help to gather real, solid, in-depth data as to what is holding victims back from reporting rape and what needs to change in the criminal justice process — and society as a whole — to help victims to feel more comfortable reporting to law enforcement. Specifically, we need Congressional support to study, and address:

- Victims' reasons for non-reporting, criminal justice system obstacles, and public and juror attitudes about victims and perpetrators;
- The particular challenges of reporting and prosecuting acquaintance (non-stranger) and intimate partner rapes and intra-familial sexual violence; and
- Victim and criminal justice system barriers to reporting and prosecution.

Overall, as Congress moves forward with any crime legislation, we would like to see the overarching question be: what will this do to improve the reporting and conviction rates of rape cases? At the moment, 94% of rapists are escaping any form of punishment. This should be the main focus of policymakers as they consider how to improve the criminal justice system.

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In setting policy, it is tempting to focus on longer sentences and stricter guidelines for sex offenders. While we support such efforts, we cannot let them distract us from the much bigger problem: violent criminals will sexually assault approximately 657 Americans today. If history is any guide, 616 of those criminals will wake up tomorrow morning — and every morning after — free to start all over again.

National Sexual Assault Hotline: 1.800.656.HOPE | National Sexual Assault Online Hotline: RAINN.org

Department of Justice

STATEMENT OF

SUSAN B. CARBON
DIRECTOR
OFFICE ON VIOLENCE AGAINST WOMEN

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ENTITLED

"RAPE IN THE UNITED STATES: THE CHRONIC FAILURE TO REPORT AND INVESTIGATE RAPE CASES"

PRESENTED

SEPTEMBER 14, 2010

Testimony of Susan B. Carbon, Director
Office on Violence Against Women

Subcommittee on Crime and Drugs
Committee on the Judiciary
United States Senate

"Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases"
September 14, 2010

Thank you, Senator Specter and members of the Committee, for holding this hearing to draw attention to how the crime of rape is treated in our country. Rape is a crime that our nation must confront today with invigorated purpose. We know that sexual violence has devastating and long-lasting effects throughout many communities. We also know that many courageous individuals have devoted their life's work to highlighting this issue, and much progress has been made. Unfortunately, we also know that due to myriad reasons rape is a crime that our society avoids confronting. In order to bring justice for victims and accountability for their perpetrators and to prevent the crime in the first instance, we must produce a shift in the conscience of our nation. I am pleased that the United States Congress exercise leadership toward this moral imperative.

In the 1970s, a groundswell of grassroots activism began to transform the way that sexual violence was viewed and addressed in our society. The anti-rape movement shone a light on widespread misconceptions about rape and glaring deficits in the criminal justice response. As a result, a number of states passed rape reform laws that included provisions ensuring that a victim no longer had to reveal prior sexual history or prove evidence of physical resistance to the assault for the event to be defined as a crime. Although lamentably overdue, in the late 1970s, states began to remove marital rape exemptions from their laws. Additionally, the field of forensic medicine expanded to meet the need for specialized medical and evidence collection services. When the Violence Against Women Act (VAWA) was passed in 1994, it built upon these advances and included a number of provisions aimed at addressing sexual violence.

The Department of Justice recently completed a year of events commemorating the 15th anniversary of the passage of VAWA. Over the course of the year we have had the opportunity to meet with communities across the country to hear about the positive impact of VAWA on women's lives. We have also heard about the persisting and emerging needs that communities face. One of the clear messages we have received is that, despite the many advances made during recent decades, sexual violence remains a pervasive, costly, and misunderstood crime. Victims encounter many barriers to accessing the specialized services they need, and the criminal justice system too often fails to hold offenders accountable. Many victims do not report sexual assault, and cultural attitudes and norms continue to implicitly condone sexual violence or blame victims when such violence occurs.

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I commend the Committee for taking up such an important issue and I am honored to join you today to discuss how we can work together to better serve victims of sexual violence, hold offenders accountable, and ultimately help to end sexual violence in our communities. In my testimony today I will cover four main topics: 1) what we know about sexual violence; 2) the criminal justice response to these crimes; 3) the important role that a coordinated community response and training for all responders play in improving the criminal justice response to sexual violence; and 4) how the Office on Violence Against Women is working to encourage the adoption of best practices in the criminal justice system across the country.

What we know about sexual violence[1]

Unfortunately, sexual violence affects every part of our society—from the workplace to high school and college campuses, rural and urban America, in our homes and on our streets. Sexual violence touches people of every age, class, race, gender, and sexual orientation. Sexual violence may be committed by a stranger, an acquaintance, a friend, a family member, or an intimate partner. For many people, the word "rape" still evokes an image of a knife-wielding stranger in a dark alley. In reality, we know that most victims know their perpetrators, and many are targeted either because they are vulnerable (such as young children or the elderly, immigrants, persons with disabilities, prisoners, or members of tribal communities) or they are rendered vulnerable, often through the use of alcohol or other drugs.

Although it is difficult to precisely quantify the incidence of sexual violence, the available statistics are sobering.[2] Researchers estimate that about 18% of women in the United States report having been raped at some point in their lifetimes, when rape is defined to include forcible rape, incapacitated rape, and drug-facilitated rape.[3] For some populations, rates of sexual violence are even higher: nearly one in three American Indian and Alaska Native women will be sexually assaulted in her lifetime.[4] Children and college students, persons with disabilities, and incarcerated individuals are all at a higher risk for sexual assault. Many men are also victims of sexual violence: 1 in 33 men will be victimized in his lifetime.[5]

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[1] "Sexual violence" can be defined as any type of sexual contact or behavior that occurs without consent. Included in this definition are forced sexual intercourse, sodomy, child sexual abuse or assault, fondling, attempted rape, drug-facilitated rape, and forcible rape. State sexual assault laws also reflect that children under a certain age and some persons with disabilities are legally incapable of consenting to sexual activity.

[2] As described above, the term "sexual assault" covers a wide range of unwanted behaviors that are attempted or completed against a victim's will or when a victim cannot consent because of age, disability, or the influence of alcohol or drugs. Rape definitions vary by State, however. As a result, rates of rape and sexual assault vary widely depending on how the crime is defined in a particular study, what population is studied, and the methodology that is used. The statistics cited here come from recent, methodologically rigorous studies.

[3] Kilpatrick, et al., *Drug-facilitated, Incapacitated, and Forcible Rape: A National Study*, final report submitted to the National Institute of Justice, Washington, DC: Medical University of South Carolina, July 2007.

[4] Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 901.

[5] Tjaden, P & Thoennes, *Extent, nature and consequences of rape victimization: Findings from the National Violence Against Women Survey*, NIJ Special Report, 7-12, Washington, DC: U.S. Department

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Despite high incidence rates and severe personal and societal consequences, sexual assault is one of the most underreported crimes in America. The Bureau of Justice Statistics reports that the majority of rapes and sexual assaults perpetrated against women and girls in the United States between 1992 and 2000 were not reported to the police. Only 36% of rapes, 34% of attempted rapes, and 26% of sexual assaults were reported.[6] The Department of Defense reports that only 20% of unwanted sexual contacts in the military are reported to a military authority.[7] Reasons for not reporting include fear of not being believed, lack of trust in the criminal justice system, shame and embarrassment, and self-blame and guilt.[8] Historically, victims who know their perpetrators have been less likely to report an assault than victims who are assaulted by strangers. Recent studies suggest, however, that this gap may be closing.[9] Further research is needed to understand what impact various circumstances, policies, and practices have on the willingness or ability of victims to report.

The consequences of sexual assault for victims and society are profound. Many rape victims suffer severe long-term physical and emotional difficulties. Women who have been raped are twice as likely to use mental health services as other women, and have high rates of post-traumatic stress disorder (PTSD), depression and anxiety.[10] Rape victims are 4.1 times more likely than non-crime victims to contemplate suicide, and 13% of all rape victims actually attempt suicide.[11] Sexual assault victims often turn to alcohol and drugs as a means of coping with the trauma, and untreated PTSD is linked to high rates of relapse in recovery from alcohol and drugs.[12]

Criminal justice response to sexual assault

Criminal justice responses to sexual violence vary widely from jurisdiction to jurisdiction. In some communities, victims encounter a highly-trained, coordinated team of primary and

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of Justice, Office of Justice Programs, January 2006,, NCJ 210346 (using data from NVAS conducted from November 1995 to May 1996).

[6] Rennison, C.M. *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000,* Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, August 2002, NCJ 194530.

[7] U.S. Department of Defense, Sexual Assault and Response Office, FY 2009 Report on Sexual Assault in the Military, March 2009.

[8] Du Mont, J., K.L. Miller, and T.L. Myhr, "The Role of 'Real Rape' and 'Real Victim' Stereotypes in the Police Reporting Practices of Sexually Assaulted Women.," Violence Against Women 9(4)(April 2003): 466–486.

[9] Baumer, E., *Temporal Variation in the Likelihood of Police Notification by Victims of Rapes, 1973-2000,* final report submitted to the National Institute of Justice, Washington, DC: University of Missouri-St. Louis, April 2004, NCJ 207497.

[10] Centers for Disease Control. (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence--United States, 2005. *MMWR Morbidity and Mortality Weekly Report,* 57(5): 113-7.

[11] National Center for Victims of Crime & Crime Victims Research and Treatment Center. (1992). Rape in American: A Report to the Nation. Arlington, VA: National Center for Victims of Crime.

[12] Kendler, K.S., et. al. (2000). Childhood sexual abuse and adult psychiatric and substance use disorders in women: An epidemiological and co-twin control analysis. Archives of General Psychiatry, 57(10): 953-959.

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secondary responders from the health, law enforcement, legal, and victim services sectors. These victims are supported from their first contact with health or law enforcement personnel through the ultimate disposition of the case, and have access to counseling, housing, and financial assistance, if needed. Their cases are handled by nurses, investigators, and prosecutors who are uniquely equipped to work with victims of sexual violence.

In other places, however, victims are subjected to humiliating interrogations and examinations and are treated with suspicion by law enforcement. Recently, some large cities have received attention for the high number of sexual assault cases improperly declared "unfounded" by law enforcement officers.[13] Collected evidence may sit for months or even years without being analyzed. Victims may be offered limited, if any, support or services, and are provided with insufficient information regarding the progress of their case. A victim may even be accused of lying and threatened with arrest for false reporting. And for some victims in rural areas, law enforcement, forensic medical services, counseling and other services simply are not available. Indeed, in remote villages in Alaska, where transportation is accomplished mostly by plane or boat, our grantees report that it may take law enforcement one to two days to respond to a sexual assault; and victims who want a forensic exam must travel by plane to the nearest hospital. Much needs to be done to ensure that all victims are met with an appropriate, supportive response when they choose to report sexual assault. And, as if the numerous obstacles facing victims on their course to recovery and justice were not enough, we also know few convictions result when rapes are reported.

How we can improve the criminal justice response to sexual violence

Let me be clear from the outset: We cannot simply focus on one segment of the justice system—whether it be law enforcement, prosecutors, judges, or juries—and expect to fix the problem. Over the past 16 years, we have learned that any truly effective response to sexual violence must be informed by the experiences of survivors and must be broad enough to include a diverse group of community partners to effect safety for survivors and accountability of perpetrators. When I had the opportunity to testify before the full Senate Judiciary Committee earlier this year, I talked about the sea-change that has occurred in many communities across the country as a result of the coordinated community response encouraged by the Violence Against Women Act.

The importance of training

All who play a role in a community's response to sexual violence must be trained to understand the dynamics of sexual violence. Unfortunately an attitude that implicitly condones violence and blames victims continues to pervade our society. This mentality does not stop at the doors of

[13] Justin Fenton, "City Rape Statistics, Investigations Draw Concern," *Baltimore Sun*, June 27, 2010 (questioning "unfounded" rape rates in Baltimore and noting problems and subsequent reforms in St. Louis, Philadelphia, and Pittsburgh); Mark Fazlollah, "Hidden Rapes: The Stories Behind the Numbers," *Justice Research and Statistics Association Forum*, January 2001, available at http://www.jrsa.org/pubs/forum/archives/Jan01.html (describing *Philadelphia Inquirer* reporting on unfounded rapes and subsequent reforms and questioning reliability of police rape statistics in Phoenix, New York City, Houston, San Antonio, Kansas City, Oklahoma City, and St. Paul).

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police departments, district attorney's offices, courts or even rape crisis centers. One of the most important aspects of this training, particularly for criminal justice personnel, is overcoming the still commonly held belief that many reports of sexual assault are false and that the typical "real" rape case is perpetrated by a stranger with a weapon. As noted above, the majority of sexual assault victims know their attackers, no weapon was used in the attack, and alcohol or drugs may have been involved. These circumstances will yield different evidence and require a different kind of investigation.

Many police and sheriff departments have developed specialized sex crime units staffed by officers, detectives, and other victim support personnel specifically trained to respond to and investigate reports of sexual violence. These specialized units are more common in large urban areas, but some smaller agencies have also identified experts within their agency or in nearby jurisdictions to provide specialized expertise. VAWA and Victims of Crime Act funding, for example, have supported multi-agency, multi-disciplinary teams to investigate and prosecute sexual assault and abuse cases in the State of Vermont for many years, and the State has now committed to providing all citizens with access to these special investigation units.

The most common model for a coordinated community response to sexual violence is a Sexual Assault Response Team, or SART. A SART is a community-based team that coordinates the responses of sexual assault victim advocates, Sexual Assault Nurse Examiners (SANEs), law enforcement, prosecutors, and others who may encounter a victim immediately after an assault.

Upon the request of a sexual assault victim, the SANE (or other forensic examiner) conducts a forensic exam and collects evidence in a rape kit while providing the victim with medical care. Because most sexual violence happens between acquaintances, the presence of DNA evidence is not necessary to identify the perpetrator and may not be sufficient for a conviction if the alleged perpetrator confirms the sexual activity but claims it was consensual. SANEs are trained to document bruises, tears, other physical injuries, and the emotional response of victims, all of which can help prosecutors overcome the so-called "consent defense." A rape crisis advocate is with the sexual assault victim before, during, and after the exam to provide support and information about available resources. After the initial evidence collection, the remaining members of the SART work with the sexual assault victim through the investigation and any subsequent prosecution.

Research has demonstrated that where a SART is involved, cases have more evidence available and greater victim participation.[14] In addition, SARTs have been found to greatly enhance the quality of healthcare for victims and improve the quality of forensic evidence collected.[15] SART cases are 1.7 times more likely to result in an arrest and 3.3 times more likely to result in the filing of

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[14] Nugent-Borakove, M. *Testing the Efficacy of SANE/SART Programs: Do They Make a Difference in Sexual Assault Arrest & Prosecution Outcomes?,* final report submitted to the National Institute of Justice, Washington, DC, May 2006.

[15] Campbell, R., Patterson, D., and Lichty, L. 2005. The Effectiveness of Sexual Assault Nurse Examiner (SANE) Programs: A Review of Psychological, Medical, Legal, and Community Outcomes. *Trauma, Violence, and Abuse* 6 (4): 313–329.Crandall, C., and Helitzer, D. 2003. *Impact Evaluation of a Sexual Assault Nurse Examiner (SANE) Program.* Albuquerque, NM: Albuquerque SANE Collaborative.

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charges than cases in which there was no SART intervention. One study found that a SANE-SART program is the strongest predictor that charges will be filed in a sexual assault case and increases the likelihood of conviction.[16]

An OVW-funded project in West Virginia has found that changes following the establishment of SARTs include greater communication and collaboration, on-call programs at local hospitals, monthly SART meetings, and intensive training for SART members, nurses, law enforcement, and other professionals. In one county, where law enforcement officers previously refused to work with the rape crisis center advocates, the officers now call an advocate when a victim is at the hospital and permit her to be present during the victim interview. In another, when an officer suggested polygraphing victims to prove their credibility (a practice that demeans rape victims by treating their allegations as inherently untrustworthy and violates a VAWA formula funding requirement), a prosecutor who participated in the SART was able to intervene.

DOJ's efforts to improve the response to sexual violence

As discussed above, an effective response to sexual violence that holds offenders accountable and meets the needs of victims requires a coordinated, informed response from the health care system, the criminal justice system, and victim services providers. Understanding this, OVW has focused resources toward increasing the capacity in each of these areas.

Increasing Services for Sexual Violence Victims

The vast majority of sexual assault victims will never come into contact with the criminal justice system. Thus, victims must have access to supportive services outside the criminal justice system, including health care providers who are able to meet their unique needs. At the same time, victim services providers also play an important role in the coordinated community response and can help ensure that offenders are held accountable by supporting the victim throughout the criminal justice process.

The bulk of supportive services available to victims of sexual violence are currently offered through agencies that are not exclusively dedicated to serving sexual violence victims, but are co-located or merged in agencies that are also providing services to domestic violence victims. These agencies have been funded under the Family Violence Prevention and Services Act since the mid 1980s to provide domestic violence services, yet until very recently there was no similar funding stream for sexual assault services. Because of this disparity, researchers have found that these agencies, also known as "dual agencies," are often weighted heavily toward domestic violence crisis programming, with sexual violence receiving limited attention in terms of agency mission, budget, or dedicated staff with specific expertise in serving sexual violence victims.[17] The Department is attempting to address this deficiency in two ways.

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[16] Nugent-Borakove, M. *Testing the Efficacy of SANE/SART Programs: Do They Make a Difference in Sexual Assault Arrest & Prosecution Outcomes?*, final report submitted to the National Institute of Justice, Washington, DC, May 2006.

[17] Zweig, J.M. & Burt, M.R. (2003). *Attention to sexual violence for women seeking help from victim service programs: The situation in programs with both sexual assault and domestic violence components.*

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First, the President has requested substantial funding increases for OVW's Sexual Assault Services Program (SASP). SASP is the only federal funding stream dedicated to providing services specifically for sexual assault victims and was created in VAWA 2005 as a result of this committee's work on the legislation.. Overall, the purpose of SASP is to provide intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by sexual assault. In Fiscal Year 2009, each state and territory received formula funds through the SASP. These states and territories are currently in the process of making subgrant awards to local programs to provide direct services to victims.

Second, OVW has designed a Sexual Assault Demonstration Initiative (SADI) to address the challenges that dual agencies face in reaching sexual violence victims within their communities. SADI Project sites will receive customized technical assistance in an effort to assess the agencies' current strengths and weaknesses in reaching victims of sexual violence within the community, the services currently provided to this population by the agency, and any specific technical assistance needs to underserved populations. SADI Project sites will receive guidance on developing and implementing models of service provision that prioritize the needs of sexual violence victims and the resources to implement those service models. Additionally, President Obama signed the Tribal Law and Order Act in July. The Act requires a standardized set of practices be put in place for victims of sexual assault in Indian health facilities.

Training Law Enforcement, Prosecutors, Judges, and Other Professionals

Many of OVW's grantees provide sexual assault training to their member agencies and communities. For many years, OVW has supported their efforts by promoting targeted training for law enforcement officers, prosecutors, and judges, and many other professionals to improve their handling of sexual violence cases. We often partner with national professional associations so that our grantees can benefit from their expertise and we can better reach their members, who are generally more receptive to peer-to-peer training. OVW-funded, national sexual assault training projects include:

- **International Association of Chiefs of Police (IACP):** IACP has developed tools and policies to assist law enforcement in responding effectively to sexual assault and other crimes. IACP is currently developing a training video on investigating non-stranger sexual assaults, which will be disseminated across the country.

- **AEquitas: The Prosecutors; Resource on Violence Against Women:** This new prosecution project develops, evaluates, and refines prosecution practices, with a primary focus on sexual assault, including intimate partner sexual assault. Between July 2009 and June 2010, AEquitas' staff of experienced former prosecutors has served at over 73 different training events, training over 6,100 prosecutors and allied professionals.

(95-WT-NX-0005 and 00-WT-VX-0010). National Institute of Justice, U.S. Department of Justice. Unpublished manuscript.

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- **National District Attorney's Association (NDAA)**: NDAA conducts trainings on sexual assault prosecutions. Their upcoming sexual assault conference in November will cover topics including SANE-SART programs, strategies for overcoming the consent defense, and specialized sexual assault courts.

- **National Judicial Education Program (NJEP):** Since 1997, OVW has funded NJEP, a project of Legal Momentum in cooperation with the National Association of Women Judges, to provide direct and distance training for thousands of judges through in-person programs, DVDs and a web course. This work has included trainings on the judicial response to stranger and non-stranger rape, elder sexual abuse, court interpreters in sexual assault cases, and jury selection and decision making in adult victim sexual assault cases.

Since 2001, the Department's Office for Victims of Crime, working closely with OVW, has highlighted model programs and practices and provided state-of-the-art training to thousands of multi-disciplinary practitioners, including SANEs, victim advocates, law enforcement officers and prosecutors through its biennial National SART Training Conference. Recognizing the high rate of sexual assault in Indian Country, including the sexual abuse of children, OVC's May 2011 conference in Austin, Texas will feature a specialized track of training on sexual assault in Indian Country. In December 2010, OVC will disseminate a comprehensive on-line SART Tool-Kit developed by the National Sexual Violence Resource Center to share best practices and information resources to communities throughout the Nation that wish to implement a SART, or enhance the operation of an existing SART. OVC has also entered into an innovative five-year partnership with the FBI and the Indian Health Service to work with tribes, tribal organizations, U.S. Attorneys' Offices and other entities to advance the use of SANEs and SARTs in responding to child and adult victims of sexual assault in Indian Country.

Promoting and Improving Sexual Assault Forensic Examinations

The Department recognizes that access to forensic medical examinations is critical to both the successful prosecution of sex offenders and the recovery of victims. Health care personnel specially trained in sexual assault can validate and address victims' health concerns, minimize victims' exposure to further trauma, promote healing, and maximize the detection, collection, preservation, and documentation of physical evidence for potential use by the legal system.

To promote effective practices and access to forensic medical examinations, in September, 2004, the Department released *A National Protocol for Sexual Assault Forensic Examinations (Adults/Adolescents)* (the SAFE Protocol), which provides detailed guidelines for responding to the immediate needs of sexual assault victims. Companion training standards were released in 2006 to offer a framework for training health care providers who wish to provide forensic medical services.

In the years since issuing the SAFE Protocol, the Department has made a series of technical assistance awards to promote its effective use and improve training for sexual assault forensic examiners. OVW funded the International Association of Forensic Nurses to disseminate and promote the Protocol and Training Standards and, with the National Institute of Justice, jointly funded the Dartmouth Medical School to develop an advanced distance learning program, known

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as the SAFE Virtual Practicum, for health care practitioners who perform or may perform sexual assault forensic medical examinations. Current technical assistance projects include training lay advocates and paraprofessionals to collect basic forensic evidence in American Indian and Alaska Native communities that lack forensic examiners, adapting the SAFE Protocol to specifically address the needs of tribal communities, and modifying the Protocol for use by corrections agencies.

Not only must we improve victim access to forensic examinations, we also must ensure that no victim is made to bear the expense of these exams. Historically, because these exams are conducted in medical facilities by medical personnel, victims were billed for the exam as if they had received a health care service – despite the fact that the purpose of a forensic rape exam is to collect evidence for law enforcement and prosecution. Congress recognized the injustice of such a practice and, VAWA, enacted in 1994, mandated that states ensure that victims not bear the cost of rape exams as a condition for receiving VAWA formula funding. In the Violence Against Women Act of 2005, Congress further required that States provide victims with access to free exams regardless of whether a victim chooses to cooperate with law enforcement. OVW has funded two technical assistance projects to help states and local jurisdictions comply by developing systems that permit victims, who often are traumatized in the immediate aftermath of an assault, time to decide whether to pursue charges while preserving evidence for future prosecutions.

Addressing the Rape Kit Backlog

As reported in the media, thousands of rape kits are untested and DNA backlogs in crime labs are causing delays in the criminal justice system. As set forth in the Department's December 15, 2009 Statement for the Record before this Committee on "Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide," the Department's Office of Justice Programs and OVW have made addressing untested forensic evidence a key priority. Since that statement, the Department has convened an internal working group to build on our past efforts in this arena. In May of this year, OVW held a roundtable to hear from local, state, and national organizations and experts. This discussion provided a forum for participants from a variety of disciplines to discuss the challenges involved with addressing the backlog as well as broader issues regarding processing sexual assault cases. Some of the lessons learned from that meeting include:

- The term "rape kit backlog" may not adequately describe the problem we are discussing, given that the term "sexual assault" covers a wider range of criminal behavior and that much evidence collected from a crime scene (e.g., bedding, carpet fibers) is not housed in the rape kit.
- Some hospitals are storing untested rape kits that have not been provided to either law enforcement or a crime laboratory for analysis.
- There is a need for better tracking of sexual assault evidence at all stages and locations.
- We must improve communication to ensure that crime labs focus on testing items most needed by police or prosecutors.
- We must help law enforcement officers understand the use of DNA testing and new technologies in the investigation and prosecution of sexual assault cases.

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- We must determine whether evidence collected in certain types of cases, such as non-stranger cases or cases where the victim has been using drugs or alcohol, is more likely to remain untested.

A summary of the proceedings from this Roundtable will be released in October and will inform the recommendations of the Department's working group.

Responding to Sexual Assault on College Campuses

Recognizing that women on college campuses face both a high risk for sexual victimization and additional challenges created by a "closed" campus environment, OVW has also worked to ensure that the unique needs of college women are addressed in our programs. One study of college women found that 13.7% of undergraduate women had been victims of at least one completed sexual assault since entering college.[18] Campus victims may continue to live in danger if the perpetrator resides in the same dormitory or attends the same classes. To address these unique challenges, OVW's Grants to Combat Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program is designed to improve campus responses to these crimes through services, enhanced offender accountability, and education of both faculty and students.

One innovative prevention program that has shown promise on college campuses is bystander intervention training. Although sexual assault is often viewed as a crime usually involving only the victim and the assailant(s), a 2002 study using data from the National Crime Victimization Survey revealed that sexual assaults are often witnessed by at least one person in the bystander role. Bystander intervention training builds on research about community members' expressed willingness to get involved in these issues, and helps to minimize negative long-term consequences for survivors by strengthening informal safety nets in their social and community networks. Research indicates that participants in these programs show improvements across measures of attitudes, knowledge, and behavior.[19]

I was privileged to learn first-hand about one of the most innovative campus programs located at the University of New Hampshire in my home state, when I visited the university as part of a month-long campus tour to raise awareness about sexual violence on campuses by Justice Department officials last March. Funded by a grant from OVW, the UNH program aims to reduce domestic violence, dating violence, sexual assault and stalking on campus by placing specific emphasis on athletic teams, orientation leaders, fraternities, resident hall monitors, first-year students, Student Center and elementary writing courses staffs. Central to the program's effectiveness is a social marketing campaign based on the message that *everyone has a role to play in stopping sexual crimes on campus.*

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[18] Krebs, Lindquist, Warner, Fisher, & Martin, *Campus Sexual Assault Study*, final report submitted to the National Institute of Justice, Washington, DC, December 2007, NCJ 221153.

[19] Banyard, V.L., Plante, E.G., & Moynihan, M.M., *Rape Prevention Through Bystander Education: Bringing a Broader Community Perspective to Sexual Violence Prevention*, final report submitted to the National Institute of Justice, Washington, DC, February 2005.

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We must also address the fact that rape is not something that starts in college. 10.5% of high school girls and 4.5% of high school boys report having been physically forced to have sexual intercourse[20]. We need to do a better job of working with K-12 schools to train educators to identify victims of sexual assault, to establish referral networks so they can get vital legal and health services, and to do prevention education with young people.

Conclusion: Looking Ahead

As I urged earlier in my testimony, our efforts to secure justice for victims cannot single out one facet of the criminal justice system to the exclusion of others, and we must ensure that victims and survivors of sexual violence continue to have a voice in our decision making. Looking ahead, we should build on our past and current efforts by enhancing community collaborations so that responses to sexual violence are streamlined and victim-centered. To do so, we must identify successful models, including SARTs, that enhance investigations, increase the number of successful prosecutions, and respect the dignity of victims. We must identify and disseminate promising practices for each of the relevant disciplines responding to sexual assault, such as prosecutors, law enforcement, and health care providers. We must explore new and innovative ways to serve victims, particularly in underserved and rural areas. We must move beyond old preconceptions about rape and sexual assault.

We all know the pain and suffering that sexual violence inflicts on the individual, the family unit, and our communities, and we agree that much work remains to be done to enhance the criminal justice response to these crimes. Ending sexual violence is a priority for OVW and the Department of Justice. We are committed to creating a culture where victims are safe to report the crime, where they will be treated with respect by all those with whom they must come into contact (including the medical profession, law enforcement, the courts), and where judges and juries will understand the breadth and scope of sexual assault crimes in their communities.

[20] Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance – United States, 2009, MMWR 2010:59.

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Statement of
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Committee on the Judiciary
United States Senate
Sub-Committee on Crime and Drugs

Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases

I have been asked to address the following four issues as they relate to law enforcement's response to rape in the United States:

- Victims failing to report rape;
- Police not accepting rape and other sex crimes for investigation;
- Police misclassifying rape and other sex crimes as non-crimes;
- Police "unfounding" rape cases at an extremely high rate.

Before considering each respective issue, however, I wish to place our discussion into the larger context of the criminal justice system as a whole. The failure to report and investigate rape cannot properly be understood in isolation from issues of the failure of prosecutors to charge rape cases and take them to trial,[1] the failure of juries to convict,[2] and the failure of judges to impose adequate sentences upon conviction. Each step in the criminal justice system is directly related to the next: survivors will fail to report if they believe their cases will not be taken seriously by police; police will fail to properly investigate rape cases if they believe prosecutors will not aggressively pursue charges in court; prosecutors will not aggressively pursue charges if they believe juries are unlikely

[1] Frazier, P. & Haney, B. (1996) *Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives* 20 LAW AND HUMAN BEHAVIOR 607, 622 (documenting that "substantial attrition continues to occur in the prosecution of reported rape cases"). See also, appendix A, letter from the Chicago Alliance Against Sexual Exploitation to the Cook County State's Attorney regarding the low rates of prosecution for felony sexual assault.

[2] See, Bryden, D.P. & Lengnick, S. (1997). *Rape in the Criminal Justice System* 87 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 1194, 1256 (discussing empirical literature regarding low jury conviction rates and noting that the dismal conviction rates represent "a near-total nullification of the crime of rape in cases where the parties knew each other and no aggravating factor was present.").

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to convict. Moreover, the entire system – and indeed the entire culture in which the system operates – will tend to treat rape less seriously when the sentences passed by judges do not reflect the true gravity of the offense.[3] The point of framing my comments with these concerns in mind is simply to highlight the fact that the chronic failure to report and investigate rape cases in the United States is part of a systemic failure to take rape seriously both within the criminal justice system and within our communities more generally.

1. Victims failing to report rape

It is widely recognized that rape is one of the most underreported offenses in the United States, with empirical studies estimating that merely 15-20% of cases are reported to the police.[4] Undoubtedly, misconduct and malfeasance by some members of the law enforcement community have contributed to an environment in which rape survivors who might otherwise be willing to come forward and report the offense have been deterred from doing so, out of a justifiable concern that they will not be believed, or that they will be blamed for their own victimization.[5] However, empirical investigations suggest that there are a number of additional reasons why victims often fail to report, including, among others, "(a) the embarrassment and stigma associated with the crime; ... (c) perceptions that some incidents are not serious enough; [and] (d) ambiguity about what constitutes illicit sexual conduct..."[6]

Moreover, in cases where the survivor knows the offender (cases which account for the vast majority of rape in the United States[7]), there are additional, complex reasons why victims may fail to report. Indeed, in my experience as a prosecutor of domestic violence, I dealt with many victims who acknowledged that their husbands or boyfriends

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[3] See, e.g., State v. Chaney 477 P.2d. 441 (Supreme Court of Alaska 1970) (reviewing on appeal a case in which the trial court sentenced defendant to 1 year concurrent terms of imprisonment for two counts of forcible rape and robbery). *Topeka man sentenced to probation for youth rape conviction* (AP News, May 26, 2007) available at < http://www.ktka.com/news/2007/may/26/topeka_man_sentenced_probation_youth_rape_convicti/> (reporting the case of a defendant sentenced to three years probation after being convicted of repeatedly sodomizing a 14 year old girl).

[4] Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.K. (1992). *Rape in America: A report to the nation*. National Victim Center & Medical University of South Carolina; Tjaden, P. & Thoennes, N. (2006), *Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey*. National Institute of Justice (documenting a reporting rate of 19.1%).

[5] Examples from the recent Baltimore Sun expose attest to pervasive and ongoing problems with law enforcement response to victims. Fenton, J. (2010) *City Rape Statistics Questioned* BALTIMORE SUN, June 27, 2010. See also, Fry, D. (2007). *A Room of Our Own: Sexual assault survivors evaluate services*. New York City Alliance Against Sexual Assault (reporting that 51.6% of rape survivors felt that they had been treated poorly by the police).

[6] Felson, R. & Paré, P-P. (2005) *The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police* 67 JOURNAL OF MARRIAGE AND THE FAMILY 597, 598 (internal citations omitted).

[7] Tjaden & Thoennes (2006) at 21.

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had subjected them to both physical and sexual abuse – but only very rarely were these women willing to testify as to the sexual abuse.

In order to create a culture in which survivors are willing to report their rapes, it will be necessary not only to hold police officers accountable for their misconduct, but to continue rape education and prevention programs, so that we can affect a comprehensive shift in cultural norms surrounding rape. We must dismantle the culture of impunity that allows rape and sexual abuse to continue unabated and prevents perpetrators from being held accountable for their violence. Moreover, we must create an environment in which it is simply expected that no sex will take place without the freely given agreement of the participants – and that when a person *is* subjected to sexual intercourse without her freely given agreement, the experience of embarrassment and shame will be borne by the *perpetrator* and not the victim.[8]

2. Police not accepting rape and other sex crimes for investigation;

As the recent Baltimore Sun exposé notes, substantial problems continue to exist regarding police officer's failure to investigate rape complaints.[9] Clearly, these failures have caused tremendous harm to survivors and have further contributed to the culture of impunity surrounding rape discussed above. Since I am confident that my fellow witnesses will have adequately addressed these aspects of problem, I will turn my attention to a somewhat different set of concerns.

One of the most troubling features of police not accepting rape cases for investigation is that so often the considerations which police take into account in doing so go entirely undocumented.[10] This failure to document strikes at the very heart of the rule of law and creates a profound crisis of legitimacy for the criminal justice system as a whole – for, it is a central ideal of the rule of law within liberal democracies such as ours that the State should be accountable to the People. Accountability in this sense is not merely the ability of the People to remove elected officials from office through the democratic process of voting. Rather, accountability is also – quite literally – the ability of the People to call public officials to account for their actions: to ask for, and to receive, an accounting of the reasons which explain the officials' actions. When police officers fail to document the considerations which explain their actions (or inactions as the case may be), the People are denied the opportunity to evaluate those considerations and to engage in an informed public debate regarding the proper exercise of police discretion.

I do not wish my comments to be interpreted as suggesting that police discretion in the investigation of crime should be limited, such that every rape report must

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[8] The language of "freely given agreement" is borrowed from the definition of consent found in the Wisconsin sexual assault statutes. See, W.S.A. §940.225(4).

[9] Fenton, supra n 5.

[10] According to the Sun, "department statistics show that about 40 percent of the 911 calls involving rape allegations each year are determined not to have merit or result in reports not being taken at the scene. For most of those calls, there is no documentation of why they were handled in that way…." Id.

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necessarily receive the full court press of law enforcement's investigative resources. Rather, I am concerned with the failure of police officers to document the reasons they take into account when they decide not to investigate fully. Again, the Baltimore case is illustrative. According to the Sun report, "the department has received an average of about 900 calls alleging rapes or attempted rapes each year since 2003, with reports written in ...[only] 60 percent of those instances." Quite simply, the failure of police to write reports in these cases evidences a profound failure to conform to the dictates of the rule of law within a liberal democracy. Our system of government is not one in which State actors are entitled to exercise broad discretion over matters that affect the lives of the People in important ways without even bothering to explain the reasons upon which they base their decisions. Rather, our system of government is one in which the People – and particularly survivors – are entitled to hold State actors to account for their conduct. In the context of rape investigations, that accountability will prove impossible unless police provide an explanation in every single case as to why a rape complaint was not fully investigated.

Thankfully, there are models in the United States of how to overcome this failure of accountability in law enforcement. The productive working relationship established in Philadelphia between the Women's Law Project and the Philadelphia Police Department exemplifies the positive changes that can be realized when advocates and local law enforcement come together to discuss the reasons why some cases are not pursued by law enforcement.[11] Not only can citizen review of this sort provide a context for public understanding and debate regarding the manner in which police exercise their discretion, but it can result in police reconsidering their previous decisions and reopening cases for investigation and prosecution. Of course, however, this level of accountability comes at a price. Resources are required both to provide the opportunity for police to write reports in connection with every rape complaint and to allow citizen review boards the time and expertise to engage in dialogue with law enforcement regarding their discretionary decision-making. It is my firm conviction that with proper support, programs such as the one established in Philadelphia can serve as a model for the rest of the United States, thereby securing not only justice for individual rape survivors but enhancing our commitment as a nation to the principles of the rule of law.

3. Police misclassifying rape and other sex crimes as non-crimes

In recent decades throughout the United States, both our legal and cultural understanding of what counts as rape have undergone a radical transformation. Archaic legal definitions of rape which required victims to "resist to the utmost" before their violations were deemed to count as rapes have now, thankfully, been largely abandoned throughout the fifty states. The standard set out in the infamous dissent by Judge Cole in the case of State v. Rusk, that a rape victim "must follow the natural instinct of every proud female to resist by more than mere words, the violation of her person..."[12] was

[11] See, Fazlollah, M, Matza, M. & Craig R. McCoy, C. *Police Checking Into Old Sex Cases* PHILADELPHIA INQUIRER (October 29, 1999).

[12] State v. Rusk, 424 A.2d 720 (Maryland Court of Appeals 1981) (Cole, J. dissent).

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rightfully rejected at the time by the majority of the court in Rusk, and now, nearly thirty years later, is largely recognized as representing a bizarre, anachronistic view of rape which the United States has long abandoned.[13]

Yet, perhaps this view of our legal and cultural understandings of rape is overly optimistic; for, the transformation from the archaic view of rape has not yet been complete. While some states have adopted progressive laws which recognize that a criminal offense occurs whenever sexual intercourse takes place without "words or overt actions by a person who is competent to give informed consent indicating a freely given agreement"[14], there are still a number of states in which the legal definitions of rape (or sexual assault) include some form of the archaic common law physical resistance requirement (typically built into the state courts' interpretation of what counts as "force") and others where consent is deemed to be present even when the victim evidences clear signs of unwillingness to engage in sex.[15]

In these jurisdictions, there exists a tremendous and troubling justice gap between what counts as rape according to any reasonably enlightened view of women's rights to sexual autonomy and bodily integrity - and what counts as rape as a matter of state law.[16] Given this justice gap, the problem of police "misclassifying rape as a non-crime" may simply be a reflection of the fact that what victims experience as rape - what is properly understood as rape – still does not count as rape according to out-dated laws. Where this justice gap persists, it remains crucial to support the continuation of rape law reform, so that every state's criminal law will reflect a proper understanding of the reality of what counts as rape, rather than protecting predators under archaic laws that penalize only a very tiny percentage of actual rapes.

The gap between what counts as rape in reality and what counts as rape in an archaic legal definition is clearly evident in police reporting of official rape statistics. This is so because local law enforcement are required to report these statistics in accordance with the definition of rape set out in the Uniform Crime Reporting (UCR) Handbook, and the Handbook adopts an extremely narrow, out-dated definition of rape as consisting in "the carnal knowledge of a female forcibly *and* against her will."[17] In order

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[13] See, Suk, J. (2010) *"The Look in His Eyes": State v. Rusk and Rape Reform* in Weisberg, R. & Coker, D. (eds) CRIMINAL LAW STORIES (forthcoming) (discussing modern rape law reforms and noting the "revulsion" with which Judge Cole's dissent is now commonly viewed.)

[14] Wisconsin Statutes & Annotations (W.S.A.) §§940.225(3)-(4) (defining sexual assault in the 3rd degree as "sexual intercourse without consent" and defining consent as words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.").

[15] See, Anderson, M. (1998) *Reviving Resistance in Rape Law* UNIVERSITY OF ILLINOIS LAW REVIEW 953, 1101 (discussing legal reforms and observing that "despite the abolition of the formal resistance requirement, the courts often rule that no rape occurred even when a woman experienced rape.") See also, LaFave, W. (2010) *Criminal Law* West Publishing §17.1 (discussing modern rape law reforms).

[16] The term "justice gap" is commonly used in England to capture this distinction in academic literature and public debate regarding attrition in rape cases. See, Kelly, L., Lovett, J. & Regan, L. (2005) A *Gap or a Chasm? Attrition in Reported Rape Cases* (Home Office Research Study No. 293).

[17] UNIFORM CRIME REPORTING HANDBOOK (2004) U.S. Dept. of Justice, F.B.I. at p. 19.

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to maintain uniformity in reporting across the various states, the UCR program mandates that local law enforcement report statistics using this uniform, albeit outdated, definition of rape.[18] Thus, even if an incident were to qualify as rape (or sexual assault) under the state's more progressive laws, local law enforcement are technically required under the UCR program to record these cases as "unfounded" unless they meet the narrow, anachronistic definition of rape adopted in the UCR.[19]

To make matters worse, the hypothetical factual scenarios used in the UCR Handbook to illustrate what counts as rape are equally out-dated, focusing on stranger and gang rapes, and entirely ignoring any examples of rape in which the offender is known to the victim.[20] By ignoring acquaintance rape and intimate partner rape, the UCR Handbook sends a message to local law enforcement that such cases simply do not count as "real rape".[21] It is troubling in the extreme that the FBI, in administering the UCR Program and publishing the Handbook, has failed to keep pace with the legal and cultural shifts in our understanding of what counts as rape. Since it is clearly within this subcommittee's jurisdictional remit to address concerns regarding the administration of the UCR Program by the FBI, it would seem fitting that this sub-committee urge the FBI to amend the definition of rape in the UCR Handbook and to expand the array of illustrative examples to include cases of acquaintance rape and intimate partner rape.

4. Police "unfounding" rape cases at an extremely high rate

This final issue can be best understood in one of three ways. High rates of police "unfounding" rape may be due to misconduct, malfeasance, or lack of proper education regarding the investigation and handling of rape. Insofar as these factors are present, my comments above regarding the failure of police to investigate rape cases properly and the need for accountability will prove salient here as well. Of course, police "unfounding" rape cases at an extremely high rate may further be explained in terms of the justice gap discussed above. Insofar as this "justice gap" explains the high rates of "unfounding" cases, my comments regarding the continued need for law reform are relevant here as well.

However, I believe there is a third and perhaps more illuminating way of understanding the problem of police "unfounding" rape cases at an extremely high rate.

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[18] Id. at p. 15.

[19] A further undue limitation in the UCR Handbook's definition of rape is the failure to include rape of men. This limitation is particularly perplexing in light of the fact that it applies only under the summary reporting mechanism of the UCR Program, whereas the more complex, incident-based reporting mechanism (the National Incident-Based Reporting System) recognizes the rape of men as well as women.

[20] It is ironic that the 2004 edition of the UCR Handbook professes to have "updated many of the examples so they better reflect the American society of the twenty-first century." Id. at Editorial Note.

[21] Estrich, S. (1987) REAL RAPE (Harvard University Press) 7 (arguing that acquaintance rapes and intimate partner rapes should be treated as "real rapes").

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Put simply, the UCR program actually encourages them to do so.[22] The first way the UCR encourages "unfounding" rape cases is by limiting the range of categories available to police officers in recording case dispositions. Only three options are available for recording a case disposition: "unfounded", "cleared by arrest", or "cleared by exceptional means". (See UCR form A, attached as exhibit B.) The UCR handbook explains the category of "unfounded" cases as follows:

> Occasionally, an agency will receive a complaint that is determined through investigation to be false or baseless. In other words, no crime occurred.[23]

Conversely, if a complaint is deemed legitimate (ie, if the police officer determines that a crime did in fact occur), then the UCR provides only two options for recording the case disposition: "cleared by arrest" or "cleared by exceptional means". In order to be "cleared by arrest" at least one suspect must be arrested, charged with the offense, and turned over for prosecution. (Notably, the UCR handbook equates an offense being "cleared by arrest" as being "solved for crime reporting purposes" – thus implying that offenses that are not "cleared by arrest" have not been "solved".[24]) The only other option available for clearing a case is to record it as "cleared by exceptional means"; however, this category is extremely restricted in its scope. In order to be "cleared by exceptional means" for the purpose of reporting under the UCR, there must be "enough information to support an arrest, charge, and turning over to the court for prosecution", and yet there must further be "some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender."[25] Examples of exceptional clearances provided in the UCR handbook include cases in which the offender has died, or is unable to be extradited from a foreign jurisdiction, thus clearly precluding prosecution. Puzzlingly, cases in which the "victim refuses to cooperate in the prosecution" are also categorized as exceptional clearances - as if the victim's refusal to cooperate had the legal effect of precluding arrest, charging and prosecution (which, of course, it does not, since the decision to go forward with the prosecution of a criminal case rests squarely within the discretion and authority of the State, not with the victim).

The UCR's disposition categories are problematic not only because they mischaracterize the legal effect of the victim's withdrawal of support for the prosecution of her rapist, but further because they provide no way to categorize cases in which there exists insufficient evidence to take the case forward for prosecution, despite the fact that the police believe that the victim's rape complaint is indeed legitimate.[26] At present,

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[22] As noted at n 19 above, the UCR program includes both summary reporting and more detailed incident-based reporting through the National Incident Based Reporting System (NIBRS). Given that NIBRS covers only 16% of law enforcement, what follows will focus primarily on problems with the summary-based reporting methods.

[23] UCR HANDBOOK at p. 17.

[24] Id. at p. 79.

[25] Id. at pp. 80-81.

[26] The issue of how much and what kind of evidence is sufficient for prosecution is a matter of ongoing debate in both law enforcement and academia. On the one hand, it is true that prosecutors are legally entitled to go forward with a prosecution provided they can meet the "probable cause standard".

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cases with insufficient evidence for prosecution must either be categorized as "unfounded" or left open (that is, not cleared). In so doing, the UCR program breeds a climate in which police departments are implicitly encouraged to "unfound" legitimate cases when the existing evidence is insufficient for prosecution. Given that the UCR program was created for the express purpose of gathering accurate data regarding the extent of criminal activity throughout the U.S., it is troubling that the UCR's own forms create perverse incentives that tend to skew the data and render it invalid as a statistical tool. To address this problem, it may be appropriate to include additional case disposition categories for UCR reporting (for example, "founded but prosecution declined due to insufficient evidence"). Moreover, cases in which prosecution is declined due to the victim's request should not be categorized as "exceptional clearances", since such categorization fundamentally misrepresents the legal effect of a victim's lack of cooperation. Rather, if a distinct category for reporting such cases is thought to be desirable, consideration should be given to reporting such cases as "founded but prosecution declined due to victim's request."[27]

In addition to the problems generated by the limited case disposition categories in the UCR program, the UCR Handbook presents hypothetical illustrations that breed misinformation and confusion regarding how to investigate and categorize rape cases. The UCR Handbook states that "the following scenarios illustrate incidents known to law

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See, James, D. (1995) *The Prosecutor's Discretionary Screening and Charging Authority* 29 THE PROSECUTOR 22. Under this more permissive standard, prosecutors will often be entitled to proceed to trial based solely on a victim's testimony, irrespective of the strength of the defendant's likely testimony or other circumstantial evidence that might be thought to raise a reasonable doubt as to the defendant's guilt. However, prosecutions that go forward with evidence amounting to nothing more than probable cause generate considerable controversy in the realm of prosecutorial ethics. See, e.g., Kuckes, N. (2009) *The State of Rule 3.8: Prosecutorial Ethic Reforms Since 2000* 22 GEORGETOWN JOURNAL OF LEGAL ETHICS 427; Griffin, L. (2001) *The Prudent Prosecutor* 14 GEORGETOWN JOURNAL OF LEGAL ETHICS 259; Vorenberg, J. (1981) *Decent Restraint of Prosecutorial Power* 94 HARVARD LAW REVIEW 1521. Both the American Bar Association and the Department of Justice agree that prosecutors should not take cases to trial unless they believe "that the admissible evidence will probably be sufficient to obtain…a conviction" – which is to say that the defendant "probably will be found guilty by an unbiased trier of fact" applying the standard of proof beyond a reasonable doubt. ABA Standards for Criminal Justice, Prosecution Function and Defense Function Standards, Standard 3-3.9(a) (3d ed. 1993); United States Attorneys' Manual, Section 9-27.200 (B). According to these ethical rules, the probable cause standard is merely "a threshold consideration" which "does not automatically warrant prosecution". Id. While it remains highly controversial whether prosecutors should apply this more restrictive standard in rape cases, it is clear that if they do so then cases with relatively weak evidence simply will not be "turned over for prosecution". Since these cases will not be turned over for prosecution, they cannot – according to the UCR – be "cleared by arrest". Indeed, given the limited categories of case disposition available on the UCR forms, such cases cannot be cleared at all. Rather, they are left in an administrative limbo – as neither "unfounded" nor capable of being prosecuted according to the relevant ethical rules.

[27] The creation of such categories, of course, would not serve as a substitute for the accountability procedures discussed above and illustrated in the Philadelphia model.

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enforcement that reporting agencies must report as unfounded complaints: *1. A woman claimed that a man attempted to rape her in his automobile. When law enforcement personnel talked to both individuals, the complainant admitted that she had exaggerated and that the man did not attempt to rape her.*"[28] Nowhere does the UCR Handbook consider the possibility that the woman's recantation may be based on factors such as victim intimidation, frustration at being treated unfairly by law enforcement, embarrassment and shame, posttraumatic stress, a desire to protect the offender, or simply a desire to reclaim control over her life. While it is (or at least should be) widely recognized in law enforcement that "recantation does not necessarily mean that the original report was false", the UCR Handbook continues to rely upon such misinformation and myth.[29] Fortunately this error can easily be corrected in connection with amendments to the UCR Handbook suggested above.

5. Conclusion

I am grateful and honored to have had the opportunity to comment on the chronic failure to report and investigate rape in the United States. Many of my comments have focused on issues regarding the inadequacies of official statistical measurements of rape. While I do indeed believe that the tools we use to gather this data can be improved, I wish to close my comments by recalling the words of feminist scholar, activist and rape survivor, Andrea Dworkin, recalling the *purpose* of compiling rape statistics: "We use statistics not to try to quantify the injuries, but to convince the world that those injuries even exist."[30] *That* is why statistics matter: they are not mere abstractions – they are a record the reality of women's victimization – a way to convince the world that rape is both *real* and all too common. Without that realization, there is little hope for change: little hope that we will ever realize the day of which Andrea Dworkin dreamed, the "day when not one woman is raped." On that day, she writes, "we will begin the real practice of equality… we will for the first time in our lives – both men and women – begin to experience freedom."[31]

This testimony represents my own views and does not represent the views of any client or Villanova University School of Law.

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[28] UCR Handbook, supra n 17 at p. 78 (emphasis added).

[29] Lonsway, K., Archambault, J. & Lisak, D. (2009) False Reports: Moving beyond the issue to successfully investigate and prosecute non-stranger sexual assault 42 THE PROSECUTOR 10, 11.

[30] Dworkin, A (1983, 1993) *I Want at 24 Hour Truce During Which There is No Rape* in LETTERS FROM A WAR ZONE (Lawrence Hill Books) 163.

[31] Id. at p. 171.

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November 19, 2009

Anita Alvarez
Cook County State's Attorney
69 W. Washington, Suite 3200
Chicago, IL 60602

Dear Ms. Alvarez,

As the Legal Director of the Chicago Alliance Against Sexual Exploitation, I am writing to you in partnership with several organizations in the Illinois anti-rape movement regarding the prosecution of sexual assault in Cook County. Together, we are a coalition of attorneys, survivors, and advocates for rape survivors. Individually and collectively we have many decades experience communicating with, advocating for, and providing legal representation to people (primarily girls and women) victimized by sexual assault in the Chicagoland area.

The purpose of this letter is to request a meeting with you to discuss the Cook County State's Attorney's Office's prosecution of sexual assault as a felony offense.

We recognize that prosecuting rape is not easy in a society where common myths about rape leave most laypeople expecting that "real" rape is characterized by serious bodily injury, extreme resistance, or violent action by a stranger. That judges and juries alike are reluctant to believe girls and women who report being raped, however, must not deter your office from charging sexual assault as a felony even when the primary—or only—evidence you can offer is the testimony of the victim. Fundamentally, the law says that sexual penetration achieved by force is a felony; bodily injury, third party witnesses, immediate reporting, extreme victim resistance and offender confession are not elements of the crime of sexual assault. Further, since 1991, the Illinois Supreme Court's position has been clear: credible victim testimony alone is sufficient to support a felony sexual assault conviction, "corroborating evidence" is not necessary[1].

We believe that the Cook County State's Attorney's Office is generally not authorizing felony charges for sexual assault reported by victims against non-strangers unless there is "corroborative evidence" such as bodily injury, a third-party witness, or an offender confession. Whether or not this custom is explicitly endorsed by written policy, it appears that the Cook County State's Attorney's Office has adopted a charging standard that effectively adds extra-statutory elements to the crime of sexual assault. This practice protects most rapists from the

[1] *People v. Schott* 145 Ill.2d 188 (1991).

3304 N. Lincoln Suite 202
Chicago, IL 60657
T: 773-244-2230
F: 773-244-2217
www.caase.org

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threat of criminal prosecution, devastates most victims who seek criminal justice assistance, and leads to the continued silence of most victims of sexual assault.

In addition to the gathering evidence of our collective experiences, one of your sex crimes specialists has personally confirmed that your office policy is opposed to charging sexual assault as a felony in the absence of "corroborating evidence." Specifically, on Saturday June 22, 2009, Assistant State's Attorney Annmarie Sullivan repeatedly said that it was the official policy of the Cook County State's Attorney's Office to refuse to authorize felony sexual assault charges based solely on credible victim testimony. To date, my requests for the legal authority for this position have gone unanswered.

Attached to this letter you will find some stories of girls and women raped in Cook County in recent years[2]. While it is well-known that most rape victims never report to the police, the attached narratives are about women who reported their victimization to the police and who sought to have their rapist prosecuted by your office. Most of these women reported sexual penetration by force or while they were so chemically impaired as to be fully or nearly unconscious. None of these women were told that they, or their reports, were not believed. Frequently, they were told that they were found credible. In most cases, however, the Cook County State's Attorney's Office declined to file felony sexual assault charges against the perpetrator—sometimes with the explanation that felony charges can not be 'justified' in a 'he-said'-'she-said' scenario, and sometimes with explicit references to an absence of "corroborating" evidence.

That many of these girls and women are credible is underscored by the fact that the Cook County State's Attorney's Office frequently pursued misdemeanor charges against the rapist. Charging a man with misdemeanor battery after it has been reported that he engaged in forcible sexual penetration suggests that what was done to her wasn't serious enough to merit being identified as "real" rape, and ignores the definitions and dictates of the law.

While the attached accounts are from only a few rape survivors served by Cook County based rape crisis centers, their experiences are typical. We have come to expect that non-stranger rapes reported to your offices will result in felony charges only if there is significant bodily injury, contemporaneous third-party witness testimony, or confession by the offender. Yet most rape is committed by non-strangers, in situations where there are no third-party witnesses, and does not cause serious bodily injury[3].

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[2] All of the girls and women whose stories are attached have consented to the sharing of their stories, understand that it is for the purpose of convincing you to change your practices with regard to sexual assault, and many of them have indicated an interest in meeting with you face-to-face to share with you their great distress over how they have been dealt with by your office.

[3] In a way that is particularly devastating to rape victims who had previously assumed (as so many do) that rape always leaves behind a bloody and battered body, girls and women who suffer through sex because they lack the physical strength to force the perpetrator off or out of their body (or who stop resisting when it becomes clear that their non-consent is irrelevant to the rapist) frequently discover that they have been left emotionally destroyed, but physically "uninjured" by rape.

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The survivors we work with frequently express feeling genuine sympathy and concern from members of your staff, and like them, we know and appreciate that most of your Assistants have deep sympathy and concern for rape victims. We also harbor no illusions that securing convictions for sexual assault is an easy task, but we mean, by this letter, to challenge your office to more aggressively charge and prosecute rape. Fundamentally, and because scientific research establishes that the overwhelming majority of girls and women who report being subjected to forcible sex are telling the truth, we believe that a significant majority of rapes reported to your offices should result in felony sexual assault charges.

We will be contacting you within the next week, to set up a meeting with you, at which the signatories to this letter can further discuss with you our concerns and provide you with concrete ideas for taking steps to throw the weight and resources of your office into more aggressively prosecuting rape. We are confident that if you commit to making positive change, you will find us ready, willing, and able partners in the project of making Cook County safer for girls and women and less hospitable to that small minority of men who use force to obtain sex.

Yours truly,

Kaethe Morris Hoffer, Esq.
Legal Director, Justice Project Against Sexual Harm
Chicago Alliance Against Sexual Exploitation

With:

Courtney Avery
Program Director
Quetzal Center
Community Counseling Centers of Chicago

Neusa Gaytan
Program Director
Mujeres Latinas en Acción

Jim Huenink
Executive Director
Northwest Center Against Sexual Assault

Sharmili Majmudar
Executive Director
Rape Victim Advocates

Polly Poskin
Executive Director
Illinois Coalition Against Sexual Assault

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Anne Ream, Executive Director
The Voices and Faces Project

Kimberly Schellin-Rog
Sexual Assault Program Coordinator
Community Crisis Center

Vickie R. Sides, Director
University of Chicago Resources for Sexual Violence Prevention

Lynn Siegel
Vice President of Sexual Assault & Domestic Violence Services
The Pillars Community Services

[cc: Kelly Cassidy (by facsimile); Jennifer Greene (by email)]

ACCOUNTS BY GIRLS AND WOMEN SEXUALLY ASSAULTED IN COOK COUNTY NOT ATTACHED TO THIS COPY

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RETURN A - MONTHLY RETURN OF OFFENSES KNOWN TO THE POLICE

1-720 (Rev. 3-08-06)
OMB No. 1110-0001
Expires 03-13-13

This report is authorized by law Title 28, Section 534, U.S. Code. Your cooperation in completing this form will assist the FBI, in compiling timely comprehensive, and accurate data. Please submit this form monthly, by the seventh day after the close of the month, and any questions to the FBI, Criminal Justice Information Services Division, Attention: Uniform Crime Reports/Module E-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone 304-625-4830, facsimile 304-625-3566. Under the Paperwork Reduction Act, you are not required to complete this form unless it contains a valid OMB control number. The form takes approximately 10 minutes to complete. Instructions for preparing the form appear on the reverse side.

CLASSIFICATION OF OFFENSES	DATA ENTRY	2 OFFENSES REPORTED OR KNOWN TO POLICE (INCLUDE "UNFOUNDED" AND ATTEMPTS)	3 UNFOUNDED, I.E., FALSE OR BASELESS COMPLAINTS	4 NUMBER OF ACTUAL OFFENSES (COLUMN 2 MINUS COLUMN 3) (INCLUDE ATTEMPTS)	5 TOTAL OFFENSES CLEARED BY ARREST OR EXCEPTIONAL MEANS (INCLUDES COL. 6)	6 NUMBER OF CLEARANCES INVOLVING ONLY PERSONS UNDER 18 YEARS OF AGE
1. CRIMINAL HOMICIDE						
a. MURDER AND NONNEGLIGENT HOMICIDE (Score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report	11					
b. MANSLAUGHTER BY NEGLIGENCE	12					
2. FORCIBLE RAPE TOTAL	20					
a. Rape by Force	21					
b. Attempts to commit Forcible Rape	22					
3. ROBBERY TOTAL	30					
a. Firearm	31					
b. Knife or Cutting Instrument	32					
c. Other Dangerous Weapon	33					
d. Strong-Arm (Hands, Fists, Feet, Etc.)	34					
4. ASSAULT TOTAL	40					
a. Firearm	41					
b. Knife or Cutting Instrument	42					
c. Other Dangerous Weapon	43					
d. Hands, Fists, Feet, Etc. - Aggravated injury	44					
e. Other Assaults - Simple, Not Aggravated	45					
5. BURGLARY TOTAL	50					
a. Forcible Entry	51					
b. Unlawful Entry - No Force	52					
c. Attempted Forcible Entry	53					
6. LARCENY - THEFT TOTAL (Except Motor Vehicle Theft)	60					
7. MOTOR VEHICLE THEFT TOTAL	70					
a. Autos	71					
b. Trucks and Buses	72					
c. Other Vehicles	73					
GRAND TOTAL	77					

CHECKING ANY OF THE APPROPRIATE BLOCKS BELOW WILL ELIMINATE YOUR NEED TO SUBMIT REPORTS WHEN THE VALUES ARE ZERO. THIS WILL ALSO AID THE NATIONAL PROGRAM IN ITS QUALITY CONTROL EFFORTS.

- ☐ NO SUPPLEMENTARY HOMICIDE REPORT SUBMITTED SINCE NO MURDERS, JUSTIFIABLE HOMICIDES, OR MANSLAUGHTERS BY NEGLIGENCE OCCURRED IN THIS JURISDICTION DURING THE MONTH.
- ☐ NO SUPPLEMENT TO RETURN A REPORT SINCE NO CRIME OFFENSES OR RECOVERY OF PROPERTY REPORTED DURING THE MONTH.
- ☐ NO LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED REPORT SINCE NONE OF THE OFFICERS WERE ASSAULTED OR KILLED DURING THE MONTH.
- ☐ NO AGE, SEX, AND RACE OF PERSONS ARRESTED UNDER 18 YEARS OF AGE REPORT SINCE NO ARRESTS OF PERSONS WITHIN THIS AGE GROUP.
- ☐ NO AGE, SEX, AND RACE OF PERSONS ARRESTED 18 YEARS OF AGE AND OVER REPORT SINCE NO ARREST OF PERSONS WITHIN THIS AGE GROUP.
- ☐ NO MONTHLY RETURN OF ARSON OFFENSES KNOWN TO LAW ENFORCEMENT REPORT SINCE NO ARSONS OCCURRED.

DO NOT USE THIS SPACE	
	INITIALS
RECORDED	
EDITED	
ENTERED	
ADJUSTED	
CORRES	

Month and Year of Report

Agency Identifier

Population

Prepared by

Title

Telephone Number

Date

Agency and State

Chief, Sheriff, Superintendent, or Commanding Officer

INSTRUCTIONS FOR PREPARING *RETURN A*

(Detailed instructions are given in the *Uniform Crime Reporting Handbook*)

1. All Offenses listed on the *Return A* which occur during the month should be scored whether they become known to the police as the result of:

   a. Citizens' complaints.
   b. Reports of police officers.
   c. "On view" (pick-up) arrests.
   d. Citizens' complaints to sheriff, prosecutor, county police, private detectives, constables, etc.
   e. Any other means.

2. The offenses listed in Column 1 are the Part I offenses of the Uniform Crime Reporting Program plus the offenses of simple assault and manslaughter by negligence. Follow the instructions for classifying and scoring as presented in the *Uniform Crime Reporting Handbook* . Offenses committed by juveniles should be classified in the same manner as those committed by adults even though the juveniles may be handled by juvenile authorities.

3. Adjustments should be made on this month's return for offenses omitted or scored inaccurately on returns of preceding months or those now determined to be unfounded. Offenses that occurred in a previous month but only became known to you this month should be scored this month.

4. Consider all spaces for each classification of offenses in Columns 2, 3, 4, 5, and 6. The breakdowns for forcible rape, robbery, assault, burglary, and motor vehicle theft, when added should equal the total for each of these offenses. Do not enter zeroes where no count exists.

5. Attempts of rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft are to be scored on this form.

6. **Column 2:** Enter opposite the proper offense classification the total number of such offenses reported or known through any means. "Unfounded" complaints are included. Attempts are included except in homicide classifications.

7. **Column 3:** Enter the number of complaints which were proven to be "unfounded' by police investigation. An "unfounded" offense is one in which a complaint was received, but upon investigation, proves either to be baseless or not to have actually occurred. Remember that recovery of property or clearance of an offense does not unfound a complaint.

8. **Column 4:** Number of actual offenses. This number is obtained by subtracting the number in Column 3 from that in Column 2.

9. **Column 5:** Enter the total number of offenses **cleared** during the month. This total includes the clearances which you record in Column 6. An offense is cleared when one or more persons are charged and turned over for prosecution for that offense. Clearance totals also include exceptional clearances which are explained in the *Uniform Crime Reporting Handbook* .

10. **Column 6:** Enter here the number of offenses which are cleared through the arrest, releasing to parents, or other handling of persons under the age of 18. In those situations where an offense is cleared through the involvement of both an adult and a person under 18 years of age, count the clearance only in Column 5.

11. The grand totals for Columns 2, 3, 4, 5, and 6 are the totals of each of the seven classifications.

12. Tally books can be used to maintain a running count of offenses through the month. Totals for the *Return A* can then be taken directly from the Tally book. These Tally books can be obtained by corresponding with the FBI, Criminal Justice Information Services Division, Attention: Uniform Crime Reports/Module E-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone 304-625-4830, facsimile 304-625-3566.

13. This *Return A* report should be forwarded to the FBI Uniform Crime Reports even though no offenses of this type listed were committed during the month. However, it is not necessary to submit supplemental reports in such cases. Simply check the appropriate box within the block near the bottom of the *Return A* report.

14. Any inquiry regarding the completion of this form, the classification and scoring of offenses, or prior to submitting crime data by computer printout, contact the Uniform Crime Reporting Program at the above-mentioned address.

Prepared Statement

Dean G. Kilpatrick, Ph.D.
Distinguished University Professor,
Vice Chair for Education,
Department of Psychiatry and Behavioral Sciences,
Director, National Crime Victims Research and Treatment Center,
Medical University of South Carolina,
Charleston, S.C.

Hearing before the Senate Committee on the
Judiciary Subcommittee on Crime and Drugs

"Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases"

September 14, 2010

64687.046

Thank you, Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee, for the opportunity to testify on this important topic that has been a major focus of my interest and professional work for more than 36 years, beginning in 1974 when I helped establish the first rape crisis center in South Carolina. My testimony is based on considerable experience working with survivors of rape as well as several peer reviewed research projects that my colleagues and I have conducted on the scope, nature, and mental health impact of rape and other types of sexual assault.

The topic of today's hearing involves several separate but related issues. First, it is important to distinguish between rape victims' unwillingness to report cases to police and whether police accurately record, report, and investigate these cases once they know about them. The issue of victims' unwillingness to report rape cases to police is critically important because police cannot record, report, or investigate cases they do not know about. Second, how police record, report, and investigate cases they do know about is also important. Third, it is important to understand rape victims' concerns that might influence rape victims' willingness to

report and cooperate because addressing these concerns might improve reporting and cooperation. Finally, determining whether failure to report and investigate rape cases is a chronic failure requires us to examine these issues over time to see if they have changed.

The United States Department of Justice has two major sources of information about the number of rape cases that occur each year. The National Crime Victimization Survey (NCVS) is designed to provide an estimate the total number of crimes that occur each year in the United States including crimes that were not reported to police. The F.B.I. Uniform Crime Reports (UCR) collects information on crimes that have been reported to law enforcement agencies each year using a standardized format. Ideally, we should be able to compare current with historical data from the NCVS and UCS to address these issues. However, both the NCVS and the UCR have major flaws that result in their being poor tools for measuring rape cases that produce serious underestimates of the total number of unreported and reported rape cases that occur each year. Exhibit 1 (see pages 1229-1231) describe these flaws in detail, but the bottom line is that the problems with both measures are so serious that

they are incapable of providing us with the data needed to determine the proportion of all rape cases that are reported to police as measured by the NCVS or the disposition of those cases reported to police as measured by the UCR.

Therefore, much of my testimony will focus on findings from two research projects conducted with national household probability samples of adult women in the United States that assessed whether these women had been raped at any time during their lives including when they were children or adolescents. These projects also obtained information about the extent to which rape cases were reported to law enforcement as well as rape victims' concerns that are likely to influence willingness to report. The first project, the National Women's Study (NWS), was funded by the National Institute on Drug Abuse and was conducted in the early 1990s. The second project, the National Women's Study Replication (NWS-R), was funded by the National Institute of Justice and was conducted fifteen years later in 2005. The studies used virtually identical methodology, which is described in detail in Exhibit 2, so they can provide valuable information on whether the prevalence of rape, reporting of rape cases to police, and

rape victims' concerns have changed over time. Like the NCVS and UCR, these projects measured rapes that occurred recently, permitting us to estimate the number of adult women in the U.S. who were raped each year. However, unlike the NCVS and UCR, the NWS and NWS-R also gathered information about whether U.S. women had ever been raped, including when they were children or adolescents. Therefore, data from the NWS and NWS-R provide a more comprehensive picture of the burden and nature of rape in the United States at two points in time approximately fifteen years apart, not the blurred annual snapshot we get from the NCVS and UCR.

Here is a brief summary of the most relevant findings from the NWS and the NWS-R:

- The lifetime prevalence of forcible rape using the Federal Criminal Code definition was 12.65% in the NWS and 16.1% in the NWS-R fifteen years later. This means that there was an increase of 27.3% in the percentage of adult women in the U.S. who had ever been forcibly raped at some point in their lives and that the 2005

estimated number of adult women in the U.S. who had ever been forcibly raped was approximately 18 million.

- The estimated annual prevalence of forcible rape among adult women was 0.71% in the NWS and 0.74% in the NWS-R, suggesting that there has been little change over 15 years in the percentage of adult women who are forcibly raped each year. Based on the NWS-R findings, we estimated that over 800,000 adult women in the U.S. were forcibly raped in the year prior to the NWS-R interview.
- The NWS did not measure drug or alcohol-facilitated rape (DAFR), which is clearly defined as rape in the Federal Criminal Code. However, the NWS-R found that the lifetime prevalence of this type of rape was 5.0%, and the annual prevalence was 0.42%, suggesting that approximately 5.6 million adult women in the U.S. have ever experienced this type of rape and 471,000 experience it each year.
- Both the NWS and NWS-R found that a majority of forcible rape cases occurred when the victim was younger than age 18(61.6% of cases in NWS and 55% of cases in NWS-R). This indicates that

there may have been a small decrease in the percentage of forcible rape cases that occur during childhood and adolescence, but most cases still happen during this period.

- Both the NWS and NWS-R found that only a small percentage of forcible rape cases are reported to police (16.0% in NWS and 18.0% in NWS-R). Although there was a very small increase in willingness to report forcible rape cases, 82% were still never reported. Reporting of DAFR cases in the NWS-R was even lower (10%) than for forcible rape cases.
- Rape victims in the NWS-R expressed many of the same concerns that were expressed by rape victims in the NWS. For example, over half of the rape victims in both studies said they were concerned about their families or other people finding out about the rape, and over 60% said they were concerned about being blamed by others. More rape victims had concerns about these issues than expressed concerns about HIV/AIDs, other STDs, and pregnancy.
- The NWS-R data indicated that forcible rape and DAFR substantially increased risk of posttraumatic stress disorder, major

depression, and substance use disorders. Most rape victims who ever had these mental health problems still had them, suggesting that they never received effective mental health care.

What conclusions can be drawn from these findings?

- There is no evidence that either the lifetime or annual prevalence of forcible rape is going down. In fact, the burden of rape among U.S. women is higher now than it was in the early 1990's because a larger percentage of women have been raped, and there has been no decrease in the percentage of women who are raped each year.
- Most rape cases (over 80%) are still not reported to police, indicating that this remains a chronic problem that we must address.
- Rape victims' concerns about being blamed by others and about others finding out about the rape are major barriers to increased reporting, and these concerns are likely exacerbated by the way victims are routinely trashed in high profile cases or when the criminal justice system does not pursue reported cases vigorously.

- All types of rape have lasting negative impacts on victims' mental health , and these mental health problems appear to be chronically unaddressed.
- As I describe in detail on pages 1229 - 1231 in Exhibit 1, the way that the NCVS and UCR measure rape and other types of sexual assault is seriously flawed. This is a chronic problem that has been noted by many experts over the years who have offered various suggestions about how to address it. Several of these suggestions are included in the aforementioned document. Congress should demand that changes are made in the UCR and NCVS to fix this problem so these measures can give us the information we need to determine whether we are making progress in addressing our rape problem.

Finally, although whose numbers are right is important and clearly matters, we must not let debates over rape statistics distract us from what matters even more. Although some progress has been made in responding to the problem of rape in the U.S., rape remains a chronic problem for our nation , and we have much work to do to reduce the number of women

and children who are raped and to provide all rape victims with the support and services they need. I would like to thank the Committee for its attention, and I would be delighted to answer any questions.

References

Exhibit 1. Kilpatrick,D.G. (2004).What is violence against women? Defining and measuring the problem. Journal of Interpersonal Violence .19. 1209-1234.

Exhibit 2. Kilpatrick, D.G., & McCauley, J., . (2009). Understanding national rape statistics. Harrisburg, P.A: VAWnet. http//www.vawnet.org

Applied Research Forum
National Online Resource Center on Violence Against Women

Understanding National Rape Statistics

Dean Kilpatrick and Jenna McCauley
With contributions from Grace Mattern

Policy makers and those who serve sexual violence victims/survivors need accurate information about violence against women to document the extent of the problem and to develop effective public policy, criminal justice, public health, and prevention programming. Those who seek such information are often frustrated because they are confronted with a confusing and often conflicting array of sexual violence statistics that make it difficult to understand the extent of the problem and whether it is getting better, staying the same or getting worse. The primary purpose of this paper is to provide an overview of how estimates of sexual violence in the United States are produced, with particular emphasis on major sources of rape statistics at the national level. Although having good estimates of rape at the local and state levels would be particularly valuable for local and state programs, such information is generally lacking, so we will focus this review primarily on rape statistics at a national level. Also, we will focus primarily on the crime of rape as opposed to other types of sexual violence. We will address rape among women and female children, as these cases compose the majority of rapes and therefore constitute the large majority of national estimates. Information contained in this report is meant for educative purposes, to either stand alone or be incorporated into broader training and education programming, and may prove useful to an array of advocates in the arena of prevention of violence against women.

As we will describe, rape statistics are generated from two sources: (1) cases reported to law enforcement and (2) victimization surveys. Victimization surveys were developed by criminologists in the late 1960s to measure crimes including those that are not reported to the police (e.g., Skogan, 1981; Sparks, 1982). They involve asking people a series of screening questions designed to prompt respondents to remember and disclose various types of crime that they may have experienced. This method gathers detailed information about any crimes disclosed including whether they were reported to law enforcement. We think it is useful for consumers of rape statistics to ask themselves the following questions as they consider each source:

- What types of rape and other forms of sexual violence are being measured and/or reported (e.g., forcible rape only, other types of rape such as drug-alcohol facilitated rape, attempted rape, other sexual violence)?
- Among which group is rape being measured and to which groups are rape statistics generalized (e.g., all adult women, female children and adolescents, all persons of all ages, college students, etc.)? Are important groups excluded?
- During which time frame are cases being measured or reported (e.g., past year, past six months, throughout childhood and adolescence, throughout life time)?
- Are statistics based on cases reported to law enforcement or from victimization surveys?
- If statistics and estimates are obtained from a victimization survey, what is the wording of screening questions and how well do the

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questions capture the types of rape that should be measured?

- What is the unit of analysis used for reporting the rape statistics (e.g., number of rape cases, number of women raped in a given period of time, percentage of women raped in a given period of time, number of cases per 10,000 women)?

Definitions and Terminology

Federal Criminal Code Definition of Rape

It is important to note that despite the traditional understanding that states had primary jurisdiction in the matter of violent crimes, recent years have seen an expansion of the Federal Criminal Code to cover many violent crimes, including rape. Although the Federal Criminal Code of 1986 (Title 18, Chapter 109A, Sections 2241-2233) does not explicitly use the term "rape," *aggravated sexual abuse* is referenced and two types are identified: (1) aggravated sexual abuse by force or threat of force, and (2) aggravated sexual abuse by other means. *Aggravated sexual abuse by force or threat of force* is defined within the code as follows: when a person knowingly causes another person to engage in a sexual act, or attempts to do so, by using force against that person, or by threatening or placing that person in fear that they will be subjected to death, serious bodily injury or kidnapping. *Aggravated sexual abuse by other means* is defined as follows: when a person knowingly renders another person unconscious and thereby engages in a sexual act with that other person; or administers to another person by force or threat of force without the knowledge or permission of that person, a drug, intoxicant, or similar substance and thereby, (a) substantially impairs the ability of that person to appraise or control conduct and (b) engages in a sexual act with that person.

This definition has several important implications for what should be included in the assessment of rape. First, this definition includes more than just unwanted penile penetration of the vagina, and recognizes that not all perpetrators are male, not all victims are female, and that rape may include other forms of penetration, such as oral and/or anal. Second, the definition acknowledges that unwanted sexual penetration should be recognized in both the instance of being obtained by force/threat of force and the instance of drug-alcohol facilitation/incapacitation. Third, the definition highlights that statutory rape (i.e., any type of non-forcible sexual penetration with a child) is a serious federal offense and should be measured in national surveys in order to capture the full scope of the problem of rape. As noted during the discussion of individual national surveys that estimate the burden of rape, not all assessments of rape include the diverse range of unwanted sexual experiences that are defined as rape by the Federal Criminal Code.

Methods of Measurement of Rape Prevalence

Several general statistics are provided by national data on rape, and it is helpful to make distinctions in terminology prior to a review of the findings from individual studies. It is important to note that there is a distinction between *rape cases* and *rape victims*. A single rape victim may (and often does) have experienced multiple rape cases. Similarly, there is an important distinction to be made between *rape prevalence* and *rape incidence*. *Prevalence* refers to the proportion or percent of the population that has been raped at least once in a specific period of time. "Lifetime" and "past-year" are common time frames used in the assessment of prevalence. *Incidence* refers to the number of new cases of rape that occur in a specified period of time. Incidence is most often expressed as a victimization rate, or number of incidents per given number of people. Also worth noting is the difference between "reported (to authorities)" and "unreported" cases of rape. Given that a majority of rape cases, 84% by recent national estimates (Kilpatrick et al., 2007), are not reported to the police, there is a notable difference between rape estimates based on cases reported to law enforcement versus unreported cases.

When thinking of the differences between incidence rates, past-year prevalence, and lifetime prevalence, it is important to consider that these estimates can serve different functions for the reader.

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For instance, if a rape crisis center is interested in how many women they can reasonably expect to serve in a given year, past year prevalence (a person-based estimate) may be most useful. However, one could also extrapolate from past year victimization rates by applying these to the current population of their community. For example, if an annual victimization incidence rate of 1.8 is applied to a community with 100,000 women, the local crisis center could expect that approximately 1,800 rape cases will occur in their area in that year. Alternatively, law enforcement agencies or victim advocate agencies may be most interested in the incidence of reported rape cases, as this would be most closely related to the size of their population served. Thirdly, mental health providers in a given community may be interested in the community mental health burden of rape, a question best addressed using lifetime prevalence data on rape. While the different ways of measuring rape may make the data seem somewhat confusing, differing forms of measuring rape are necessary to address differing needs of service providers.

Key Terminology

- *Carnal Knowledge*: (see UCR definition of rape); the act of a man having sexual bodily connections with a woman; sexual inter course.
- *Drug-Alcohol Facilitated Rape*: an incident in which the perpetrator deliberately gives the victim drugs or alcohol without her permission in an attempt to get her high or drunk and then commits an unwanted sexual act against her involving oral, anal, or vaginal penetration.
- *Forcible Rape*: unwanted sexual act involv ing oral, anal, or vaginal penetration that occurs as a result of the perpetrator's use or threat of use of force.
- *Incapacitated Rape*: unwanted sexual act involving oral, anal, or vaginal penetration that occurs after the victim voluntarily uses alcohol or drugs and is passed out or awake but too drunk or high to consent or control her behavior.
- *Incest*: non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- *Incidence*: an estimate that is based on the number of cases of rape occurring in a given period of time; usually expressed as a victimization/rape rate; women with multiple victimizations would count for each of their multiple victimizations in this analysis.
- *Lifetime Prevalence*: the proportion of the population that has ever been raped.
- *Past Year Prevalence*: the proportion of the population that was victimized during the past year; most often based on prevalence of persons.
- *Population Estimates*: calculated by multiplying prevalence data by national estimates (most often US Census data) of the total population from which the sample was drawn.
- *Prevalence of Persons*: the proportion of the population that was victimized at least once during a given time; women with multiple victimizations would only count as one unit in this analysis.
- *Random Digit Dialing Method*: a sampling method that involves random generation of landline telephone numbers within a given exchange, to be called for survey participa tion. Random digit dialing methods give access to unlisted telephone numbers.
- *Statutory Rape*: any type of non-forcible sexual penetration with a child.

Sources and Estimates

The major sources of U.S. prevalence data on rape included in this paper are summarized below:

Uniform Crime Reports (UCR)

The UCR is a publication of the Federal Bureau of Investigation (FBI) that estimates the number of cases of forcible rape and attempted forcible rape as well as other violent crimes that are reported to participating law enforcement agencies across the

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U.S. Reports are issued annually and data from 2007 are reported below.

Who was Included: In order to be included in the UCR, a rape has to be reported to law enforcement. Participating law enforcement agencies compile information on relevant cases (those meeting the definition below) and send it either directly to the FBI or to an agency at the state level that processes cases and then sends them to the FBI. *Unfounded* cases of rape, cases that (according to federal reporting requirements) are presumed to be false or without basis upon investigation, are not included in the data. Only rapes or attempted rapes of women are included in the report. According to the FBI, approximately 94.6% of the U.S. population resides in jurisdictions that report to the UCR program. The UCR data include 95.7% of the population in metropolitan statistical areas, 88% of the population in cities outside metropolitan areas, and 90% of the population in non-metropolitan counties. The sample includes girls and women of all ages.

What was Measured: *Forcible rape* is defined in the FBI's Uniform Crime Reporting Program as "the carnal knowledge of a female forcibly and against her will." *Carnal knowledge* is defined as "the act of a man having sexual bodily connections with a woman; sexual intercourse." Carnal knowledge applies only to penetration of the vagina by the penis, no matter how slight the penetration. Assaults and attempts to commit rape by force or threat of force are also included. Note that oral and anal penetration is not assessed.

Rapes by means of the victim's intoxication, or inability to consent, are not included in this assessment. Statutory rape (without force) and other sex offenses, such as incest, are not included. However, a rape by force involving a female victim and perpetrated by a family member is counted as a forcible rape, not an act of incest. The FBI manually calculated the 2007 rate of females raped based on the national female population provided by the U.S. Census Bureau.

Findings: Based on data from 2007, an estimated 90,427 founded cases of forcible rape or attempted forcible rape were reported, with 92.2 percent of these cases being rape offenses, and assault to rape attempts accounting for the remaining 7.8 percent of reported cases. This equates to a forcible rape rate of 3 cases per 10,000 women.

National Crime Victimization Survey (NCVS)

The NCVS is conducted by the U.S. Department of Justice, Office of Justice Programs and housed in the Bureau of Justice Statistics. Twice annually (every six months), the NCVS collects detailed information on the frequency and nature of rape cases, regardless of whether these cases were reported to the police. Reports are issued annually and data from 2007 are reported here.

Who was Included: The U.S. Census Bureau personnel interview, via telephone (excepting the first and fifth interviews which are face-to-face), household members in a nationally representative sample of approximately 73,600 men and women aged 12 and older from 41,500 households. New households are rotated into the sample on an ongoing basis and, once selected, a household remains in the sample for three years. The NCVS is currently administered in both English and Spanish versions.

What was Measured: Questions on the survey assess victim information (including age, sex, race, ethnicity, marital status, income, and educational level), offender information (including sex, race, approximate age, and victim-offender relationship), and information regarding the crime itself (time and place of occurrence, use of weapons, nature of injury, and economic consequences). All items assessed are bounded within the year of assessment. Two items assess rape experiences for both men and women. They are:

1. Has anyone ever attacked or threatened you in any of these ways: any rape, attempted rape, or other type of sexual attack?
2. Incidents involving forced or unwanted sexual acts are often difficult to talk about. Have you been forced or coerced to engage in unwanted sexual activity by:

- Someone you didn't know before?
- A casual acquaintance?
- Someone you knew well?

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Findings: Although rape was assessed among men, fewer than 10 cases of rape per 100,000 males aged 12 or older were reported in the previous year. Among women, 2007 estimates indicate that 18 cases of forced unwanted sexual acts per 10,000 women were reported. A total of 248,000 cases of rape were projected to have occurred in the 2007 estimates.

National Women's Study (NWS)

The NWS (see Kilpatrick et al., 1992; Resnick et al., 1993) was a victimization survey of adult women in the United States that included victimization events that were reported to authorities as well as those that were not reported.

Who was Included: Telephone interviews were conducted in three waves between 1989 and 1991, (using random-digit-dial methodology) with an initial household probability sample of 4,008 adult U.S. women aged 18 or older. One-year follow-up interviews were conducted with 3,220 women from the original sample and two-year follow-up interviews were conducted with 3,006 women from the original sample. The participation rate for the study was 85.2% of screened and eligible women who agreed to participate in the study and completed the first interview.

What was Measured: The NWS interview protocol took steps to ensure participants' privacy during the interview completion and employed an all female, trained interviewing staff. Questions were behaviorally specific (they avoided the use of undefined summary labels such as "rape" or "sexual assault") and assessed women's experiences of forcible rape that occurred throughout their lifetime (by assessing for most recent/or only incident and first incident rapes), as well as between the baseline and two follow-up interviews.

The introduction read to participants was: "Another type of stressful event that many women have experienced is unwanted sexual advances. Women do not always report such experiences to the police or other authorities or discuss them with family or friends. The person making the advances isn't always a stranger, but can be a friend, boyfriend, or even family member. Such experiences can occur at any time during a woman's life – even as a child. Regardless of how long ago it happened or who made the advance ..." The preamble was followed by four behaviorally specific closed-ended screening questions to assess rape:

1. Has a man or boy ever made you have sex by using force or threatening to harm you or someone close to you? Just so there is no mistake, by having sex, we mean putting a penis in your vagina.
2. Has anyone, male or female, ever made you have oral sex by force or threatening to harm you? So there is no mistake, by oral sex, we mean that a man or boy put his penis in your mouth or someone penetrated your vagina or anus with their mouth or tongue.
3. Has anyone ever made you have anal sex by force or threatening to harm you? By anal sex we mean putting their penis in your anus or rectum.
4. Has anyone ever put fingers or objects in your vagina or anus against your will by using force or threatening to harm you?

Findings: Prevalence of lifetime experience of rape was 12.65%, meaning that 12.65% of women endorsed at least one of the four rape screening questions as having occurred at least once in their lifetime. Past-year prevalence of rape was 0.71%, meaning that 71 out of every 10,000 women reported rape experiences in the year prior to the survey. It is worth noting that only 16% of rape victims surveyed in this study stated that they had reported their rape to law enforcement.

National Violence Against Women Survey (NVAWS)

The NVAWS (Tjaden and Thoennes, 2000) was a national household probability survey of U.S. adult women (aged 18 and older) and adult males. Similar to the NWS, the study included cases of forcible rape that were both reported and unreported to authorities.

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Who was Included: Telephone interviews were conducted between 1995 and 1996 with a national household probability sample of 8,000 adult women and 8,005 adult men who were selected via random-digit-dialing methods. To maintain consistency with the aims of this paper and with data from other reports, we will only discuss findings from the female sample. The participation rate of women screened and determined to be eligible for participation was 61.7%, somewhat lower than that of the NWS.

What was Measured: Methodology of assessment was similar to that used in the NWS. Participants were read the following preamble: "We are particularly interested in learning about violence women experience, either by strangers, friends, relatives, or even by husbands or partners. I'm going to ask you some questions about unwanted sexual experiences you may have had either as an adult or as a child. You may find the questions disturbing, but it is important we ask them this way so that everyone is clear about what we mean. Remember the information you are providing is confidential. Regardless of how long ago it happened ..." This preamble was followed by five behaviorally-specific questions to assess rape or attempted rape:

1. Has a man or boy ever made you have sex by using force or threatening to harm you or someone close to you? Just so there is no mistake, by sex we mean putting a penis in your vagina.
2. Has anyone, male or female, ever made you have oral sex by using force or threat of harm? Just so there is no mistake, by oral sex we mean that a man or boy put his penis in your mouth or someone, male or female, penetrated your vagina or anus with their mouth or tongue.
3. Has anyone ever made you have anal sex by using force or threat of harm? Just so there is no mistake, by anal sex we mean that a man or boy put his penis in your anus.
4. Has anyone, male or female, ever put fingers or objects in your vagina or anus against your will by using force or threats?
5. Has anyone, male or female, ever attempted to make you have vaginal, oral, or anal sex against your will, but intercourse penetration did not occur? (Note: This item assesses attempted forcible rape)

Findings: NVAWS found a 14.8% lifetime prevalence of rape among women, whereas an additional 2.8% of women reported an attempted rape experience. NVAWS data also reported the prevalence of women in the U.S. who had been raped in the past year. Past year prevalence of rape was 0.27%, or 27 women per every 10,000 women.

National Women's Study-Replication (NWS-R)

Numerous previous national studies have omitted assessment of rape under the conditions of victim intoxication. In 2006, the National Institute of Justice funded a study entitled, "Drug Facilitated, Incapacitated, and Forcible Rape: A National Study (NWS-R)" that aimed to fill this gap (Kilpatrick et al., 2007). This national survey included detailed assessment of lifetime and past year prevalence for (1) forcible rape experiences, (2) incapacitated rape experiences, and (3) drug-alcohol facilitated rape experiences.

Who was Included: The study interviewed 3,001 women 18 to 86 years of age sampled from U.S. households using random-digit dial methodology.

What was Measured: All women were interviewed via telephone by trained female interviewers using computer-assisted telephone interview technology, and were asked if they were in a setting ensuring the privacy of their responses prior to proceeding with the interview. The study assessed women's most recent and, for women with multiple rapes, first incident of rape. Rape was defined as penetration of the victim's vagina, mouth or rectum by a penis, finger, or object, without consent. Questions were closed-ended (yes/no) and behaviorally specific. Women were read a preamble identical to that used in the NWS, and were then asked the four behaviorally specific questions assessing rape experiences (also used in the NWS).

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In addition, women were also asked the following questions:

1. Has anyone ever had sex with you when you didn't want to after you drank so much alcohol that you were very high, drunk, or passed out? By having sex, we mean that a man or boy put his penis in your vagina, anus, or your mouth. (Incapacitated Rape)
2. Has anyone ever had sex with you when you didn't want to after they gave you, or you had taken enough drugs to make you very high, intoxicated, or passed out? By having sex we mean that a man or boy put his penis in your vagina, anus, or your mouth. (Drug-Alcohol Facilitated Rape/Incapacitated Rape)

Women endorsing a rape experience were then asked follow-up questions to distinguish between incapacitated and drug-alcohol facilitated rape characteristics:

1. When this happened, did the incident involve only alcohol use on your part, only drug use on your part, or some use of both alcohol and drugs?
2. When this incident happened, did you drink the alcohol (or take the drugs) because you wanted to, did the person(s) who had sex with you deliberately try to get you drunk, or both?
3. When this incident happened were you passed out from drinking or taking drugs?
4. When this incident happened were you awake but too drunk or high to know what you were doing or control your behavior?

For questions about population percentages of U.S. women, data were analyzed at the level of the person (this involved the use of weightings). That is, the authors estimated population percentages by dividing the number of women meeting a particular criterion by the total number of women in the sample (3,001 women). In many instances, the population percentage was multiplied by the total number of women in the U.S. Census estimates (in the year 2006, 112,068,000 women) to estimate true population numbers of women. Data reported at the person level classified women based on history of each type of rape they endorsed experiencing, regardless of whether they also met criteria for another type of rape at the incident level. For example, someone who reported a history of forcible rape as part of their most recent/only incident and who also met criteria for drug-alcohol facilitated rape for that same incident was considered to have a history of both forcible and drug-alcohol facilitated rape. The exception to this was if a woman reported both elements of drug-alcohol facilitation and incapacitation within their most recent/only incident, then they were classified as having a lifetime history of only drug-alcohol facilitation. That is to say, incapacitated rape history was defined as report of at least one incident involving incapacitation (without drug-alcohol facilitation), whether or not forcible rape was also part of that incident.

Findings: For U.S. community women, 18% of women reported at least one lifetime incident of any type of rape, equating to a population estimate of approximately 20 million women in the U.S. Nearly one-fifth of women (16.1%), approximately 18 million women, reported a lifetime experience of forcible rape. An estimated 3.1 million (2.8%) and 2.6 million (2.3%) U.S. women reported experiences of incapacitated or drug-alcohol facilitated rape experiences, respectively. Past year prevalence of forcible rape (0.7%; 829,000 women), incapacitated rape (0.3%; 303,000), and drug-alcohol facilitated rape (0.2%; 179,000) were also assessed. In sum, over 1 million women in the U.S. (0.9%) are estimated to have had a rape experience in the past year.

National Intimate Partner and Sexual Violence Surveillance System (NISVSS)

In 2009, the Centers for Disease Control and Prevention (in collaboration with the National Institute of Justice and the U.S. Department of Defense) will begin data collection for the NISVSS. Random-digit-dial telephone surveys will be conducted in both English and Spanish with a nationally representative sample of men and women ages 18

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and older. The aim of the NISVSS will be to produce accurate lifetime and past-year incidence and prevalence estimates on a range of types of intimate partner violence, sexual violence, and stalking victimization. The NISVSS will produce annual estimates on a national level, as well as provide an opportunity for stable state-level lifetime prevalence data.

National Studies with Special Populations

At times it may be useful to reference national data from specific samples of individuals who are often either not directly targeted for study or excluded from the previously mentioned national studies of adult women. One population often of interest to sexual violence researchers, policy makers, and service providers is college women. College represents a particularly high-risk time period and environment for women with respect to rape. Fortunately, several large, representative, national studies have focused exclusively on the impact of rape on college women. The National College Women's Sexual Victimization Survey (NCWSV; Fisher, Cullen, & Turner, 2000) was conducted between 1996 and 1997 and was intended to use sensitive assessment methodologies to determine national prevalence of rape among American college women. The NCWSV interviewed 4,446 women enrolled in a two- or four-year college or university, using methodology similar to that employed by the NWS, NVAWS, and NWS-R. Within the first few months of the school-term, 1.7% of women reported experiencing a forcible rape, equating to an annual estimate of 3% of college women experiencing forcible rape. More recently, the NWS-R (Kilpatrick et al., 2007) measured forcible, incapacitated, and drug-alcohol facilitated rape experiences in a national sample of college women. For the 2,000 U.S. women enrolled in college sampled by the study, 11.5% of women reported at least one lifetime incident of any type of rape, a prevalence estimate somewhat lower than estimates from the national household studies. However, past year prevalence (assessed in 2006) of forcible rape (3.2%; 189,000 women), incapacitated rape (2.1%; 123,000), and drug-alcohol facilitated rape (1.5%; 87,000) were striking. In sum, over 300,000 college women in the U.S. (5.2%) reported a rape experience in the year prior to the 2006 study.

A second population of interest due to its high-risk nature consists of adolescents. The Centers for Disease Control and Prevention monitors a compendium of health-risk behaviors among male and female youth enrolled in grades 9 through 12 and annually compiles their data in a report entitled "Youth Risk Behavior Surveillance System (YRBSS)." Although the YRBSS uses a crude assessment of rape (asking only, "Have you ever been physically forced to have sexual intercourse when you didn't want to?"), prevalence of forcible rape was notably high in the 2007 report, with 7.8% of respondents endorsing an experience of forced sexual intercourse (11.3% of females and 4.5% of males). A more thorough assessment of rape among adolescents was provided by the National Survey of Adolescents (Kilpatrick et al., 2003; Hanson et al., 2003). Conducted in 1995, the NSA included a national representative sample of 4,023 adolescents (ages 12 to 17) and used methodology similar to that of the NWS and NWS-R. According to the NSA, 3.4% of male and 13% of female adolescents endorsed a lifetime history of forced sexual assault (a broader definition including forcible rape and unwanted fondling of genitalia). In 2005, Kilpatrick and colleagues began collection of data from the National Survey of Adolescents-Replication (NSA-R). This three-wave, longitudinal assessment of adolescent victimization experiences is currently in its third wave of data collection and is expected to yield lifetime and annual prevalence estimates of sexual assault experiences, as well as drug-alcohol facilitated rape experiences.

Please see Table 1 on the following page for a summary of the studies discussed in this section.

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Table 1: Summary of Rape Statistic Studies

	UCR	NCVS	NWS	NVAWS	NWS-R
Year Conducted	Annual (2007)	Annual (2007)	1989-91	1995-96	2006
Nationally Representative	X	X	X	X	X
Ages Included	Any	12 and older	18 and older	18 and older	18 and older
Men		X		X	
Women	X	X	X	X	X
Reported	X	X	X	X	X
Unreported		X	X	X	X
Behaviorally Specific Questions			X	X	X
Drug-Facilitated					X
Incapacitated					X
Oral or Anal Penetration			X	X	X
Lifetime Prevalence			X 12.65%	X 14.8%	X 18%
Past-Year Prevalence	X	X	X 0.71%	X 0.27%	X 0.9%
Cases vs. Persons	C	C	P	P	P
Population Estimate for Past Year Rapes of Women	3 rape cases per 10,000 women	18 rape cases per 10,000 women	71 women out of 10,000 women	27 women out of 10,000 women	90 women out of 10,000 women (>1,000,000 women in U.S.)

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Summary

Each of the studies above provides a snapshot of the problem of rape in America from a slightly different angle, and no one study to date has been able to capture the full panorama. In this final section, we will review some of the relative strengths and weaknesses of the aforementioned studies.

First, recent data suggest that fewer than one-in-six women report their rape experiences to the police (Kilpatrick et al., 2007). Reports like the UCR, which rely on estimates from reported and founded cases of rape only, will grossly underestimate the total occurrence of rape. However, these data may have some applicability for those involved with law enforcement and/or victim advocate services as they estimate the total number of cases of rape with legal involvement.

Second, the measurement of rape is highly dependent on the sensitivity of the assessment. Behaviorally specific (as opposed to relying on labels such as "sexual assault") questions that include assessment of experiences of oral and anal penetration by a penis, fingers, or other objects (as opposed to those only measuring forced vaginal penetration by a penis) provide a more comprehensive survey of rape in America. Because the UCR and NCVS estimates are not based on these more sensitive assessments of rape, they produce national estimates that are lower than those produced by other studies (such as the NWS, NVAWS, and NWS-R studies).

Third, the definition of rape provided by the Federal Criminal Code includes experiences where the victim is too intoxicated or high to provide consent. To date, only one nationally representative study specifically assessed experiences of drug-alcohol facilitated and incapacitated rape (NWS-R). Data suggest reporting rates for drug-alcohol facilitated and incapacitated rape experiences are even lower than reporting rates for forcible rape experiences (Kilpatrick et al., 2007). Lifetime and past-year prevalence estimates were higher, most likely due to the careful assessment of drug-alcohol facilitated and incapacitated rapes; however, forcible rape prevalence was also higher than was found previously in the NWS and NVAWS.

In addition, there are several other things to keep in mind when evaluating these and other rape statistics. The type of population sampled can have an influence on prevalence rates. For example, the age range of 18-24 years is a notably high-risk time period with respect to rape, and the college campus environment also tends to confer higher levels of risk (see Krebs et al., 2007). Therefore, past-year prevalence of rape tends to be higher when measured among women in college (or those in the 18-24 age range) than when measured among national household samples of women with ages ranging from 18 up to 90 years.

Method of assessment is also worth noting. Most of the victimization surveys discussed in this report employed random-digit-dial methods to select their sample and interviewed their participants via telephone. In addition to the methodological importance of ensuring respondents' privacy during the interview, the use of telephone self-report limits the data available to those who are: (1) contactable by phone (e.g. not institutionalized, residing in a home, having a home phone line), and (2) willing to participate in a research survey (participation rates/cooperation vary by study and should be noted). Additionally, all self-report methods are subject to recall bias. However, the assessment of lifetime rape experiences may be more susceptible in this respect. It is also worth noting that none of the studies included specifically assessed for statutory rape.

Finally, all of the studies discussed in detail in this paper report national estimates of the prevalence or incidence of rape. For many agencies that serve state or local jurisdictions, studies that provide regional, state, and local estimates may be of more use. Data from the UCR and YBRSS produce such estimates on an annual basis. However, these studies fall prey to the numerous limitations discussed above. In an attempt to produce state and local-level rape estimates that resolve many of the key limitations of the UCR and NCVS in particular, several states have begun implementing their own surveillance of violence against women. Using the same methodology employed in the NVAWS, states such as New Hampshire (in conjunction with the University of New Hampshire Survey Center) have begun to measure the prevalence of rape among

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women in their own state. Results from the New Hampshire survey, conducted in 2006, indicated that 19.5% of women reported a lifetime rape experience (compared with the 17.6% lifetime prevalence estimates in the national NVAWS). This further highlights that while national estimates provide a good guide to the impact that rape has on women (and men) in America, the burden of rape may vary significantly by region, state, or locale. Although these data do not currently exist, according to the stated aims of the NISVSS study (currently being conducted by the CDC), the data it collects will have the ability to provide initial state and local estimates of rape prevalence.

In sum, while there is no perfect study producing unflawed and comprehensive estimates of the lifetime prevalence, past-year prevalence, and past-year incidence of rape on a national, state and local level, the data from several sources may be pieced together to gain a better understanding of how rape affects America. The data discussed in this paper suggest that the burden of forcible rape on women in the U.S. appears to have increased since the NWS was completed in the early 1990s. This indicates that we must not only continue to monitor rape in America, but also to maintain a continued focus on the prevention of rape and provision of services to victims. By maintaining an awareness of how and which respondents are selected, how rape is defined by the study, which questions are used to assess rape, how data is analyzed, and what information is being presented, the reader is well-equipped to maneuver through the various available information and walk away with a clearer understanding of the impact and burden of rape victimization in America. Through an understanding of the existing national estimates of the rape burden, advocates are empowered to further educate the public through the use of media outlets addressing local, state, and national legislatures, and provide training opportunities to members of associated professions (e.g., legal, medical, mental health professionals). In addition, individual advocates and agencies are encouraged to form collaborations with researchers to continue designing rigorous evaluations of the burden of rape in America, and to further advance the agenda of prevention of violence against women.

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64687.086

References

Bureau of Justice Statistics (2007). *National Crime Victimization Survey 2007.* U.S. Department of Justice, Office of Justice Programs. Obtained at http://www.ojp.usdoj.gov/bjs/cvict.htm#ncvs

Centers for Disease Control and Prevention (2007). *Youth Risk Behavior Surveillance System 2007.* National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention. Obtained at http://www.cdc.gov/HealthyYouth/yrbs/index.htm

Federal Bureau of Investigation. (2007). *Uniform crime reports 2007: Crime in the United States.* U.S. Department of Justice. Obtained at http://www.fbi.gov/ucr/ucr.htm

Fisher, B.S., Cullen, F.T., & Turner, M.G. (December, 2000). *The sexual victimization of women.* NCJ 182369. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Hanson, R., Kievit, L., Saunders, B., Smith, D., Kilpatrick, D., Resnick, H., et al. (2003). Correlates of Adolescent Reports of Sexual Assault: Findings From the National Survey of Adolescents. *Child Maltreatment*, *8*(4), 261-272.

Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.K. (1992). *Rape in America: A report to the nation.* Arlington, VA: National Victim Center & Medical University of South Carolina.

Kilpatrick, D.G., Resnick, H.S., Ruggiero, K.J., Conoscenti, L.M. & McCauley, J.L. (2007). Drug-facilitated, incapacitated, and forcible rape: A national study. *Report to National Institute of Justice.*

Kilpatrick, D. G., Ruggiero, K. J., Acierno, R., Saunders, B. E., Resnick, H. S., & Best, C. L. (2003). Violence and risk of PTSD, major depression, substance abuse/dependence, and comorbidity: results from the National Survey of Adolescents. *Journal of Consulting and Clinical Psychology*, *71*(4), 692-700.

Krebs, C. P., Lindquist, C. H., Warner, T. D., Fisher, B. S., & Martin, S. L. (2007). The campus sexual assault (CSA) study: Final report submitted to the National Institute of Justice.

Resnick, H.S., Kilpatrick, D.G., Dansky, B.S., Saunders, B.E., & Best, C.L. (1993). Prevalence of civilian trauma and PTSD in a representative sample of women. *Journal of Consulting and Clinical Psychology, 61,* 984-991.

Skogan, W. (1981). Reactions to crime: Impacts of crime: On attitudes and behaviors. *Sage Criminal Justice System Annuals*, *16*, 19-45.

Sparks, R.F. (1982). Research on victims of crime. Washington, DC: Government Printing Office.

Tjaden, P. & Thoennes, N. (2000). *Full report of the prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey.* Washington D.C.: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice and Centers for Disease Control and Prevention, NCJ183781.

Other Helpful Resources

Kilpatrick, D.G. (2004). What is violence against women: Defining and measuring the problem. *Journal of Interpersonal Violence, 19,* 1209-1234.

Kilpatrick, D.G. & Acierno, R. (2003). Mental health needs of crime victims: Epidemiology and outcomes. *Journal of Traumatic Stress, 16,* 119-132.

Kilpatrick, D.G. & Ruggiero, K.J. (2004). Making sense of rape in America: Where do the numbers come from and what do they mean? Charleston: Medical University of South Carolina, National Crime Victims Research and Treatment Center.

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Applied Research Forum
National Online Resource Center on Violence Against Women

In Brief:
Understanding National Rape Statistics

The primary purpose of this paper is to provide an overview of how estimates of sexual violence in the United States are produced, with particular emphasis on major sources of rape statistics at the national level. Rape statistics are generated from two sources: (1) cases reported to law enforcement and (2) victimization surveys. Several broad conclusions may be drawn from the estimates discussed in this paper:

First, recent data suggest that fewer than one-in-six women report their rape experiences to the police (Kilpatrick et al., 2007). Reports like the Uniform Crime Report (UCR), which rely on estimates from reported and founded cases of rape only, will grossly underestimate the total occurrence of rape.

Second, the measurement of rape appears highly dependent on the sensitivity of the assessment. Behaviorally specific (as opposed to relying on labels such as "sexual assault") questions that include assessment of experiences of oral and anal penetration by a penis, fingers, or other objects (as opposed to those only measuring forced vaginal penetration by a penis) provide a more comprehensive survey of rape in America. Because the UCR and National Crime Victimization Survey (NCVS) estimates are not based on these more sensitive assessments of rape, they produce national estimates that are lower than those produced by other studies (such as the National Women's Study (NWS), National Violence Against Women Survey (NVAWS), and National Women's Study-Replication (NWS-R)).

Third, the definition of rape provided by the Federal Criminal Code includes experiences where the victim is too intoxicated or impaired by substances to provide consent. To date, only one nationally representative study specifically assessed experiences of drug-alcohol facilitated and incapacitated rape (NWS-R). Data suggest reporting rates for drug-alcohol facilitated and incapacitated rape experiences are even lower than reporting rates for forcible rape experiences (Kilpatrick et al., 2007).

In addition, there are other factors to keep in mind when evaluating these and other rape statistics. The type of population sampled can have an influence on prevalence rates. Method of assessment is also worth noting. Most of the victimization surveys discussed in this paper employed random-digit-dial methods to select their sample and interviewed their participants via telephone. The use of telephone self-report limits the data available to those who are: (1) contactable by phone (e.g. not institutionalized, residing in a home, having a home phone line as opposed to a cell phone), and (2) willing to participate in a research survey (participation rates/cooperation vary by study and should be noted). Additionally, all self-report methods are subject to recall bias. The assessment of lifetime rape experiences may be more susceptible in this respect given the length of time from which women are asked to recall. In addition, none of the studies included specifically assessed for statutory rape.

The data discussed in this paper suggest that the burden of forcible rape on women in the U.S. appears to have increased since the NWS was completed in the early 1990s. This indicates that we must not only continue to monitor rape in America, but also to maintain a continued focus on the prevention of rape and the provision of services to victims. By maintaining an awareness of how and which respondents are selected, how rape is defined by the study, which questions are used to assess rape, how data is analyzed, and what information is being presented, the reader is well-equipped to maneuver through the various available information and walk away with a clearer understanding of the impact and burden of rape victimization in America.

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What Is Violence Against Women?

Defining and Measuring the Problem

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Violence against women (VAW) is a prevalent problem with substantial physical and mental health consequences throughout the world, and sound public policy is dependent on having good measures of VAW. This article (a) describes and contrasts criminal justice and public health approaches toward defining VAW, (b) identifies major controversies concerning measurement of VAW, (c) summarizes basic principles in identifying and measuring VAW cases, and (d) recommends changes to improve measurement of VAW. In addition to reviewing recommendations from the Centers for Disease Control and Prevention Workshop on Building Data Systems for Monitoring and Responding to Violence Against Women and the World Health Organization World Report on Violence and Health, *the article concludes that changes are needed in the FBI Uniform Crime Reports and National Crime Victimization Survey to improve measurement of rape and sexual assault.*

Keywords: *violence against women; measurement; definition; public policy*

HISTORICAL BACKGROUND

The problem of violence against women (VAW) languished on the back burner of science and public policy until there was a resurgence in the early 1970s of the feminist movement in the United States and other Western nations. An important component of this movement was women discussing their life experiences and identifying the personal, legal, and societal barriers to greater opportunities and fulfillment for women. As a result of these discussions, it became apparent that violence was a prevalent part of women's lives and that it had a profoundly negative impact on women's ability to live happy, productive lives. Consequently, a major policy initiative of the feminist movement was to raise consciousness about VAW, to reform relevant laws and policies, to provide services to VAW victims, and to increase efforts to prevent VAW. The feminist movement examined the criminal justice system's treatment of major types of VAW with particular focus on rape, other

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types of sexual assault, and wife battering. In addition to highlighting the abysmal status of services for female victims of violence, this examination identified reform of criminal statutes concerning major types of VAW as a major public policy focus.

During the past 30 years, the feminist movement has been a major impetus in accomplishing substantial reform in the criminal codes defining the crimes of sexual assault, criminal domestic violence, child abuse and neglect, and other crimes against women (Chapman & Gates, 1978; Estrich, 1987; Walker, 1979). The feminist movement also was responsible for establishing a system of community-based services for victims of rape and other types of intimate partner violence. Feminist-oriented activists, practitioners, and scientists also were influential in making the case that VAW is an important public health issue as well as a criminal justice issue. Therefore, it is important to acknowledge the key role that the feminist movement played in establishing VAW as a societal problem.

Obtaining accurate measures of the prevalence, scope, nature, and consequences of VAW is important for a variety of reasons. First, from a public policy perspective, it is imperative to have good data about the magnitude and nature of a problem to formulate a proper public policy response. Public policy is about allocation of resources, and more resources are generally allocated to big problems that affect many citizens than to small problems that affect only a few (Kilpatrick & Ross, 2001). Therefore, obtaining accurate information about VAW is relevant to public policy because it provides data about the magnitude of the problem. Second, it is important to have the best information possible about VAW cases. Such information is necessary for the criminal justice system to determine how many total cases of various types of VAW exist, the proportion of cases reported to police, the disposition of cases (i.e., the outcome of criminal justice system processing of cases), and needs for victim services provided by the criminal justice system as well as by community-based organizations. Having information about important characteristics of cases (e.g., the age of victims, the perpetrators' relationship to victims) is also useful. Third, having sound information about the prevalence, nature, and consequences of VAW is the foundation of the public health approach toward violence prevention.

However it is defined and measured, VAW is a prevalent problem in the United States and throughout the world (Krug, Dahlberg, Mercy, Zwi, & Lozano, 2002). It also increases risk for numerous physical and mental health problems (Kilpatrick & Acierno, 2003; Krug et al., 2002; National Center for Injury Prevention in Control, 2003; Schnurr & Green, 2004). The VAW problem has been addressed from several perspectives, including that of the criminal law and public health system. During the past three decades, consider-

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able progress has been made in highlighting the VAW problem; in understanding the scope, nature, and consequences of VAW; in changing relevant legislation concerning VAW; and in providing services to VAW victims. However, progress in addressing the VAW problem has been impeded by a lack of better information about several important aspects of VAW. Notwithstanding this progress, debates still rage about several important issues, including what types of acts should be defined as constituting VAW, how various types of VAW should be measured or counted, and the adequacy of governmental measures of the magnitude and nature of the VAW problem.

This article has four major objectives: (a) to review and contrast criminal justice versus public health definitions of VAW, (b) to describe major controversies concerning measurement of VAW, (c) to summarize basic principles in identifying and measuring VAW cases, and (d) to recommend changes to improve measurement of VAW.

DEFINING VAW

Criminal Justice Approaches

Examination of criminal code definitions in the United States is complicated by the fact that we operate under a complex set of overlapping federal, state, military, and tribal laws that often differ in how specific crimes are defined. Although states traditionally have had primary jurisdiction for most violent crimes, there has been a recent expansion of the federal criminal code to include many violent crimes. It is impossible to describe relevant types of violent crimes as defined in the criminal codes of all 50 states. However, the criminal code definitions of violent crimes in most states are similar to those in the federal criminal code, and the FBI (2001) uses federal criminal code definitions of violent crimes to compile its annual estimates of reported crimes throughout the United States. Therefore, this article will use the FBI definitions to illustrate the way relevant crimes are defined by criminal codes in the United States.

Rantala (2000) reviewed differences between the traditional FBI Uniform Crime Reporting (UCR) definitions of crime and a new National Incident-Based Reporting System (NIBRS; 2001) that is being introduced by the FBI. The most relevant types of crime are the violent crimes of murder, sexual offenses, assault, and stalking. The UCR and NIBRS both define *murder* and *nonnegligent manslaughter* as "the willful (nonnegligent) killing of one human being by another" (Rantala, 2000, p. 12). The FBI UCR defines *forcible rape* as "the carnal knowledge of a female forcibly and against her will" (Rantala,

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2000, p. 12). This definition includes attempts as well as completed forcible rapes, but only rapes of female victims are included. The NIBRS defines *forcible rape* as

> the carnal knowledge of a person, forcibly, and/or against that person's will; or not forcibly or against that person's will where that person is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth). (p. 12)

This includes male as well as female victims.

The UCR and the NIBRS define *assault* as "an unlawful attack by one person upon another" (Rantala, 2000, p. 13). Under the UCR definition, *aggravated assault* is

> an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury; this type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (Rantala, 2000, p. 13)

The NIBRS definition of *aggravated assault* is

> an unlawful attack by one person upon another wherein the offender uses a weapon or displays it in a threatening manner, or the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness; this also includes assault with disease (as in cases when the offender is aware that he/he is infected with a deadly disease and deliberately attempts to inflict the disease by biting, spitting, etc.). (Rantala, 2000, p. 13)

The NIBRS definition of *simple assault* is

> an unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration or loss of consciousness. (Rantala, 2000, p. 13)

The UCR also includes other assaults, which are defined as simple, not aggravated, in its assault totals, although such assaults are not included in the index of violent crimes. The NIBRS also includes intimidation as a type of assault. This is defined in the following manner: "to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack" (Rantala, 2000, p. 13).

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As will be described subsequently, the Bureau of Justice Statistics (2001) in the U.S. Department of Justice conducts a major victimization survey that provides estimates of the number of crimes that are experienced each year by household residents ages 12 and older. This National Crime Victimization Survey uses the following definitions of the crimes it attempts to measure.

Aggravated Assault

"Attack or attempted attack with a weapon, regardless of whether or not an injury occurred and attack without a weapon when serious injury resulted" (Bureau of Justice, 2002). *Simple assault* is defined as an "attack without a weapon resulting in either no injury, minor injury, or in an indeterminate injury, requiring less than 2 days of hospitalization; also includes attempted assault without a weapon" (Bureau of Justice, 2002). *Rape* is defined as

> forced sexual intercourse including both psychological coercion as well as physical force; forced sexual intercourse means vaginal, anal, or oral penetration by the offender; includes incidents where penetration is from a foreign object, attempted rapes, male and female victims, and both homosexual and heterosexual rape. (Bureau of Justice, 2002).

Neither the UCR or the NIBRS or the National Crime Victimization Survey defines the crime of stalking or includes it in measures of crimes. However, the National Institute of Justice has developed a model antistalking criminal code that defines *stalking* as a course of conduct directed at a specific person that involves repeated visual or physical proximity; nonconsensual communication; verbal, written, or implied threats; or a combination thereof that would cause fear in a reasonable person. A key feature of this criminal code definition is that it is not necessary for the stalker to make a credible threat of violence against the victim. All of these crimes (i.e., murder, rape, sexual assault, stalking) would be classified as VAW by the criminal justice system if the victim was a women or female child.

The Public Health Approach

From the public health perspective, VAW is defined as a subset of interpersonal violence. In its groundbreaking *World Report on Violence and Health* (Krug et al., 2002), the World Health Organization (WHO) defines *violence* as

> the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or

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> has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation. (Krug et al., 2002, p. 5)

This definition of violence encompasses three major types of violence: (a) self-directed violence or suicidal behavior, (b) interpersonal violence, and (c) collective violence consisting of violence committed by larger groups of individuals or states (e.g., hate crimes committed by organized groups, terrorist acts, mob violence, war). The remainder of this discussion will focus on interpersonal violence.

The WHO report developed a useful typology of all three major types of violence, and Figure 1 contains the interpersonal violence portion of this typology. As inspection of Figure 1 reveals, this typology identifies four types of interpersonal violence: 1) physical violence, 2) sexual violence, 3) psychological violence, and 4) deprivation or neglect. Furthermore, the typology separates interpersonal violence into that which occurs in family or partner settings vs. that which occurs in community settings. Within family or partner settings, interpersonal violence is further divided into violence that is committed against children, intimate partners, and the elderly. Community violence is defined as violence that occurs outside of family or partner settings and includes youth violence, acts of violence committed by acquaintances or strangers, and violence in institutional settings such as schools, prisons, and nursing homes.

There are three other important issues in the public health definition of *violence*. First, the public health definition of violence places great emphasis on the intentional use of physical force or power. Clearly, some perpetrators intend to harm victims without successfully accomplishing their goals, and other individuals cause great harm to victims without any intent to do so. The former are viewed as perpetrators of violence under the public health definition, whereas the latter are not. Second, the public health definition includes intentional use of power as well as intentional use of physical force. As noted in the WHO report, *power* refers to acts resulting from a power relationship that include threats, intimidation, neglect, and acts of omission. Third, the public health definition of violence does not require that an intentional act actually produce injury, death, psychological harm, maldevelopment, or deprivation to be defined as violent. Instead, the key point is that the intentional act must either produce or have a high likelihood of producing these outcomes.

From the public health perspective, *sexual violence* is defined as

> any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality

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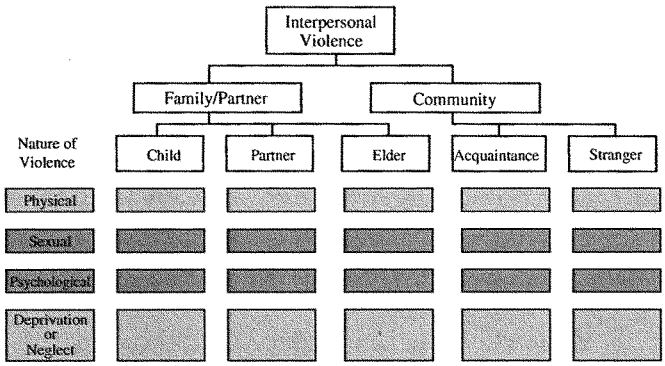

Figure 1: A Public Health Typology of Interpersonal Violence
NOTE: From *World Report on Violence and Health*, by E. G. Krug, L. L. Dahlberg, J. A. Mercy, A. B. Zwi, and R. Lozano, 2002. Adapted with permission of the authors.

> using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work. (Jewkes, Sen, & Garcia-Moreno, 2002, p. 149)

Under this definition, *coercion* is defined as including physical force, psychological intimidation, blackmail or other threats, or taking advantage of an individual who is unable to give consent because they are drunk, drugged, asleep, or mentally incapable of understanding the situation (Jewkes et al., 2002, p. 149). *Rape* is defined as physically forced or otherwise coerced penetration of the vulva or anus using a penis, other body parts, or an object. *Attempted rape* is defined as an unsuccessful attempt to accomplish acts that would constitute rape. Interestingly, coerced oral sex is not classified as rape using this definition, although forced or coerced oral sex is defined as rape in the criminal codes of most jurisdictions in the United States.

The public health definition of *sexual violence* used by Jewkes et al. (2002) includes sexual abuse of mentally or physically disabled people and sexual abuse of children, which are defined as violations of the criminal code in virtually all jurisdictions. However, this public health definition also includes a number of other acts that are either not violent or are not classified as sexual violence in the criminal codes of most jurisdictions of the United States (e.g., forced marriage or cohabitation, sexual harassment, denial of the right to use contraception or to adopt other measures protecting against sexu-

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ally transmitted diseases, obligatory inspections for virginity; Jewkes et al., 2002, pp. 149-150). Clearly, sexual violence is defined much more broadly by the public health community than by the criminal justice system.

The public health approach primarily focuses on physical assaults committed by women's intimate partners or committed against children or the elderly.

Intimate partner violence is defined as

> any behavior within an intimate relationship that causes physical, psychological, or sexual harm to those in the relationship. Such behaviors include acts of physical aggression, . . . psychological abuse, forced intercourse and other forms of sexual coercion, (and) various controlling behaviors such as isolating a person from their family and friends, monitoring their movements, and restricting their access to information or assistance. (Heise & Garcia-Moreno, 2002, p. 89)

This definition excludes any type of physical violence committed against women, unless it occurs within the context of an intimate partner relationship.

Comparing the Two Approaches

A comparison of the criminal justice and public health approaches toward defining VAW reveals several important differences. First, many of the acts that are defined as VAW using the WHO report definition would also be defined as criminal acts using criminal justice definitions, but some acts of interpersonal violence using public health definitions would not be defined as crimes (e.g., psychological abuse). Second, acts involving deprivation or neglect under the public health definition are defined as a form of VAW, but they are not always defined as crimes under most criminal codes. However, when female children or vulnerable adults are severely deprived or neglected by their caretakers, protective action may be taken by child or adult protective services. Third, the public health typology makes a bigger distinction between the context in which interpersonal violence occurs (i.e., family or partner violence vs. community violence) than does the criminal justice system's definitions of crimes in the criminal code. Thus, the criminal justice system identifies murder, assault, rape, and stalking as crimes irrespective of the relationship between perpetrator and victim, whereas the public health typology tends to focus on whether the violent act occurs in a family or partner setting to a child, partner, or elder versus in a community setting involving an acquaintance or a stranger perpetrator.

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From the criminal justice perspective, VAW would be defined as the subset of violent crimes that are perpetrated against women or female children. As previously noted, psychological abuse of female children, adolescents, or adults would not generally be defined as a crime or included in statistics documenting the prevalence of crimes against women.

Saltzman (2000a, 2000b) recently edited a two-part special issue of the journal *Violence Against Women* that included a series of articles from a Department of Health and Human Services and Department of Justice Workshop on Building Data Systems for Monitoring and Responding to Violence Against Women. In her article describing the workshop (Saltzman, 2000a, 2000b) and in a series of recommendations from the workshop (Centers for Disease Control and Prevention, 2000), Saltzman, Fanslow, McMahon, and Shelley (2002) suggest a solution to the problem of including nonviolent acts in the public health definition of VAW. Specifically, they recommend that the term *VAW* should be restricted to physical violence, sexual violence, and threats of physical or sexual violence. They also recommend that the broader term *violence and abuse against women* (VAAW) should be defined as including the three types of violence in the VAW definition as well as stalking and psychological and emotional abuse. This approach has considerable merit because it distinguishes between violent acts and nonviolent acts but also permits assessment of actual violence as well as stalking and psychological abuse.

CONTROVERSIES CONCERNING MEASUREMENT OF VAW

What Types of VAW or VAAW Should We Measure?

Clearly, the answer to this question is related to the previous discussion of how VAW is defined. If you prefer a broad definition of VAW, which includes all major types of violence as well as psychological abuse, you probably advocate measuring all types of acts that fall within that broad definition. However, if you prefer a narrower definition of VAW, which focuses on violations of the criminal code, you generally advocate restricting measurement to only those offenses. Therefore, those who approach this question from a criminal justice perspective suggest that we should measure VAW by identifying cases of all types of violent crimes that are perpetrated against women and female children. In contrast, many feminists and public health professionals argue that we should measure VAAW and gather information about all types of family and partner crimes as well as other acts that are not crimes but that affect women negatively (e.g., psychological abuse). Although the

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public health model clearly identifies community violence perpetrated by acquaintances or strangers as a type of interpersonal violence, most of the focus of the public health community to date has focused on measurement of sexual violence of all types as well as intimate partner violence. In some ways, the criminal justice definition and measurement of VAW is broader than the feminist and public health approach toward definition and measurement because it includes all violent acts committed against women and female children irrespective of who the perpetrator is. In other ways, however, the feminist and public health approach is broader because it includes several types of acts that are not violent per se.

This issue of what types of acts should be covered in the definition of VAW or VAAW and be included in measures of VAW is critically important. Obviously, if we define VAAW broadly, include psychological abuse as well as violent acts, and attempt to measure all types of violence and abuse that have ever been experienced by women or female children, the prevalence will be one thing. If we define VAW more narrowly, include only violent crimes, and measure only violence occurring within intimate partner relationships, the prevalence will be much smaller.

The controversy about whether to measure VAW broadly or narrowly is old, fierce, and unlikely to be resolved in the near future. For example, the feminist scholar DeKeseredy (2000) argues that using broad definitions of VAW is essential because using narrow definitions contributes to lower estimates of incidence and prevalence. He suggests that these lower estimates resulting from use of narrow legal definitions of VAW are problematic because "policy makers tend to only listen to large numbers" (DeKeseredy, 2000, p. 734) and are unlikely to devote sufficient resources unless incidence and prevalence rates are large. He also argues that this approach establishes a hierarchy in which only the most violent acts are viewed as serious and in which some acts that are highly distressing to women but are not defined as crimes are excluded. He also argues that use of narrow definitions exacerbates the problem of underreporting and of having access to social support and social services.

In contrast, other social scientists and criminal justice professionals argue that excessively broad definitions of VAW run the risk of trivializing the definition by including acts that are not violent per se and that occur sufficiently frequently to be almost universal (Fox, 1993; Gelles & Cornell, 1985). Both sides of this argument have merit, but the key point is that decisions about whether to measure VAW and VAAW broadly, including many types of violent acts and abuse, or more narrowly, including only acts that constitute violent crimes, have profound implications for the magnitude of the problem that will be documented. Specifically, estimates will be larger if our defini-

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tion and its measurement thereof are broad than if our definition and its measurement are narrow.

Within Which Time Frames Should VAW Be Measured?

Another controversy concerns whether we are primarily interested in gathering information about recent cases, cases occurring within particular parts of the lifespan (e.g., childhood, adolescence, adulthood, old age), or cases occurring throughout the lifespan. Having information about recent cases is clearly important. If collected longitudinally, such information provides trend data with respect to changes in VAW in time as well as information about the number of new VAW victims who may require services or processing by the criminal justice system. Most of the criminal justice system measures of VAW address only cases in the past year (e.g., the FBI Uniform Crime Reports, the National Crime Victimization Survey). Likewise, most state and local data on cases reported to police or child protective services are aggregated within a calendar year period.

There is substantial evidence that many types of VAW have persistent, long-term effects on women's risk for mental and physical health problems (Kilpatrick & Acierno, 2003; Krug et al., 2002; National Center for Injury Prevention in Control, 2003; Resnick, Acierno, & Kilpatrick, 1997; Schnurr & Green, 2004; Tjaden & Thoennes, 2000). Given the persistence of these effects, it is important to measure not only recent VAW experiences but also those which occur throughout the lifespan. Considerable research has been done on factors that influence accuracy of data obtained using different recall periods for victimization, and there is no question that briefer recall periods produce more accurate data (Cantor & Lynch, 2000). However, there is also no question that ignoring VAW incidents that occurred longer than 1 year ago introduces its own set of problems. It is also obvious that the length of time within which you are measuring VAW has a dramatic impact on the incidence or prevalence measures you will obtain. Use of longer time frames produces higher incidence or prevalence estimates.

From What Sources Should We Gather VAW Information?

This controversy encompasses several issues. First, there is a question about whether we should gather information from women about victimization experiences, from men about perpetration experiences, or from both women and men about both VAW victimization and perpetration. Particu-

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larly with respect to intimate partner violence, many investigators use some modification of the Conflict Tactics Scale (CTS; Strauss, 1990a, 1990b) with both parties in intimate partner relationships to measure the extent to which they have perpetrated violence against their partners and their partners have perpetrated violence against them. Such studies generally find that overall levels of female-against-male versus male-against-female partner violence are similar, but that male-against-female intimate partner violence is more severe and causes more physical injury (Strauss & Gelles, 1990). This pattern of findings is controversial because it suggests that women as well as men are sometimes violent within intimate partner relationships. Moreover, it does not correspond to the pattern of violence observed by advocates who serve women in shelter samples, many of whom have been savagely beaten and terrorized by their partners. Another reason CTS data are hard to interpret is that the CTS does not distinguish between violent acts that occur in retaliation after one has been attacked. Whether we obtain information about VAW perpetration and victimization from one gender or from both genders will influence our estimates of incidence and prevalence, as will whether we measure offensive versus defensive violence.

A second question concerns whether information about VAW victimization and perpetration should be gathered from children and adolescents as well as adults. A few governmentally sponsored surveys already collect some information about victimization experiences from adolescents (e.g., the National Crime Victimization Survey, the CDC Youth Risk Behavior Survey). There have also been several private surveys that collected information about victimization of adolescents. For example, Elliott, Huizinga, & Menard (1989) initiated the National Youth Survey almost 30 years ago in 1975 (Ageton, 1983; Elliott et al. 1989). Boney-McCoy and Finkelhor studied youth victimization, including physical and sexual assault among a national household probability sample of 10- to 16-year-olds (Boney-McCoy & Finkelhor, 1996). The National Survey of Adolescents obtained information about physical and sexual assault from a national household probability sample of 12- to 17-year-old adolescents (Kilpatrick, Saunders, & Smith, 2003). However, virtually no information about either victimization or perpetration has been collected from representative samples of children under the age of 10. Clearly, there are numerous methodological and human participant protection challenges involved in collecting such information from children and adolescents. However, the lack of contemporaneous information about the scope and nature of victimization of female children and adolescents is problematic.

A third issue concerns potential sources of systematic data collection regarding VAW. As noted in a recent *Morbidity and Mortality Weekly Report*

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(Centers for Disease Control and Prevention, 2000), there are a number of criminal justice, health care, and other sources and potential sources of national data on violence and abuse against women. In most cases, these sources involve collection of systematic data from survey samples. However, in many cases, the ability of these surveys to provide useful data is hindered by their failure to include adequate measures of VAW. In addition to systematic surveys, other sources of data include screening for victimization experiences among women who are seeking services in emergency rooms, in health care settings, and in mental health care settings. In many but not all cases, such screening has focused on intimate partner violence exclusively and has not inquired about violence committed by acquaintances or strangers. Likewise, many criminal justice agencies, rape crisis centers, and battered women's shelters collect some information about their clients' history of exposure to violence. There are strong proponents for each of these potential sources of information about VAW, and there are clear advantages to each source. However, a much more comprehensive picture of VAW would emerge if these potential data sources would use common definitions of VAW and collect data in as similar a format as possible (Centers for Disease Control and Prevention, 2000).

How Concerned Should We Be About Multiple Victimization and Multiple Types of VAW?

The VAW field has been highly fragmented. It is fragmented with respect to the types of professionals who attempt to address the VAW problem (e.g., criminal justice professionals, public health professionals, mental health professionals, researchers, and community-based advocates). It is also fragmented with respect to the types of VAW victims or perpetrators we are attempting to research and serve. Saunders (2003) addressed this issue recently in reference to understanding children exposed to violence, and most of his observations and conclusions are also applicable to the VAW field. Specifically, Saunders noted that isolated fields of research and service delivery have developed concerning different types of violence against children (e.g., child sexual assault, child physical assault, child neglect, witnessing violence in homes with intimate partner violence, witnessing violence in the community). In most cases, researchers and service delivery professionals in each of these areas focus on one particular type of violence against children, to the exclusion of all others. Separate scientific literatures have developed within each of these separate areas, and separate service delivery systems have developed for each form of violence against children.

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Saunders (2003) also presented compelling data regarding children's exposure to multiple types of violence using two sources of data. The first data source was the National Survey of Adolescents (Kilpatrick, Ruggiero, et al., 2003; Kilpatrick, Saunders, et al., 2003). Among this national household probability sample of adolescents, exposure to four types of violence were measured: sexual assault, physical assault, physically abusive punishment, and witnessed violence. Approximately half of the sample (49.6%) had been exposed to at least one of these four types of violence. However, only 29.4% of adolescents had been exposed to only one type of violence, 13.8% had been exposed to two types, 4.9% had been exposed to three types, and 1.4 % had been exposed to all four types of violence. Saunders also reviewed data from a clinically referred sample in which the prevalence of multiple types of child victimization was even greater than in the National Survey of Adolescents. His conclusion was that most children in either research or clinical samples will have experienced either multiple types of different victimizations, multiple incidents of the same type of victimization, or both.

Monnier, Resnick, Kilpatrick, and Seals (2002) illustrated a similar point with data from a sample of recent rape victims. At their initial rape forensic exam, 36% of these rape victims had been past victims of domestic violence, and 60% had been victims of a prior rape. Within a 6-month follow-up period, 6% of these rape victims sustained another rape, and 17% sustained a new physical assault. Of the new physical assaults, 63% were perpetrated by intimate partners. These and other findings confirm the fact that girls and women often experience multiple types of VAW throughout their lives. In addition, many of these girls and women will also experience more than one victimization within a given type of VAW throughout their lives. This appears to be true both within samples of girls and women within the general population and within service-seeking samples.

As Saunders (2003) noted, service delivery professionals have tended to focus their attention on the particular type of child victims they serve, but children who present to service agencies with an index case of one type of childhood victimization (e.g., child sexual assault) often have experienced other types of childhood victimization (e.g., child physical assault, witnessed violence) that the service provider will remain unaware of unless they specifically inquire about the child's comprehensive history of violence. The Monnier et al. (2002) findings suggest that rape crisis centers and battered women's shelters may be providing services to the same women at different points in time.

In summary, the VAW field has been involved in parallel play characterized by different groups of researchers and service delivery professionals

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focusing on their particular type of VAW, often to the exclusion of other types. We focus on the recent index case of VAW, frequently ignoring previous history of exposure to other types of VAW. We argue that the specific type of VAW we are interested in is more important than other types. We study risk factors for specific types of VAW in isolation, and we examine mental and physical health consequences of specific types of VAW in isolation. We approach the longitudinal, complex problem of experiencing multiple types of VAW throughout the lifespan in a simplistic, cross-sectional way. Clearly, if we are concerned about multiple types of VAW victimization and repeat victimization, our attempts to measure VAW incidence and prevalence will be comprehensive and longitudinal in nature. However, if we focus on only one type of victimization at only one point in time, our assessment approach will be quite different.

BASIC PRINCIPLES IN IDENTIFYING AND RECORDING VAW CASES

A substantial scientific literature exists describing factors that influence our ability to detect cases of violence, including VAW (Cantor & Lynch, 2000; Centers for Disease Control and Prevention, 2000; Fisher & Cullen, 2004; Kilpatrick & Acierno, 2003; Koss, 1996; Skogan, 1981), a review of which is beyond the scope of this article. However, it may be useful to distinguish between two situations in which we wish to identify and record VAW cases. In the first situation, a woman voluntarily discloses that she has been a VAW victim. Examples of this situation are when a woman reports a rape to police, seeks services from a rape crisis center, or seeks assistance from a battered women's shelter. In such cases, the woman will tell us that she has been raped or physically assaulted without our having to ask her about it. In the second situation, we have no knowledge about a woman's victimization history and must inquire about it to obtain any information. Examples of this situation are when we conduct victimization surveys of women in the general population, when health care professionals screen for victimization histories, or when rape crisis centers or battered women's shelters inquire about victimizations that occurred prior to the index VAW case. In the first situation, identifying a VAW case is relatively easy because the victim voluntarily discloses it. In the second situation, identifying VAW cases is considerably more complex.

Figure 2 depicts the steps that are required to identify and record a VAW case in either a victimization survey or in a service setting. In service settings, these are the steps required to identify cases other than the index VAW case

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that a woman already disclosed. As the figure indicates, the process of identifying a VAW case involves many steps, and failure to identify and correctly record a VAW case can occur at any step in the process. After a VAW incident occurs, the victim must perceive the incident and label it. In some cases, victims either may not clearly perceive what happened in an incident (e.g., a woman is sexually assaulted after the perpetrator gives her rohypnol) or she may not label it as a crime or VAW (e.g., a woman who is raped or physically attacked by an intimate partner or a woman who is psychologically abused). In addition, the event must be coded into memory. If the incident is not perceived to be or labeled as VAW or is not coded into memory, it is unlikely that it will be identified and recorded. If a victim of VAW is not included in a victimization survey sample or in the caseload of a victim service agency, there is no possibility that the victimization they experienced will be identified and recorded.

The next step in the process is critically important. The interviewer, health care professional, or victim service provider must ask questions about potential VAW experiences in such a way as to accurately capture key elements of the event in question and to cue the victim's memory of the event. If the screening questions used do not accomplish both of these requirements, the VAW incident will not be identified or recorded. For example, Koss, (1985, 1988) demonstrated that a majority of women who have experienced forcible rape as determined by screening questions measuring key elements of the crime of rape say *no* when asked if they have ever been a victim of rape. Another important step in the process is the victim's willingness to disclose the incidence to the interviewer or service provider. A woman may have experienced an incident, remember it clearly after being asked appropriate screening questions, and still be unwilling to disclose it to an interviewer or service provider. In such cases, the VAW incident will remain unidentified and unrecorded. The final step in the process is whether the interviewer or service provider defines the event disclosed to him or her by the victim as constituting VAW. For example, the victim may disclose an incident of psychological abuse that a particular interviewer or service provider does not classify as true VAW. In such cases, the incident would not be identified or recorded.

In summary, there are numerous steps involved in identifying and recording a single type of VAW, and the potential for misadventure is great at each step in the process. Not surprising, case identification and recording becomes much more complicated when we attempt to measure several types of VAW. Although all of the steps are important, there are two steps of paramount importance. First, screening questions must tap all types of VAW of interest and must cue victims' memory of incidents that they have experienced. Sec-

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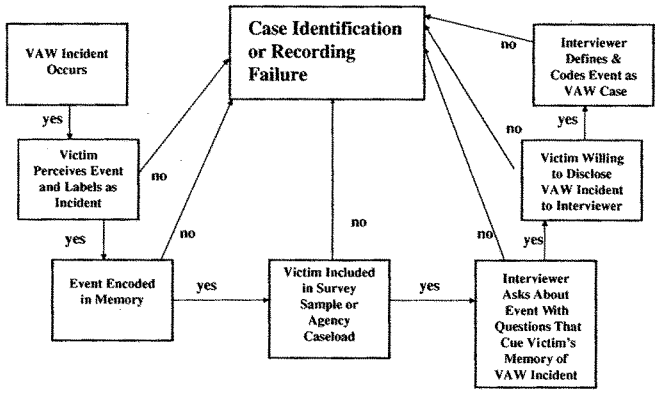

Figure 2: Steps Required to Identify and Record a Violence Against Women Case in Survey and Service Settings
NOTE: VAW = violence against women.

ond, the context in which screening questions are asked must facilitate victims' willingness to disclose VAW experiences.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

As was previously noted, VAW is a major problem irrespective of whether it is measured broadly or narrowly, whether it is defined using criminal code definitions or public health definitions. It is critically important to obtain better information about important types of VAW occurring during all stages of a woman's life. However, it is also probably important to follow Saltzman et al.'s (2002) definitional distinction between VAW, which includes physical violence, sexual violence, and threats to commit physical or sexual violence, and VAAW, which includes the three types of violence as well as stalking and psychological abuse. Using this definition of violence and abuse against women permits us to disaggregate violent acts from abusive ones but to also capture the full spectrum of acts that are harmful to women. Using this defini-

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tion also permits us to identify VAW incidents that are violations of the criminal code.

No comprehensive national information about incidence and prevalence of VAAW in the United States currently exists because no existing criminal justice, public health, or privately conducted research study has collected systematic, comprehensive information about all types of VAAW. The recent Centers for Disease Control and Prevention Workshop On Building Data Systems for Monitoring and Responding to Violence against Women (Centers for Disease Control and Prevention, 2000) identified 18 sources and potential sources of national data on violence and abuse against women. These 18 sources include ongoing U.S. Department of Justice criminal justice reports and surveys, ongoing health care surveys sponsored by the Centers for Disease Control and Prevention and Substance Abuse Mental Health Services Administration, and other surveys conducted by private researchers and governmental agencies. None of these data sources include comprehensive assessment of all five types of VAAW, and very few of them include adequate assessment of even those VAW incidents that are defined as violations of the criminal code. As was previously mentioned, some studies have measured many types of VAW (e.g., the National Survey of Adolescents, the National Violence Against Women Survey, the National Women's Study). The most comprehensive study to date was the National Violence Against Women Survey conducted by Tjaden and Thoennes (2000), which measured sexual assault, physical assault, and stalking but did not measure psychological abuse.

The two U.S. Justice Department measures of recent violent crimes committed against women are problematic, particularly with respect to measurement of sexual assaults. The FBI UCR includes data about forcible rapes and attempted forcible rapes reported to police each year. However, as described by Kilpatrick (2002) and discussed previously, the FBI UCR definition of forcible rape does not capture all cases defined as forcible rape in the criminal code of most jurisdictions in the United States. Specifically, the UCR excludes cases involving forced oral sex, anal sex, or penetration with fingers or objects. Likewise, the UCR does not include other acts of rape because of the victims' being incapable of giving consent because of temporary or permanent mental or physical incapacity. The FBI NIBRS definition does include these other types of rape, but the only national data the FBI reports are based on the UCR definition, which produces a substantial undercount of rape cases.

Similarly, the National Crime Victimization Survey conducted annually by the Bureau of Justice Statistics has several problems that limit its ability to

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detect sexual assault cases (Bachman & Saltzman, 1995; Kilpatrick, 2003; Koss, 1990). These include failure to provide a confidential, private environment for survey respondents and use of sexual assault screening questions that are much less sensitive than those used in state-of-the-art epidemiological surveys, such as the National Women's Study and the National Violence Against Women Survey. A recent study by Fisher, Cullen, and Turner (2000) compared forcible rape screening questions used in the National Crime Victimization Survey with those used in the National Women's Study and the National Violence Against Women Survey. Two large national probability samples of college students were interviewed by telephone using identical methodology and differing only in which of the two sets of screening questions were used. Results of the study indicated that the rape screening questions used in the National Crime Victimization Survey were approximately 11 times less sensitive than the other rape screening questions. These findings provide conclusive documentation as to the inadequacies of the rape screening questions used in the National Crime Victimization Survey.

Many VAAW victims seek services from rape crisis centers, battered women's shelters, criminal justice system agencies, and a variety of health care and mental health care settings. Sometimes, these victims identify themselves as such when they seek services, but many times, they do not. Even when the victim tells the service provider about her index VAAW experience, the service provider generally has no information about other VAAW experiences a woman has had unless comprehensive screening for other VAAW experiences is conducted. Most rape crisis centers, battered women's shelters, and other victim service agencies collect some data about the victims they serve, but they rarely collect systematic information about other types of VAAW experiences the victim may have experienced. Also, as noted in a recommendation from the Centers for Disease Control and Prevention Workshop (Centers for Disease Control and Prevention, 2000), agencies presently lack any way of assigning a unique identifier to each victim or case, which is necessary to obtain a nonduplicative count of VAAW victims and cases. Although there have been some worthy efforts to screen for victimization experiences among women seeking health care services, most screenings have attempted to identify cases of intimate partner violence (see recent reviews by Campbell, 2000; Walker, Newman, & Koss, 2004). Of necessity, time constraints in health care and mental health care settings do not facilitate use of comprehensive screening measures, but brief screening questions may lack sensitivity to detect comprehensive VAAW victimization histories.

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Recommendations

Both the Centers for Disease Control and Prevention Workshop (Centers for Disease Control and Prevention, 2000) and the WHO *World Report on Violence and Health* (Krug et al., 2002) contain relevant recommendations regarding improving definition and measurement of VAW and VAAW experiences. Several of these recommendations are pertinent to the topic of this article. These include the following recommendations from the CDC workshop:

1. the term *VAW* should be used to include the combination of physical violence, sexual violence, and threats of physical and sexual violence;
2. data should be collected on as many of the five major components of VAAW as possible;
3. surveillance data should report disaggregated statistics for each of the five forms of VAAW, and presentation of VAAW data should show the overlap among all these five types;
4. existing national data collection surveys should incorporate and include measures of VAAW; and
5. improved estimation of lifetime prevalence of VAW is needed.

It should be noted that the Centers for Disease Control and Prevention workshop included many other recommendations as well as a thorough discussion justifying all recommendations. The two special issues of *Violence Against Women*, edited by Saltzman, contain several articles elaborating on the issues and recommendations covered in the Centers for Disease Control and Prevention workshop (Saltzman, 2000a, 2000b).

Two chapters in the WHO *World Report on Violence and Health* (Heise & Garcia-Moreno, 2002) also contain relevant recommendations. The chapter on intimate partner violence identified several areas in which future research is needed. These include the following:

1. studies that examined the prevalence, consequences, and risk and protective factors of violence by intimate partners in different cultural settings using standardized methodologies;
2. longitudinal research on the trajectory of violent behavior by intimate partners over time, examining whether and how it differs from the development of other violent behaviors;
3. studies that explore the impact of violence during the course of a person's life, investigating the relative impact of different types of violence on health and well being, and whether the effects are cumulative.

The chapter on sexual violence (Jewkes et al., 2002) identified these as promising areas for future research:

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1. the incidence and prevalence of sexual violence in a range of settings, using a standard research tool for measuring sexual coercion;
2. the risk factors for being a victim or perpetrator of sexual violence;
3. the health and social consequences of different forms of sexual violence;
4. the factors influencing recovery of health following a sexual assault; and
5. the social contexts of different forms of sexual violence and the relationships between sexual violence and other forms of violence.

All of these recommendations are sensible, although implementing them would require working through a number of knotty conceptual and methodological problems. Moreover, it would be necessary to acquire substantial financial resources and public policy changes to implement these recommendations. However, it has been estimated that intimate partner violence alone costs approximately $5.8 billion each year in the United States (National Center for Injury and Prevention Control, 2003). To the extent that additional funding would improve our understanding of this costly problem, investing in improved surveillance of VAW would appear to be cost effective.

SPECIAL RECOMMENDATIONS FOR SEXUAL ASSAULT

Rape and other forms of sexual assault are more difficult to measure than many other types of violence because of inaccurate stereotypes about rape and women's concerns about what will happen if they disclose incidents to family members, friends, or police (Kilpatrick, 2002; Kilpatrick, Edmunds, & Seymour, 1992; Koss & Kilpatrick, 2001). Notwithstanding these difficulties, considerable progress has been made in the science of screening for histories of sexual violence among adolescent girls and adult women (see Fisher & Cullen, 2000, for a recent review). Particularly with respect to forcible rape experiences, several national studies have documented the feasibility of using state-of-the-art forcible rape screening questions with national probability samples of adult women (Kilpatrick et al., 1992; Resnick, Kilpatrick, Dansky, Saunders, & Best, 1993; Tjaden & Thoennes, 2000), female adolescents (Kilpatrick, Saunders, & Smith, 2003; Kilpatrick et al, 2003), and female college students (Fisher, Cullen, & Turner, 2000; Koss, Gidyez, & Wisniewski, 1987).

At the national level in the United States, most of the data regarding recent rape cases come from two U.S. Justice Department–funded sources: (a) the FBI Uniform Crime Reports and (b) the National Crime Victimization Survey. Unfortunately, both of these sources produce severely flawed underestimates of the number of new cases of forcible rape that occur each year. As

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previously discussed, the FBI UCR uses an antiquated definition of rape that is inconsistent with the criminal codes in most jurisdictions throughout the United States. As demonstrated by the results of the Fisher et al. (2000) study, the sexual assault screening questions used in the National Crime Victimization Survey are substantially less sensitive than those used in the National Women's Study and the National Violence Against Women Survey. Therefore, major improvements in our information about the incidence and prevalence of rape cases each year in the United States could be achieved by making the following changes.

Recommendation 1

The FBI UCR definition of forcible rape should be changed to make it consistent with criminal code definitions in most U.S. jurisdictions. Specifically, the FBI should consider using the NIBRS definition, which is

> the carnal knowledge of a person, forcibly, and/or against that person's will; or not forcibly or against that person's will where that person is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity. (Rantala, 2000, p. 12)

Presumably, the definition of *carnal knowledge* includes cases of forced anal or oral sex. Because most jurisdictions have criminal codes that include these elements of rape, police are already collecting information about crimes that would permit them to use this new definition. Further justification for this recommendation was provided in a well-documented letter to FBI Director Robert S. Mueller, III, dated September 20, 2001, from Carol E. Tracey, executive director, and Terry L. Fromson, managing attorney, Women's Law Project. This letter, which was cosigned by 91 organizations, requested that Director Mueller change the UCR definition of rape to the following: "*Rape:* vaginal, oral, or anal intercourse or vaginal or anal penetration by a perpetrator using an object or body part without freely and affirmatively given consent." This 8-page letter provides detailed documentation of why the current UCR definition of rape is a problem as well as why attempting to address this problem by fully implementing NIBRS is not an adequate solution.

Either the NIBRS or the definition recommended by the 91 organizations (C. E. Tracy & T. L. Fromson, personal communication, September 20, 2001) are much more consistent with state and federal definitions of rape than the current UCR definitions. Using either of these new definitions would yield better data, and implementing a change in the current UCR change

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would not require more than modest resources. In contrast, implementing NIBRS across all U.S. jurisdictions will take decades to accomplish, and it will be extremely costly to implement.

Although there are always those who resist making changes because of reverence for tradition as well as for other reasons, this is one change that is long overdue. Other than bureaucratic inertia, it is difficult to identify a legitimate reason not to make this change in a timely fashion.

Recommendation 2

The National Crime Victimization Survey should change the way it measures rape and sexual assault. Specifically, the Bureau of Justice Statistics should undertake a formal evaluation in which its current rape and sexual assault screening questions are compared with those used in the National Women's Study, National Violence Against Women Survey, and Sexual Victimization of College Women study. Screening questions used in the latter three projects were quite similar and are clearly feasible for use with female adolescents and adults. As previously mentioned, the Fisher et al. (2000) study found these screening questions to be more sensitive than the current national crime victimization survey questions by an order of magnitude of 10 times or more. Changing the National Crime Victimization Survey is admittedly difficult, but its sexual assault screening questions were changed once before in 1992. At the time of that change, a split sample design was used in which half of the sample got the old screening questions and the other half got the new screening questions. This procedure enabled the Bureau of Justice Statistics to calibrate the new with the old screening questions, thereby facilitating calculation of trend data that would otherwise be impossible given the use of new screening questions. A similar procedure could be used should recommended changes in screening questions be made.

Making this change to the National Crime Victimization Survey will be costly and will take some time to implement. However, it is difficult to justify the National Crime Victimization Survey's current measurement of rape and sexual assault given the evidence that other screening questions are more sensitive by a large order of magnitude. The National Crime Victimization Survey is the nation's chief measure of the past year's unreported rapes and sexual assaults. There is little justification for continuing to use screening questions that are not sensitive and fail to detect many cases.

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REFERENCES

Ageton, S. S. (1983). *Sexual assault among adolescents.* Lexington, MA: Lexington Books.

Bachman, R., & Saltzman, L. (1995). *Violence against women: Estimate from the redesigned survey.* Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Boney-McCoy, S., & Finkelhor, D. (1996). Is youth victimization related to trauma symptoms and depression after controlling for prior symptoms and family relationships? A longitudinal, prospective study. *Journal of Consulting and Clinical Psychology, 64*, 1406-1416.

Bureau of Justice. (2002). *Sourcebook of Criminal Justice Statistics* (Appendix 8). Retrieved September 10, 2003, from http://www.albany.edu/sourcebook/1995/app8.html

Bureau of Justice Statistics. (2001). *National Crime Victimization Survey.* Washington, DC: U.S. Department of Justice.

Campbell, J. C. (2000). Promise and perils of surveillance in addressing violence against women. *Violence Against Women, 6*(7), 705-727.

Cantor, D., & Lynch, J. P. (2000). Self-report surveys as measures of crime and criminal victimization. *Measurement and Analysis of Crime and Justice, 4*, 85-138.

Centers for Disease Control and Prevention. (2000). *Building data systems for monitoring and responding to violence against women: Recommendations from a workshop.* Retrieved September 10, 2003, from http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4911a1.htm

Chapman, J. R., & Gates, M. (Eds.). (1978). *The victimization of women.* Beverly Hills, CA: Sage.

DeKeseredy, W. S. (2000). Current controversies on defining nonlethal violence against women in intimate heterosexual relationships. *Violence Against Women, 6*(7), 728-246.

Elliott, D. S., Huizinga, D., & Menard, S. (1989). *Multiple problem youth: Delinquency, substance use, and mental health problems.* New York: Springer-Verlag.

Estrich, S. (1987). *Real rape.* Cambridge, MA: Harvard University Press.

FBI. (2001). *Uniform crime reports: Crime in the United States: 2000.* Washington, DC: U.S. Government Printing Office.

Fisher, B. S., & Cullen, F. T. (2004). Measuring the sexual victimization of women: Evolution, current controversies and future research. *Measurement and Analysis of Crime and Justice, 4*, 317-390.

Fisher, B. S., Cullen, F. T., & Turner, M. G. (2000). *The sexual victimization of women* (NCJ 182369). Washington, DC: National Institute of Justice, Bureau of Justice Statistics.

Fox, B. J. (1993). On violent men and female victims: A comment on DeKeseredy and Kelly. *Canadian Journal of Sociology, 18*, 320-324.

Gelles, R. J., & Cornell, C. P. (1985). *Intimate violence in families.* Beverly Hills, CA: Sage.

Heise, L., & Garcia-Moreno, C. (2002). Violence by intimate partners. In E. G. Krug, L. L. Dahlberg, J. A. Mercy, A. B. Zwi, & R. Lozano (Eds.), *World health report on violence and health* (pp. 149-181). Geneva, Switzerland: World Health Organization.

Jewkes, R., Sen, P., & Garcia-Moreno, C. (2002). Sexual violence. In E.G. Krug, L. L. Dahlberg, J. A. Mercy, A. B. Zwi, & R. Lozano (Eds.), *World report on violence and health* (p. 149). Geneva, Switzerland: World Health Organization.

Kilpatrick, D. G. (2002, January). *Making sense of rape in America: Where do the numbers come from and what do they mean?* Paper presented at the Rape Prevention and Education Program Regional Meeting (Region A), Centers for Disease Control, Atlanta, GA.

Kilpatrick, D. G. (2003, May). *Rationale, methodology, results, use and recommendations.* Paper presented at the Rape Prevention and Education Program, Atlanta, GA.

Downloaded from jiv.sagepub.com at MUSC Library on September 10, 2010

Kilpatrick, D. G., & Acierno, R. E. (2003). Mental health needs of crime victims: Epidemiology and outcomes. *Journal of Traumatic Stress, 16*(2), 119-132.

Kilpatrick, D. G., Edmunds, C. N., & Seymour, A. K. (1992). *Rape in America: A report to the nation*. Arlington, VA: National Victim Center & Medical University of South Carolina.

Kilpatrick, D. G., & Ross, M. E. (2001). Torture and human rights violations: Public policy and the law. In T. Keane, E. Gerrity, & F. Tuma (Eds.), *Mental health consequences of torture* (pp. 317-331). New York: Kluwer.

Kilpatrick, D. G., Ruggiero, K. J., Acierno, R., Saunders, B. E., Resnick, H. S., & Best, C. L. (2003). Violence and risk of PTSD, major depression, substance abuse/dependence, and comorbidity: Results from the National Survey of Adolescents. *Journal of Consulting and Clinical Psychology, 71*(4), 692-700.

Kilpatrick, D. G., Saunders, B. E., & Smith, D. W. (2003). *Youth victimization: Prevalence and implications*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

Koss, M. P. (1985). The hidden rape victim: Personality, attitudinal and situational characteristics. *Psychology of Women Quarterly, 9*, 193-212.

Koss, M. P. (1988). Hidden rape: Sexual aggression and victimization in a national sample of college students in higher education. In A. W. Burgess (Eds.), *Rape and sexual assault* (pp. 3-25). New York: Garland.

Koss, M. P. (1990). The women's mental health research agenda: Violence against women. *American Psychologist, 45*(3), 374-380.

Koss, M. P. (1996). The measurement of rape victimization in crime surveys. *Criminal Justice and Behavior, 23*, 55-69.

Koss, M. P., Gidycz, C. A., & Wisniewski, N. (1987). The scope of rape: Incidence and prevalence of sexual aggression and victimization in a national sample of higher education students. *Journal of Consulting and Clinical Psychology, 55*, 162-170.

Koss, M. P., & Kilpatrick, D. G. (2001). Rape and sexual assault. In T. Keane, E. Gerrity, & F. Tuma (Eds.), *Mental health consequences of torture* (pp. 177-193). New York: Kluwer.

Krug, E. G., Dahlberg, L. L., Mercy, J. A., Zwi, A. B., & Lozano, R. (Eds). (2002). *World report on violence and health*. Geneva, Switzerland: World Health Organization.

Monnier, J., Resnick, H. S., Kilpatrick, D. G., & Seals, B. (2002). The relationship between distress and resource loss following rape. *Violence and Victims, 17*, 85-91.

National Center for Injury Prevention and Control. (2003). *Costs of intimate partner violence against women in the United States*. Atlanta, GA: Centers for Disease Control and Prevention.

National Incident-Based Reporting System. (2001). Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Rantala, R. (2000). *Effects of NIBRS on crime statistics* (Special Report, NCJ178890). Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Resnick, H. S., Acierno, R. E., & Kilpatrick, D. G. (1997). Health impact of interpersonal violence. Section II: Medical and mental health outcomes. *Behavioral Medicine, 23*(2), 65-78.

Resnick, H. S., Kilpatrick, D. G., Dansky, B. S., Saunders, B. E., & Best, C. L. (1993). Prevalence of civilian trauma and PTSD in a representative sample of women. *Journal of Consulting and Clinical Psychology, 61*(6), 984-991.

Saltzman, L. (Eds.). (2000a). Building data systems for monitoring and responding to violence against women, Part I. *Violence Against Women, 6*(7), 699-804.

Saltzman, L. (Eds.). (2000b). Building data systems for monitoring and responding to violence against women, Part II. *Violence Against Women, 6*(8), 811-911.

Downloaded from jiv.sagepub.com at MUSC Library on September 10, 2010

Saltzman, L. E., Fanslow, J. L., McMahon, P. M., & Shelley, G. A. (2002). *Intimate partner violence surveillance: Uniform definitions and recommended data elements* (Version 1.0). Atlanta, GA: Centers for Disease Control and Prevention, National Center for Injury and Prevention and Control.

Saunders, B. E. (2003). Understanding children exposed to violence: Toward an integration of overlapping fields. *Journal of Interpersonal Violence, 18*(4), 356-376.

Schnurr, P., & Green, B. (Eds.). (2004). *Trauma and health: Physical health consequences of exposure to extreme stress*. Washington, DC: American Psychological Association.

Skogan, W. G. (1981). *Issues in the measure of victimization* (NCJ 74682). Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Strauss, M. A. (1990a). The Conflict Tactics Scale and its critics: An evaluation and new data on validity and reliability. In M. A. Strauss & R. J. Gelles (Eds.), *Physical violence in American families: Risk factors and adaptations to violence in 8,145 families* (pp. 49-73). New Brunswick, NJ: Transaction Publishing.

Strauss, M. A. (1990b). Measuring intrafamily conflict and violence: The Conflict Tactics Scale. In M. A. Straus & R. J. Gelles (Eds.), *Physical violence in American families: Risk factors and adaptations to violence in 8,145 families (pp. 3-16, 29-47)*. New Brunswick, NJ: Transaction Publishing.

Strauss, M. A., & Gelles, R. J. (1990). *Physical violence in American families: Risk factors and adaptations to violence in 8,145 families*. New Brunswick, NJ: Transaction Publishing.

Tjaden, P., & Thoennes, N. (2000, November). *Full report of the prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey* (NCJ183781). Washington, DC: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice and the Centers for Disease Control and Prevention.

Walker, E. A., Newman, E., & Koss, M. P. (2004). Cost and health care utilization associated with traumatic experiences. In P. Schnurr & B. L. Green (Eds.), *Trauma and health: Physical health consequences of exposure to extreme stress* (pp. 43-69). Washington, DC: American Psychological Association.

Walker, L. E. (1979). *The battered women*. New York: Harper and Row.

Dean G. Kilpatrick, Ph.D., is professor of clinical psychology and director of the National Crime Victims Research and Treatment Center (NCVC) at the Medical University of South Carolina in Charleston. He has been involved in the crime victims' rights field since 1974, when he became founding member of People Against Rape, a Charleston-based rape crisis center. His primary research interests include measuring the prevalence of rape, other violent crimes, and other types of potentially traumatic events as well as assessing the mental health impact of such events. He and his colleagues at the NCVC have conducted extramurally funded studies investigating these topics using national household probability samples of adults and adolescents. His research has been funded by a variety of federal agencies, including the National Institute of Mental Health, National Institute on Drug Abuse, and the National Institute of Justice. He has more than 130 peer-reviewed publications, more than 60 book chapters and monographs, and more than 400 presentations at scientific and professional meetings. He has provided testimony on the topics of rape and sexual harassment to committees of the U.S. House of Representatives and the U.S. Senate.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
"Rape In The United States: The Chronic Failure To Report And Investigate Rape Cases"
September 14, 2010

I want to thank Senator Specter for holding this important hearing to draw attention to the low reporting rates for the crime of rape. Sexual violence destroys lives and communities, and we must do more to prevent it.

Today we will examine disturbing reports that, despite the important progress we have made to ensure justice for rape victims, in too many jurisdictions, this horrific crime goes unreported and its perpetrators are often left unpunished. We must do better to understand why that is, and what we can do to make victims feel safe to come forward and report sexual assault.

Our Nation has made remarkable progress in the last two decades in responding to sexual violence. Today, there is no question that domestic violence and sexual assault are crimes, and we have dramatically improved the support systems for survivors of this abuse. We have responded with better laws, better law enforcement training, and coordinated community support systems. We are improving, but as this hearing makes clear, we must do more.

We recently celebrated the 15th Anniversary of the Violence Against Women Act, a watershed law that changed the way we address sexual violence in our country. I am proud of the work we have done in Congress to improve that law over the years, and I am looking forward to working with Director Susan Carbon of the Office on Violence Against Women and others to make it even stronger as we prepare for reauthorization in 2011.

I am also working hard, along with Senator Klobuchar, Senator Franken, Senator Grassley, and others to improve the Debbie Smith DNA Backlog Reduction Act, which authorizes significant funding to reduce the backlog of untested rape kits, so that victims need not live in fear while kits languish in storage. I have heard from the Justice Department, the states, law enforcement, and victims' advocates that Debbie Smith grants have led to significant and meaningful backlog reduction, and to justice for victims, in jurisdictions across the country. Again, the system is improving, but we can and must do more to ensure that DNA evidence is processed and tested in a timely and efficient manner, and that the perpetrators of these horrific crimes are held accountable for their actions.

It is time to strengthen the steps we take to prevent violence against women and children and its devastating costs and consequences. One important step in reducing this violence is providing the support survivors need to feel safe to come forward and report these crimes. I look forward to hearing from today's witnesses about how we can work together to get to the bottom of this problem. The time to solve this problem is now.

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Hearing before the Senate Committee on the Judiciary
Subcommittee on Crime and Drugs
Dirksen Senate Office Building

Rape in the United States:
The Chronic Failure to Report and Investigate Rape Cases
September 14, 2010

Testimony from Police Commissioner Charles H. Ramsey
Philadelphia Police Department

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Good Morning Chairman Specter, Senator Graham, and invited speakers and guests. Thank you for this opportunity to appear before you today to discuss this critically important issue. Having had 42 years in law enforcement, I have witnessed many important changes in how rape and sexual assault are reported and handled by police departments in three cities: first in Chicago for 30 years, then as Chief of the Metropolitan Police Department here in Washington, DC, for nine years, and now as Police Commissioner in Philadelphia. Additionally, I currently serve as the President of the Police Executive Research Forum (PERF), the First Vice President of Major Cities Chiefs and as a member of the executive committee of the International Association of Chiefs of Police.

I'd like to begin by thanking a trusted colleague, tireless advocate and friend in Carol Tracy, who testified before me and summarized the incidents in Philadelphia in 1999 that led to dramatic changes in the Department. I firmly believe that partnerships between law enforcement agencies and our social service, prevention and victim advocacy counterparts are absolutely essential in addressing some of the most pressing issues that confront us.

I will be brief in this testimony, and share with you the most relevant lessons learned from our history in the Philadelphia Police Department of how rape has been reported and investigated. The deliberate downgrading of rape cases in the Philadelphia Police Department in the late 1990s, brought to light by the excellent investigative work of the *Philadelphia Inquirer*, exposed a widespread hidden practice. There was no one person, or unit responsible**; it was a pervasive and systemic failure.** Consequently, it took a comprehensive and relentless approach to address this failure. Under then Police Commissioner, John Timoney, many important corrective actions were taken at all levels: from training, report writing and interviewing, to coding and follow-up investigation. It also required changing leadership, adjusting staffing levels, accepting oversight and establishing partnerships with advocacy groups.

The Department has had the same commander of the now Special Victims Unit (SVU), since the year 2000, at which time a number of seasoned investigators were also transferred into the unit to increase our staffing levels. Our partners have also remained in their positions in the advocacy groups. Carol Tracy has been with the Women's Law Project since these changes were implemented, and once a year, she and her peers from other organizations, come to the SVU office and pore over between 300 to 400 cases selected at random. They have complete access to our files and our personnel. This is just the formal component of their annual review, but on a daily basis, these organizations are in constant communication with police personnel from SVU. They have established a long-term relationship, one which has built trust and confidence in what was a broken system. I credit all the personnel in SVU and our advocacy groups for their persistence and their dedication to

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their jobs, and to the thousands of people they've helped deal with such painful acts of violence and trauma. I cannot overstate the importance of this collaboration in charting a new course of direction in how rape was, and is reported and investigated by our Department.

The Philadelphia Police Department put measures into place that thus far have been helpful in re-establishing trust, and promoting a culture that treats victims of rape with dignity and respect. There will always be ways in which we can better the process, and we are committed to continuous improvement as a core principle for how we will move into the future. It's now been over ten years since these practices have been exposed, and seemingly, we have sustained these changes for the better. Sustainability cannot be overlooked as we discuss implementing long-term procedural and cultural changes.

Fostering collaboration amongst governmental organizations, police departments, courts, and advocacy and prevention groups is critical in ensuring that we work with victims of rape and sexual assault in a manner that is compassionate, and under a process that is transparent. We must all be advocates for anyone who has been impacted by this kind of violence. If there are lessons to be learned from our Department, I would urge others to focus on this aspect of how we report and investigate rape and sexual assault. Don't do it alone - Invite your stakeholders to be a part of this process, and work together in treating rape and sexual assault from a holistic perspective. Our partnerships have strengthened every part of the process, from reporting each case of sexual assault, irrespective of the circumstances, to a thorough investigation by well-trained specialized detectives, and finally to working with our medical and mental health providers in minimizing the trauma experienced by victims of the heinous crime.

A crisis is often a catalyst for real and systemic change - such was the case for Philadelphia. Police departments can also learn from each other, and organizations like PERF can facilitate that transfer of knowledge. I am pleased to announce today, as the President of PERF, that we will convene an executive session in early 2011 for police leaders, medical and mental health professionals, and advocacy groups to discuss the current state of sexual assault reporting and investigations. Based on the results of this session, we will make recommendations on how police agencies can partner with their social service and advocacy colleagues, and identify best practices in the investigative process.

Thank you for your time here today, and for convening this hearing on an issue that impacts us all. I am happy to answer any questions that the Committee may have.

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NCCD Center for Girls and Young Women

Testimony of
Dr. Lawanda Ravoira, Director
NCCD Center for Girls and Young Women

For the Hearing on
"Rape in the United States:
The Chronic Failure to Report and Investigate Rape Cases"

Before
SENATE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CRIME AND DRUGS

September 14, 2010
2:15 pm
Senate Judiciary Committee Hearing Room
Dirksen Senate Building, Room 226
Washington, DC

Mr. Chairman and distinguished members of the Committee, thank you for inviting the NCCD Center for Girls and Young Women to testify at this important and timely hearing on police response to victims of rape.

In 2006, the National Council on Crime and Delinquency (NCCD) headquartered in Oakland, California with divisions in Wisconsin and Florida, celebrated its 100 year history in promoting effective, humane, fair, and economically sound solutions to criminal justice problems. Located in Jacksonville, Florida, the NCCD Center for Girls and Young Women is guided by the courageous life experiences of girls caught up in the juvenile justice and child welfare systems. We are the passionate voice for activism to ensure equitable, human, and gender-appropriate responses to improve outcomes for girls and young women. Our work focuses on advocacy, systems reform, research, assessment services, staff training, evaluation and the development and implementation of innovative programming and services.

A division of the National Council on Crime and Delinquency - Oakland, California
1022 Park Street, Suite 207 • Jacksonville, FL 32204 • 904.598.0901 fax 598.0902
www.justiceforallgirls.org

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One Young Woman's Story

Gabbie was the daughter of a migrant family living in a remote area in Florida. At age 14, a man came through her bedroom window, threatened her, took her out of the house and raped her.

Left alone in the field, she found her way back home and told her mother. Immediately her mother reported the rape to the local police. The police officer asked Gabbie "What did you do to provoke this?" The trauma that Gabbie suffered and her feelings of shame were magnified by the treatment she received by the police officer.

The officer took a statement and although they kept the case open, little effort was made to find the assailant. Gabbie was not referred to the local sexual assault treatment services or to any counseling program for support. She was simply sent home with her mother.

She was terrified to sleep in her bedroom. For months she slept with her mother. She would not leave the house and was afraid to go to school. As a result of missing school, she was charged with truancy.

After a couple of months, her mother sent her back to her room to sleep. When everyone went to bed, Gabbie would get up and sleep in the hallway on the floor outside of her mother's bedroom. She simply refused to go to school or out of the house.

Several months passed and she was raped again. The man returned to her home and entered through her bedroom window. Again, he threatened her and took her out of the house and raped her in the nearby fields. Another police report was made and this time she was referred to a local day treatment and educational program for girls.

She shared that she could not go to school because "he knows what I look like" and "I don't know who he is." "He could be looking at me and I don't know what he even looks like."

Gabbie is the marginalized population – daughter of a poor, minority, migrant family. She was living in substandard housing and her family was making a living picking vegetables in the fields in southwest Florida. Gabbie was fortunate to have a mother who reached out on her own to get help for her daughter. The family stopped going to the police because when they reported the crimes, it was Gabbie who was treated as the criminal.

The staff shared that Gabbie was the classic case of post traumatic stress disorder. She was afraid of being alone—or going out into the community. She had panic attacks and was often depressed and hopeless. In the safe environment of the small all girls' school, Gabbie found a safe place to heal. The tragedy of Gabbie's story is two fold: the trauma that she endured – not once but twice – and the failure of law enforcement to protect her.

"He knows what I look like" and "I don't know who he is." "He could be looking at me and I don't know what he even looks like."

Who does rape affect?

Fact: Nearly 18% of women will experience a rape or attempted rape in their lifetime.[1] That's one in six women (who are wives, partners, daughters, granddaughters, nieces, sisters, friends). Rape is a violent crime that does not discriminate. Young girls and women are all vulnerable to rape regardless of socioeconomic status, race/ethnicity. Survivors of sexual assault—homeless or housed, poor or wealthy—live with shame and fear.[2]

Fact: More than half of rape victims are raped before their 18th birthday. Girls ages 16-19 are 4 times more likely than the general population to be victims of rape, attempted rape, or sexual assault.[3] Early victimization can make women more vulnerable to sexual re-victimization (twice as likely to report being raped as adults).[4]

Fact: In public schools across the country, there were over 4,000 incidents of rape or sexual assault in one year.[5] Young victims of violence experience obstacles to seeking help including distrust of adults, knowledge of resources, pressure from peers or parents.

Fact: One in six women in college report sexual assault on campus. Alcohol played a role According to the National College Health Assessment, 2% of female college students reported non consensual sexual penetration in the past 12 months.[6]

For college students, the trauma of assault can be compounded by a lack of support from their college. Many times there will be no disciplinary action taken against the assailant who is able to graduate. Many times, victims will drop out of school. One in three completed rapes take place on campus, either in the victim's dorm/residence, another's residence, or in a fraternity.

Fact: Intimate/Acquaintance/Stranger
Approximately 80% of rape and sexual assaults are committed by someone known to the victim. Approximately **19%** of rape victims are raped by their husbands or boyfriends, **29%** by an acquaintance, and **16%** by a relative.[7]

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Fact: For every 100 rape cases reported to law enforcement, 33 are referred to prosecutors, 16 are charged and moved into the court system, and about 12 end up in successful conviction.[8]

Marginalized Groups

There is not enough research from the missing voices/experiences of highly marginalized and vulnerable victims including immigrants, rural area survivors, LGBTQ victims, survivors with disabilities, homeless, women living in prisons/institutions, and women in the military[9] to grasp the severity of disillusionment with the criminal justice system's response.

Rape of women in prison Approximately 200,000 women are incarcerated in the United States (in federal, state, local and immigration detention settings). Women make up about 10 percent of the total prison population. In 2004, Amnesty International reported a total of 2,298 allegations of staff sexual misconduct against both male and female inmates were made. Over half of these cases reported involved women as victims. This is especially troubling since women make up 10 percent of the prison population, yet comprise over 50% of the reported sexual misconduct cases. Studies suggest that the prevalence may be higher since many women did not report sexual misconduct and assault. It can vary from institution to institution, but in the worst prison facilities in the United States, one in four female inmates are sexually abused in prison.[11]

"I am 7 months pregnant [and] I got pregnant here during a sexual assault. I have been sexually assaulted here numerous times! The jailers here are the ones doing it!"

The power dynamics in prison, detention centers and youthful offender programs severely disadvantage the women and girls. They are often at the mercy of the guards and correctional staff. Staff have unlimited access to the living environment, including where they sleep and where they bathe. Likewise, access to outside support is generally limited and in some cases non-existent. This imbalance of power creates a climate for sexual assault and victimization. Sexual abuse in prison can range from forcible rape to the trading of sex for certain privileges. Some may argue that trading sex for privileges is consensual, but the power disparity makes the idea of "consent" implausible. In fact, all 50 states have laws that make any sexual contact between inmates and correctional officers illegal, "consensual" or not.

Prostitute rape is rarely reported, investigated, prosecuted or taken seriously. In one study of 130 prostitutes in San Francisco, 68% reported having been raped since entering prostitution, with the majority of them experiencing rape several times.[12] The majority of prostitutes report childhood histories of sexual abuse and experiencing long-term trauma.

Another marginalized group are ***homeless women*** who are more likely to experience violent sexual assaults. Forty-three percent of homeless women report sexual abuse in childhood and 63% reporting intimate partner violence in adulthood.[13] Thirteen percent of homeless women reported having been raped in *the past 12 months* and half of these were raped at least twice.[14] In addition to social alienation and isolation, homeless women face even greater barriers and access to resources including legal, mental health, and medical services.[15]

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Impact of Rape on Her Life

The statistics do not tell the complete story. We know that sexual violence actually happens a lot more often than it is reported. Many survivors do not report the sexual violence for various reasons, including fear of future violence, fear of not being believed, social stigma and personal shame.

Rape is one of the most severe of all traumas, causing multiple short and long-term negative consequences and outcomes for women.[16] PTSD is the most common mental health problem[17] and the majority of women report fear and/or anxiety (73-82%).[18] Other common mental health problems include suicidal ideation, depression, emotional detachment, sleeping problems and substance use.[19] Moreover, women who experience rape are at an increased likelihood of repeated sexual victimization.[20] In addition to psychological problems, there are also physical manifestations of rape. In fact, women who have been raped, have poorer health outcomes.[21] Typical physical symptoms following rape may include abdominal pain, sleeping problems, sexual symptoms and problems, such as pain during intercourse, gastrointestinal symptoms, and urinary pain.[22] In sum, there are a host of both psychological and physical problems that plague female survivors of rape and while these problems subside over time, research shows that many have a long-lasting impact and may continue or resurface for years.[23]

Women and girls who are survivors of sexual violence while incarcerated endure serious psychological, physical, and spiritual trauma. If this trauma is not addressed, the survivor may develop long-term mental health issues, including post-traumatic stress disorder, depression, suicidal behaviors, and substance abuse issues. Research shows that rape is a shared crisis that negatively impacts not only women, but their loved ones: their partners, parents, friends and children.[25] The overwhelming majority of survivors of rape disclose to family and friends (59-91%)[26] as opposed to formal agencies (2-20%).[27] Given that women often talk to their loved ones about rape and that this disclosure creates significant stress on family and friends who may not be equipped to handle the trauma, the impact of rape has far-reaching implications.

"Getting raped destroys you from the inside out, and it takes a part of you and puts it where you can't reach it."[24]

Quote from a survivor of sexual violence while incarcerated

Research has documented that rape has a damaging effect on women's relationships with their partners.[28] For example, as a response to rape, women often reach out to their male partners for protection and to reaffirm their desirability.[29] It is common for male partners, though, to report that survivors experience difficulties surrounding sexual desire and functioning, which women may have a tendency to minimize.[30] While women often describe their male partners as supportive, the male partners themselves, typically do not see themselves as being supportive enough which stems from not knowing how to be helpful and from communication difficulties.[31]

Miscommunication and other communication problems occur with partners, parents and friends and can last for at least the first year after the rape.[32] Loved ones are often afraid to say the wrong thing or express their own feelings about the rape.[33] Regarding friendships, while there is the potential for relationships to improve after traumatic events, many woman and their friends report that rape disclosure was the source of negative changes in the friendship where friends avoid the survivor or even end the friendship.[34] In general, partners, parents and friends report feeling shocked, helpless, angry, and frustrated over not knowing how to help the survivor and fear for their continued safety.[35]

There is a significant impact on the relationships mothers form and maintain with their children following mothers' sexual assault during adulthood, which is not the case for mothers who have been sexually abused as children.[36] Given the psychological and physical impact of rape, a woman's capacity to provide nurturing, care and emotional closeness may be challenged after sexual assault. In fact, research shows that regardless of race, age (mother's and child's), socioeconomic status, mother's level of substance use, social functioning, PTSD symptoms, child behavioral problems, and other mother-child

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and demographic factors, women who had been raped had poorer parent-child relationships as compared to women who had not been raped.[37] This demonstrates that the impact of rape not only affects survivors, but the next generation of their children.

We are here today because we want to improve the response to rape victims. Rape is the least likely crime to be reported. Research shows that only 1 in 5 adult women will report a rape to police.[38] That means 4 out of 5 women will not contact authorities.

Why?

The National Violence Against Women Survey (NVAWS) found the following reasons provided by rape victims for why they did not report to police: police would not believe me or would blame me (12%), police could not do anything (13%), and too ashamed or embarrassed (18%). In another study, victims stated that they worried about the risk of further harm and distress in making the decision to not report to police.[39] Further, we know that there are differences in "who" is more likely to report to police as well as differences in how they will experience the process. Minority women, victims of low socioeconomic status and those raped by someone they know are at high risk for experiencing difficulties and negative reactions.[40]

We also know that there are police attitudes at play. For example, beliefs such as prostitutes can't be raped , intimate partner violence (IPV) is not as serious as stranger rape,[41] contribute to perpetuating rape myths. Other examples include fitting the description of "real victim" (not under influence of alcohol raped by a stranger) to receive services.[42] Also, the police perception that a victim is less credible if there is no weapon involved, the assault is not quickly reported, or if the alleged perpetrator is an acquaintance[43] comes into play. Other research has found that having prior sexual relationship with the accused or a previous complaint of another rape charge that was not proven were seen as factors that raised investigators' doubts about victims' credibility.[44] This is troublesome given the research evidence that documents high incidences of repeat rape victimization for women who have experienced early sexual assault. It is also troublesome given the prevalence of studies that demonstrate as much as 80% of rapes are committed by someone known to the victim and that control tactics often do not involve weapons.[45]

> *"I am discouraged by the lack of response of law enforcement for the past 25 to 30 years. We encounter patrol officers and sex crime investigators throughout the state who continue to believe that if alcohol is involved or if it is an acquaintance rape - that the rape is not real. We have encountered this attitude for 30 years. There are notable exceptions where this is not the case and law enforcement officers are trained in how to be victim focused in their response".*
>
> *- Advocate*

The Impact of How Police Respond and Risks of Secondary Victimization

When women make a decision to go to the police to report the rape, the response by police is critical given that police officers have the discretion to initiate an investigation, make an arrest, etc. While assessing the "merits of a case," there are police practices which can exacerbate victims' trauma. In the context of police investigative practices, the following may occur:

Questions by Police: The range of questions may include: Victim's attire, use of alcohol or drugs, reason for being at certain location at time of rape, degree of resistance, prior sexual encounters with

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alleged assailant, and whether she "led on" the alleged assailant.[46] Other questions such as, "did you go to his room?" and "were you alone with him in his room?" can make a victim who was raped by a man feel it was her fault. If this is not done in a sensitive way, the victims' experience is not validated or she may feel she used poor judgment, should have fought back, or actually deserved what happened to her.

Expectations to recount the events multiple times to multiple people: Aside from having to tell the story to different people (patrol officer, detective, prosecutor, etc), law enforcement may ask for the details over and over to check for consistency. This can be emotionally unsettling and cognitively challenging (especially when concentration and memory are affected by trauma).[47] Some research has found that police officers expect more consistency in a rape complainant's story than from victims of any other crime.[48]

Discouraged from proceeding with report or prosecution: Law enforcement may actively discourage victims from reporting, sometimes portraying the personal costs to pursue prosecution like repeated court trips, or cross-examination that can be humiliating.[49] Police may refuse or be reluctant to take the report. For example, a police officer may tell a victim of acquaintance rape that because she "was invited to go to his house", that it now becomes a case of "he said/she said," where they don't have a case. They may also tell a victim that the case is not serious enough to pursue. When police are concerned with the prosecuting outcome instead of validating the victim, this can feel like re-victimization.

Threatening: Police may threaten a victim about charges being brought against them if at some point doubt emerges about the accuracy of their reporting/claims.

"The most egregious thing that continues to happen is that survivors are asked to sign a waiver of prosecution when it is an acquaintance rape, which means the case does not even go to the State Attorney for review. Police officers tell victims that an acquaintance rape is hard to prosecute and that there is not much of a case. This is inappropriate and is done when the survivor is going through the physical examinations and interviews. What it means is that they [police] do not know how to conduct the investigation." – Advocate

Mia's Story

A mother of two young children was raped by two men. She made the report to the police and the two assailants were arrested. She was at the police station and as the investigation continued well into the early morning, the young woman became distraught and was worried about her two children waking up and her not being at home. She expressed this concern and kept asking when she could go home to be with her children. "I need to go home." She was confused after the trauma and desperately wanting to be with her children. The police officer handling the case told her – "here is the deal – if you want to go home all you have to do is say "nothing happened". It was late, she wanted to be home with her children. She had been there for hours – and she said "fine, nothing happened." At that moment, they handcuffed her and arrested her for filing a false police report. She is now in jail. This is a woman who did not have an advocate with her to help navigate the process following her assault. Once this came to the attention of the sexual assault advocates, she was assigned an advocate who is securing the services of an attorney to represent her in court. The rape recovery team is working with a psychiatrist to secure pro bono services for serving as an expert witness to explain the confusion that happens as part of PSTD following this type of acute trauma.

Secondary victimization

The risks of negative reaction/disbelief by the police may have a secondary victimization effect. Re-victimization occurs when the police or others blame or stigmatize victims, causing additional trauma after the rape itself,[50] sometimes referred to as the "second rape."[51] This secondary victimization impacts her mental health. As a result of contact with legal system, 87% of survivors reported they felt bad about themselves, depressed (71%), violated (89%), distrustful of others (53%), and reluctant to seek further help (80%).[52] Most striking, it was victims of non-stranger rape whose cases were not prosecuted who experienced the highest PTSD.[53] Women should not feel "as if it is up to them to persuade the police of the genuineness of their allegation before an investigation proceeds." They should not feel that the police is "trying to catch them out, to see if they [are] lying." And women should not be expected to display "tears

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and hysterical behavior" to conform to perceptions of what some might think a woman who has just been raped *should* appear.[54]

Reactions of police response by victims of sexual assault

In the National Violence Against Women Survey, the reactions/results of police response for the 141 women who reported their rape to police are expressed below:[55]

76% took report

43% detained perpetrator

33% referred case for prosecution (significant higher for intimate)

35% referred victim to victim services (significant higher for intimate)

32% gave victim advice (significant higher for intimate)

10% did nothing

Recommendations

The Center calls for critical examination of police culture and practice in order to improve the responses to victims and survivors of sexual violence and abuse and to prevent further trauma. Even when victims and police officers agree on what happened (offered services, interactions), there is a disconnection between how rape survivors feel after these experiences and how officers perceive their actions affect levels of distress.[56] Law enforcement agencies can expand their efforts to assist rape victims and be mindful of practices that exacerbate trauma. Police officers can improve current practices to make the reporting and prosecuting experience worthwhile. Further, current training and expectations, agency pressures on police officers to treat the victim as a witness to the crime in order to be able to "build a good case" can be contradicting and hurtful to victims of sexual assault. Improving the response to rape victims/survivors requires addressing some of the underlying social practices (e.g., rape myths) so that victims can trust and openly participate in a process that can begin JUSTICE and HEALING.

Given the chronic failure to report and investigate rape, we need to make changes and we can draw from lessons learned from other legislation regarding rape. In particular, The Prison Rape Elimination (PREA) Act of 2003, which was unanimously passed by Congress in 2003, can serve as a model for this work. PREA specifically applies to incarcerated persons in U.S. correctional institutions including federal prisons, state prisons, jails, private facilities, lock-ups, juvenile facilities, and immigration detention centers. The law not only addresses rape but also applies to multiple forms of sexual violence, including coercion by staff or other incarcerated people, which is critical, considering strict definitions of rape do not include many of the sexual violations people experience. While PREA addresses rape and sexual violence for incarcerated populations, many of the elements are applicable for all victims.

There are four key recommendations drawn from The National Prison Rape Elimination Commission (NPREC), the U.S. bipartisan panel established by the 2003 Prison Rape Elimination Act,[57] which can be applied to rape victims/survivors in general to help improve responses to rape, which are listed below.

1. **Developing national standards to detect, prevent, reduce, and address rape/sexual violence.**
   a. There should be guidelines for how to address the chronic failure of investigating and reporting rape. States and local jurisdictions should be able to look to national standards to guide their practices. Similarly, there should be consequences for police officers who unfairly detain and treat victims of sexual violence as criminals.

   b. There should be specialized prevention efforts and responses for women who are repeat victims of sexual victimization.

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c. More research is needed on marginalized and often invisible women. Special efforts should be made to detect particularly at-risk populations such as minors, LBGTQ, immigrants, prostitutes, and homeless women.

2. **Collecting and disseminating information about the prevalence of sexual assaults and the impact of police practices.**
   a. National data collected regarding rape prevalence should be used for public education and prevention efforts.

   b. Information regarding the impact of police practices should be disseminated to the public.

3. **Disseminating information on effective models such as the Philadelphia Police Department where systemic changes have been instituted.**
   a. Research should evaluate models of police practices for effectiveness.

   b. Models found to be effective at responding to victims/survivors as well as providing needed evidence for rape cases should be used to exemplify best practices.

4. **Providing funding to help states implement the standards and to support government agencies and non-profit organizations research the issue and develop training and public education.**
   a. Police officers should explain/warn/prepare victims about the type of questions they need to ask and the reasons for them. Similarly, only questions that are relevant should be asked.

   b. Police should offer the support of a victim advocate.

   c. More research on understanding minority women's experiences with rape as well as other marginalized groups and implications for training and resources.

   d. Only police officers trained to investigate rape cases should take the report/do the questioning.

Of primary importance are efforts to train law enforcement regarding how to respond to victims/ survivors. This recommendation has numerous implications and the potential to create better results:

- Training regarding how to 1) respond more empathically to psychologically distressed rape victims, 2) acknowledge vulnerability and diminished competency of women who were under the influence or drugged---rather than attribute blame, and 3) providing detectives with skills to both support victims and produce stronger statements.
  - Potential result: Police empathy was positively correlated with victims' ratings of likelihood of taking the case to court, and negatively correlated with PTSD severity and shame.[58]
- Holding perpetrators accountable to reduce likelihood of re-offense/re-victimization of same victims or new victims.
  - Potential result: reduce the number of rapes in our country.

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We must make changes in how police respond to rape victims/survivors. We need to develop the necessary tools such as national standards, best practices and effective models in order to train law enforcement. We believe that training police in how to better respond to rape victims/survivors is one of the most important steps we can take in this effort. Police officers hold tremendous power and discretion and their attitudes, beliefs and practices can either support or re-victimize rape victims/survivors. Funding must be put toward these efforts if positive changes which impact every segment of our society, women victims/survivors, their families, partners and children are to occur.

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Endnotes

[1] National Institute of Justice (NIJ) (2006, January). Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey. Washington, DC: Office of Justice.

[2] Goodman, L. (2006, September). *No Safe Place: Sexual assault in the lives of homeless women.* Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Retrieved September 8,2010 from: http://www.vawnet.org.

[3] Rape, Abuse, and Incest National Network (RAINN) http://www.rainn.org/get-information/statistics/sexual-assault-victims.

[4] National Institute of Justice (NIJ) (2006, January). Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey. Washington, DC: Office of Justice.

[5] Violence Against Women Act 2005, Congressional Findings. Section 301 (3).

[6] National College Health Assessment Survey, Executive Summary, Fall 2009 http://www.acha-ncha.org/docs/ACHA-NCHA_Reference_Group_ExecutiveSummary_Fall2009.pdf.

[7] Rape in America: A Report to the Nation. Available at National Victim Center.

[8] Campbell, R. (2008). "The Psychological Impact of Rape Victims" Experiences with the Legal, Medical, and Mental Health Systems, *American Psychologist,* 702-717.

[9] Ibid.

[10] excerpt from a letter from an inmate in a jail in Alabama to Stop Prisoner Rape in PRISON RAPE ELIMINATION ACT: ELIMINATING SEXUAL VIOLENCE IN OREGON'S CORRECTIONAL INSTITUTIONS, June 16, 2009 *Article by Kerry Naughton, www.safetyandjustice.org/new/1417.*

[11] Summer, N, Powerless in Prison: Sexual Abuse Against Incarcerated Women, www.alternet.org/reproductivejustice/73784/page 3; PRISON RAPE ELIMINATION ACT: ELIMINATING SEXUAL VIOLENCE IN OREGON'S CORRECTIONAL INSTITUTIONS, June 16, 2009 *Article by Kerry Naughton, www.safetyandjustice.org/new/1417;* Amnesty International, 2004).

[12] http://womensissues.about.com/od/rapesexualassault/a/Wuornos.htm.

[13] Browne & Bassuk, 1997 as cited in Goodman, L. (2006, September). *No Safe Place: Sexual assault in the lives of homeless women.* Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Retrieved September 8,2010 from: http://www.vawnet.org.

[14] Wenzel, et al., (2000). Antecedents of physical and sexual victimization among homeless women: A comparison to homeless men. *American Journal of Community Psychology,* 28, 367-390.

[15] Goodman, L. (2006, September). *No Safe Place: Sexual assault in the lives of homeless women.* Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Retrieved September 8,2010 from: http://www.vawnet.org.

[16] Campbell, R. (2008). The Psychological Impact of Rape Victims' Experiences With the Legal, Medical, and Mental Health Systems. *American Psychologist*, 702-717.

[17] Campbell, R. & Wasco, S. M. (2005). Understanding rape and sexual assault: 20 years of progress and future directions. *Journal of Interpersonal Violence, 20,* 127-131.; Foa, E. B.,& Rothbaum, B. O. (1998).*Treating the trauma of rape: Cognitive behavioral therapy for PTSD.* New York: Guilford.

[18] Jordan, C.E., Campbell, R., & Follingstad, D. (2010). Violence and Women's Mental Health: The Impact of Physical, Sexual, and Psychological Aggression. Annu. Rev. Clin. Psychol. 2010. 6:607–28.

[19] Jordan, C.E., Campbell, R., & Follingstad, D. (2010). Violence and Women's Mental Health: The Impact of Physical, Sexual, and Psychological Aggression. Annu. Rev. Clin. Psychol. 2010. 6:607–28. Nishith P, Resick PA, Mueser KT. Sleep difficulties and alcohol use motives in female rape victims with posttraumatic stress disorder. *Journal of Traumatic Stress.* 2001;14(3):469–479.

[20] Campbell, R. (2008). The Psychological Impact of Rape Victims' Experiences With the Legal, Medical, and Mental Health Systems. *American Psychologist*, 702-717.

[21] Golding JM: Sexual assault history and physical health in randomly selected Los Angeles women. Health Psychol 13:130-138, 1994; Koss, M. P., Koss, P. G.,& Woodruff,W. J. (1991). Deleterious effects of criminal victimization on women's health and medical utilization. *Archives of Internal Medicine, 151,* 342-347.

[22] Ibid.

[23] Campbell, R. (2008). The Psychological Impact of Rape Victims' Experiences With the Legal, Medical, and Mental Health Systems. *American Psychologist*, 702-717.

[24] PRISON RAPE ELIMINATION ACT: ELIMINATING SEXUAL VIOLENCE IN OREGON'S CORRECTIONAL INSTITUTIONS, June 16, 2009 *Article by Kerry Naughton, www.safetyandjustice.org/new/1417.*

[25] Ahrens, C.E. & Campbell, R. (2000). Assisting rape victims as they recover from Rape: The impact on friends. *Journal of Interpersonal Violence, 15,* 959-986. Campbell, R. & Wasco, S. M. (2005). Understanding rape and sexual assault: 20 years of progress and future directions. *Journal of Interpersonal Violence, 20,* 127-131.; Burge, S. K. (1983). Rape: Individual and family reactions. In C. Figley &H. McCubbin (Eds.), *Stress and the family: Coping with catastrophe* (pp. 103-119). New York: Brunner/Mazel.; Remer, R.,&Elliott, J. E. (1988). Characteristics of secondary victims of sexual assault. *International Journal of Family Psychiatry, 9,* 373-387.

[26] In Ahrens, C.E. & Campbell, R. (2000). Assisting rape victims as they recover from Rape: The impact on friends. *Journal of Interpersonal Violence, 15,* 959-986. This article reviewed the range of how often women disclosed to their family and friends in several studies:(1) George, L. K. , Winfield, I., & Blazer, D. G. *(1992).* Sociocultural factors in sexual assault: Comparison of two representative samples of women. *Journal of Social Issues,* 48, 105-125. *(2)* Golding, J. M , Siegel, J. M., Sorenson, S. B., Burnam, M. A., & Stein, J. A. *(1989).* Social support sources following sexual assault. *Journal of Community Psychology,* 17, 92-107.. (3) Ullman, S. E. (1996). Do social reactions to sexual assault victims vary by support provider? *Violence and Victims, 11,* 143-156.

[27] In Ahrens, C.E. & Campbell, R. (2000). Assisting rape victims as they recover from Rape: The impact on friends. *Journal of Interpersonal Violence, 15,* 959-986. This article reviewed the range of how often women disclosed to formal agencies in seven several studies: (1) Binder, R. L. *(1981).* Why women don't report sexual assault. *Journal of Clinical Psychiatry,* 42, 437-438. *(2)* Brickman, J., & Briere, J. (1984). Incidence of rape and sexual assault in an urban Canadian population. International Journal of Women's Studies, 7, 195-206. (3)George, L. K. , Winfield, I., & Blazer, D. G. *(1992).* Sociocultural factors in sexual assault: Comparison of

two representative samples of women. *Journal of Social Issues,* 48, 105-125. *(4)* Golding, J. M , Siegel, J. M., Sorenson, S. B., Burnam, M. A., & Stein, J. A. *(1989).* Social support sources following sexual assault. *Journal of Community Psychology,* 17, 97-107. *(5)* Koss, M. P. , Dinero, T. E., Seibel, C. A., & Cox, S. L. (1988). Strang and acquaintance rape. Psychology of Women Quarterly, 12, 1-24. (6) Russell, D.E.H. (1982). The prevalence and incidence of forcible rape and attempted rape of females. Victimology: An International Journal, 7, 81-93. (7) Ullman, S. E. (1996). Do social reactions to sexual assault victims vary by support provider? *Violence a Victims, 11,* 143-156.

[28] Emm, D., & McKenry, P. C. (1988). Coping with victimization: The impact of rape on female survivors, male significant others, and parents. *Contemporary Family Therapy, 10,* 272–279.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Ahrens, C.E. & Campbell, R. (2000). Assisting rape victims as they recover from Rape: The impact on friends. *Journal of Interpersonal Violence, 15,* 959-986. Emm D., & McKenry, P. C. (1988). Coping with victimization: The impact of rape on female survivors, male significant others, and parents. *Contemporary Family Therap 10,* 272–279.

[33] Ibid.

[34] Ibid.

[35] Ahrens, C.E. & Campbell, R. (2000). Assisting rape victims as they recover from Rape: The impact on friends. *Journal of Interpersonal Violence, 15,* 959-986. Emm D., & McKenry, P. C. (1988). Coping with victimization: The impact of rape on female survivors, male significant others, and parents. *Contemporary Family Therap 10,* 272–279. Smith, M. (2005). Female sexual assault: The impact on the male significant other. *Issues in Mental Health Nursing, 26,* 149-67.

[36] Reid-Cunningham, A.R. (2009). Parent—Child Relationship and Mother's Sexual Assault History. *Violence Against Women, 15,* 920-932.

[37] Ibid.

[38] National Institute of Justice (NIJ) (2006, January). Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey. Washington, DC: Office of Justice.

[39] Campbell, R. (2008). The Psychological Impact of Rape Victims" Experiences with the Legal, Medical, and Mental Health Systems, *American Psychologist,* 702-71

[40] Ibid.

[41] Dellinger Page, A. (2007). Behind the Blue Line: Investigating Police Officers' Attitudes Toward Rape. Journal of Police Crim Psych, 22, 22-32.

[42] Campbell, R. (2008). The Psychological Impact of Rape Victims" Experiences with the Legal, Medical, and Mental Health Systems, *American Psychologist,* 702-71

[43] Estich, 1987; Lafree,1989 ; Madigan and Gamble, 1991.

[44] Jordan, J. (2004) **Beyond belief?** Police, rape and women's credibility, *Criminal Justice* Vol: 4(1): 29–59; quote page 33.

[45] Koss, M. P., Abbey, A., Campbell, R., Cook, S., Norris, J., Testa, M., et al. (2007). Revising the SES: A collaborative process to improve assessment of sexual aggres and victimization. *Psychology of Women Quarterly, 31,* 357– 370.

[46] Maier, S. (2008). "I have heard horrible stories..." Rape Victim Advocates' Perceptions of the Revictimization of Rape Victims by the Police and Medical Systen *Violence Against Women,* Vol 14, 7, 786-808.

[47] Halligan, S. L., Michael, T., Clark, D. M., & Ehlers, A. (2003). Posttraumatic stress disorder following assault: The role of cognitive processing, trauma memory, ar appraisals. Journal of Consulting and Clinical Psychology, 71, 419–431.

[48] Galton, 1975 as cited in Dellinger Page, 2007. Behind the Blue Line: Investigating Police Officers' Attitudes Toward Rape. Journal of Police Crim Psych, 22, 22-3

[49] Campbell, 2008; Campbell, R., & Raja, S. (2005). The sexual assault and secondary victimization of female veterans: Help-seeking experiences in military and civ social systems. Psychology of Women Quarterly, 29, 97–106.; Filipas, H. H., & Ullman, S. E. (2001). Social reactions to sexual assault victims from various suppo sources. Violence & Victims, 16, 673–692.

[50] Maier, S. (2008). "I have heard horrible stories..." Rape Victim Advocates' Perceptions of the Revictimization of Rape Victims by the Police and Medical Syster Violence Against Women, Vol 14, 7, 786-808.

[51] Campbell, R. (2008). The Psychological Impact of Rape Victims" Experiences with the Legal, Medical, and Mental Health Systems, American Psychologist, 702-7

[52] Campbell, R. (2005). What really happened? A validation study of rape survivors' help-seeking experiences with the legal and medical systems. Violence & Vict 20, 55–68.

[53] Campbell, R., Barnes, H. E., Ahrens, C. E., Wasco, S. M., Zaragoza-Diesfeld, Y., & Sefl, T. (1999). Community services for rape survivors: Enhancing psychological wellbeing or increasing trauma? Journal of Consulting and Clinical Psychology, 67, 847–858.

[54] Jordan, J. (2004) **Beyond belief?** Police, rape and women's credibility, Criminal Justice Vol: 4(1): 29–59; quote page 33.

[55] National Institute of Justice (NIJ) (2006, January). Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Wom Survey. Washington, DC: Office of Justice.

[56] Campbell, R. (2005). What really happened? A validation study of rape survivors' help-seeking experiences with the legal and medical systems. Violence & Vic 20, 55–68.

[57] **PRISON RAPE ELIMINATION ACT: ELIMINATING SEXUAL VIOLENCE IN OREGON'S CORRECTIONAL INSTITUTIONS, June 16, 2009** Article by Kerry Naug www.safetyandjustice.org/new/1417.

[58] Maddox, L., Lee, D. Barker, C. (2010). Police Empathy and Victim PTSD as Potential Factors in Rape Case Attrition, *Journal of Police and Criminal Psychology.*

SARA REEDY – WRITTEN TESTIMONY

On July 14, 2004, I was working at 3-11 p.m. shift at the Cranberry Gulf Station on Rt. 19, by myself. At about 10:40 p.m., a man came into the store. He proceeded to walk through the store and then approached the counter, where he pulled a gun out and pointed it at me. He demanded that I sit on the floor in the corner and he came behind the counter where the register was located. He questioned me about how to open the register drawer. After removing the cash, he came and stood directly in front of me where he held his gun to my left temple and demanded that I give him oral sex and saying "if you don't swallow then I will shoot you." After the assault, he told me to go into the back office and rip out the phone lines, and then said to wait in the back office for 5 minutes after he left.

Following the assault, I went next door to Jordan's, an automotive shop. I had one of the employees call 911 and report the crime. I stayed at the shop where several officers showed up, and I gave them descriptions of the attacker and my account of the assault. Shortly afterward, I was taken to Cranberry Passavant, where I first met Detective Evanson.

When I arrived in the emergency room, I was put in a small office, where I begin to retell the night's events to Detective Evanson. At one point he asked me how many times a day I used dope/heroin. I was then soon moved to an examination room. Detective Evanson came inside the room several different times asking me to retell the attack and soon his attitude became very aggressive towards me. He asked me countless times where I had put the money/ where was the money. He told me if I confessed things would go a lot easier for me. At one point I got very upset and was crying and he told me that my "tears would not save me."

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I stayed at the hospital for three hours before I was allowed to leave to go home.

The next day, I went to the Cranberry police station with my mother and step-father to give a written statement as asked by Detective Evanson. When I arrived at the police station, I was put in a small conference room by myself to write my statement and Detective Evanson took my parents into another room where he questioned them about me. After finishing my written statement, Detective Evanson came into the room and began to question and accuse me about the theft. At one point I responded that I just wanted it all to go away.

After only meeting Detective Evanson two times, I had lost hope of my attacker being caught because of Detective Evanson's unwillingness to believe my story.

Two months after I was assaulted, another woman was sexually assaulted within two miles of my attack. Detective Evanson was assigned to the case. This woman gave almost the same exact description of her attack and his M.O. as I had. Unfortunately, Detective Evanson was unable or just refused to make the connection between the two assaults, because he still accused me of fabricating my story.

Detective Evanson even showed up at my residence where he called a marked police car for backup. He stood outside my house asking me to change my written statement and to confess to the crime and they would go easy on me. After almost 45 minutes at my house, the only thing Detective Evanson managed to do was embarrass me in front of my neighbors and re-victimize me.

On Sunday, January 14, 2005, a warrant for my arrest was issued for theft, receiving stolen property and filing a false police report. On Thursday, January 18, I went to the Cranberry magistrate and turned

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myself in. I was given a $5,000 straight cash bond because according to Detective Evanson I was a flight risk. I spent the next five days in jail waiting for a bond reduction hearing and bondsman so I could be released. This all happened while I was four months pregnant with my first child.

While awaiting trial, I had contacted a state wide tip line for a serial rapist. I talked to an officer and made him aware of the fact that I was assaulted and that I believed it was the same man they were looking for. I also explained that I reported the crime and my complaint was not taken seriously and I was arrested for the crime.

Over 13 months after I was assaulted, a state wide search for a serial rapist ended. A man by the name of Wilbur Brown was caught in the act of sexually assaulting a gas station attendant in Brookville. After being placed under arrest, Wilbur Brown confessed to twelve different sexual assaults. One of those assaults happened to me.

Thanks to a local news reporter, I was notified of that fact. I was able to call my lawyer who in return called Detective Evanson who confirmed that there was a confession and my charges would be dropped.

After this experience, it left me concerned if I would ever be able to rely on an officer to do his job. Because of Detective Evanson's uncooperative attitude and unwillingness to believe me, the victim, a serial rapist was allowed to continue attacking and assaulting other women.

I filed a lawsuit against Detective Evanson and other as the result of their treatment of me. Attached is an opinion issued by the 3rd Circuit Court of Appeals in my case on August 2, 2010. This opinion further details the facts and legal issues in my case.

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-2210

SARA R. REEDY,
Appellant

v.

FRANK S. EVANSON, individually and in his official capacity as a Police Officer of the Township of Cranberry; STEVE MANNELL, individually and 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 of the Township of Cranberry

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On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 06-cv-01080)
District Judge: Honorable David Stewart Cercone

Argued March 11, 2010

64687.169

Before: BARRY, JORDAN and VAN ANTWERPEN,
Circuit Judges.

(Filed: August 02, 2010)

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Counsel for Non Party Amicus Appellant

OPINION OF THE COURT

JORDAN, *Circuit Judge.*

While working as a cashier at a convenience store, nineteen-year-old Sara R. Reedy was sexually assaulted and robbed at gunpoint by a serial sex offender. She reported the crime to the police within minutes, subjected herself to a rape kit examination, and gave detailed and consistent statements to law enforcement officers and hospital staff. However, Detective Frank Evanson of the Cranberry Township, Pennsylvania Police Department, the lead investigator assigned to Reedy's case, believed that Reedy had fabricated the incident to cover up her own theft of cash from the convenience store. Approximately three months later, Evanson also became the lead investigator on another sexual attack that was substantially similar to the assault on Reedy and that Evanson knew was suspected to be the work of a serial rapist. Six months after the assault on Reedy, Evanson filed a criminal complaint against her, charging her with falsely reporting a crime, theft, and receipt of stolen property. Reedy spent five days in jail. The charges against her were dropped only when the serial rapist was captured and confessed to assaulting her, to committing the theft, and to committing the other sexual assault investigated by Evanson.

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Reedy later commenced this suit in the United States District Court for the Western District of Pennsylvania under 42 U.S.C. § 1983 against Evanson and another Cranberry Township Police Officer, Kevin Meyer, and the Township's Public Safety Director, Steve Mannell. She asserted claims of unlawful seizure and unlawful search under the Fourth Amendment, and accompanying state law claims of false arrest, false imprisonment, abuse of process, and intentional infliction of emotional distress. The District Court granted summary judgment to the defendants on all of Reedy's claims, and this appeal followed. For the reasons described below, we will vacate in part, reverse in part, and affirm in part, and will remand the case for further proceedings.

I. Background

A. *The Assault*

Because it is necessary to demonstrate the similarities between the assault on Reedy and the other sexual assault that Evanson was investigating, a graphic description of events is, unfortunately, required.

On July 14, 2004, Reedy was working alone as a cashier at the JG Gulf Station (the "store" or "Gulf Station") in Cranberry Township, located in Butler County, Pennsylvania. At approximately 10:40 p.m., a man later identified as Wilbur Brown entered the Gulf Station. He walked toward the counter where Reedy was standing, lifted his shirt, pulled out a gun, and ordered Reedy to sit on the floor behind the counter while he opened the store's cash register by pushing the "no sale" key.

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Although the store was equipped with a panic alarm button, Reedy did not press it. After Brown removed the money from the register, he ordered Reedy to take off her shirt, which she did. He faced her, stared out the store's window, unzipped his pants, and exposed himself. He then began to sexually assault Reedy, fondling her breasts and forcing her to perform oral sex on him. While she was doing so, he yelled, "Suck my dick and don't bite it or I'll shoot you." (App. at 350.) He also told Reedy to insert her finger into his anus, which she did. Brown then ejaculated in Reedy's mouth and threatened to harm her if she did not swallow all of his semen.

After the assault, Brown ordered Reedy to go to the back of the store, where there was an office that held the Gulf Station's safe. When Brown noticed that the store's safe was partially open, he asked Reedy if there was any money inside, to which she responded that there was. Brown or Reedy[1] then removed two envelopes of money from the safe. Brown next ordered Reedy to disable the telephone, which she did by pulling the lines from the wall. Finally, he ordered Reedy to remain in the back office for a few minutes while he left. He then fled through the front door of the store. After waiting for a short while, Reedy exited through the back door of the store and ran to a neighboring service station for help. One of the employees there called the police to report the robbery and sexual assault.

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[1]It is unclear from the record whether Reedy removed the money from the safe on Brown's command, or whether Brown removed the money himself.

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B. *The Initial Investigation*

Officers from the Cranberry Township Police Force arrived at the scene within minutes, and Reedy's boyfriend, Mark Watt, whom she had called, arrived shortly thereafter. Reedy provided one of the police officers, Charles Mascellino, a detailed description of the assault. She also described her assailant as a white male, approximately 5'6" to 5'7", wearing a blue baseball cap, blue jeans, and blue boxer shorts, and appearing in his mid-30s to early 40s.[2] Reedy was unsure of which direction her assailant went when he left the store, and she could not provide a description of any vehicle he might have used. Reedy was "crying, shaking, talking real loud," and "hysterical" during the interview. (App. at 252 p. 20.) One of the officers offered Reedy the services of a sexual assault

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[2]Reedy's description of her assailant's age is in dispute. The police report indicates that Reedy described her assailant as appearing between 28 and 31 years of age. Similarly, the affidavit of probable cause that Evanson filed against Reedy months later when he charged her with criminal activity (the "Affidavit") also states that Reedy described her assailant as appearing between 28 and 31 years of age. Reedy, however, maintains that she advised the police officers that her assailant was in his mid-30s to early 40s. Moreover, the record shows that in her later statement to a nurse that same night, Reedy described her assailant as appearing to be in his mid-30s to 40s. Drawing all inferences in Reedy's favor, the District Court considered Reedy to have described the assailant as in his mid-30s to early 40s.

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counselor but she refused, stating that she had been sexually abused as a child and knew how to handle the situation. The officers searched the wooded area behind the Gulf Station but could not locate Reedy's assailant. An alert for the suspect was broadcast around the local area. Four fingerprint specimens were taken at the Gulf Station but none of them yielded any useful forensic findings.

C. *The Hospital*

Mascellino took Reedy and Watt to the University of Pittsburgh Medical Center in Cranberry Township, where Reedy underwent a rape kit examination and where she first met Detective Evanson. Evanson was the lead detective assigned to investigate the incident. He had been a police detective for Cranberry Township since 1986 and, by the time of these events, had investigated more than ten rapes in his career. On the night of the incident, Evanson traveled to the hospital, where he introduced himself to Reedy and asked her what happened. She provided an account of the assault that matched in detail what she had told Mascellino. Reedy later said that, after hearing her description of the attack, Evanson asked her how many times she did "dope" each day. (App. at 396.) He then called her a liar and repeatedly accused her of stealing the money from the store. He asked Reedy where she had put the stolen money, to which she responded that she did not know where the money was. When Reedy began to cry under this hostile questioning,

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Evanson told her not to bother, "because [your] tears aren't going to save [you] now."[3] (App. at 398.)

After speaking with Evanson, Reedy provided another full and consistent description of the assault to Mary Beth Farah,[4] the nurse who was treating her and who administered the rape kit. According to Farah's notes from the conversation, Reedy told her that none of the assailant's semen had gotten onto her face and that, during the few minutes she was forced to wait in the back room while her assailant escaped, she gargled with water twice and washed her hands with soap. She also told Farah that Evanson had called her a liar. In sum, by the time the night of the assault was over, Reedy had provided separate, detailed, and consistent accounts of the incident to Mascellino, Farah, and Evanson, and had been accused by Evanson of being a liar and a thief.

During their confrontational conversation at the hospital, Evanson took note of Reedy's physical appearance. He said that her eyes looked dilated and that her speech was slow. According to Evanson, he asked Reedy if she had "consumed prescribed or unprescribed narcotics," to which she responded

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[3]In his deposition, Evanson denied asking Reedy about the location of the money, and said he did not recall making the statement about her tears.

[4]The record and the briefs contain references to both a Mary Beth Farrah and Mary Beth Farah. We have adopted the latter spelling, as used by the District Court.

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she had not. (App. at 351.) Shortly thereafter, Evanson learned that Reedy's urine samples had tested positive for marijuana. He asked Reedy if she had used marijuana recently, and she answered that she had smoked it five or six days ago but had not consumed any other medication. According to Evanson, "[t]hat information led [him] to question [Reedy's] credibility and to ask the hospital to test for drug usage ... blood samples that had been taken [from Reedy] ... as part of the 'rape kit' ... ." (Appellees' Answering Br. at 7.) Thus, without speaking to Reedy, Evanson directed the hospital to perform additional toxicology testing on Reedy's blood samples.

Eight days later, on July 23, 2004, Evanson obtained and executed a search warrant for Reedy's medical records. The records included the results of the additional toxicology screening that Evanson had ordered, which revealed that Reedy had ingested diazepam, better known as Valium, and confirmed that Reedy had used marijuana. When Evanson later asked Reedy about the diazepam, during a visit he made to her home a couple of weeks later,[5] Reedy explained that Watt, who had a legal prescription for the drug, brought her a pill on the night of the assault to "assist her in calming down." (*Id.* at 356.)

D. *Information From The Gulf Station's Manager*

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[5]*See infra*, Section I.F.

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In the days following the incident, Evanson spoke with Carol Hazlett, Reedy's supervisor at the Gulf Station.[6] Hazlett told Evanson that, on the day of the attack, she left the Gulf Station at 3:00 p.m., when Reedy's shift began.[7] At approximately 11:20 p.m. that night, she returned to the Gulf Station because she had received a phone call at her home from Security Systems of America ("SSA"), the Gulf Station's security monitoring company, informing her that there had been an interruption in the power source for the store's alarm system.[8] SSA called Hazlett at home after receiving no answer when it attempted to call the Gulf Station. A report from SSA reveals that Hazlett was notified at approximately 11:15 p.m. about a power failure that had occurred at approximately 10:15 p.m.

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[6]It is not clear exactly when Evanson met with Hazlett. However, it appears from the police report that it happened at some point between July 15 and 18, 2004.

[7]Evanson wrote in the Affidavit that Hazlett left the store at 9:15 that evening (rather than 3:00 p.m.) but Hazlett stated in her deposition that she left the store at 3:00 p.m. The District Court proceeded on the premise that Hazlett's departure time was 3:00 p.m.

[8]Evidently, the power source for this alarm system was different than the power source for the store's panic alarm. Police officers tested the panic alarm on the night of the incident, before the power to the store's SSA alarm system had been restored, and discovered that the panic alarm was working. (App. at 333, ¶ 128; 662, ¶ 128.)

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The day after the incident, Hazlett went back to the Gulf Station. When she was in the back room trying to fix the phone lines that had been torn from the wall, she noticed that the alarm system's power cord, which was located behind a desk, had been unplugged. She also learned, by looking at the Gulf Station's cash register tape, that the register had been opened by pressing the "no sale" key at the exact time that Reedy had noted. Finally, Hazlett discovered that $606.73 in cash was missing from the store.

E. *Meeting at the Police Station*

On the morning of July 15, 2004, while Reedy was still in the hospital, Evanson requested that she come to the police station to provide a written statement to the police. The next day, July 16, 2004, she traveled to the Cranberry Township Police Station with her mother and stepfather, where she provided a detailed, written statement about the incident.[9] Her

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[9]In the Affidavit, Evanson stated that Reedy did not come to the police station until July 23, 2004. He also wrote that he had attempted to contact Reedy for several days (from July 15-23) but was unsuccessful. Reedy's mother, however, testified that she called Evanson on July 15, the day after the incident, and arranged for her and Reedy to travel to the police station the very next day. Reedy, her mother, and her stepfather, all testified that they went to the station and met with Evanson on July 16, 2004, the first day that Reedy was out of the hospital. Drawing all inferences in favor of Reedy, the District Court proceeded on the premise that Evanson spoke with Reedy's

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description again matched what she had previously told Mascellino, Farah, and Evanson. She also included the assertion that Evanson had accused her of lying.

While Reedy was writing her statement, Evanson spoke with Reedy's mother and stepfather, Debbie and Paul Bosco, Jr. He suggested that Reedy and Watt were responsible for the theft at the Gulf Station and that he would soon be able to prove it. He told the Boscos that, on the night of the attack, Watt had not gotten out of his car right away when he arrived at the scene, which Evanson thought was suspicious. Evanson also told them he found it suspicious that Reedy had reported that the crime happened around 10:40 p.m. and that the cash register had been opened at exactly that time. In his view, "nobody that's in this kind of a hysteria would know exactly what time it was, so she had to have preplanned this because nobody would know this." (App. at 448-49.) Finally, he told Reedy's parents that "the sooner [Reedy] confessed ... he could wrap it up." (*Id.* at 449.) He warned the Boscos that it was only "a matter of time ... before he tied up the loose ends and put it all together so it would be in [Reedy's] best interest if [they] would encourage her to ... admit it." (*Id.* at 22 (first and third alterations in original).) He also told Paul Bosco that he wanted to "burn" Watt.[10] (*Id.*)

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mother on July 15, 2004, and that Reedy and her family met with Evanson the next day, on July 16, 2004.

[10]In his deposition, Evanson conceded that some of this conversation occurred. Specifically, he stated that while Reedy

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was writing out her statement, he expressed to Reedy's mother that Reedy's story was suspect because it contained what he viewed as critical gaps in information. He also conceded that he spoke with Reedy about the security alarm system and about his suspicion surrounding the fact that she was able to report the exact time that the cash register was opened. However, Evanson

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Evanson then spoke directly with Reedy. He asked her about the alarm being unplugged. Specifically, he asked whether she had been ordered to disable any wires besides the phone lines on the night of the incident, and, if so, where those wires were located. Reedy responded that she did not believe that the assailant had disabled anything other than the phone line and, thus, did not know how the alarm system had been disabled.

According to Evanson, when he asked Reedy how the power failure on the alarm could have occurred, she grew "verbally abusive" and stated "I just want to drop the whole thing" and "I just want this whole thing to go away." (*Id.* at 197-98 ¶¶ 47-48.) According to Reedy, on the other hand, Evanson was hostile toward her during the meeting and repeatedly accused her of lying and of taking money from the store. Therefore, according to Reedy, any hostility or desire on her part to end the proceedings was due to "Evanson's hostility, baseless accusations and badgering." (*Id.* at 321 ¶¶ 47- 48.) Reedy's stepfather also stated that Reedy was not "verbally abusive" during the interview but was simply "upset" at being falsely accused less than two days after being sexually assaulted.[11] (*Id.* at 451-52.)

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denied discussing Watt's behavior and denied telling the Boscos that it would be better for Reedy if she confessed.

[11]Evanson also asked Reedy if she would be willing to take a polygraph test, and she agreed to do so. The test results were

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F. ____*Meeting at the Trailer Park*

On August 17, 2004, Evanson and Detective Kevin Meyer, another detective from the Cranberry Township Police Force, went to the trailer park where Watt and Reedy were living.[12] According to Reedy, the officers asked her to step outside her trailer. She did so and they had her sign a waiver of her *Miranda* rights. They then began to press her to change her earlier written statement about the assault. Evanson presented Reedy with the hospital toxicology report and demanded to know why her blood contained illegal substances. In her deposition, Reedy described the encounter with Evanson, saying, "I asked him to leave several times, just leave, leave me alone. [I said] I'm not changing my statement. And he refused.

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ultimately inconclusive and do not appear to have played any role in the investigation or subsequent legal proceedings.

[12]Sometime during the second half of July 2004, Meyer learned from David Kriley, manager of the Green Acres Trailer Park, that, on July 19, 2004, five days after the assault at the Gulf Station, Reedy and Watt applied to rent a mobile home and agreed to a monthly rent of $365.00, with a security deposit of one month's rent prior to moving in. On their rental application, Reedy and Watt indicated that Catholic Charities would provide $200.00 toward the initial security deposit. On July 20, 2004, Watt provided Kriley with $165.00 in cash to fulfill the remainder of the security deposit. These sums later figure into the District Court's consideration of whether Reedy had stolen cash from the store.

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... He had me completely hysterical, and, ... [i]t was totally embarrassing, insulting."[13] (*Id.* at 407-08.) This meeting appears to be the last investigative effort regarding Reedy that Evanson took before he charged her nearly five months later with making false reports to the police, theft, and receiving stolen property.

G. *The Landmark Attack on October 13, 2004*

On October 13, 2004, approximately three months after the attack on Reedy, another woman was sexually assaulted and robbed at gunpoint in Cranberry Township. That attack, which occurred while the woman was leaving the Landmark Building, was the only other reported sexual assault in Cranberry Township in 2004 and was also assigned to Evanson as the lead investigator. The Landmark attack bore several similarities to the attack on Reedy:[14]

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[13]In his answer to Reedy's amended complaint, Evanson acknowledged that he and Meyer visited Reedy and Watt on August 17, 2004, but admitted only to offering to "drop" criminal charges against Reedy if she passed a polygraph test. (App. at 120, ¶ 25.)

[14]There were also differences between the two incidents. Notably, the Landmark incident left physical, corroborative evidence in the form of semen on the victim's shirt that led to DNA matches with other sexual assaults. However, there was no physical evidence from the Reedy attack that could have led to a DNA match.

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- Both occurred in Cranberry Township, separated by 3 months.

- Both occurred at businesses located on Route 19, approximately 1.5 miles apart from one another.

- Both attacks occurred at the same time of evening – approximately at 10:40 p.m.

- In both attacks, the assailant made no effort to conceal his identity.

- In both attacks, the female victim was assaulted while at work or while leaving work.

- Both victims described their assailant as a Caucasian male with brown (Reedy) or light brown hair (Landmark), wearing blue jeans.

- Both victims described their assailant as being around the same age. The Landmark victim described her assailant as in his late-30s while Reedy described her assailant as in his mid-30s to early 40s.

- In both attacks, the assailant used a black handgun.

- Both victims were robbed, in addition to being sexually assaulted.

- Both victims were ordered to bare their breasts and had their breasts fondled by the assailant.

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- Both victims were forced to perform oral sex upon the assailant.

H. *The Affidavit*

In January 2005, six months after Reedy had reported the assault, and three months after the Landmark attack, Evanson began drafting the Affidavit he would submit with the criminal complaint against Reedy. Evanson sent an initial version of the Affidavit to William Fullerton, an Assistant District Attorney for Butler County, Pennsylvania. Fullerton reviewed the draft and advised Evanson that it was inadequate. Specifically, on January 11, 2005, Fullerton sent the following email to Evanson:

> I got your PC [probable cause Affidavit] and [police] report. I did not know they would be virtually identical. ... I dont [sic] have the time to edit and re-write the whole thing. If you want to re-draft the PC and include a description of the evidence that makes out the elements, I would be glad to review that. My thinking is that the PC needs to set forth that a report of a crime was made and what information you have, in brief, [that] shows that the event reported did not occur.

(App. at 725.) Fullerton confirmed in his deposition that he sent an email to Evanson encouraging Evanson to "explain the elements, [and] why [he] th[ought] the crime [was] there." (*Id.* at 703.) Although Fullerton expected to see another draft of the Affidavit, Evanson never sent a revised draft to him.

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On January 14, 2005, Evanson learned from the Pennsylvania State Police that DNA analysis linked the Landmark attack to other sexual assaults in Pennsylvania. That same day, Evanson sent a copy of his police report about the Landmark attack to another town's police department via fax, with the subject line "Serial Rapist." (App. at 609.) Also on that same day – six months after Reedy was attacked, five months after Evanson's investigative efforts had ceased, and three months after the Landmark attack – Evanson filed the criminal complaint and Affidavit against Reedy with a Pennsylvania Magisterial District Judge. Assistant District Attorney Fullerton did not see the final Affidavit until after Evanson had filed it, and the only changes Evanson had made to the Affidavit from the draft that was earlier sent to Fullerton involved removing portions from the prior draft.

Later that month or early in February, Evanson gave details about the Reedy attack during a teleconference conducted by a State Police task force organized to catch the serial rapist.[15] Evanson also sent a copy of the police reports on the Reedy incident and on the later Landmark incident to Corporal George Cronin, the State Police officer in charge of the serial rapist task force.

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[15]It is not clear exactly when in January or early February the teleconference occurred. It was, however, apparently after January 14, 2005 because Evanson stated in his deposition that charges had already been filed against Reedy at that point.

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I. *Reedy's Arrest and Subsequent Developments*

Reedy was notified of the warrant for her arrest and, on January 19, 2005, turned herself in. She was unable to post bond and was taken into custody and transported to the Butler County jail, where she spent five days awaiting a bail reduction hearing. Later, in February, Reedy called a State Police tip line that had been set up to obtain information about the serial rapist. She explained that she had been sexually assaulted but had been criminally charged for reporting the assault. On May 9, 2005, while charges were still pending against Reedy, Evanson was advised by the State Police that Reedy had contacted the task force tip line about the assault at the Gulf Station.

Reedy's criminal trial was scheduled to begin on September 19, 2005. On August 22, 2005, Wilbur Brown was apprehended while he was assaulting a female convenience store clerk in Brookville, Pennsylvania. Brown subsequently confessed to both the attack on Reedy and the Landmark attack. On September 1, 2005, the Butler County District Attorney dropped all charges against Reedy.

J. *Procedural History*

On August 14, 2006, Reedy filed the present suit against Evanson, Meyer, Steve Mannell (the Public Safety Director for Cranberry Township), Butler County, Assistant District Attorney Fullerton, and Timothy F. McCune, the Butler County District Attorney. On March 12, 2008, after Butler County, Fullerton, and McCune were dismissed from the suit, Reedy filed an

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amended complaint[16] against Evanson, Meyer, and Mannell, containing the following counts:

> Count 1: Unlawful search in violation of the Fourth Amendment, based on the toxicology screening performed on Reedy's blood;
>
> Counts 2, 3, and 4: Unlawful seizure, false imprisonment, and malicious prosecution in violation of the Fourth Amendment, based on Reedy's arrest;
>
> Count 5: Harm to liberty interest in violation of the Due Process Clause of the Fourteenth Amendment;[17]

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[16]For simplicity, we refer to the amended complaint as the "complaint."

[17]Neither the District Court nor the parties have discussed Reedy's Fourteenth Amendment claim (Count 5). Either Count 5 has been abandoned, or, despite the fact that Count 5 is against one additional party as compared to Counts 2-4, they have treated Count 5 as being subsumed into Reedy's Fourth Amendment unlawful seizure claims. *Cf. Graham v. Connor*, 490 U.S. 386, 388 (1989) (holding that a Fourth Amendment claim of excessive force is "properly analyzed under the Fourth Amendment's 'objective reasonableness' standard, rather than under a substantive due process standard"). Given the handling

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Counts 6 and 7: State law claims of false arrest, false imprisonment, and abuse of process;

Count 8: A state law claim of intentional infliction of emotional distress[18]

On July 1, 2008, all of the defendants filed a motion for summary judgment. On March 31, 2009, the District Court granted the motion for summary judgment and entered final judgment in favor of the defendants and against Reedy on all counts.[19] However, the Court first held that, when the evidence was viewed in the light most favorable to Reedy, there was sufficient evidence to establish that Evanson knowingly or recklessly included false statements in, and omitted relevant information from, the Affidavit he had filed in support of Reedy's arrest.[20] The Court thus had to "excise the offending inaccuracies and insert the facts recklessly omitted [to]

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of Count 5 by the parties and the District Court, we too decline to address that Count as an independent claim.

[18]Counts 1-4 were brought against Evanson and Mannell; Count 5 was brought against Evanson, Mannell, and Meyer; Counts 6 and 7 were brought against Evanson only; and Count 8 was brought against Evanson and Meyer.

[19]The District Court's opinion was not filed until April 20, 2009.

[20]These omissions and false statements are discussed more thoroughly below. *See infra*, Section III.A.ii.

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determine whether or not the corrected ... affidavit would establish probable cause." (App. at 27 (quotations omitted).) After "[p]erforming such surgery," the Court held that the Affidavit as corrected, "provides probable cause to believe ... [that Reedy] committed the crimes ... ." (*Id.* at 27, 34.) The Court further held that, even if a genuine issue of fact existed as to whether the corrected Affidavit establishes probable cause, Evanson was entitled to qualified immunity because "a jury could not conclude that no reasonabl[y] competent officer would fin[d] probable cause in this instance." (*Id.* at 39-40.) The Court therefore granted Evanson summary judgment on Reedy's unlawful seizure claims.

Next, the District Court rejected Reedy's claim that her blood had been unlawfully searched, holding that, by signing two consent forms in connection with the rape examination at the hospital, she had consented to the testing of her blood for drugs. Alternatively, the Court determined that Reedy had "lost any reasonable expectation of privacy in that blood" once it was removed from her body. (*Id.* at 42.) The Court next held that Reedy had failed to produce sufficient evidence that Meyer and Mannell actively participated in any violation of her constitutional rights and that those defendants were accordingly entitled to summary judgment on all claims. Finally, the Court granted summary judgment to Evanson on Reedy's emotional distress claim, concluding that Evanson's conduct was not sufficiently "extreme and outrageous" to be a foundation for such a claim. (*Id.* at 43.) Having lost on all her claims, Reedy filed a timely notice of appeal.

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II. Standard of Review [1,2]

A district court's grant of summary judgment is subject to plenary review. *Horn v. Thoratec Corp.*, 376 F.3d 163, 165 (3d Cir. 2004). Summary judgment is only proper when there is no genuine issue of material fact in the case and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c)(2). Our role in reviewing a grant of summary judgment is "not to weigh the evidence or to determine the truth of the matter, but only to determine whether the evidence of record is such that a reasonable jury could return a verdict for the nonmoving party." *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009). If so, summary judgment cannot stand. We must view all of the facts in the light most favorable to the non-moving party, who is "entitled to every reasonable inference that can be drawn from the record." *Merkle v. Upper Dublin Sch. Dist.*, 211 F.3d 782, 788 (3d Cir. 2000). "[W]hen there is a disagreement about the facts or the proper inferences to be drawn from them, a trial is required to resolve the conflicting versions of the parties." *Peterson v. Lehigh Valley Dist. Council*, 676 F.2d 81, 84 (3d Cir. 1982).

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[21]The District Court had jurisdiction over Reedy's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. The District Court had supplemental jurisdiction over Reedy's state law claims pursuant to 28 U.S.C. § 1367. We have jurisdiction over this appeal under 28 U.S.C. § 1291.

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III. Discussion

Reedy raises several contentions on appeal. First, she argues that the District Court improperly granted summary judgment as to her unlawful seizure claim because, whether Evanson's Affidavit is analyzed on its face or after being corrected for omissions and false statements, there was no probable cause to arrest her. Reedy further argues that the District Court erred in holding that Evanson was entitled to qualified immunity. She says that immunity is not warranted because, viewing all the facts in the light most favorable to her, a reasonably competent officer would realize that there was no probable cause to arrest her. Second, Reedy argues that the District Court erred in holding that the toxicology screening of her blood for drug usage was within the scope of the two consent forms she signed as part of her rape kit examination. The District Court further erred, she says, when it held that she had no reasonable expectation of privacy regarding the testing of her blood simply because the blood had already left her body. Reedy further contends that the Court erred in dismissing her claims against Meyer and Mannell because the record contains sufficient evidence to support a claim that they violated her constitutional rights, namely, that they were active participants in arresting her without probable cause. Finally, she says the Court erred in granting summary judgment to Evanson on her emotional distress claim because his conduct qualifies as extreme and outrageous. We address each of these contentions in turn.

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A. *Unlawful Seizure: Probable Cause and Qualified Immunity*[22]

The Fourth Amendment provides that people are "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, ... and no Warrants shall issue, but upon probable cause ... ." U.S. CONST. amend. IV. It is well-established that the Fourth Amendment "prohibits a police officer from arresting a citizen except upon probable cause." *Orsatti v. N.J. State Police*, 71 F.3d 480, 482 (3d Cir. 1995) (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 169 (1972)).

Probable cause "requires more than mere suspicion[.]" *Orsatti*, 71 F.3d at 482. However, it does not "require the same type of specific evidence of each element of the offense as would be needed to support a conviction." *Adams v. Williams*, 407 U.S. 143, 149 (1972). Rather, "probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." *Orsatti*, 71 F.3d at 483; *see also Wilson v. Russo*, 212 F.3d 781, 789 (3d Cir. 2000)

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[22]Our analysis of "unlawful seizure" (Count 2) encompasses Reedy's claims of false imprisonment and malicious prosecution (Counts 3 and 4), as well as her related state law claims of false arrest, false imprisonment, and abuse of process (Counts 6 and 7), because all of those claims turn on whether probable cause existed for the arrest.

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("Probable cause exists if there is a 'fair probability' that the person committed the crime at issue." (citation omitted).). "Probable cause need only exist as to [one of the] offense[s] that could be charged under the circumstances." *Barna v. City of Perth Amboy*, 42 F.3d 809, 819 (3d Cir. 1994). In analyzing whether probable cause existed for an arrest, we must take a "totality-of-the-circumstances approach." *Illinois v. Gates*, 462 U.S. 213, 230 (1983).

i. *The Original Affidavit*

Taken on its face, Evanson's original Affidavit accused Reedy of false reporting, theft, and receiving stolen property[23] based on the following assertions of fact, some of which have been contradicted by Reedy and some of which were later corrected by the District Court:

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[23] The Pennsylvania Crimes Code (the "Code") states that a person commits the crime of false reporting if he "reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur[.]" 18 PA. CONS. STAT. § 4906(b)(1). With respect to theft, the Code states that "[a] person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with intent to deprive him thereof." *Id.* § 3921(a). A person commits the crime of receiving stolen property "if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." *Id.* § 3925(a).

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(1) On July 14, 2004, Reedy reported to Robert McGee, an employee at the service station next door to the Gulf Station, that she had been sexually assaulted and robbed by an unknown assailant.

(2) Reedy provided McGee with a description of her assailant, but was unsure of the direction he went when he left the store and could not provide a description of any vehicle he may have used.

(3) Reedy provided Mascellino and Evanson with a description of the robbery, which she said occurred at 10:40 pm.

(4) Evanson attempted to contact Reedy on July 15, 2004, and was unable to reach her for several days.

(5) Evanson spoke with Hazlett and learned that the power for the store's alarm system was interrupted on the night of the robbery and alleged assault and that the company monitoring the security system had unsuccessfully attempted to contact the store.

(6) Hazlett returned to the store after the incident and found that the power cord for the alarm system had been unplugged.

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(7) Reedy's statement regarding the assailant pressing the "no sale" key on the cash register matched the exact time indicated on the register tape.

(8) $606.73 was taken from the store's cash register during the robbery.

(9) On July 23, 2004, Evanson met with Reedy and her mother. He asked Reedy if her assailant had disabled, or had ordered her to disable, any wires other than the telephone lines during the attack. Reedy responded that he had not. Evanson also specifically asked Reedy if her assailant disabled any lines for the electricity or the alarm, to which Reedy responded no.

(10) When Evanson told Reedy that the security system company had reported that the security system's power failed at 10:14 p.m., Reedy stated that she did not know how that occurred.

(11) When Evanson told Reedy that a power cord for the security system was unplugged in the back room, and questioned Reedy about how that could have happened, Reedy became verbally abusive and stated, "I just want to drop the whole thing."

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(12) When Evanson told Reedy that the matter could not be dropped, Reedy said, "I just want this whole thing to go away."

(13) Meyer learned that in mid-July, Watt and Reedy looked into renting a mobile home with a monthly rental fee of $365.00 and a security deposit of that same amount.

(14) On July 19, 2004, Watt and Reedy in fact applied to rent a mobile home. Catholic Charities indicated that it would pay $200.00 of the security deposit and that Watt and Reedy would pay the remaining $165.00. On July 20, 2004, Watt paid the remaining $165.00 of the security deposit in cash.

ii. *The Corrected Affidavit*

Reedy argued before the District Court that the Affidavit not only lacked probable cause on its face, but that it contained material falsehoods and omissions. An arrest warrant "does not, in itself, shelter an officer from liability for false arrest." *Wilson*, 212 F.3d at 786. Instead,

> a plaintiff may succeed in a § 1983 action for false arrest made pursuant to a warrant if the plaintiff shows, by a preponderance of the

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> evidence: (1) that the police officer knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary, to the finding of probable cause.

Id. at 786-87 (internal quotations omitted). Thus, a court faced with a claim that an arrest warrant contains false assertions and omissions must first determine whether the officer made those false assertions or omissions either deliberately or with reckless disregard for their truth.

Whether something is done deliberately is a straightforward question of fact. To know whether something is done with "reckless disregard" for the truth requires some explanation of the meaning of that term. Assertions are made with reckless disregard when, "viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported." *Id.* at 788 (internal quotations omitted). Assertions can be made with reckless disregard for the truth "even if they involve minor details – recklessness is measured not by the relevance of the information, but the demonstration of willingness to affirmatively distort truth." *Id.* "[O]missions are made with reckless disregard for the truth when an officer recklessly omits facts that any reasonable person would know that a judge would want to know" in making a probable cause determination. *Id.* at 783.

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After establishing that "there [is] sufficient evidence of omissions and assertions made knowingly, or with reckless disregard for the truth," a court "assess[es] whether the statements and omissions made with reckless disregard of the truth were material, or necessary, to the finding of probable cause." *Id.* at 789 (internal quotations omitted). "To determine the materiality of the misstatements and omissions," a court must "excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether ... the 'corrected' ... affidavit would establish probable cause." *Id.*

This two-part exercise – determining the affiant's motivation and constructing a revised Affidavit without material omissions or misstatements – ensures that a police officer does not "make unilateral decisions about the materiality of information, or, after satisfying him or herself that probable cause exists, merely inform the magistrate or judge of inculpatory evidence." *Id.* at 787. We have cautioned that "[a]n officer contemplating an arrest is not free to disregard plainly exculpatory evidence, even if substantial inculpatory evidence (standing by itself) suggests that probable cause exists." *Id.* at 790 (internal quotations omitted).

The District Court agreed with Reedy that, viewing the evidence in the light most favorable to her, a jury could conclude that the Affidavit suffered from recklessly-made false statements and omissions.[24] Specifically, the District Court

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[24]Evanson does not directly challenge the District Court's findings of false statements and omissions in the Affidavit.

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Rather, he argues that the Affidavit he originally submitted, as well as the revised Affidavit, both "present probable cause." (Appellees' Answering Br. at 29-30.) We note, however, that the District Court wrongly applied the summary judgment lens of "all inferences in favor of the non-moving party" to the analytical steps we outlined in *Wilson*. We did not say in *Wilson* that the question of whether an affidavit has material omissions and misstatements should be viewed from the deliberately slanted perspective that summary judgment demands. On the contrary, the necessary import of *Wilson* is that the effort to determine whether an affidavit is false or misleading must be undertaken with scrupulous neutrality. *See Wilson*, 212 F.3d at 787 (citing criminal cases *United States v. Leon,* 468 U.S. 897 (1984), and *Franks v. Delaware*, 438 U.S. 154 (1978), in support of the proposition that a court testing probable cause for an arrest challenged in a § 1983 case "must first consider whether [the plaintiff] adduced sufficient evidence that a reasonable jury could conclude that [defendant police officer] made statements or omissions that he 'knew [were] false, or would have known [were] false except for his reckless disregard for the truth.'").

Specifically, *Wilson* provides that the person challenging the affidavit must show, by a preponderance of the evidence, that "(1) that the police officer knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary, to the finding of probable cause." *Wilson*, 212 F.3d at 786-87 (internal quotations omitted). Once that review and correction

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reached the following conclusions:

(1) Evanson omitted, with reckless disregard for the truth, that he spoke with Reedy's mother on July 15, 2004, the day after the incident, and that Reedy's mother made arrangements for Reedy to travel to the police station the next day, on July 16, 2004. He also omitted the fact that Reedy did indeed meet with him at the station on July 16, 2004, as planned. Evanson had stated in the original Affidavit that he attempted to make contact with Reedy for several days after the incident but that she would not return his calls. He had also

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process is complete, the corrected affidavit (assuming there were corrections to be made) simply becomes one more set of factual assertions that must then be viewed in the light most favorable to the non-movant, in the same manner as all of the other evidence is to be considered at the summary judgment stage. The existence of a factual assertion in the corrected affidavit of course does not preclude other evidence pertaining to the same topic covered by that assertion from also being considered in the summary judgment process.

Our review of the record here has not been affected by the District Court's error in this regard. Having examined the totality of the circumstances, including the glaring omissions in Evanson's affidavit, we have reached the conclusions we describe.

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stated in the original Affidavit that his meeting with Reedy and her mother occurred eight days after Reedy was released from the hospital, on July 23, 2004. The Affidavit was corrected to reflect that Evanson spoke with Reedy's mother the day after the incident, and that Reedy and her mother met with him that following day, July 16, 2004.

(2) Evanson recklessly misrepresented the purpose of that meeting with Reedy at the police station, neglecting to include the fact that he also wanted to discuss the possibility that Reedy had fabricated the entire incident. Evanson had stated in the original Affidavit that the purpose of the meeting was simply to discuss the alleged assault and robbery. The Affidavit was corrected to reflect that Evanson also wanted Reedy to come to the police station to discuss the possibility that she had committed theft and concocted the rape allegations to cover her crime.

(3) Evanson recklessly mischaracterized Reedy's reaction to his questioning as "verbally abusive" rather than being simply upset. The Affidavit was corrected to reflect that Reedy became "upset" at

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Evanson's line of questioning. (App. at 23.)

(4) Evanson recklessly omitted the fact that the two accounts Reedy provided to Mascellino and Farah about the attack were consistent with one another and were given in graphic detail. The Affidavit was corrected to fill in that omission.

(5) Evanson recklessly omitted the fact that the Gulf Station's panic alarm would have worked had Reedy attempted to use it, but that she may have been too distraught to use it since a gun was pointed at her at the time. The Affidavit was corrected to include that information.[25]

(6) Evanson recklessly stated that Reedy described her assailant as between 28 and 31 years of age. Reedy, however, testified that she had described her assailant as in

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[25] Evanson had not included a statement about the existence of a panic alarm in his original Affidavit. He explained in his deposition that he considered Reedy's failure to press the panic alarm during the incident to be irrelevant, because it might have been due to the fact that the assailant was pointing a gun at her at the time, and thus, she might have been too distraught to reach for it.

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his mid-30s to early 40s, a description confirmed by the fact that she told Farah that her assailant was in his mid-30s to 40s. The Affidavit was corrected to include the latter characterization of the assailant's age.

(7) Evanson recklessly stated that Hazlett left the Gulf Station at 9:15 p.m. on the day of the incident, rather than 3:00 p.m., the time that Hazlett stated she left. The Affidavit was corrected to reflect that Hazlett left the store at 3:00 p.m.

(8) Evanson recklessly omitted the fact that he had investigated the Landmark Attack during the time he was investigating Reedy's attack. The Affidavit was corrected to include the fact that Evanson investigated a robbery and sexual assault with "several similarities" to Reedy's attack. (*Id.* at 27.)

The District Court reconstructed the Affidavit based on those several conclusions. It then weighed what it considered to be exculpatory facts in the revised Affidavit against what it considered to be inculpatory facts, and held that the Affidavit, even as corrected, still established probable cause to arrest Reedy for false reporting and theft.

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iii. *Probable Cause Analysis*

The District Court's approach was correct, but we cannot agree with its ultimate conclusion about probable cause. In general, the District Court committed four types of error. First, it erred in its reconstruction of the Affidavit because it failed to consistently interpret the record in the light most favorable to Reedy and instead, contrary to the summary judgment standard, occasionally adopted interpretations that were the least favorable to Reedy. Second, the Court cited several inculpatory "facts" to support probable cause that were not actually supported by the record. Similarly, not all of Evanson's arguably reckless omissions were actually included in the Court's reconstructed Affidavit and analysis. Third, the Court erred in deciding that certain facts were inculpatory when they were either irrelevant or even exculpatory. Finally, the Court erred when it gave little weight to the highly significant exculpatory facts that the Landmark attack, with all of its similarities to the attack on Reedy, occurred before Evanson sought to arrest Reedy and that Evanson was responsible for investigating both attacks. We explain below how these general errors manifested themselves more specifically, and why the reconstructed Affidavit, as further corrected by us, fails to establish probable cause.

1. Reedy's Supposed Reluctance to be Available and Evanson's Predisposition Toward Reedy

The District Court first cited as inculpatory the fact that Reedy "was unwilling to provide a firm commitment to meet with the police ... on the night in question and did not make

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herself available until Detective Evanson continued to press the matter with [Reedy's] parents." (App. at 31.) The Court then held that, "although [Reedy] and her parents did actually meet with Detective Evanson" the day after Reedy was released from the hospital, that fact only "weaken[s] the inferences that [Reedy] was evasive and uncooperative." (*Id.* at 31-32.) Thus, the Court held that "[t]he inference of reluctance to be available to the police was fairly raised by [Reedy's] behavior." (*Id.* at 31.)

The record, however, if viewed in the light most favorable to Reedy, does not show any lack of willingness by her to meet with the police. On the night of the attack, she immediately sought help to report it. She then, over the course of the night, provided three separate, consistent, and detailed accounts of the traumatic incident. Two of those statements were to police officers. She also agreed to take a polygraph test. The day she was released from the hospital, the earliest day she could physically travel to the police station, she and her parents met with Evanson at the station and she provided a detailed written statement that was consistent with the accounts she had given at the hospital. These are not the actions of someone trying to avoid cooperating with the police.

The Court also cited as inculpatory the fact that, when Evanson tried to contact Reedy on July 15, he was only able to reach her voicemail. On July 15, however, Reedy was still in the hospital, and Reedy's mother contacted Evanson that same day on Reedy's behalf and arranged for Reedy to go to the police station the next day. Reaching the voicemail of a person who has just been sexually assaulted at gunpoint, while that

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victim is still in the hospital, does not demonstrate that the victim is uncooperative, especially when the victim has a relative return the phone call the same day.

Moreover, even if Reedy had shown a reluctance to cooperate, a reasonable jury could find that such reluctance was not inculpatory but was understandable in the face of Evanson's undisguised suspicion of Reedy from practically the moment she reported the attack. The District Court correctly recognized the remarkable rapidity with which Evanson viewed Reedy as the prime suspect in the theft of the Gulf Station, but the Court nevertheless expressly declined to consider Evanson's predisposition toward Reedy to be relevant, stating that "whether Detective Evanson had a predisposition towards [Reedy] ... from the start of [the] investigation does not change the inculpatory information ... ." (*Id.* at 31.) That puzzling assertion ignores the human dynamic inherent in communication. Evanson's predisposition, which was manifested in his aggressive and insulting accusations, is certainly relevant to an interpretation of Reedy's attitude, because her actions or statements occurred in the context of, and in response to, Evanson's actions and statements. Reedy's behavior cannot be fairly analyzed without considering the behavior of Evanson to which she was reacting.

Evanson's investigation into the reported rape and robbery appears to have focused exclusively on the theory that Reedy was a liar and thief. The police report – and, for that matter, the entire record – indicates that, after a brief search of the woods on the night of the incident, Evanson and the other officers made no effort to locate Reedy's assailant or to consider

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anyone but Reedy and Watt as suspects, even after the Landmark Attack.[26] As Reedy tells it, the night she was attacked, while she was still in the hospital and after she had given Evanson a detailed description of the events that matched what she had already told Mascellino, and before Evanson had done any further investigation, he called her a liar and repeatedly accused her of stealing the money from the store.

In short, we are mindful that we must view the record in the light most favorable to Reedy. The fact that Reedy reported the assault immediately, provided three consistent and detailed accounts of it,[27] traveled to meet with Evanson the day after she was released from the hospital, provided another detailed statement in writing, and did all of this in the face of Evanson's repeated accusations against her, shows a willingness to work with law enforcement rather than an "evasive" or

[26]*See infra*, Section III.iii.7.

[27]The District Court corrected Evanson's original Affidavit to reflect that Reedy had provided two separate detailed accounts of the assault to Mascellino and Farah, and that those accounts were consistent with one another. The Court cited that as exculpatory. We agree it is exculpatory, but note that the record actually reflects that Reedy provided three graphic accounts of the assault on the night of the incident – to Mascellino, Farah, and Evanson – and that all three accounts were consistent with one another. Accordingly, in reconstructing the Affidavit and analyzing it for probable cause, the District Court should have included and considered all three accounts.

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"uncooperative" attitude. Accordingly, the District Court's characterization of Reedy's behavior as inculpatory is clearly wrong.

2. The Cash Register and the Assailant's Exit

The District Court regarded as inculpatory Reedy's failure to provide any information about how her assailant arrived at the gas station or in what direction he went when he left the scene. At the same time, however, the District Court found Reedy's knowledge about the precise time the cash register was opened to be inculpatory, because it seemed suspicious to the Court that she could remember such detail. The District Court thus placed Reedy in a memory trap: she implicated herself by noticing and remembering certain details about the attack, but also implicated herself by not noticing or remembering other details. Leaving aside the fact that a reasonable jury could conclude that people often remember some details but not others, the District Court's conclusion is inapposite because, again, it casts the evidence in an unfavorable light for Reedy. It does not take much generosity to consider that Reedy may have been unaware of her attacker until he was already in the store. Hence, not knowing the direction he came from is hardly inculpatory. Reedy could not describe the direction that her assailant left the scene because she remained in the backroom of the station at the time he left, just as he had ordered. If the evidence is viewed in her favor, these interpretations must be given their due and the inculpatory conclusion reached by the District Court falls away.

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3. The Panic Alarm and Counseling

The District Court thought it inculpatory that Reedy had failed to push the panic alarm while a gun was being pointed at her,[28] and that she had declined professional counseling when it was offered to her. Specifically, the Court held that Reedy's

> declining professional counseling after it was offered repeatedly and the fact that she did not attempt to press the panic alarm at any time during the events happening behind the counter in the front room, while susceptible of innocent explanation, add to the quantum of information supporting a finding of probable cause.

(App. at 34 n.7.)

Here again, the District Court erred in its application of the summary judgment standard. It explicitly recognized that there are two reasonable interpretations of Reedy's conduct, stating that Reedy's conduct is "susceptible of innocent explanation." (*Id.*) However, it then adopted the least favorable interpretation for Reedy, which is contrary to the requirement that "[t]he evidence of the non-movant is to be believed, and all

[28]Evanson's police report states that the perpetrator "pulled a black semi-automatic handgun from the waist band of his pants and proceeded to point said gun at victim." (App. at 350.) Reedy said that he "pointed his gun at the left side of [her] head." (*Id.* at 460-61.)

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justifiable inferences are to be drawn in [her] favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

More specifically, the District Court's implication that there is a duty to attend counseling is incorrect. There is no such duty. Moreover, implicit in the Court's conclusion that an inculpatory inference can be drawn from Reedy's decision not to attend counseling is a value judgment about how victims ought to respond to trauma. That is a highly debatable judgment, lacking any foundation in the record. Even if there were some basis for saying that refusing counseling is inculpatory, Reedy explained why she did not want counseling, saying that her earlier experience with sexual abuse would allow her to handle the trauma. When confronted, as the District Court evidently believed it was, with two explanations for Reedy's decision to refuse counseling – either she was lying about the assault or she believed counseling was not necessary – the Court chose to operate on the least favorable interpretation of the evidence. That was error. Likewise, Reedy's failure to reach for a panic alarm when a gun was pointed at her and she was being sexually assaulted, which are the facts we must accept at this stage, is not in the least inculpatory.[29]

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[29]The District Court's statement about the panic alarm is also troubling because it is based on the assumption that a victim must engage in active forms of resistance during a sexual assault, even if that resistance threatens personal safety. *See State ex rel. M.T.S.*, 609 A.2d 1266, 1271 (N.J. 1992) (discussing how historically "[c]ourts assumed that any woman who was [sexually assaulted] necessarily would resist to the extent of her ability"). Under Pennsylvania law, to which

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4. The Security Alarm System

The District Court focused heavily on events related to the security alarm system. Of the several assertions of fact cited by the Court as inculpatory, the following five involved the security alarm system:

> (1) the power to the alarm system was disabled approximately 20 minutes before the attack;
>
> (2) the system had been unplugged from its socket behind a desk in the Gulf Station's rear office;
>
> (3) Reedy stated that her attacker was not in the area where the plug to the alarm system was located;
>
> (4) Reedy admitted that her attacker did not disable any lines for electricity or the alarm system, and;

Evanson was presumably looking in drafting his Affidavit, that assumption is not legally permissible, because, in 1976, the Commonwealth enacted a statute stating that a sexual assault victim's lack of resistance is not relevant. *See* 18 PA. CONS. STAT. § 3107. By the District Court's reasoning, however, it was appropriate for Evanson to presume that Reedy was lying because she did not press a panic alarm while a man pointed a gun at her and sexually assaulted her. That reasoning amounts to a return to considering a victim's lack of physical resistance to be legally significant.

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> (5) when asked about the alarm system and why the power would have gone out twenty minutes before the attack, Reedy became upset and stated that she wanted the whole thing to go away.

The Court drew these assertions of fact from Evanson's reply brief in support of summary judgment, despite that brief's failure to contain any citations to the record. The record actually does not align with Evanson's assertions or with the description provided by the District Court on the last three of those five points. As to the third point, Reedy's assailant forced her into the back room where he ordered her to disable the telephone lines. Thus, the assailant was in fact in the area where the plug to the alarm system was located, and Reedy never stated otherwise. As to the fourth, Reedy never admitted that her attacker did not disable the alarm system; rather, she told Evanson that she did not know how the power to the alarm system was disabled. As to the fifth, Reedy's statements – "I just want this whole thing to go away" and "I just want to drop the whole thing" – were made while she was being accused by Evanson of being a liar and a thief. The District Court's discussion of these statements as inculpatory assumes that a jury could draw only one conclusion from Reedy's statements: that Reedy had a guilty conscience about the matter. But contrary to that, a reasonable jury could plausibly conclude that, at the time Reedy made those statements, she could tell that Evanson was going to make her life unpleasant and so she naturally "wanted this whole thing to go away." (App. at 198 ¶ 48.) This again reflects a failure to "construe[the evidence] in the light most favorable to the party opposing summary judgment." *Anderson*, 477 U.S. at 261 n.2. In short, points 3, 4, and 5 on the list of

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factual assertions regarding the alarm system are not supported by an appropriate view of the record.[30]

5. The Remaining Inculpatory Facts

The District Court noted other facts that it considered to be inculpatory but which bear innocent explanation. First, the Court pointed out that Reedy was the sole employee on the premises when the incident occurred. While perhaps inculpatory in the sense that Reedy had an opportunity to commit the crime, her being alone is also consistent with her

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[30]Moreover, as Reedy notes, if she had intended to disable the power to the alarm to support a fabricated story of rape and robbery, she could have done at least one of the following:

> (1) blamed her assailant for disabling the alarm, especially in response to Evanson's questions about the alarm; (2) reported the attack to have occurred at about the same time as the disabling of the alarm; and/or (3) reported to the police that she was unable to use the alarm/panic button because it had been disabled.

(Appellant's Opening Br. at 41.) That she did none of these things arguably cuts against the view that she fabricated her story. On this record, although Reedy has not proffered an explanation for how the alarm system was disabled, a reasonable jury could conclude that she was genuinely unaware of what had occurred with the system.

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being a victim of assault, as a jury could conclude that an assailant would chose to rob a gas station convenience store relatively late at night precisely because he might assume it would be staffed by a single employee.

Second, the Court noted that Watt arrived at the scene shortly after the incident was reported and later had cash for a deposit of $165.00 for the rental of a mobile home, just a few days after the incident. The implication is that Reedy had arranged for Watt to arrive at the Gulf Station as part of a scheme to transfer the stolen cash to him. But Watt arrived at the scene after the police were already there, and, according to Reedy, in response to her urgent call. Moreover, she stated that Watt typically picked her up after her shift ended and so he would have arrived at the scene near that time anyway, since the incident occurred when Reedy's shift was ending. We also cannot agree with the District Court that making a $165.00 deposit is necessarily inculpatory. Even assuming that Reedy had no money for the rental deposit, the record is silent about Watt's financial status and whether he had legitimate access to funds for the deposit. In short, without more facts – and, particularly at the summary judgment stage, where the only permissible inferences are ones in favor of Reedy – Watt's and Reedy's payment of $165.00 has little, if any, inculpatory value.[31]

[31]Hazlett stated in her deposition that a week prior to the incident, Reedy told her that she and Watt needed a $600.00 down payment for a trailer that they wanted to purchase. However, because Hazlett did not reveal this information until her deposition, no reference to this fact is contained in the police

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6. The Drug Testing

Evanson's briefing before us emphasizes that Reedy had used drugs and claims that her "lying about her use of marijuana and diazepam justified [his] suspicion and reinforced the theory that [Reedy] was involved in the removal of the money." (Appellees' Answering Br. at 37.) However, Evanson did not include in his original Affidavit any reference to Reedy's use of marijuana or other drugs, or to her alleged lying about drugs, suggesting that, despite his present rationalization, he did not believe that the information was relevant to probable cause.

Moreover, at least as to her marijuana use, Reedy appears to have been forthcoming to both Evanson and Farah, acknowledging that she had used marijuana several days before the incident. Evanson has failed to explain how a positive urine test for marijuana is inconsistent with Reedy's statement of when she had used marijuana, and, thus, he has not explained why marijuana testing led him to question Reedy's credibility. To the extent he is implying that marijuana could only be detected by the test if the use had been more recent, Evanson has referenced nothing to support that conclusion.

As to the diazepam, the evidence of Reedy's denying drug use is more equivocal. Evanson says that, when he asked Reedy if she had consumed any narcotics, she answered that she had not, but that later he discovered she had taken a diazepam. According to Evanson, this demonstrates that Reedy had lied to

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report or the Affidavit, and it played no part in Evanson's probable cause analysis.

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him. That, of course, assumes that Reedy understood the word "narcotic" to include diazepam. Evanson also says that when he asked Reedy about her marijuana consumption, she responded that, while she had smoked marijuana, she had taken no other medication. If Reedy made the statement that she had taken no other medication, that could surely be viewed as inconsistent with her admission that she had taken a diazepam. However, there is a question about whether Evanson's account of the conversation is accurate, because of evidence that indicates that it was inserted into the police report after the fact.[32] More importantly, it bears re-emphasis that the issue of Reedy's drug use was evidently not a part of Evanson's probable cause

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[32]The only evidence of this conversation between Evanson and Reedy is found in Evanson's police report entries. The police report indicates that this information was entered by Evanson on July 15, 2004, the day after the incident. However, according to Reedy, defendants produced electronic backup files of the police report, which revealed that Evanson's question to Reedy about narcotics usage was inserted into the police report on September 1, 2004. By September 1, 2004, Evanson had obtained the results of the toxicology report and had confronted Reedy with those results. Reedy says she explained to Evanson that Watt had given her diazepam to relax after the assault. Reedy thus suggests that, since Evanson "was aware of Reedy's truthful and eminently reasonable explanation" for both the diazepam and the marijuana, Evanson knew that he could only suggest Reedy was untruthful if he "specifically referred to the use of prescription or non-prescription drugs ... ." (Appellant's Reply Br. at 12.)

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determination, because he did not mention Reedy's drug use in the Affidavit.

7. The Landmark Attack

Prominent among the problems with the District Court's probable cause analysis is the way that it addressed the Landmark attack. While recognizing that Evanson's failure to include any mention of that attack in the Affidavit was a reckless omission, the Court nevertheless concluded that, while the Reedy and Landmark attacks "share general similarities[,] ... [s]uch details neither add to nor subtract from the probable cause determination." (App. at 26.) That conclusion is unsustainable because it ignores the marked similarities of the attacks and the fact that Reedy was charged with fabricating the entire incident at the Gulf Station.

The several similarities between the Landmark attack and the attack on Reedy constitute material omissions that should have been included by the District Court in the reconstructed Affidavit. Once included, they significantly undermine the conclusion that there was probable cause to arrest Reedy for theft, receiving of stolen property, and filing a false report.

Not only are the similarities between the attacks objectively apparent, the attacks may have been subjectively connected in Evanson's mind prior to the time he arrested Reedy. That is at least a fair inference when the record is viewed in Reedy's favor, though Evanson denies it. On October 13, 2004, approximately three months after the attack on Reedy, the Landmark victim reported being attacked by someone of the

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same general description as Reedy's assailant, who used a similar weapon, and who forced her at gunpoint to allow him to fondle her breasts and to perform oral sex on him. The Landmark attack, which took place less than two miles from the Gulf Station and at practically the same time of night as Reedy's attack, was the only other reported sexual assault in Cranberry Township in 2004. It was also assigned to Evanson as the lead investigator. Nevertheless, when Evanson filed his Affidavit against Reedy on January 14, 2005, he did not mention the Landmark attack and there is no indication in the record that he investigated any relationship between the two incidents, or that he even considered the similarities between the two attacks. When Evanson was asked in his deposition, "[w]hat information would you have needed to link the Reedy rape and the Landmark rape?", he responded that the "only things that could have linked" the two incidents in his mind would have been a confession from the assailant or a DNA match.[33] (*Id.* at 219, p. 520.)

Regardless of the credibility of that claimed level of cluelessness, the record indicates that Evanson eventually did recognize the connection between the two attacks. On January 14, 2005, the same day that he filed the criminal complaint against Reedy, Evanson learned from the State Police that the Landmark attack was linked, by DNA, to other attacks

[33]Even on appeal, Evanson continues to say that he never once thought to connect the two crimes, because "[f]rom [his own] perspective ... only a confession or a DNA match would have linked the Landmark and the Reedy incidents." (Appellees' Opening Br. at 15.)

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throughout Pennsylvania, and that those attacks were believed to have been committed by a serial rapist. Also that same day, Evanson sent a copy of the Landmark police report to another town's police department via fax, with the subject line "Serial Rapist." Soon thereafter, in late January or early February, Evanson gave details about the Reedy attack during a teleconference conducted by a State Police task force organized to catch that serial rapist. Finally, sometime later in February, Reedy contacted the State Police through a tip line established to obtain information regarding the serial rapist, and she advised them that she had been charged with making a false report. On May 9, 2005, while charges were still pending against Reedy, Evanson heard from the State Police that Reedy had contacted them on the rape tip line. Despite all this, the record does not reveal that Evanson ever reconsidered Reedy's arrest or made any effort to investigate whether the Landmark and Reedy attacks were related.[34]

Particularly telling as to probable cause is the deposition of Corporal George Cronin of the State Police, who led the statewide task force. After comparing the police reports in the Reedy attack and the Landmark attack, Cronin testified that the similarities between the two attacks "seemed to be fairly obvious," and he answered "yes" when asked whether he would

[34]We note these post-arrest events not because they figure into an analysis of probable cause at the time the arrest took place but because they may be seen as indicative of Evanson's closed mind throughout the entire set of events, if one views all of the evidence in Reedy's favor.

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expect a detective who was investigating both crimes, as Evanson was, "to recognize those similarities." (App. at 626.)

The District Court minimized Cronin's testimony and the similarities between the attacks, saying that Evanson had no constitutional duty to further investigate in the hope of finding exculpatory evidence. Assuming that were true, it is beside the point. No further investigation was needed to reach the conclusions expressed by Cronin. All that was required was a simple comparison of the police reports in the two cases, both of which were written by Evanson. On the very day he filed the Affidavit, he participated in a discussion of the Landmark attack as the work of a serial rapist. Again taking the view of the record required at this stage, Evanson's failure or refusal to compare the two attacks he was investigating – stating that only a DNA match or a confession would link the two attacks – demonstrates that he chose to "disregard plainly exculpatory evidence," *Wilson*, 212 F.3d at 790, and that he created the "unnecessary danger of unlawful arrest," *Malley v. Briggs*, 475 U.S. 335, 345 (1986).

v. *Probable Cause Conclusion*

In sum, within hours of the attack on Reedy, Evanson concluded that Reedy had fabricated the robbery and sexual assault. Three months later, another robbery and sexual assault occurred involving substantial similarities to the attack on Reedy. The later attack was identified as the work of a serial rapist. Despite that, Evanson declined to consider that the two attacks were linked. Six months after Reedy reported that she had been robbed and assaulted at the Gulf station, Evanson

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arrested her on the same theory he had formed the night that he met her at the hospital. Taking all inferences in favor of Reedy, a reasonable jury could conclude that, at the time the arrest was made, the facts and circumstances within Evanson's knowledge were not sufficient "to warrant a prudent man in believing that [the suspect] had committed ... an offense." *See Wright v. City of Phila.*, 409 F.3d 595, 602 (3d Cir. 2005) (first alteration in original) (internal quotations omitted).[35] Accordingly, on this record, viewed in Reedy's favor, it was error for the District

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[35]Evanson attempts to analogize the present case to *Wright*, 409 F.3d at 595. However, *Wright* is significantly distinguishable. The plaintiff in *Wright*, after being sexually assaulted by two men, returned to the house where she was attacked and broke into that house to retrieve her belongings. *Id.* at 597. While there, she took other items that did not belong to her. *Id.* Wright was charged with burglary, theft, criminal trespass, and criminal mischief. *Id.* at 596. Those charges were later dropped for failure to prosecute. *Id.* at 598. Wright then filed a § 1983 claim for false arrest. *Id.* We held that the officers had probable cause to arrest Wright for criminal trespass on the basis that she admitted to the police that she had broken a window, entered the house, and removed items from the house. *Id.* at 603. Unlike Wright, who admitted to having committed elements of the crimes charged, Reedy has never admitted to any crime, but rather has argued consistently that, at the time of her arrest, there was no probable cause to believe that she committed any element of any of the offenses for which she was charged.

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Court to hold that Evanson had probable cause to arrest Reedy.

vi. *Qualified Immunity*

The District Court held in the alternative that, even if there was no probable cause, Evanson is entitled to qualified immunity. The burden of establishing entitlement to qualified immunity is on Evanson. *See Harlow v. Fitzgerald*, 457 U.S. 800, 808 (1982). In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court established a two-part test to determine if a defendant can be shielded by qualified immunity. First, we must ask whether, "[t]aken in the light most favorable to the party asserting the injury, ... the facts alleged show the officer's conduct violated a constitutional right[.]" *Id.* at 201. "If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity." *Id.* If, however, the facts read in the light most favorable to the plaintiff show a violation of a constitutional right, as they do here because an arrest was made without probable cause, we must ask "whether the right was clearly established ... in light of the specific context of the case ... ." *Id.* A right is clearly established if "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[36] *Id.* at 202. A defendant police

[36]While *Saucier* mandated that a court must first determine whether a constitutional right had been violated before asking whether the right was clearly established (i.e., whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted), the Supreme Court has recently

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officer "will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue ... ." *Malley*, 475 U.S. at 341.

For the reasons described above, it must be said that, viewing the evidence from Reedy's perspective, "no reasonably competent officer would have concluded that a warrant should issue" when it did for her arrest for making a false report of the rape, for theft, and for receiving stolen property.[37] *See Grant v. City of Pittsburgh*, 98 F.3d 116, 122 (3d Cir. 1996) ("[C]rucial

clarified that lower courts have discretion to determine the order of the qualified immunity analysis in order to avoid unnecessary analysis of challenging constitutional questions. *See Pearson v. Callahan*, 129 S. Ct. 808, 818 (2009).

[37]Further, qualified immunity exists, in part, to protect police officers in situations where they are forced to make difficult, split-second decisions. *See Gilles v. Davis*, 427 F.3d 197, 207 (3d Cir. 2005) ("Under qualified immunity, police officers are entitled to a certain amount of deference for decisions they make in the field [because they] must make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." (internal quotations omitted)). There were no "split-second" decisions made in this case. The Reedy attack occurred on July 14, 2004, the Landmark attack occurred on October 13, 2004, and Evanson did not file the Affidavit against Reedy until January 14, 2005, five months after ceasing his investigative efforts into Reedy's case.

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to the resolution of any assertion of qualified immunity is a careful examination of the record ... to establish, for purposes of summary judgment, a detailed factual description of the actions of each individual defendant viewed in a light most favorable to the plaintiff.") (internal punctuation omitted). The District Court thus erred in granting summary judgment on the basis of qualified immunity.[38]

B. *Unlawful Search: The Blood Claim*

i. *Background*

As earlier discussed, Evanson directed the hospital to perform drug testing on blood samples taken from Reedy as part of her rape kit examination. The test results, which Evanson obtained eight days later through a search warrant, revealed that Reedy had ingested diazepam and confirmed that she had used marijuana.

[38]Qualified immunity was discussed by the District Court only with respect to Reedy's § 1983 claims concerning her arrest (i.e., her claims of unlawful seizure, false imprisonment, and malicious prosecution). Our decision on qualified immunity as to those claims is solely that it is not warranted at the summary judgment stage in this case. Qualified immunity remains a viable defense, though its applicability cannot be finally determined until after the facts have been sorted out at trial. With respect to Reedy's other § 1983 claim – her unlawful search claim – we make no comment on the availability of qualified immunity as it may pertain to that claim.

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Reedy contends that, under Fourth Amendment standards, Evanson conducted an unreasonable, warrantless search of her blood by ordering the drug screening.[39] Evanson does not argue that he had a warrant to search Reedy's blood, but rather argues that Reedy consented to the search, or alternatively, that she had no reasonable expectation of privacy in her blood because it had left her body. The District Court held that the Fourth Amendment's protections apply only to intrusions below the bodily surface, and that Reedy thus lost any reasonable expectation of privacy in her blood after she consented to having it drawn as part of her rape kit. The Court alternatively held that the drug screening Evanson ordered fell within the scope of the authorization form that Reedy had signed. On appeal, Reedy challenges both of those conclusions.

We address the consent issue before considering whether Reedy had a reasonable expectation of privacy in her blood, because, if Reedy consented to having her blood searched for drugs, there is no need to ask whether she had a reasonable expectation of privacy in the blood that was drawn.

[39]No one appears to be disputing that Evanson had probable cause to believe that the blood would reveal that Reedy had used a controlled substance. Indeed, Reedy had admitted that she had smoked marijuana. Rather, the issue is that he conducted a warrantless search.

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ii. *Consent*

The Fourth Amendment's protection proscribes only government action. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Although the medical personnel who drew and tested Reedy's blood are not government actors, because the personnel acted at Evanson's direction, they were effectively acting as agents of the government. *See Lustig v. United States*, 338 U.S. 74, 79 (1949), *overruled on other grounds by Elkins v. United States*, 364 U.S. 206 (1960) (indicating that evidence procured with the participation of government actors implicates the Fourth Amendment).

As a general matter, "warrantless searches ... are *per se* unreasonable under the Fourth Amendment." *United States v. Silveus*, 542 F.3d 993, 999 (3d Cir. 2008). "However, there are several exceptions to this rule." *Id.* One of those exceptions is consent, which, if given voluntarily, authorizes a warrantless search. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973).

"When an official search is properly authorized – whether by consent or by the issuance of a valid warrant – the scope of the search is limited by the terms of its authorization." *Walter v. United States*, 447 U.S. 649, 656 (1980). The standard for measuring the scope of a person's consent is "objective reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 251 (1991); *United States v. Baker*, 221 F.3d 438, 447 (3d Cir. 2000) (same). We must ask "what ... the typical reasonable person [would] have understood by the exchange" through which consent was obtained. *Jimeno*, 500 U.S. at 251; *see also United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990) (describing how

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"the scope of a permissible search is not limitless ... [but is r]ather ... constrained by the bounds of reasonableness[.]"). Consent is "determined from the totality of the circumstances ... [and] we must examine the circumstances surrounding [the] consent ... ." *United States v. Antoon*, 933 F.2d 200, 203-04 (3d Cir. 1991). Here, those "circumstances" involve Reedy undergoing a rape kit examination.

While at the hospital, Reedy signed two consent forms before her blood was drawn for the rape kit. The first form,[40] titled "AUTHORIZATION FOR COLLECTION AND RELEASE OF EVIDENCE AND INFORMATION," provides the following:

> I, Sara Reedy, freely consent to allow Dr. Jones, M.D., his medical and nursing assistants and associates to conduct an examination *to collect evidence concerning an alleged sexual assault.* This procedure has been fully explained to me and I understand that this examination will include tests for the presence of sperm and sexually transmitted diseases and infectious diseases, as well as clinical observation for physical evidence of penetration of or injury to my person, or both, and the *collection of other specimens and blood samples for laboratory analysis.*

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[40]We say "first" only for convenience in referring to the two forms. While both of the forms were signed on July 15, 2004, the order in which they were signed is not clear from the record.

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> I fully understand the nature of the examination and the fact that medical information gathered by this means may be used as evidence in a court of law or in connection with enforcement of public health rules and law.
>
> I do ... authorize the hospital and its agents to release the laboratory specimens, medical records and related information pertinent to this incident, including any photographs, to the appropriate law enforcement officials, and I herewith release and hold harmless the hospital and its agents from any and all liability and claims of injury whatsoever which may in any manner result from the authorized release of such information.

(App. at 274 (emphasis added).)

The second consent form, titled "CONSENT FOR RAPE EXAMINATION," provides the following:

> 1. I, Sara Reedy, hereby authorize Dr. Jones to perform a medical exam, including, but not limited to, a pelvic (internal) exam on my person and to record for the proper law enforcement agency and personal legal council [sic] his/her findings as related to the prosecution of my assailants.

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> 2. I authorize the collection of necessary specimens for laboratory test [sic] *as related to my case.*
>
> 3. Any questions I had regarding the procedure(s) have been answered to my satisfaction.

(*Id.* at 525 (emphasis added).) The District Court held that the "toxicology [drug] screening would fall within the scope of the [first form], which included 'the collection of other specimens and blood samples for laboratory analysis.'" (*Id.* at 42 (quoting App. at 274).) That was the only statement the Court made to support its conclusion that the testing Evanson ordered fell within the scope of Reedy's consent. Evanson argues that the forms "obviously allowed plaintiff's blood to be drawn and tested for drugs, and the results shared with the police," (Appellees' Answering Br. at 48,) but beyond that ipse dixit, offers no explanation as to why the forms authorized Reedy's blood to be searched for evidence of drug use.

Having examined the language of the consent forms from the perspective of an objectively reasonable person in Reedy's circumstances, *Baker*, 221 F.3d at 447, we conclude that someone who had not been accused of committing any crime and who had arrived at the hospital to be examined for the purpose of evaluating the extent of her injuries and risk of disease from a sexual assault, and for the purpose of gathering physical evidence to prosecute her assailant, would not understand that she was also consenting to having her blood

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tested a second time, at the direction of a law enforcement agent, for the purpose of collecting evidence to prosecute her.[41]

The first consent form states that Reedy is agreeing to an "examination *to collect evidence concerning an alleged sexual assault.*" (App. at 274 (emphasis added).) An objectively reasonable person in Reedy's situation would likely understand this phrase to limit her consent to the collection of evidence regarding the prosecution of her sexual assailant. Drug use had not been raised as being relevant to the sexual assault at the time that Reedy signed the form.[42] It cannot fairly be said, then, that an objectively reasonable person would understand that drug use "concern[ed]" the sexual assault when Reedy made the decision to consent.

The second form, by its title – "CONSENT FOR RAPE EXAMINATION" – identifies the scope of Reedy's consent, namely, that she was agreeing to a rape examination. In that

[41]We are not suggesting that hospital personnel, acting on their own, would have been constrained by the terms of the authorization forms from subjecting Reedy's blood sample to a toxicology screen. We need not and do not address that issue. We are concerned here only with the application of Fourth Amendment principles.

[42]From Evanson's police report, it appears that evidence regarding the urine samples was shared with him during his conversation with Reedy, thus indicating that Reedy had signed the forms prior to speaking with Evanson.

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form, Reedy authorized "the collection of necessary specimens for laboratory tests *as related to my case*." (*Id.* at 525 (emphasis added).) For the reasons described above, from a reasonable person's perspective, Reedy's sexual assault case was about sexual assault, not drug use. Again, at no time during Reedy's dealings with the police or the hospital prior to her signing the forms, did anyone discuss drug use with her. As a result, at the time Reedy signed that form, she could not have been expected to understand that she was consenting to have law enforcement direct the testing of her blood to show illegal drug use.[43]

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[43]Evanson argues that the information about drug use "could have been used ... to help prove or disprove [Reedy's] sexual assault claim." (Appellees' Answering Br. at 48.) No reasoning is provided as to how drug use would have any bearing on the competing factual scenarios in play here, and we can perceive none. Evanson also indulges in a non-sequitur, suggesting that it "does not matter" that he had not yet discussed drug usage with Reedy because he "had begun to formulate ... a theory inculpating [Reedy]." (*Id.*) When analyzing the scope of consent, the test is the objectively reasonable meaning of the communication between the person obtaining consent and the person who has supposedly consented. *See Baker*, 221 F.3d at 447. It is not what an individual police officer's inner thoughts happen to be.

Evanson further argues that if Reedy "had any qualms about what she was authorizing, she could have refused to sign the forms ... ." (*Id.*) However, Evanson does not suggest what about the forms should have given Reedy qualms. While competent adults have the duty to read consent forms carefully,

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In sum, we conclude that the text of these two authorization forms is insufficient to show that Reedy consented to having a law enforcement officer order medical personnel to search her blood for evidence of drug use for the purpose of incriminating her, something that is wholly apart from the sexual assault at issue here.

iii. *Expectation of Privacy and Consent*

The District Court also held that Reedy lost any reasonable expectation of privacy after she consented to having her blood drawn as part of the rape kit, because any subsequent testing on that blood "did not involve an intrusion below [her] bodily surface." (App. at 42.) That holding wrongly discounts the limits of Reedy's consent, effectively rendering those limits a nullity once law enforcement had access to otherwise private material.

Beyond that, the District Court's analysis misapprehends the privacy rights at stake. "A legitimate expectation of privacy exists when the individual seeking Fourth Amendment protection maintains a 'subjective expectation of privacy' in the area searched that 'society [is] willing to recognize ... as reasonable.'" *Doe v. Broderick*, 225 F.3d 440, 450 (4th Cir. 2000) (alterations in original) (quoting *California v. Ciraolo*, 476 U.S. 207, 211 (1986)); *see also United States v. Hartwell*, 436 F.3d 174, 178 n.4 (3d Cir. 2006) ("[A] Fourth Amendment

there is no duty to be skeptical that one might be consenting to something not mentioned in the forms.

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search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." (quoting *Kyllo v. United States*, 533 U.S. 27, 33 (2001))). In *Schmerber v. California*, the Supreme Court held that blood "testing procedures plainly constitute searches of 'persons' ... within the meaning of [the Fourth] Amendment." 384 U.S. 757, 767 (1966). The Court noted that the "intrusions beyond the body's surface" implicate the "interests in human dignity and privacy which the Fourth Amendment protects ... ." *Id.* at 769-70. The Court reasoned that this was so because "[t]he overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State." *Id.* at 767. The District Court in this case cited to *Schmerber* but concluded that the Supreme Court intended to give Fourth Amendment protection only to "forced invasions below the body surface ... ." (App. at 41.)

To support that reading, the District Court cited our decision in *In re Grand Jury Proceedings (Mills)*, 686 F.2d 135, 139 (3d Cir. 1982), in which we held that the seizure of "facial and head hair" did not constitute a search or seizure protected by the Fourth Amendment because the evidence was "on public view." In that case, we distinguished hair samples from "blood samples, ... [where, unlike hair samples] the bodily seizure requires production of evidence below the body surface which is not subject to public view." *Id.* The District Court took our words to mean that the Fourth Amendment protects blood only when it is "below the body surface" (App. at 41), and held that Reedy had no claim because the "Fourth Amendment provides no protection for what a person knowingly exposes to the public." (*Id.* (internal quotations omitted).) The Court also

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analogized Reedy's case to *United States v. Dionisio*, 410 U.S. 1, 8-9 (1973), in which the Supreme Court held that requiring a witness to produce voice exemplars did not violate the Fourth Amendment because someone's voice is exposed to the public.

The District Court's analogies fail because, unlike one's voice or hair, blood is not exposed to the general public, not even after it has been drawn for medical testing. Agreeing that the data produced by a blood test can be shared with law enforcement for the purpose of prosecuting a rapist is not tantamount to the unrestricted public exposure of the blood sample in the way people typically expose their voice or hair. While we did remark in *Mills* that the taking of blood samples requires an intrusion below the body surface, 686 F.2d at 139, we noted that fact only to illustrate why blood samples, as compared to hair samples, were not "on public view." Similarly, in *Schmerber*, while the Supreme Court noted that the taking of blood involves intrusion beyond the body's surface, it did not say that the blood, once drawn, is no longer subject to a reasonable expectation of privacy. Instead, the Court held that blood "testing procedures plainly constitute searches of 'persons' ... within the meaning of [the Fourth] Amendment." 384 U.S. at 767. That holding makes sense, given that an "overriding function of the Fourth Amendment is to protect personal privacy and dignity ... ." *Id.*

However, if there were any doubt about the breadth of the Supreme Court's holding in *Schmerber*, it is dispelled by the Court's subsequent decision in *Ferguson v. City of Charleston (Ferguson I)*, 532 U.S. 67 (2001), and the decision of the United States Court of Appeals for the Fourth Circuit in that case on

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remand, *Ferguson v. City of Charleston* (*Ferguson II*), 308 F.3d 380 (4th Cir. 2002). In *Ferguson I*, a state hospital began performing drug tests on the urine samples of obstetric patients that met certain criteria. 532 U.S. at 71 & 72 n.4. The hospital then shared the results of those tests with law enforcement. *Id.* at 72. Several women who were arrested after their urine tested positive for cocaine filed suit, claiming that the drug tests on their urine were unconstitutional searches. *Id.* at 73. The state defended on the basis "(1) that, as a matter of fact, petitioners had consented to the searches; and (2) that, as a matter of law, the searches were reasonable, even absent consent, because they were justified by special non-law-enforcement purposes [or the 'special needs' doctrine]." *Id.*

The Supreme Court addressed the second of those two defenses, and compared the case to previous ones in which drug testing had been allowed based on the "special needs" exception. It specifically cited drug testing of U.S. Customs Service employees as part of their being considered for promotion, and testing of high school students as a condition of their participating in extracurricular activities. *Id.* at 77. The Court noted that the invasion of privacy suffered by the *Ferguson* plaintiffs was far more substantial than the privacy invasions in the "special needs" cases because, in the special needs cases, "there was no misunderstanding about the purpose of the test or the potential use of the test results, and there were protections against the dissemination of the results to third parties." *Id.* at 78. Moreover, "[t]he reasonable expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent." *Id.*

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The Court further "recognized that an intrusion on that expectation may have adverse consequences because it may deter patients from receiving needed medical care." *Id.* at 78 n.14. The Court then remanded the case to the Fourth Circuit for consideration of the scope of the patient's consent. In so doing, the Court specifically admonished that "when [medical personnel] undertake to obtain ... evidence from their patients *for the specific purpose of incriminating those patients*, they have a special obligation to make sure that the patients are fully informed about their constitutional rights ... ." *Id.* at 85 (emphasis in original).

On remand, the Fourth Circuit first explained that it was "abundantly clear" from the Supreme Court that "any finding of informed consent must rest on a determination that Appellants had knowledge, from some source, that no medical purpose supported the testing of their urine for cocaine; further, Appellants must have understood that the tests were being conducted for the law enforcement purpose of obtaining incriminating evidence." *Ferguson II*, 308 F.3d at 397. The Fourth Circuit considered critical the question of whether the patients "understood that the request was *not* being made by medical personnel for medical purposes, but rather by agents of law enforcement for purposes of crime detection." *Id.* (emphasis added). After analyzing the relevant language of the consent forms, the court held that

> [nothing] in either form [] advised or even suggested to Appellants that their urine might be searched for evidence of criminal activity for law enforcement purposes. Rather, to the extent the

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> forms alerted Appellants to the possibility that their urine would be tested for drugs, Appellants were led to believe that such tests would be conducted only if an Appellant's treating physician deemed such a test advisable in the particular circumstances of that Appellant's medical care. ... [T]here is no evidence that *any* of the urine drug screens were conducted as a result of a doctor's independent medical judgment ... .

Id. at 399. The court thus concluded that, "as a matter of law, neither ... consent form could serve as sufficient evidence of Appellants' informed consent to the searches." *Id.* Implicit in the Fourth Circuit's holding is that the patients had a reasonable expectation of privacy in urine samples taken from them at the hospital for medical purposes.

As in *Ferguson I* and *Ferguson II*, an important inquiry about the blood samples at issue here is whether Reedy understood that her blood was being tested for the law enforcement purpose of obtaining incriminating evidence against her. The answer seems plainly to be no. She consented to having her blood drawn in the context of a rape kit examination. She had just been sexually assaulted and was being tested for sexually transmitted diseases and for potential evidence concerning her assailant. She indisputably had a reasonable expectation of privacy in her blood when it was drawn, and she did nothing to forfeit that expectation.

The Fourth Amendment protects against unreasonable government intrusion into the personal and private aspects of

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life. There is little that is more personal than an individual's bodily integrity. *See Schmerber*, 384 U.S. at 772 ("The integrity of an individual's person is a cherished value of our society.") Consequently, Evanson's warrantless search of Reedy's blood for drug use, without Reedy's consent, violated the Fourth Amendment.[44] The District Court's conclusion to the contrary was error.

C. *Claim Against Mannell*

In her amended complaint, Reedy named Mannell, the Public Safety Director for Cranberry Township, as a defendant in all of her federal claims. The District Court granted summary judgment to Mannell. Reedy argues that the District Court erred in finding that supervisory liability should not attach to Mannell.[45]

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[44]Were it otherwise, victims of violent crime might be deterred from receiving much-needed medical care and from providing the physical evidence necessary for law enforcement to apprehend and prosecute those who commit such crimes. *Cf. Ferguson I*, 532 U.S. at 78 n.14 (warning that such an intrusion on a reasonable expectation of privacy "may have adverse consequences because it may deter patients from receiving needed medical care").

[45]In granting summary judgment to Mannell, the District Court cited to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and stated that Reedy had failed "to meet the standards needed to impose liability" against Mannell under that

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In order to establish supervisory liability, Reedy must show that Mannell "participated in violating [her] rights, or that he directed others to violate them, or that he, as the person in charge ... , had knowledge of and acquiesced in his subordinates' violations." *Baker v. Monrow Twp.*, 50 F.3d 1186, 1190-91 (3d Cir. 1995). Reedy claims that "Mannell not only supervised, ratified and approved Evanson's investigation and charging of Reedy, but also participated along with Evanson in the events leading up to and following Reedy's arrest." (Appellant's Opening Br. at 50.) Mannell explained in his deposition that he is generally kept abreast of how investigations are going and that he is usually notified by a detective when a decision is made to take criminal charges to an Assistant District Attorney for review. However, he does not review the charges before they go to a prosecutor. With regard to Reedy's prosecution, Mannell was Evanson's supervisor during the relevant time, and Evanson kept Mannell abreast of "significant points" (App. at 569), but there is no evidence that Mannell directed Evanson to take or not to take any particular action concerning Reedy that would amount to a violation of her constitutional rights. Accordingly, we affirm the District

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case, which deals with liability arising from constitutional violations as a result of governmental custom or policy. (App. at 43.) However, when discussing Mannell's potential liability, the parties focus on traditional principles of supervisory liability against Mannell as an individual, rather than on *Monell* liability. Accordingly, we analyze Mannell's potential liability under the doctrine of supervisory liability, as set forth in *Baker v. Monrow Township*, 50 F.3d 1186, 1190-91 (3d Cir. 1995).

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Court's grant of summary judgment to Mannell on all of Reedy's claims.

D. *Intentional Infliction of Emotional Distress*

Reedy brought a state law claim of intentional infliction of emotional distress against both Evanson and Meyer. The Court granted summary judgment, finding that neither Evanson's nor Meyer's conduct was "extreme and outrageous." (*Id.* at 43.)

While the Pennsylvania Supreme Court has yet to formally recognize a cause of action for intentional infliction of emotional distress, *see Taylor v. Albert Einstein Med. Ctr.*, 754 A.2d 650, 652 (Pa. 2000), the Pennsylvania Superior Court has recognized the cause of action and has held that, "in order for a plaintiff to prevail on such a claim, he or she must, at the least, demonstrate intentional outrageous or extreme conduct by the defendant, which causes severe emotional distress to the plaintiff." *Swisher v. Pitz*, 868 A.2d 1228, 1230 (Pa. Super. Ct. 2005) (discussing how the Pennsylvania Supreme Court has indicated that, were it to recognize a cause of action for intentional infliction of emotional distress, these would be the requirements necessary for a plaintiff to prevail on such a claim). In addition, "a plaintiff must suffer some type of resulting physical harm due to the defendant's outrageous conduct." *Id.* Liability on an intentional infliction of emotional distress claim "has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."

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Field v. Phila. Elec. Co., 565 A.2d 1170, 1184 (Pa. Super. Ct. 1989).

Reedy argues that Evanson engaged in several "extreme and outrageous acts," and that the District Court erred because there was "ample evidence of Evanson['s] ... abusive treatment of her[.]" (Appellant's Opening Br. at 56.) Specifically, Reedy points to Evanson's denunciations of her, the fact that he traveled to her home and harassed her, and his recklessly-made false statements and the omissions in his Affidavit. (*Id.* at 55-57.) While one may argue whether Evanson's conduct was "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious," *Field*, 565 A.2d at 1184, we need not decide the issue, because, to succeed on an intentional infliction of emotional distress claim, Reedy must show that she suffered "some type of resulting physical harm due to the defendant's outrageous conduct." *Swisher*, 868 A.2d at 1230. Reedy has not pointed to any physical harm she suffered as a result of police conduct and, for that reason alone, her intentional infliction of emotional distress claim fails as a matter of law. We thus affirm the District Court's grant of summary judgment on that claim.[46]

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[46]Even though Reedy names both Evanson and Meyer in her emotional distress claim, the only allegations of extreme and outrageous acts in her briefing before us pertain to Evanson. It is thus fair to wonder whether she has abandoned her emotional distress claim against Meyer. Even if not abandoned, however, Reedy's emotional distress claim against Meyer fails for the same reasons that it fails against Evanson. She has not pointed

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IV. Conclusion

In conclusion, the District Court erred in granting summary judgment to Evanson on Reedy's Fourth Amendment unlawful seizure claim and her related federal and state law claims. Viewing the facts in the light most favorable to Reedy, no reasonably competent officer could have concluded at the time of Reedy's arrest that there was probable cause for the arrest. In addition, summary judgment on Evanson's defense of qualified immunity cannot stand. The availability of the defense must be decided after fact finding by the jury to determine whether the facts as recounted by Evanson or by Reedy are more credible. We thus vacate and remand for Counts 2, 3, and 4 of the complaint, as against Evanson, to go to a jury.

The District Court also erred in granting summary judgment to Evanson on Reedy's unlawful search claim. We reverse the Court's decision with respect to Count 1 of the

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to any physical harm suffered as a result of Meyer's actions. Accordingly, we affirm the District Court's grant of summary judgment to Meyer on Reedy's emotional distress claim.

We note also that Meyer was listed as a defendant in Count 5 of Reedy's complaint (harm to liberty interest in violation of the Due Process Clause of the Fourteenth Amendment). However, as discussed above, *see supra* note 17, that Count is subsumed by Reedy's Fourth Amendment counts, and Reedy did not name Meyer as a defendant in any of those counts.

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complaint and remand for consideration of whether qualified immunity is available to Evanson on that Count.

Finally, we affirm the District Court's grant of summary judgment as to all claims against Meyer and Mannell, and as to Reedy's intentional infliction of emotional distress claim, Count 8, against Meyer and Evanson.

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Testimony to the Senate Judiciary, Subcommittee on Crime and Drugs

"Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases"

September the 14th, 2010

By

Delilah Rumburg, Executive Director, Pennsylvania Coalition Against Rape, National Sexual Violence Resource Center

Thank you Chairman Specter and distinguished members of the Committee for this opportunity to discuss these important issues. As Executive Director of the Pennsylvania Coalition Against Rape (PCAR) I am deeply honored to be able to comment on rape reporting and investigation on behalf of our network of 51 rape crisis center programs that provide services to every county in the Pennsylvania. Since 1975, PCAR, the oldest anti-sexual violence coalition in the country has successfully worked as an agent of change-educating society about the sever and long-lasting impact of sexual violence, confronting victim-blaming attitudes, challenging injustice, advocating for legislation and providing sexual assault victims with the compassion and dignity they deserve.

In 2000, PCAR founded the National Sexual Violence Resource Center (NSVRC) as the nation's principle information and resource center regarding all aspects of sexual violence. The NSVRC provides national leadership in the anti-sexual violence movement by generating and facilitating the development and flow of information on sexual violence intervention and prevention strategies.

I have worked in the violence against women field for over 25 years and as Executive Director of PCAR and NSVRC, I am in a position to bring the experience and perspectives of these two organizations to the Committee to create awareness and ask for accountability in the way rape cases are investigated and reported in America. I would like to emphasize that both of our organizations have a decade's long history of collaboration and dialogue with law enforcement and prosecution. We strongly adhere to the philosophy that it takes a team of advocates, police and prosecutors to bring perpetrators to justice. It is therefore critical that we take this

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opportunity to create positive change for victims of sexual violence, the police who investigate these heinous crimes, and the prosecutors who make the community safe by holding offenders accountable.

To begin I would like to address the issues in front of this committee that relate to the inadequate and shameful way that some cases of sexual violence are handled during the investigative phase. For many years law enforcement and prosecutors have strived to educate their ranks on the dynamics of victim behavior, the complexity of investigating these crimes and overall have improved the way that victims are treated in the criminal justice process. However, as you will hear in today's testimony and what is widely reported in the press, many victims are still being treated poorly and as a result many perpetrators of sexual crimes go free (and often to commit more crimes).

In the second part of my testimony I will provide the members of the committee with an analysis comparing the various types of data on rape that is reported through our network of victim service agencies in contrast to national FBI Uniformed Crime Report data. Keep in mind that many of the individuals that are seen for services at our programs are adult survivors of child sexual abuse that may or may not have reported the crime to law enforcement. We are not stating that the number of Pennsylvanians seen at rape crisis centers is the number that should be reported by the Pennsylvania State Police, rather that the numbers are striking by comparison. This disparaging gap in data leads to a misunderstanding of the real rate and levels of sexual assault in our country.

Attitudes Toward Victims When Investigating Sexual Assault

Today you will hear accounts of how victims of rape, attempted rape, assault and harassment are often treated when they report these crimes. These accounts are shocking and shameful. Unfortunately they are not rare. Thanks to training resulting from federal legislation and funding through the Violence Against Women Act, many local law enforcement agencies and prosecutors offices have been able to learn more about the dynamics and complexities of sexual violence as it affects the victim. Although these programs have proven successful they are not enough. Only a fraction of funding is actually appropriated for these programs and as staff joins and leaves these agencies there is often a gap in training for many individuals. Lack of training is not the only problem. Clearly social perception about sexual assault victims plays a large role in how criminal justice professionals treat victims.

Even as popular television shows and wide spread media reports paint a more realistic picture of rape victims, many members of the general public (and in the ranks of the criminal justice system) have a skewed view of what a "real victim" of rape should be. Many people think that rape victims must be completely "innocent" or have not behaved in a certain way to "bring on" what happened to them. Some think that rape victims have to act a certain way after the crime

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in order to prove that they were really hurt. While others believe that victims should have physical injuries in order for them to be "real victims". Unfortunately those that investigate and prosecute these crimes also believe these myths.

There are numerous cases that have been popular in the media over the past decade that illustrate this behavior. For example during the Kobe Bryant rape case many reporters and professionals in the criminal justice field spoke on news programs about what the victim had "done wrong" how what her demeanor was like after the alleged crime. Many of these professionals and subsequently the general public, questioned the victim's sexual history and her motivation to report the crime. These outdated attitudes not only jeopardize the prosecution of these cases but also have an impact on whether future victims will feel safe enough to come forward.

Another common myth that many people and professionals often use to question the validity of a rape victim's report is whether the victim was drinking and/or drunk. Most recently in the multiple rape allegations against Pittsburgh Steelers' quarterback Ben Roethlisberger, this issue was a hot topic during the investigation and the public's reaction. Anyone's use of alcohol at any time should not be an excuse or a mitigating circumstance to rape. Regardless of the amount of alcohol someone has they do not want to be physically assaulted. Many perpetrators of sexual offenses even use these as an excuse or seek out victims who are intoxicated so that the victim will have a hard time remembering details and will not be considered a credible witness.

Many cases that are dismissed by the public and ignored by law enforcement involve victims who are considered "socially undesirable" such as runaways, drug users/addicts, prostitutes and those who are homeless. Because these individuals are not "missed" for a long period of time (or ever) they make easy targets for rapists, murderers and trafficking perpetrators. These individuals are often not seen as credible witnesses by law enforcement and because many of them are transient they may not be able to testify at trial. In 2009 an Ohio man who lured addicts and prostitutes to his house with the promise of money or drugs, raped, murdered and buried over a dozen women in his home before he was captured. The police even investigated the reports of several women who were attacked by the perpetrator before discovering the bodies under his home. It begs to wonder if the surviving victims' reports were more thoroughly investigated at the time, if the serial rapist would have been caught sooner saving more victims from death.

Individuals and criminal justice professionals also question a victim's reaction after a crime. Many people think a victim should be crying, scared, upset or physically injured. However psychologists and sexual assault advocates, who work with these victims, continually report that each victim reacts differently in each case. Victims may be in a state of shock and not able to speak at all where some victims may be angry and combative. These reactions may lead investigators to question whether the victim is being honest. For many years it was common practice to polygraph victims to see if they were "telling the truth" about what happened. Although this practice is outlawed and shunned by the court system as inadmissible as evidence, it is still used as a tool to intimidate victims to "tell the truth".

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It is clear that even today many people, and unfortunately those that investigate sexual crimes, still hold on to outdated and shameful myths about victims of rape. The attitudes that someone isn't good enough to be a victim or that they don't act like a "real victim" or that they did something to cause the attack, have no place in our society and certainly no place in our criminal justice system.

When we hear that someone is a victim of car jacking we do not say "well maybe they shouldn't have had a nice car" or in cases of burglary "they shouldn't have had a nice house". Our legal system was built on the premise that justice should be served without prejudice toward the accused, and therefore professionals assigned to investigate crime and protect victims should be held accountable to investigate and prosecute cases without prejudice toward the victim.

Discrepancies in Crime Reporting Data

Below is an analysis of crime reporting techniques and data collection of sexual assault offenses. As you will see the discrepancies in what data is collected, from whom and when often leads to reports that widely skew the reality of rape in our society. Until these programs can be analyzed, updated and modernized we caution anyone using one of these data sets to accurately portray trends and prevalence rates of sexual assault and rape in our country. We can not know if our programs are working to curb, deter or bring justice in these cases until a more accurate count and analysis of rape data is available.

1. The Pennsylvania Uniform Crime Report

This report was established as a result of the Uniform Criminal Statistics Act of 1970 (71 P.S. §1190.25). The Pennsylvania State Police serves as administrator of the program through an Inter-Agency Agreement with the Pennsylvania Commission on Crime and Delinquency. The counterpart of the Pennsylvania UCR Program is the National UCR Program under the direction of the Federal Bureau of Investigation (FBI). (UCR, 2009). UCR data is collected in every state and published annually by the U.S. Department of Justice.

The primary objectives of the Pennsylvania UCR Program are to inform the Governor, Legislature, other governmental officials, and the public as to the nature of the crime problem in Pennsylvania and to provide law enforcement administrators with criminal statistics for administrative and operational purposes.

Strengths: It gathers data on arrests from police departments across The Commonwealth.

Limitations: It only reports on the following sexual offenses:

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- Forcible Rape defined as "carnal knowledge of a female forcibly against her will".
- Does not include statutory rape or other sex offenses such as attempted rape, assault, sexual battery, or other crimes not included in forcible rape.
- Does not include rape of males.
- Does not include sexual violence against children.

2. The National Crime Victim Survey (NCVS)

The National Crime Victimization Survey (NCVS) series, previously called the National Crime Survey (NCS), has been collecting data on personal and household victimization since 1973. An ongoing survey of a nationally representative sample of residential addresses, the NCVS is the primary source of information on the characteristics of criminal victimization and on the number and types of crimes not reported to law enforcement authorities.

It provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders. Twice each year, data are obtained from a nationally representative sample of roughly 49,000 households comprising about 100,000 persons on the frequency, characteristics, and consequences of criminal victimization in the United States (National Crime Victim Survey, 2010). The survey is administered by the U.S. Census Bureau (under the U.S. Department of Commerce) on behalf of the Bureau of Justice Statistics (under the U.S. Department of Justice).

Strengths: It gathers data from a large number of households from across the United States.

Limitations:

- It gathers information from one individual in the household (the individual who answers the phone).
- Data collection limited to those with a landline.
- Participants may not be willing to share information.

3. Research article *Rape in Pennsylvania*

The authors of this article reviewed data from the National Women's Study (NWS) and the National Violence Against Women Survey (NVAWS). Data from these studies showed that approximately 13.4% of adult women in the United States have been victims of completed forcible rape sometime during their lifetime.

These studies also found the risk of having ever been raped was related to a woman's current age, her race/ethnicity, and the region of the nation in which she currently lives. Both studies also found that the majority of rapes experienced by adult women occurred when they were under the age of 18.

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The authors then developed a method for estimating the prevalence of rape in Pennsylvania using national information about the prevalence of rape as well as risk factors for having been raped. Using a breakdown of the Pennsylvania population of women with the identified risk factors as well as demographic and geographic risk factor information, they estimated that approximately 9.9% of women in Pennsylvania had been raped.

Strengths: Uses sound research data to extrapolate information on the number of women raped in Pennsylvania.

Limitations:

- Does not include cases of attempted rape.
- Does not include rapes in which no force was used (incapacitation rapes, alcohol or drug facilitated rapes, coerced or threat of force rape).
- Does not include rape of female minors.
- Does not include rape of men or boys.

4. Statistics from Pennsylvania Rape Crisis Centers:

Statistics are captured on every victim of sexual violence who seeks services in a Pennsylvania rape crisis center. The rape crisis centers track sex, ethnicity, age, as well as type of violence. The data includes adult male victims, teens, and children.

Strengths: The data is not limited to adult females, but tracks traditionally unreported types of sexual violence.

Limitations: The statistics only count individuals who seek services at a Pennsylvania rape crisis center including counseling/advocacy, hospital accompaniment, court accompaniment, and hotline services. It does not report victims that do not seek services.

To see a comparison of the UCR and Pennsylvania Rape Crisis Statistics for 2008, see Appendix A.

As these numbers demonstrate, the practice of limiting the reporting of sexual offenses to "forcible rape" does not reflect the reality of state sexual assault statutes and results in a gross undercounting of crime. We ask the Committee to consider methods by which the UCR can more accurately reflect the reality of rape. Nationally, states have completely revised crimes' codes to reflect that reality. States have created a sex offense which does not require force as an element, colloquially the "No means No" law. The crime of statutory rape or statutory sexual assault has been enacted. Further, states' Megan's law website plainly list the crimes committed by offenders which community members will not see reflected in the Uniform Crimes Code. Can this flawed system be changed by policy, statute or Executive Order? This change must happen to acknowledge states' legislatures recognition of the differentiation of sex offenses. The

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community has a right to know that the crimes that they see on a public website are recognized in the Uniform Crime Report.

The next issue we see as a major contributing factor to the underreporting biased investigation of rape, is the plethora of non-stranger rapes in America. Some investigators and most community members, who are, after all, potential jurors, believe in the myth of the "stranger in the bushes" leaping out in the dark to assault a victim. The reality is that the majority of rapes are committed by someone known to the victim. (U.S. Department of Justice National Crime Victimization Study, 2005) PCAR has taken a very concrete initiative to counter this myth by creating Aequitas, an organization which provides training on the prosecution of sexual assault, domestic violence dating violence and stalking by developing, evaluating and refining prosecution practices that increase victim safety and offender accountability. This project has travelled the country with "The National Institute on the Prosecution of Sexual Violence."

This Institute focuses on the predominant but difficult to prosecute cases, combining lecture with hands on exercises to give the prosecutors the tools to overcome the unfortunately common myths and misconception regarding non-stranger rape. The culture of rape myths leads law enforcement, prosecution and juries to turn their focus on what the victim did rather than the evidence that would support a conviction for rape. As mentioned above, the non-stranger rape, the victim's voluntary use of alcohol, so-called provocative dress, sexually exploited or prostituted victims, including men and children, and counterintuitive victim behavior all support the notion that the victim is lying, instead of focusing on the offender's targeting and cultivating a victim to use these myths to continue to be a threat to the community by evading conviction.

In conclusion, we ask the Committee to examine the effectiveness of the Uniform Crime Reporting process and seek a solution that more accurately reflects the reality of rape in our nation. Further, we would like to emphasize the critical nature of the advocates' role in providing a safe haven for victims to disclose and seek help. Finally, we would like to encourage the continuing education of law enforcement and prosecutors on the difficult issue of the appropriate and successful investigation and prosecution of the crime of rape. Improving the accountability of offenders by trial and incarceration will not only make our communities safer, but it will create a culture of increased reporting of this very personal, pervasive and insidious crime.

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Heartfelt appreciation and thank you is due to the leadership of Senator Specter, who has a long history of service to crime victims and awareness of crime victimization, since his days as a prosecutor. His passion, intellect and insight will be sorely missed not only by Pennsylvanians but also by our nation. Thank you to the members of the Committee for shining a light on this often invisible crime.

Please contact myself and our organizations for more information.

Respectfully submitted,

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Appendix A

References

Kilpatrick, D.G., & Ruggiero, K.J. (2003). *Rape in Pennsylvania: A Report to the Commonwealth.* Charleston, SC: National Violence Against Women Prevention Research Center, Medical University of South Carolina.

Pennsylvania Uniform Crime Report. Retrieved September 7, 2010 from: http://ucr.psp.state.pa.us/UCR/Reporting/RptMain.asp

The Crime Victimization Survey. Retrieved September 7, 2010 from http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=245

Comparison of the UCR and Pennsylvania Rape Crisis Statistics

PENNSYLVANIA UNIFORM CRIME REPORT:

Forcible Rape:* 3,440 in 2008

- 9 rapes occur each day in Pennsylvania, one every two hours and 7 minutes.
- 1.6% increase from the previous year
- Represents 6.8% of the Violent Crime Index for PA

Northeast Pennsylvania:

- 13.9% of rapes occurred in NE PA
- 478 forcible rapes were reported
- 43.5% were cleared; there were 131 arrests

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In Pennsylvania Persons arrested were:

- 99.4% male
- 56.7% Caucasian
- 56.8% were 25 years or age, or older

STATISTICS PROVIDED TO PCAR BY PENNSYLVANIA RAPE CRISIS CENTERS (2008):**

- 21,078 victims of sexual violence
- Of these:
  - **9,114** were **children** under the age of 18
    - 2,762 girls 0-11 years of age
    - 1,239 boys 0-11 years of age

    - 4,512 girls 12-17 years of age
    - 601 boys 12-17 years of age

  - 11,964 were adults, 18 years of age and older
    - 11,131 women
    - 833 men

  - 11,616 people received services who were impacted by the violence, but not directly victimized (often significant others of crime victims).

***Forcible Rape definition:**

Forcible rape is the carnal knowledge of a female through the use of force or the threat of force. Assaults or attempts to commit forcible rape are included; however, statutory rape (without force) is not counted. Crime counts in this category are limited to actual offenses of forcible rape or attempts, as established by police investigation.

**** Studies such as Rape in America consistently show that only about 10% of victims ever report their victimization to the police. Approximately 15% to 20% report their victimization to a friend.**

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Testimony of
Eleanor Cutri Smeal
President of the Feminist Majority Foundation
For the Hearing
"Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases"
Of the Subcommittee on Crime and Drugs of the Judiciary Committee, United States Senate

September 14, 2010

I would like to thank you, Chairman Specter and the members of the subcommittee and staff, for holding these hearings and addressing this crucial problem affecting the safety and lives of millions of women and girls in the United States. I am Eleanor Smeal, President of the Feminist Majority Foundation (FMF). The FMF, Founded in 1987, is a nationwide research and action organization dedicated to women's equality, reproductive health, and non-violence. Our foundation has had reducing violence toward women as a major focus. In 1995, the Feminist Majority Foundation established the National Center for Women and Policing, which is a division of the Foundation. The Center promotes increasing the numbers of women at all ranks of law enforcement, both to promote equality for women and to improve police response to violence against women, reduce incidents of police brutality, and to strengthen community policing reforms. FMF also publishes *Ms.* Magazine, the oldest and most well-known feminist publication in the US, which has reported frequently on violence against women and rape.

I would also like to thank and especially recognize the work of the following individuals in the preparation of this testimony: Margaret Moore, Director of the National Center for Women and Policing, who has 26 years of police and federal law enforcement experience; Kim Gandy, FMF Vice President and General Counsel and former prosecutor; Norma Gattsek, FMF Government Relations Director and who has 12 years of victim advocacy and direct services experience; and Kim Lonsway, Ph.D., Director of Research for End Violence Against Women International and former Research Director for the National Center for Women and Policing.

I. Nationwide Prevalence of Underreporting and Investigating of Rape

Numerous studies over some four decades have documented the high incidence of rape in the U.S. as well as the underreporting and the under-prosecution of rape. Tragically, the National Violence Against Women Survey[1] found that 1 in 6 women will be sexually assaulted sometime during their lifetime. This survey, the most authoritative and comprehensive study to date, was conducted in 1995-1996 and sponsored by the National Institute of Justice and the Centers for Disease Control. Using a random sampling methodology, the study revealed that in the U.S., some 15% of women

[1] Tjaden, P. & Thoennes, N. (2000), Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women (NCJ 183781). National Institute of Justice, Office of Justice Programs, Washington, DC.

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respondents had been raped. Furthermore, studies reveal most rapists are never prosecuted.

Despite years of feminist efforts by countless rape crisis and sexual assault centers, women's law projects, activists and experts, the old axiom often repeated in the 1970s that 10% of rapes are reported and that 10% of these rapes result in a conviction remains largely true today. According to David Lisak, Ph.D., of the University of Massachusetts Boston, "Approximately 85% of rape victims do not report their victimization to criminal justice authorities. Of the 15% who do report, it is estimated that 10% result in the filing of charges, and perhaps 40% of those cases result in some sort of conviction."[2]

According to one recent analysis based on social scientific research and federal data from the 2004 State Court Processing Statistics, less than 5% of perpetrators convicted in rape cases and less than 3% will be incarcerated.[3] Another based on data from the National Violence Against Women Study analysis by Dr. Mary Koss in 2006 indicates that "only .35% of the rapes committed against female respondents were reported, prosecuted and resulted in a sentence of incarceration."[4]

The lack of reporting, investigation, and prosecution endangers millions of women and girls. Most "undetected" rapists are serial rapists. One small study in Boston indicated that these undetected rapists had, on the average, some 14 victims.[5] Another larger study by David Lisak and Paul Miller of 1,882 male college students at a "mid-size, urban commuter university" revealed of those who reported committing rape (120), a majority (63%) of these undetected rapists were repeat offenders. A majority of these repeat offenders "also committed other acts of interpersonal violence, such as battery, child physical abuse, and child sexual abuse."[6] Even more alarming, undetected repeat offenders committed 91% of the rapes.[7]

The problem of "undetected" rapists and the evidence that the vast majority of these rapists are repeat offenders or serial rapists makes it all the more egregious that hundreds of thousands of rape kits remain unprocessed and untested in the United States. Although not the focus of the hearing, I believe it is an indicator of the failure to investigate rape cases.

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[2] David Lisak, Ph.D., University of Massachusetts Boston, Rape Fact Sheet. (http://www.sexualassault.army.mil/files/RAPE_FACT_SHEET.pdf)
[3] Kimberly A. Lonsway, Ph.D., Director of Research, End Violence Against Women (EVAW) International and Sgt. Joanne Archambault (Ret.), Executive Director EVAW International, "The 'Justice Gap' for Sexual Assault Cases: Future Directions for Research and Reform" Violence & Victims, Springer Publishing Company, Inc., 2010, p. 19.
[4] Ibid., pp.20-21.
[5] Lisak, Rape Fact Sheet.
[6] David Lisak and Paul M. Miller (Brown University School of Medicine), Violence and Victims, Vol.17, No.1, Springer Publishing Company, Inc., 2001, p. 80.
[7] Ibid., p. 78. Repeat offenders committed 439 of the 483 rapes or 91%.

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Last year, these findings were replicated in a sample of new enlistees to the Navy. Using similar question to screen for rape perpetration, Stephanie McWhorter and colleagues surveyed 1,146 men who were fairly diverse in race/ethnicity and whose average age was 19.8 years. This longitudinal (two year) self-report survey of newly enlisted male navy personnel found "reperpetrators [repeat offenders] committed 95% of the ACR [attempted and completed rapes] incidents."[8]

The study of Navy enlistees also shed light on stranger versus acquaintance rape, and the means used to subdue the victim. Of the total number of rapes, 75% targeted only an acquaintance, and 7% only a stranger; an additional 18% involved both victims who were strangers and acquaintances. In other words, 93% involved at least one victim who was known to the man; only 7% only involved solely victims who were strangers.

Finally, in the 2009 study, the men were asked whether they had used drugs or alcohol as a tactic, or only force or threats of force. The researchers found that 77% of rapes were committed using drugs or alcohol (61% involved only substances, and an additional 16% involved both force and substances). Only 23% involved only force or threats of force (i.e., no substances); these were all committed against victims who were known to the victim. In other words, there were no rapes committed against a stranger that did not use substances.

II. Impact of the Under-Representation of and Discrimination Against Women in Law Enforcement

Effective police response is critical in reducing the massive prevalence of sexual assault and rapes affecting millions of women. Some studies have revealed that women police officers are more effective in responding to domestic violence. Women victims tend to rate women police officers more favorably than male officers.[9] The work of the National Center for Women and Policing has helped to reveal and some research has documented a high prevalence of domestic violence perpetrators among male police officers.[10]

In the U.S., twenty years of research demonstrates that women police officers utilize a style of policing that relies less on physical force, and more on communication

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[8] Stephanie K. McWhorter, Valerie A. Stander, Lex L. Merrill (all of Naval Health Research Center) and Cynthia J. Thomsen, Joel S. Milner (both of Northern Illinois University), "Reports of Reperpetration by Newly Enlisted Male Navy Personnel," Violence and Victims, Springer Publishing Company, Inc., 2009, p. 209.

[9] Dr. Kim Lonsway, Research Director, National Center for Women & Policing et al., "Hiring & Retaining More Women: The Advantages to Law Enforcement Agencies," National Center for Women & Policing, a Division of the FMF, Spring 2003, pp. 3, 7-8.

[10] Dr. Kim Lonsway, "Policies on Police Officer Domestic Violence: Prevalence and Specific Provisions Within Large Police Agencies," Police Quarterly, (2006) 9:4, pp. 397-421.

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skills that defuse potentially violent situations. Women police officers are much less likely to be involved in problems of excessive force and citizen complaints overall.[11]

Inadequate police response to violence against women is not only a problem in the United States. To combat the problem, some countries have gone so far as forming all female units to investigate violence against women. For example, New Delhi, India, police first established a female unit in 1983 to deal with crimes against women. Specialized women police stations have been established in several Latin American countries including Brazil, Ecuador, Nicaragua, and Peru.[12] In Brazil, some 400 women police stations have been formed.

Since the early 1970s, women have pursued legal strategies to overcome the systematic discrimination against women, including sexual harassment, in hiring, retention and promotion of women in law enforcement. As an activist of the National Organization for Women (NOW) in Pittsburgh, then as President of Pennsylvania NOW and National NOW in the 1970s, I supported these efforts challenging the Pittsburgh, Philadelphia, Los Angeles, and Chicago police departments for sex discrimination, to mention a few. Sadly, although consent decrees were issued by judges to improve hiring, promotion and retention of women in the specified police force, and some progress has been made, it has been slow, painful, and appears now to be stalled. After some 40 years of action and research, we have progressed surprisingly little.

Despite this determined effort on the part of individual courageous women litigants and women's rights organizations as well as compelling research as to the effectiveness of women police officers, women are still severely under-represented in police departments. "During the 1990s and 2000s, the percent of sworn law enforcement officers who were women increased only slightly in federal, state, and local agencies."[13] In 2007, women comprised 12% of the officers in local police departments overall and about 15% of large local police departments.[14] The National Center for Women and Policing 2000 survey on the status of women in law enforcement, had found women comprised 11% of sworn local police officers overall.[15]

The numbers of women in law enforcement are kept artificially low by widespread discriminatory hiring and selection practices. Several barriers exist to recruiting women in local police agencies. An example is physical agility tests which are widely used in entry-level police selection. Yet "research has failed to demonstrate any meaningful link between successfully passing a physical agility test and effectively

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[11] Chief Penny Harrington, Dr Kim Lonsway, et al., National Center for Women and Policing. Men, Women and Police Excessive Force: A Tale of Two Genders, "(2003). This is a content analysis of Civil Liability Cases, Sustained Allegations and citizen complaints.
[12] Patrick Kavanaigh, International Development Research Center, August 2009
[13] Bureau of Justice Statistics, Crime Data Brief, "Women in Law Enforcement, 1987-2008," June 2010.
[14] Ibid., pp. 2-3.
[15] Lonsway et al., "Equality Denied: The Status of Women in Policing: 2001," National Center for Women & Policing, a Division of FMF, April, 2002.

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performing the job of police officer."[16] Such tests used by an overwhelming majority of police agencies have a negative impact on the recruitment of women police officers.

Keeping women out of policing is not only depriving women of jobs, but is resulting in a less effective response to violence against women. An examination of police radio transmissions performed by the Christopher Commission after the Rodney King beating incident in Los Angeles revealed shocking racist and sexist remarks among police officers. In responding to violence against women calls the police officers made lewd and sexist remarks that too often revealed they were, to put it mildly, insensitive to calls for help from female victims.[17] An examination of sex discrimination lawsuits against local police agencies reveal a hostile police culture to women including sexist and demeaning remarks and behavior, sexual harassment, and unwanted physical contact. Moreover, women were fearful of reporting unprofessional behavior for warranted fear of retaliation.[18]

As reviewed in this testimony, the crime of rape and sexual assault is so prevalent in the United States that it requires special consideration in law enforcement recruitment. Preference in recruiting law enforcement personnel must be given to skills, education, and training that are required in dealing effectively with rape and sexual assault reporting, investigations, and prosecution. In recruiting a diversified police force, backgrounds and training in social work, psychology, sexual assault, nursing, victim advocates and service providers, and related fields must also be given special consideration. The crime of rape requires a multidisciplinary response. Similar hiring practices should be in place for hiring prosecutors, enforcement professionals, medical forensic examiners, researchers, educators and policy makers trained and vetted for investigating rape.

If the failed physical agility tests were replaced with skills, education, and training necessary for modern law enforcement, including training, skills, and education for dealing with sexual assault and violence against women, not only would the numbers and percentage of women in law enforcement rise, but also the numbers and percentage of men with understanding and skills for effectively dealing with such cases. Calls pertaining to violence against women remain the single largest category of 911 calls to police agencies. We need more police officers who are skilled and trained to deal with this violence.

III. Negative Impact of Narrow and Archaic Federal Uniform Crime Report Definition of Rape and Limitations of the National Crime Victimization Survey

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[16] Kimberly A. Lonsway, Ph.D., Research Director, National Center for Women & Policing, "Failing Grade: Physical Agility Tests in Police Selection," Women Police, Vol. 38, No. 1 (2004), pp.7-10.

[17] Christopher, W. et al. (1991), Report of the Independent Commission on the Los Angeles Police Department, pp. 87-88.

[18] Kimberly A. Lonsway and Angela M. Alipio, "Sex Discrimination Lawsuits in Law Enforcement." Women and Criminal Justice, (2008) 18: 4, pp.63-103.

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The narrow and out-dated definition of rape in the Uniform Crime Report, first adopted in 1927, results in a significant undercounting of the actual number of rapes that are reported, which is already reduced by the under-reporting by victims. Forcible rape is defined as "the carnal knowledge of a female forcibly and against her will." Moreover, this limited definition affects the perception of what constitutes "real rape." The undercounting of rape, in comparison with other major crimes, naturally reduces the allocation of resources for sexual assault enforcement. If the common perception is a problem is much smaller than it actually is, it will result inevitably in fewer resources being allocated to it.

In the Uniform Crime Report (UCR) Program, only forcible rape is counted. The UCR instructions to law enforcement ensure that the definition will be interpreted narrowly. The UCR Manual directs that "[a]gencies must **not** classify statutory rape, incest, or other sex offenses, i.e. forcible sodomy, sexual assault with an object, forcible fondling, etc. as Forcible Rape."

Another contributor to the under-reporting comes directly from the UCR Handbook. "In cases where several males attack one female, agencies must count the number of victims, not the number of offenders nor the number of times the female was raped." The Handbook goes on to give the example that if three women are raped by four men, with each of the men raping each of the women [i.e. 12 rapes] it would only be reported as three – the number of victims.

The upshot of this narrow definition is that many rapes are excluded from the Uniform Crime Report statistics – including forced anal sex and/or oral sex, vaginal or anal fisting, rape with an object (even if serious injuries result), and other injurious and degrading sexual assaults that would be considered rape by any rational adult. It also excludes rapes in which the victim's will was compromised by her youth or by a temporary or permanent mental or physical incapacity, and entirely omits the significant number of rapes committed against men.

Another problem in the Uniform Crime Report is the use of unfounded category vis-à-vis rape cases. Although the federal requirements are clear for determining a case is unfounded, i.e. a case is to be determined to be unfounded, after investigation, only if it is found to be false or baseless, it does not include cases where an arrest is not made or a victim is no longer cooperating. However, too often police departments use unfounding to clear cases for reasons in addition to the claim being false or baseless. Therefore the unfounded category gives an erroneous impression that many rape cases are false, i.e. the victim has lied, or baseless.

The other set of statistics frequently cited with regard to the frequency of rape is the Bureau of Justice Statistics' National Crime Victimization Survey [NCVS], which is based on twice-yearly in-home interviews with a representative sample of people. The NCVS also significantly under-reports rape. Although the NCVS definition is somewhat broader than the UCR, it includes only crime victims age 12 and over. This excludes rapes committed against victims under age 12, which Lawrence Greenfeld, former

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director of the Bureau of Justice Statistics in 2001 placed at 25% of all rapes. [19] The National Violence Against Women Survey (funded by the National Institute of Justice and the Centers for Disease Control) also found in 1998 that 21.6% of first or only rape cases experienced by women happened before age 12. The up-front exclusion of this 21% to 25% of all rapes skews the data before the analysis even begins.

IV. Police Undercounting of Rape

In a 2005 exposé entitled "What Rape?"[20] the St. Louis Post-Dispatch reported shocking police practices. The reporter found out why St. Louis had an unusually low rate of rape – because for two decades countless rape complaints had not been counted as crimes, but instead "relegated to informal memos" which were destroyed in one to two years – even if the victim's "rape kit" DNA evidence was still in storage and could potentially identify a serial rapist in the future.

Among the many startling stories revealed in the Post-Dispatch's investigation, one victim's rape was reduced from a crime report to a memo because she couldn't stop crying long enough to answer the detective's questions. The mishandling and disbelief of an 11-year-old victim's report of rape resulted in the perpetrator receiving only probation. The revealing investigative report also examined practices in other cities, including Atlanta and Philadelphia, where the failure to make reports (and follow up on reports) of rape had devastating consequences. In a nutshell, in these cities, police disregard of rape complaints had helped serial rapists (and a murderer) evade detection and continue offending for years.

Even in an area where there is no evidence of intentional under-reporting, there is clearly a problem. Last year in San Antonio, Texas, the Express-News reported a huge disparity between the number of sexual assaults the local Rape Crisis Center reported (1,024 that required a medical forensic exam, or "rape kit") and the number reported to UCR by the local police and sheriff's office (a total of 514), some of which is undoubtedly related to the UCR's inadequate definition.[21] Without adequate reports, we cannot know the magnitude of the problem and therefore cannot adequately address it.

V. The Need for New Federal Policies

These serious problems in the failure to report and investigate rape cases demand both a change in existing federal policies and some totally new federal policies. In light

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[19] Mark Fazlollah, "Experts Question Accurary of New Rape Statistics." Women's E-news, June 19, 2001. (http://www.womensenews.org/story/rape/010619/experts-question-accuracy-new-rape-statistics)

[20] Jeremy Kohler, "What Rape?" Dart Center for Journalism and Trauma, Columbia University Graduate School of Journalism. From a series originally published in the St. Louis Post-Dispatch in August 2005. (http://www.dartcenter.org/content/what-rape-0)

[21] Michelle Mondo, "County Agency's Rape Statistics Conflict with FBI." San Antonio Express-News, June 22, 2009.
(http://www.mysanantonio.com/news/local_news/Countys_statistics_conflict.html)

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of the above discussion and the critical need for change, I urge the following recommendations:

Expand the Uniform Crime Definition of Rape, which includes current methods of rape and social science research findings. At a minimum, such an update should include gender neutrality or the inclusion of sexual assault of both men and women as well as girls and boys; vaginal, oral, and anal sex, penetration with a finger or foreign object; sexual assault facilitated with drugs and/or alcohol; sexual assault of unconscious victims; and sexual assault of severely disabled victims "when the disability precluded the individual from legally being able to give consent." [22]

Federal guidelines should be issued on best practices for closing out sexual assault investigations. Other terminologies, eg. inactive or suspended, should be applied when the strict definition of unfounded is not me because most rapists do reoffend. Clearing rape cases inappropriately as unfounded has a detrimental effect on any future prosecutions.

Include Rapes of Children less than 12 years of age in the Bureau of Justice Statistics' National Crime Victimization Survey (NCVS).

Adopt federal policies in federal grant making under various federal programs to encourage the recruitment of local police agencies with specialized training in sexual assault or skills, education, and training that are required in dealing effectively with rape and sexual assault reporting, investigations, and prosecution. For example, in grant programs dealing with sexual assault or violence toward women, preference would be given to agencies which mandate training as part of core curriculum of new recruits on sexual assault.

Adopt federal policies to encourage the recruitment and retention of women law enforcement personnel and to eliminate a hostile work environment for women. For example, provide COPS grants to police agencies to hire more women.

Strengthen the funding and role of the federal Violence against Women Office. For example, Congress must increase funding for the office for training programs of local, state, and federal law enforcement for sexual assault and sex trafficking.

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[22] Dr. Kimberly A. Lonsway, EVAW International Director of Research with contributions from Joanne Archambault, Mary Koss, Joan Zorza, and Rebecca Campbell, "Measuring Sexual Violence: Methods, Misconceptions, and a New (Revised) Measure," Sexual Assault Report, Vol. 12, No. 1, pp. 1-2, 8-13.

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WOMEN'S LAW PROJECT

Safeguarding Rights, Creating Opportunities

HEARING BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND DRUGS
DIRKSEN SENATE OFFICE BUILDING

RAPE IN THE UNITED STATES:
THE CHRONIC FAILURE TO REPORT AND INVESTIGATE RAPE CASES
SEPTEMBER 14, 2010

TESTIMONY FROM CAROL E. TRACY
EXECUTIVE DIRECTOR
WOMEN'S LAW PROJECT
PHILADELPHIA, PA

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TESTIMONY OF CAROL E. TRACY
EXECUTIVE DIRECTOR, WOMEN'S LAW PROJECT
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CRIME AND DRUGS
HEARING ON
RAPE IN THE UNITED STATES: THE CHRONIC FAILURE TO REPORT AND INVESTIGATE RAPE CASES
September 14, 2010

Good Afternoon. My name is Carol Tracy and I am the Executive Director of the Women's Law Project (WLP), a public interest law center located in Pennsylvania, whose mission is to create a more just and equitable society by advancing the status of women.

First, I wish to commend Senator Specter for responding to my request to hold these hearings, and to Senator Graham and the other members of the Subcommittee on Crime and Drugs for conducting these hearings. We believe it is critically important that Congress address the claims that are being made in numerous newspapers that police departments around the United States are mishandling rapes and other sex crimes. It is also essential that this Committee review the serious inadequacy of the Federal Bureau of Investigation (FBI) Uniform Crime Report (UCR) program's definition of rape and assess the quality of the rape data reported by local law enforcement agencies.

The Women's Law Project first became involved in addressing police mishandling of sex crimes in the fall of 1999. At that time, the *Philadelphia Inquirer* published an investigative report revealing that for almost two decades the Philadelphia Police Department had downgraded thousands of rapes and other sex crimes to a non-criminal category, thereby precluding a full and complete investigation of the crime.[1] Thousands of sexual assault cases – almost one third of all reports from the mid-1980's through 1998 – were buried in a non-crime code – "2701 – Investigation of Person."[2] The victims were never advised that their complaints had been shelved. This disclosure came on the heels of the murder of Shannon Schieber by a serial sexual predator. The police eventually tied the attack on Schieber to at least two other women in the same neighborhood whose cases had been incorrectly coded as non-criminal incidents.

The WLP led a group of women's and children's organizations in responding to the scandal and demanding reform. Recognizing the need for public oversight, the Women's Law Project requested that the Public Safety Committee of Philadelphia City Council hold hearings to investigate *The Inquirer*'s allegations. In addition, we organized meetings with then Police

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[1] Mark Fazlollah, Michael Matza, Craig R. McCoy, Clea Benson, *Women Victimized Twice in Police Game of Numbers*, Phila. Inquirer, Oct. 17, 1999; Mark Fazlollah, Michael Matza, Craig R. McCoy, Clea Benson, *How Police Use A New Code When Sex Cases Are Unclear*, Phila. Inquirer, Oct. 18, 1999; Michael Matza, Craig R. McCoy, *Police Used 'Throwaway Categories' Since 1960's*, Phila. Inquirer, Oct. 18, 1999; Mark Fazlollah, Michael Matza, Craig R. McCoy, *After FBI Questioned One Tactic, Another Was Found*, Phila. Inquirer, Oct. 18, 1999. These articles as well as those describing Philadelphia's response to the reports and continuing reverberations from this scandal through March, 2004 can be found on The Philadelphia Inquirer's website *Down With Crime: The Rape Squad Files* at http://inquirer.philly.com/packages/crime/html/

[2] Fazlollah, et al., *Women Victimized Twice in Police Game of Numbers*, *supra* note 1.

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Commissioner John Timoney and his senior staff to discuss the need for change in the Department.

The Commissioner undertook a comprehensive audit that included a reinvestigation of all cases coded "2701" for the previous five years – the statute of limitations, or maximum time period, during which rape prosecutions could still be commenced. He assigned 45 newly graduated detectives to conduct this reinvestigation, which revealed that 681 cases should have been classified and investigated as rape – a first degree felony. The reinvestigation also found that over 1700 additional cases should have been investigated and classified as other sex crimes. Massive reforms have been implemented and advocates were invited to provide input and suggestions at numerous junctions. Most notable was the invitation to review all rape complaints that were "unfounded,"a UCR classification for "false or baseless complaints" which is used when "the investigation shows that no offense occurred or was attempted."[3] Ten years later, the Women's Law Project, along with Women Organized Against Rape, the Support Center for Child Advocates, and the Philadelphia Children's Alliance, continues to annually review "unfounded" rape files as well as files coded as non-crimes and a random sampling of open rape and sexual assault cases. A very strong collaborative reform effort put in place by Commissioner Timoney continues under the able leadership of Commissioner Ramsey. We all recognize the need for constant vigilance and cooperation. We believe that we have a successful partnership in Philadelphia.

Because of the role the Women's Law Project played in Philadelphia, I have been contacted by journalists from the *St. Louis Post Dispatch,* the New Orleans *Times Picayune,* the *Baltimore Sun,* and *the New York Times*, who have reported similar problems in their cities. I have also discussed this issue with reporters from the *Cleveland Plain Dealer*, the *Journal Sentinel* in Milwaukee, and the *Village Voice*, who have also reported on this problem.

Questions are being raised across the United States about sex crime data reported to the FBI:

- The *Baltimore Sun* reported that, since 1992, the number of Baltimore rape cases reported to the FBI has declined by 80%[4] and, since 1991, the percentage of unfounded rape cases has tripled.[5] From 2003 through 2010, police wrote reports for only 4 in 10 calls rape, signifying that patrol officers were rejecting cases prior to investigation.[6]

- The *St. Louis Post-Dispatch*, reported that many St. Louis rape complaints were written up in informal memos, not counted in crime statistics, and then filed away for 1-2 years before being shredded, often before the statute of limitations

[3] Federal Bureau of Investigation, U.S. Department of Justice, *Uniform Crime Reporting Handbook* 77 (2004) [hereinafter *Handbook*].
[4] Justin Fenton, *City Rape Statistics, Investigations Draw Concern,* Balt. Sun, June 27, 2010, *available at* http://articles.baltimoresun.com/2010-06-27/news/bs-md-ci-rapes-20100519_1_fbi-data-mayor-orders-review-detectives (last visited Aug. 05, 2010).
[5] *Id.*
[6] *Id.*

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had run out. The city's official rape tally declined during the 20 year period that the "memo" system was in place.[7]

- *The Times-Picayune* reported that more than half of the reports of rape in New Orleans are put in a noncriminal category, raising questions about the accuracy of the department's recent rape statistics showing a sharp decrease by 37%.[8]

- The *New York Times* reported that the number of rapes in New York City declined by 35.7% between 2005 and 2009.[9] Yet since 2005, the number of sex crimes classified as misdemeanors rose 6%, and there was a dramatic increase in the rate at which forcible rape complaints have been "unfounded."[10]

- The *Baltimore Sun* and the *Times-Picayune*, reported more homicides than rapes in Baltimore and New Orleans in 2009.[11]

The translation of this data to real life presents horrifying events:

- The Cleveland *Plain Dealer* reported that a Cleveland victim was found to be "not credible" after she filed a complaint that she had been sexually assaulted by Anthony Sowell, a man who had spent 15 years in prison for a 1989 rape and registered as a sex offender upon his release from prison.[12] Her complaint was unfounded even though she was bleeding when she flagged down a police cruiser and provided the police with detailed information about the assailant and the location of the assault, and the police took her to a hospital where she received stitches and found blood and signs of a struggle at Sowell's home.[13] Police eventually found the remains of 11 women at Sowell's home, six of whom were murdered after police failed to pursue the complaints of this and one other woman.[14]

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[7] Jeremy Kohler, *What Rape: Abused by the System*, St. Louis Dispatch, Aug 28, 2005, *available at* http://dartcenter.org/content/what-rape-0 (last visited Sept. 10, 2010).
[8] Laura Maggi, *NOPD Downgrading of Rape Reports Raises Questions*, Times-Picayune, July 11, 2009, *available at* http://www.nola.com/news/index.ssf/2009/07/nopd_downgrading_of_rape_repor.html (last visited Sept. 8, 2010).
[9] John Eligon, *Panel Seeks More Police Training on Sex Crimes,* N.Y.Times, June 3, 2010, A26, *available at* http://www.nytimes.com/2010/06/03/nyregion/03rape.html (last visited Aug. 06, 2010).
[10] *Id.*
[11] Fenton, *supra* note 4; Maggi, *supra* note 8.
[12] Rachel Dissell, *History Shows Sexual-Assault Cases Have Not Been a Priority for Cleveland's City Leaders, Law Enforcement*, Plain Dealer, Mar. 28, 2010, *available at* http://blog.cleveland.com/metro/2010/03/history_shows_sexual_assault_c.html (last visited Sept. 9, 2010).
[13] Rachel Dissell, *Sowell's Arrest, Release in 2008 Leaves Lingering Questions About Handling of Case*, Plain Dealer, Nov. 13, 2009, *available at* http://blog.cleveland.com/metro/2009/11/sowells_arrest_release_in_2008.html (last visited Sept. 10, 2010)
[14] Rachel Dissell, *Mayor Names Panel to Look at Handling of Sex Assault*, Plain Dealer, Dec. 10, 2009.

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- The *Journal Sentinel* in Milwaukee reported that the apprehension of a serial rapist, Gregory Tyson Below, prompted Milwaukee police to look into previously received complaints by three women who had been victimized by him and claimed they were not assisted by police when they reported the assaults.[15] One woman was kidnapped from a nightclub and sexually assaulted over a period of several hours; she said she went to three different Milwaukee police stations to report the attack but gave up because officials kept telling her to go to a different station.[16] Police arrived in the middle of the assault against the second woman, who was naked from the waist down, bruised and screaming for help; one of the officers asked her if the incident was a "dope date," as he had discovered a drug charge against the woman and did not believe her.[17] No arrest was made in either case. The serial rapist re-offended after these reports were ignored and was eventually apprehended only after raping more women.

- The *Baltimore Sun* reported that a woman who had been raped at gunpoint and treated at a hospital for vaginal bleeding retracted her statement because of the intimidating and accusatory questioning she was subjected to by the police: "Why had she waited two hours to call police? Why didn't she flag down a squad car? Where was she coming from before she was assaulted? Who was she with?"[18]

- The *Village Voice* reported that a woman was pushed into the woods by an unknown assailant, physically overpowered and held down while the perpetrator told her he wanted to have sex with her and masturbated against her.[19] She was told by police officers, who had consulted with the Special Victims Unit, that the crime was a misdemeanor, "forcible touching," while she protested it was a felony, attempted rape. She was ignored.[20]

Having been in the news on this subject, we hear from women whose complaints of rape and other sex crimes have been disbelieved by police. If the complaints relate to the Philadelphia Police Department, we attempt to intervene on their behalf. In cases in which a civil lawsuit is filed, we often file "friend of the court" briefs in support of the victim whose case was mishandled by the police. Most recently we filed such a brief in support of a western Pennsylvania woman who was sexually assaulted at gunpoint by a perpetrator during a robbery

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[15] Gina Barton & Becky Vevea, *Police Launch Investigation into Inaction Complaints,* J. Sentinel, July 07, 2010, *available at* http://www.jsonline.com/news/crime/97995519.html (last visited Aug. 06, 2010); Gina Barton & Becky Vevea, *Rape Victims Say Police Failed Them,* J. Sentinel, July 06, 2010, *available at* http://www.jsonline.com/news/milwaukee/97848834.html (last visited Aug. 06, 2010).
[16] *Id.*
[17] *Id.*
[18] Fenton, *supra* note 4.
[19] Graham Rayman, *NYPD Forced to Apologize Publicly to Rape Victim for Downgrading Her Attack,* Village Voice, May 10, 2010, *available at* http://blogs.villagevoice.com/runninscared/archives/2010/05/ nypd_forced_to.php (last visited Aug. 06, 2010).
[20] *Id.*

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of her workplace. She sued the local police after they not only disbelieved her but actually arrested her for falsely reporting a crime, theft, and receiving stolen property. The perpetrator sexually assaulted at least two other women before he was apprehended for a subsequent assault and confessed to assaulting all of them. This is not the first time we have dealt with a woman who has been arrested instead of helped by law enforcement.

Initially I thought the reports of egregious police conduct were isolated incidents. However, viewing the totality of the news accounts, it is clear that we are seeing chronic and systemic patterns of police refusing to accept cases for investigation, misclassifying cases to non-criminal categories so that investigations do not occur, and "unfounding" complaints by determining that women are lying about being sexually assaulted. They also show a shocking disregard and callous indifference to victims who are interrogated as though they are criminals, are presumptively disbelieved, are threatened with lie detector tests and/or arrest, and are blamed for the outrageous conduct of perpetrators.

We believe this is a national crisis and that the factors contributing to it can be addressed through federal action. There is no question that sexual stereotypes and bias are a root cause of police mishandling of sex crimes. Less visible but no less responsible is the manner in which the FBI's UCR system defines, analyzes, and publicizes the incidence of sex crimes. The combination of bias and an unrealistic definition result in highly unreliable data on the incidence of sex crime in America.

Myths and Stereotypes Influence Police Behavior

Myths and stereotypes about rape and sexual assault that are so deeply embedded in our culture impact on police handling of sex crimes. 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."[21] Many of these myths blame the victim, trivialize the seriousness of sexual assault, excuse the assailant's behavior, or assume the victim's untruthfulness.[22] These myths are tied to biased stereotypes about women and the notions of how they should behave before, during, and after sexual assault.[23] They include the 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. Decades of research have documented, however, that the vast majority of sexual assault victims do not report their

[21] Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review*, 18 Psych. of Women Quarterly, 133-64, 134 (1994).
[22] *See, e.g.,* Martha R. Burt, *Rape Myths and Acquaintance Rape, in Acquaintance Rape: The Hidden Crime* 27 (2001).
[23] *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).

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sexual assault to police. [24] Victims do not report because they fear that their report will not be taken seriously, they will not be believed, or they will be seen as responsible for their own assault.[25]

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.[26] "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."[27] 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.

This mishandling of rape and other sex crimes puts victims at a unique disadvantage in the criminal justice system, decreasing the rate of reporting rape and other sex crimes and increasing the rate of claims withdrawn by victims.[28] Overall, police mistrust and interrogation of victims of rape and other sex crimes create seemingly uncooperative victims, feed the misperception that uncooperative victims are lying, and discourage future victims from reporting to police.

The FBI's Uniform Crime Reporting System Does Not Accurately Report Sex Crimes

The FBI created the UCR system in 1927 in order to collect uniform police statistics from local police departments. Over 17,000 law enforcement agencies nationwide *voluntarily* contribute their crime statistics.[29] The UCR system has become a collective effort on the part of city, county, state, tribal and federal law enforcement agencies to present a nationwide view of crime.[30]

UCR data have been considered the authoritative source of nationally representative information on crime. According to the Government Accountability Office, UCR data are used by policy makers, the media, and researchers to describe and understand crime and police activity. [31] In addition, Congress allocates federal funds to state and localities based on these data.[32]

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[24] *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).

[25] *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).

[26] *See* Susan Caringella, *Addressing Rape Reform in Law and Practice* 115 (2009).

[27] *Id.*

[28] *See* Tjaden & Thoennes, *supra* note 25, at 35.

[29] *Handbook*, *supra* note 3.

[30] *Id.*

[31] Government Accountability Office, *Community Police Grants: COPS Grants Were a Modest Contributor To The Decline In Crime In The 1990's* (Report to the Chairman, Committee on the Judiciary House of Representatives)

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Decades of press reports, however, raise serious questions as to whether this data is in fact reliable as far as sex crimes are concerned. Criminologists have informed me that the data on sex crimes that states report to the FBI Uniform Crime Reporting system – unlike data on other major crimes – is so inaccurate that most academic researchers do not use it as a separate measure when examining violent crime patterns.[33]

The inaccuracy stems from the apparent undercounting of rape due to police improperly unfounding rape complaints at extremely high rates, or failing to classify them as crimes and accept them for investigation.

The lack of reliable and verifiable national data on the incidence of rape and other sex crimes and the disposition of such cases is a grave problem. It is not possible to manage – or improve – what is not measured. The lack of solid data about the incidence and disposition of rape and other sex crimes means we—as a society—do not really know how prevalent this violent crime is, how safe our citizens are, or how effective are the methods used to investigate and apprehend perpetrators.

Our review of current national data found that at least 45 cities with populations over 100,000 have unfounded rates of over 20 percent; some cities have more unfoundeds than total reported rapes.

The problem with the UCR does not end with its inadequate data analysis. The narrow definition of rape does not reflect societal and legal definitions of serious sexual assault.

The Women's Law Project recognized the need to change the UCR definition of rape in 2001 after learning about the impact of the UCR on the Philadelphia Police Department's handling and reporting of sex crimes. As the Law Project worked with the Department, it became apparent that it was the UCR definition of rape and not Pennsylvania's criminal sexual assault statutes that in large part drove police perception and response to sex crimes. In 2001, the Women's Law Project spearheaded an effort to change the definition of rape used by the FBI in its UCR system. In a letter-memorandum sent to the Acting Director of the FBI on September 20, 2001, the Law Project outlined the enormous deleterious impact of the UCR's definition of rape on public knowledge about serious sex crimes and on the reporting and handling of sexual assault complaints. Over 90 organizations involved in advocacy on behalf of victims of sexual assault signed on in support of the persuasive argument that the UCR's definition of rape should be updated immediately. The memorandum sent to the FBI was prepared for mailing on the ominous day of September 11, 2001. We delayed the mailing and understood, of course, that, at that time, the FBI was completely immersed in the events of September 11th. We see

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(2005), cited by James P. Lynch, *Missing Data and imputation in the Uniform Crime Reports and the Effects on National Estimates*, 24 J Contemporary Crim. Justice 69 (Feb. 2008).

[32] *Id.*

[33] Conversations in August, 2010 with John M. MacDonald, Associate Professor of Criminology, School of Arts and Sciences, University of Pennsylvania.

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today's hearing as an opportunity to follow up on this issue. Attached to my testimony is the letter and the list or organizations, including representatives from 40 states and one territory that supported the effort.

"Forcible rape," is defined by the UCR as "the carnal knowledge of a female, forcibly and against her will."[34] This definition, unchanged since 1927, is exceedingly narrow, including only forcible male penile penetration of a female. It excludes oral and anal penetration, rape of males, penetration of the vagina and anus with an object or body part other than the penis, rape of females by females, incest, statutory rape, and non-forcible rape. The force requirement also excluded rape victims incapable of giving consent because of youth, disability, or drugs.

"Forcible rape" is the only sex crime included in the FBI's category of serious crimes, or Part I crimes. All other sex crimes are relegated to a secondary broad undifferentiated Part II data category of crimes that is not used as a barometer of serious crime and therefore is not shared with the public to the same extent as Part I crime data.

In the intervening years since the UCR created its definition of rape, America has significantly expanded its understanding of rape, and states have revised their laws accordingly. Many state criminal laws — and the public at large — now recognize that all forms of non-consensual sexual penetration regardless of gender, relationship, or mode of penetration are as serious as the criminal conduct included in the UCR definition of rape.

In 2004, following our 2001 letter to the FBI, the FBI issued a revised UCR Handbook. However, the definition of rape remains the same: it continues to be restricted to forcible male penile penetration of a female. While the explanatory material accompanying the definition of rape reflects an attempt to include victims incapacitated by disability or youth within those raped "against their will," the attempt falls short. Little guidance is provided as to how the law enforcement agency is to make the required professional determination regarding the ability of the victim to give consent. In addition, there are serious questions as to whether this change has been adequately communicated to the individuals in the field who are responsible for submitting local data to the FBI, and therefore whether there has been any resulting change in the data submitted to the FBI.

The inconsistencies between the UCR's reported data on rape and the broader statutory definitions of serious sex crimes promulgated by state legislatures impact society's response to sex crimes on a number of levels.

First, the UCR definition has a powerful influence on police perception of serious sex crimes and resulting police response. By minimizing what crimes count as rape, it sends a powerful message to those who gather the statistics — the local agencies — that the only serious sex crime is UCR rape. The UCR's definition of rape becomes the standard of "real" rape, negatively influencing the attitudes of law enforcement towards the many rape victims whose stories do

[34] *Handbook, supra* note 3, at 19.

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not fit within this narrow, stereotypical view of rape. When a sex crime is considered less serious, it may not receive the full range of police resources and attention that it deserves. Police response is already hampered by pervasive biases against victims of rape and other sex crimes. By minimizing the seriousness of sex crimes, the UCR's limited definition of rape exacerbates this problem.

Second, inadequate police response in turn leads to diminished public confidence in the handling of sex crimes by police within a particular community. Sexual assault is already the most underreported of crimes.[35] Because sexual assault victims find it so difficult to come forward under the best of circumstances, diminished trust in the police strongly undermines the likelihood of victims to report to police. When a victim does not report a sexual assault to the police, the police cannot bring the perpetrator to justice, making it possible for this assailant to strike again and again.

Third, by diminishing the scope of the problem, the narrow definition of rape reduces our ability to develop programs and policies that appropriately respond to the problem, thus hampering law enforcement and victim assistance efforts. It impacts all those who would help the victims, from the decision-makers who control funds for investigation and prosecution of sex crimes to rape crisis centers who provide essential victim services to community organizations concerned with crime in their communities. Accurate information is essential to the work of all these parties, and the data on rape and other sex crimes currently reported by the UCR are not adequate.

Conclusion

Rape is a heinous crime and second only to murder in severity in the FBI's Crime Index. That it does not merit the attention associated with its severity – by police officers, by police departments, by the FBI, by researchers – seems inescapable. Indeed, it seems to be quite marginal to public policy.

The view that sex crimes are marginal issues permeates police departments across the country and contributes to the underreporting of rape and sexual assault. One of the most commonly cited reasons by victims for not reporting is fear of police bias,[36] a fact that illustrates the far-reaching consequences of police neglect and hostility.

Sexual assault survivors who have come forward to report the crime are entitled to be treated fairly and with dignity. If police do not regard complaints of rape as crimes, then there is no investigation or arrest, thus further endangering the public as sexual predators remain free, to continue to rape other victims, and in some cases murder them as the news accounts describe.

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[35] *See* Mary P. Koss, *The Underdetection of Rape*, 48 J. Soc. Issues 61, 63 (1992) (citing the 1982 *Uniform Crime Report*).
[36] *Id.*

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As happened in Philadelphia in 1999, those municipalities that have recently come under fire in the press for mishandling sex crimes are taking steps to organize a response and develop plans to make changes. We hope that police departments throughout the United States will follow the example of the Philadelphia Police Department and thoroughly review their practices, and work closely with the advocacy community. The International Association of Chiefs of Police, the National Sheriffs' Association, and the Police Executive Research Forum are well qualified to exercise leadership at the local level. Having criticized law enforcement's response, we know that there are many police officers that take this crime very seriously. Even at the height of the crisis in Philadelphia, we knew that to be true. We also understand that investigating sex crimes, particularly crimes against children, is extremely stressful. Police suffer a high rate of post traumatic stress disorders and little is offered to police officers to deal with their secondary trauma.

We recognize the limitations of the federal government in responding to local criminal justice issues. However, the FBI is responsible for assessing the validity of the arrest and crime data that states provide to it as part of the UCR program. The FBI office that deals with the UCR is responsible for checking submitted data, training local agencies in UCR data collection procedures, and performing quality assurance reviews to maintain the quality of UCR data.[37] The UCR Program staff develop and revise the *Uniform Crime Reporting Handbook*, which provides the definitions and instructions used by local law enforcement agencies to submit crime data to the FBI.

We ask this committee to charge the UCR Program staff with updating the definition of rape to conform to modern understanding that all forms of non-consensual sexual penetration regardless of gender, relationship, or mode of penetration are serious sexual assaults. We recommend this be done in consultation with the Department of Justice Office of Violence Against Women and the National Sexual Assault Resource Center. The Women's Law Project will also be honored to assist in this endeavor.

We also ask you to charge the UCR Program staff to undertake a nationwide audit of police practices to insure that local law enforcement agencies are recognizing and investigating sex crimes so that they are properly reported as crimes to the FBI.

There are numerous federal government entities that are equipped to assist the FBI in this effort. The Bureau of Justice Statistics in the Department of Justice has expertise in data analysis of crime. The General Accounting Office is noted for its superb and unbiased research and analysis. It would be appropriate for this Committee to direct these offices to lend their expertise to correcting these problems and issue a report to the public. We believe that accurate collection and analysis can drive improvements in police practice on the ground.

We also ask Congress to continue its support of the Department of Justice Office of Violence Against Women (OVAW) in its commendable efforts to improve and expand law enforcement's

[37] Michael Maltz, *Bridging Gaps in Police Crime Data: A Discussion Paper from the BJS Fellows Program* 1 (1999).

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response to sexual assault, domestic violence, and stalking, and its approach of including advocates in working with law enforcement. OVAW funding and technical support can play a critical role in training local law enforcement in understanding sexual assault and overcoming the influence of myths and stereotypes as well as in properly coding and reporting crime to the FBI, including when it is proper to unfound a complaint.

We are grateful for the opportunity to address this committee today on an issue of critical importance to the safety of women. We also wish to thank the journalists whose courageous and relentless pursuit of the truth has and will continue to promote change in the way sex crimes are handled: Craig McCoy, Mark Fazlollah, Mike Matza, Cleo Benson from the *Philadelphia Inquirer*, Rachel Dissell from the *Cleveland Plain Dealer*, Laura Maggi, from *The Times-Picayune*, Justin Fenton, from the *Baltimore Sun*, Graham Rayman from the *Village Voice*, John Elgin, from the *New York Times*, Gina Barton and Becky Vevea from the *Journal Sentinel*, and Jeremy Kohler, from the *St. Louis Post Dispatch*.

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Women's Law Project

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WOMENS WAY
A Womens Way Agency

September 20, 2001

Robert S. Mueller, III
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, DC 20535

Dear Mr. Mueller:

We understand that the attention of the Federal Bureau of Investigation must necessarily and appropriately be turned towards our national crisis. Like the rest of America, we hope and believe that our country and institutions will return to normal business activities in the near future.

With that in mind, we enclose a letter to you that is supported by over 90 organizations that calls on the FBI to change the definition of rape in the Uniform Crime Report. Due to the enormous importance of this definition to the safety of women in America, we trust that the appropriate personnel in the Bureau will turn their attention to the issues raised in the letter at a suitable time.

Thank you for your attention. We will be in touch with your office at an appropriate time.

Respectfully submitted,

Carol E. Tracy
Executive Director

Terry L. Fromson
Managing Attorney

cc: Advisory Policy Board, UCR Subcommittee
Office for Victims of Crime
Violence Against Women Office, Dept. of Justice
International Association of Chiefs of Police
National Sheriff's Association
National District Attorneys Association

A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free 1.800.732.0999. Registration does not imply endorsement.

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September 20, 2001

Robert S. Mueller, III
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, DC 20535

Re: UCR Definition of Rape

Dear Mr. Mueller:

We are writing to request your assistance in a matter of grave importance for survivors of sexual assault. As described more fully below, the current Uniform Crime Report (UCR) definition of rape is narrow, outmoded and steeped in gender-based stereotypes. It seriously understates the true incidence of sexual assault in the United States today, confuses and hampers law enforcement, and discourages victims from reporting serious crimes. We urge you to act speedily to amend this definition to conform to a more contemporary understanding of sex crimes.

The Uniform Crime Report system, developed in 1927 as a framework for gathering and publishing crime data and maintained by the FBI, has become the country's major source of crime data. The UCR defines rape as, "the carnal knowledge of a female, forcibly and against her will."[1] This definition was created over seventy years ago. In the intervening years, America has significantly expanded its understanding of rape, and states have revised their laws accordingly. Many state criminal laws now recognize that all forms of non-consensual sexual penetration regardless of gender, relationship, or mode of penetration are as serious as the criminal conduct included in the UCR definition of rape.

[1] FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTING HANDBOOK 10 (1984) [hereinafter GREENBOOK].

A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free 1.800.732.0999. Registration does not imply endorsement.

The UCR definition of rape should be revised to include rape of males, rape committed against the victim's will without force, and rape by blood relatives, and it should not be limited to vaginal/penile penetration. The public is entitled to know the full extent of serious sex crimes committed in the United States. In addition, the police entrusted with enforcing state law would benefit greatly from consistency in their reporting and enforcement obligations. To accomplish this goal, we recommend that the UCR define rape as follows:

> Rape: vaginal, oral or anal intercourse or vaginal or anal penetration by a perpetrator using an object or body part without freely and affirmatively given consent.

Background:

The Women's Law Project and the undersigned individuals and organizations are all experienced in advocacy on behalf of victims of sex crimes and domestic violence. Consequently, we have a strong interest in the appropriate treatment of victims of sexual assault and in the effective investigation and prosecution of sex crimes. We strongly believe that the UCR must be updated to improve the reporting and handling of crimes of sexual assault.

The Women's Law Project recognized the need to change the UCR definition of rape after learning about the impact of the UCR on the Philadelphia Police Department's handling and reporting of sex crimes. The Law Project began working with the Philadelphia Police Department following the publication in *The Philadelphia Inquirer* of a series of articles recounting the Philadelphia Police Department's misclassification of substantial numbers of sex crime complaints as non-crimes. The Department requested that we assist it in revising its classification system and reviewing its handling of complaints.

While helping the Philadelphia Police Department improve its crime classification system and response to sex crimes, the Women's Law Project learned that the inconsistencies between the UCR's narrow definition of rape and the broader definitions of sex crimes promulgated by the Pennsylvania legislature present major problems. These inconsistencies create an unnecessary barrier to the accurate and comprehensive reporting of serious crime in Pennsylvania. The narrow UCR definition of rape reduces significantly the amount of information shared with the public about sex crimes in a way that disregards how Pennsylvania has chosen to define sex crimes. The narrowness of the UCR's definition of rape also improperly influences police perception of what constitutes a serious sex crime, focusing the police on the UCR definition of rape rather than on what Pennsylvania has defined as serious sex crimes. These problems are not unique to Pennsylvania; they affect every jurisdiction that has chosen to modernize its rape laws.

Problems with the Current UCR Definition of Rape:

1. *Part I rape does not accurately inform the public of the true incidence of serious sex crimes.* The UCR divides crimes into Part I and Part II crimes and treats Part I crimes as the serious crimes. It also reports more information to the public about the incidence of and effectiveness of police response to Part I crimes. We do not object to the UCR's focus on more serious crime. However, because the only sex crime included in the UCR's Part I crime index is the narrowly defined category of rape and Part I excludes many serious sex crimes, the report fails to give an accurate picture of the incidence of serious sex crimes in America.

   Many serious sex crimes classified under the crime codes of most states as felonies and misdemeanors are not included in the Part I category of rape. Rather, all sexual assaults which do not fit within the narrow UCR definition of rape are reported as a single, undifferentiated category, Other Sex Crimes,[2] which includes both serious crimes such as involuntary deviate sexual intercourse and incest as well as more minor offenses such as indecent exposure. These Part II crimes are only reported when an arrest has been made. For those sexual assaults that fall outside the current definition of rape, the public will only find out how many arrests the police have made, rather than the numbers of serious sex crimes reported to police in their communities. America needs to know the extent of serious sex crimes, not just the incidence of one specific type of sexual assault (UCR rape).

2. *The UCR negatively impacts law enforcement's response to sex crimes.* The UCR's narrow definition of rape also has complicated and damaging ramifications for law enforcement. When the UCR minimizes what crimes count as rape, it sends a powerful message to those who gather the statistics - the local agencies - that the only serious sex crime is UCR rape. The UCR's definition of rape becomes the standard of "real" rape, negatively influencing the attitudes of law enforcement towards the many rape victims whose stories do not fit within this narrow, stereotypical view of rape. When a sex crime is considered less serious, it may not receive the full range of police resources and attention that it deserves. Police response is already hampered by pervasive biases against rape victims. By minimizing the seriousness of sex crimes, the UCR's limited definition of rape exacerbates this problem.

3. *The narrow definition of Part I rape contributes to underreporting by victims.* Inadequate police response in turn leads to diminished public confidence in the handling of sex crimes by police within a particular community. Rape is

[2] *See* GREENBOOK, *supra* note 1 at 80.

already the most underreported of crimes.[3] Because rape victims find it so difficult to come forward under the best of circumstances, diminished trust in the police strongly undermines the likelihood of victims to report a rape. When a victim does not report a rape to the police, the police can not bring the perpetrator to justice, making it possible for this rapist to strike again.

4. *Diminution of rape statistics hampers law enforcement and victim assistance efforts.* The underreporting of rape seriously handicaps the efforts of all those who would help the victims, from the decision-makers who control funds for investigation and prosecution of sex crimes to rape crisis centers who provide essential victim services to community organizations concerned with crime in their communities. Data that diminish the scope of the problem reduce the ability to develop programs and policies that appropriately respond to the problem. Accurate information is essential to the work of all these parties, and the data on rape currently reported by the UCR are not adequate.

Changing the Part I definition of rape to more closely match the crime actually experienced by so many victims is an important step towards addressing these complicated problems. Because the FBI's definition of crimes for UCR reporting purposes carries so much weight for police departments across the country, the broadening of Part I rape would correspondingly improve police response to rape complaints and their investigation of complaints. Police recognition that rapes that fall outside of the narrow confines of the Part I definition are serious crimes is essential to the proper investigation of these crimes and the proper treatment of these victims.

Attempt to Expand Reporting by NIBRS:

The FBI's attempt to improve the accuracy and usefulness of UCR sex crimes data by creating a whole new system to replace the UCR is not an adequate solution. Created in the mid-1980s in response to seven decades of criticism about the data collected on rape and other sex crimes, the National Incident-Based Reporting System (NIBRS), is, on paper, a great improvement over the traditional summary system of gathering UCR data. In particular, in the Group A offenses for which it collects both incidence and arrest data, NIBRS includes two groups of sex offenses: Sex Offenses, Forcible and Sex Offenses, Nonforcible.[4] Together, these two groups more closely reflect serious sex crimes as defined by state laws. "Sex Offenses, Forcible" is defined as "Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent."[5] This group includes: forcible rape, forcible sodomy, sexual assault with an

[3] *See* Mary P. Koss, *The Underdetection of Rape*, 48 J. SOC. ISSUES 61, 63 (1992) (citing the 1982 UNIFORM CRIME REPORT).
[4] FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTING HANDBOOK: NIBRS EDITION 21-22 (1992) [hereinafter NIBRS HANDBOOK].
[5] *See id.*

object, and forcible fondling.[6] The category "Sex Offenses, Nonforcible" is defined as "Unlawful, nonforcible, sexual intercourse" and includes incest and statutory rape.[7] NIBRS has expanded upon the definition of rape itself, eliminating both the gender limitations and force requirements of the UCR definition.[8]

Unfortunately, the NIBRS system has not been adopted by many local law enforcement authorities. Today, more than fifteen years since the inception of this system, NIBRS statistics represent only 11% of the population.[9] Austin, Texas is the only city with a population over 500,000 to use NIBRS, and only three other cities with populations over 250,000 use NIBRS.[10] The scale and complexity of NIBRS, along with the degree to which it departs from summary reporting make NIBRS very cumbersome and very expensive to implement – disproportionately more so for the large law-enforcement agencies in the major metropolitan areas where most of the American population lives. The current summary reporting system took over thirty years to implement,[11] and NIBRS is a vastly more complex and ambitious system. Widespread adoption of NIBRS will not take place for decades, if at all.

Proposed Changes to the Summary Reporting Definition:

Since NIBRS is not likely to be implemented to the extent necessary to gather nationally representative statistics for decades, we call for a change in the current definition of rape in Part I of the UCR's Index Crimes. Unlike the implementation of NIBRS, instituting a revised definition of rape is not costly, and will not require extensive retooling of local agencies data-collection systems. The Part I definition of rape should be changed to include all forms of non-consensual sexual penetration, rather than just the limited group covered by the current definition. Specifically, the following conduct needs to be included in the definition of rape:

1. *Non-forcible rape*: Currently, summary UCR reporting only includes those rapes perpetrated by use of force. The definition reads, "forcibly *and* against her will."[12] By contrast, the definition of rape used for NIBRS includes rape against the victim's will even if force is not used. It reads, "forcibly *and/or*

[6] *See id.* at 21.
[7] *See id.* at 22.
[8] *See id.* at 21.
[9] *See* BUREAU OF JUSTICE STATISTICS & FEDERAL BUREAU OF INVESTIGATION, LEVEL OF UCR PARTICIPATION BY STATE AS OF MAY 5, 2000 *available at* http://www.ojp.usdoj.gov/bjs/nibrsstatus.txt.
[10] *Wichita, Charlotte-Mecklenburg, and Chicago Test NIBRS*, A NEWSLETTER FOR THE CRIMINAL JUSTICE COMMUNITY: NIBRS EDITION (Criminal Justice Information Services Division, FBI, Washington, D.C.), vol. 4 at 8, tbl. at 10
[11] Michael G. Maxfield, *The National Incident-Based Reporting System: Research and Policy Applications*, 15 J. QUANTITATIVE CRIMINOLOGY 119, 139 (1999).
[12] *See* GREENBOOK, *supra* note 1 at 10 (emphasis added).

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against the person's will,"[13] and the definition used in summary reporting should as well.

Many rapists do not use force. They use other types of coercion or other means to control their victim. In many acquaintance rapes, the offender uses a high level of verbal coercion but little physical force.[14] Many rapes of children are perpetrated without force or even threat of force.[15] Rape of other particularly vulnerable victims such as mentally disabled, physically disabled or unconscious persons also may occur without actual force, but without the victim's consent. Some stranger rapes are perpetrated without force or with very minimal force.[16] At least eighteen states currently criminalize penetration without the victim's consent without requiring proof of force or coercion.[17] Approximately twenty states have a statute that substitutes non-physical forms of coercion for the traditional force requirement.[18] The UCR's definition of rape excludes the above-described situations and is in conflict with state statutes. It should be changed to require only that rape be against the victim's will.

2. *Non-vaginal/penile rape*: The UCR definition counts only vaginal/penile penetration as rape. However, oral, and anal rape and penetration of the vagina or anus with a body part or foreign object[19] are just as serious and must be included. Most states have expanded the definition of rape beyond vaginal/penile penetration.[20] Because the states have by and large already made reforms to their rape laws in this respect, the UCR is reporting only a segment of what state laws classify as rape, thus presenting an inaccurate picture of the incidence of this crime. The current UCR definition conflicts with the overwhelming majority of states in this respect, and needs to be brought into line.

[13] *See* NIBRS HANDBOOK, *supra* note 4 at 21 (emphasis added).
[14] *See* Ian T. Brownes, et al., *Rape – A Comparison of Stranger and Acquaintance Assaults*, 31 MED. SCI. & L., 102, 108 (1991).
[15] *See id.* at 326-35.
[16] *See* Robert R. Hazelwood & Ann Wolbert Burgess, *The Behavioral-Oriented Interview of Rape Victims: The Key to Profiling, in* PRACTICAL ASPECTS OF RAPE INVESTIGATION: A MULTIDISCIPLINARY APPROACH 144, 158 (Robert R. Hazelwood & Ann Wolbert Burgess eds., 1999).
[17] Patricia J. Falk, *Rape by Fraud and Rape by Coercion*, 64 BROOK. L.AW REV. 39, 125-26 (1998).
[18] *See id.* at 119
[19] The report that resulted in the formulation of NIBRS recommended that the UCR include rape by instrumentation. *See* EUGENE C. POGGIO ET AL., FEDERAL BUREAU OF INVESTIGATION, BLUEPRINT FOR THE FUTURE OF THE UNIFORM CRIME REPORTING PROGRAM 5 (1985) [hereinafter BLUEPRINT].
[20] *See* Patricia Searles and Ronald J. Berger, *The Current Status of Rape Reform Legislation: An Examination of State Statutes*, 10 WOMEN'S RIGHTS REPORTER 25, 31 tbl.1 (1987). When Searles and Berger did this survey, only 33.3% of states still limited rape to vaginal penetration. Even fewer states limit their definitions today. *See, e.g,*. D.C. CODE ANN. § 22-4102 (2000); IDAHO CODE § 18-6101 (2000); KY. REV. STAT. ANN. §§ 510.010, 510.040 (2000); Me. Rev. Stat. Ann. tit. 17-A § 251, 253 (2000), MISS. CODE ANN. § 97-3-95, 97 (2000).

3. *Rape without gender limitations*: Summary UCR reporting only includes rapes of women ("carnal knowledge of a female"[21]). In reality, many rape victims are boys and men, and the definition of rape must include these crimes as well. The National Violence Against Women Survey done in 1995-96 by the Centers for Disease Control and Prevention and the National Institute of Justice found that 15% of all victims of attempted or completed rape are male.[22] The same survey found that in the United States, 1 in 33 men has experienced an attempted or completed rape in his lifetime and approximately 92,700 men and boys are forcibly raped each year.[23] The percentage of child victims who are male is even higher. Using NIBRS data, a recent report on sexual assault of young children from the National Center for Juvenile Justice and the Bureau of Justice Statistics found that 31% of victims of sexual assault under age six were male.[24] Although women are more likely overall to be the victim of rape, the number of men and boys raped is significant and most states have made their sexual assault laws gender neutral. The UCR should make the Part I definition of rape gender neutral as well.

4. *Rape by a blood relative*: Currently, the UCR counts rapes committed by blood relatives as incest. These rapes are reported as an undifferentiated piece of the Part II offense category "Other Sex Crimes." Minors are more likely to be raped than adults,[25] and minors are particularly likely to be raped by members of their families. According to the National Center for Juvenile Justice/Bureau of Justice Statistics Report, family members perpetrated 49% of sexual assaults where the victims were under age 6, 42% where the victims were ages 6-11, and 24% where the victims were ages 12-17.[26] In comparison, 12% of offenders who sexually assaulted adults were family members.[27] As a significant portion of victims, particularly juvenile victims, are assaulted by family members, these crimes need to be counted with other rapes, rather than mixed in with less serious sex crimes such as indecent exposure.

Each of these types of sexual assault is equal in seriousness to male/female-vaginal/penile rape and are encompassed by the definition we have proposed. Only when

[21] *See* GREENBOOK, *supra* note 1 at 10.
[22] PATRICIA TJADEN & NANCY THOENNES, NATIONAL INSTITUTE OF JUSTICE & CENTERS FOR DISEASE CONTROL AND PREVENTION, PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 3-4 (1998)
[23] *See id.*
[24] HOWARD N. SNYDER, NATIONAL CENTER FOR JUVENILE JUSTICE, BUREAU OF JUSTICE STATISTICS, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 4 (2000).
[25] *See also* TJADEN & THOENNES, *supra* note 10 at 6 (discussing how more than half (54%) of the women in their survey experienced their first rape before age 18).
[26] *See* SNYDER, *supra* note 24 at 10.
[27] *See id.*

the UCR includes these rapes in its definition can it begin to provide the useful accurate information essential to fighting these horrible crimes.

Conclusion:

The dated and inaccurate definition of rape currently used in Part I of the UCR is inadequate and must be changed as outlined above. It omits many rapes equally as serious as the narrow group it includes. By omitting these rapes from the data it collects and publishes, it contributes substantially to the serious problem of the underreporting of rape. Through this diminution in crime statistics, the UCR provides communities and decision-makers with inaccurate information about the incidence of serious sex crimes and contributes to the invidious problem of reduced public confidence in law enforcement's handling of sex crimes, which negatively impacts the ability of local agencies to fight rape effectively. NIBRS has not solved these problems and therefore is not an adequate solution. In the interim, the definition of rape used in Part I must be changed, and changed quickly, to include all types of rape.

Respectfully submitted,

Carol E. Tracy
Executive Director

Terry L. Fromson
Managing Attorney

Women's Law Project

On Behalf of 91 Organizations In Support
Of Change in UCR Definition of Rape
(Listed in Attachment "A")

cc: Advisory Policy Board, UCR Subcommittee
Office for Victims of Crime
Violence Against Women Office, Dept. of Justice
International Association of Chiefs of Police
National Sheriff's Association
National District Attorneys Association

ORGANIZATIONS IN SUPPORT OF CHANGE IN UCR DEFINITION OF RAPE

Alaska Network on Domestic Violence & Sexual Assault
Council on Domestic Violence and Sexual Assault
California Coalition Against Sexual Assault
California Women's Law Center
Family Violence and Sexual Assault Institute
Colorado Coalition Against Sexual Assault
Advocates: Victim Assistance Team
Alternative Horizons
Colorado Organization for Victim Assistance
Domestic Safety Resource Center
Ending Violence Against Women Project
Memorial Hospital Sexual Assault Nurse Examiners
Sexual Assault Survivors, Inc
The Resource Center of Eagle County
Victim/Witness Assistance Unit, District Attorney's Office, First Judicial District, Colorado
Wings Foundation, Inc.
Connecticut Sexual Assault Crisis Services, Inc.
Connecticut Women's Education & Legal Fund
Contact Delaware, Inc.
Florida Council Against Sexual Violence
Gainesville, Florida Police Department
State Attorney's Office – Eighth Judicial Circuit
Georgia Network to End Sexual Assault
Columbus Rape Crisis, Inc.
Dekalb Rape Crisis Center
HODAC'S Victim Resource Center
Rape Crisis and Sexual Assault Services
Sexual Assault Center of Northeast Georgia
Sexual Assault Center of Northwest Georgia
Wings
Hawaii Coalition For the Prevention of Sexual Assault
Idaho Coalition Against Sexual and Domestic Violence
Welch Training and Curriculum Design
Illinois Coalition Against Sexual Assault
Indiana Coalition Against Sexual Assault
Iowa Coalition Against Sexual Assault
Kansas Coalition Against Sexual & Domestic Violence
Kentucky Association of Sexual Assault Programs
Louisiana Foundation Against Sexual Assault
Maryland Coalition Against Sexual Assault, Inc.
Baltimore NOW
Women's Law Center of Maryland, Inc.
Massachusetts Coalition Against Sexual & Domestic Violence, Jane Doe, Inc.,
Stone Center, Wellesley Centers for Women
Michigan Coalition Against Domestic & Sexual Violence
Minnesota Coalition Against Sexual Assault
Sexual Assault Resource Service
University of Minnesota Program Against Sexual Violence
Missouri Coalition Against Sexual Assault
Montana Coalition Against Domestic & Sexual Violence
Nebraska Domestic Violence Sexual Assault Coalition
Nevada Coalition Against Sexual Violence
New Hampshire Coalition Against Domestic & Sexual Violence
New Jersey Coalition Against Sexual Assault
New York State Coalition Against Sexual Assault
New York City Alliance Against Sexual Assault
Safe Horizon
North Dakota Council on Abuse Women's Services
Oklahoma Coalition Against Domestic Violence & Sexual Assault
Oregon Coalition Against Domestic and Sexual Violence
Pennsylvania Coalition Against Rape
Penn Women's Center, University of Pennsylvania
Pennsylvania NOW
Philadelphia Children's Alliance
Support Center for Child Advocates
Women's Law Project
Women Organized Against Rape
Puerto Rico Rape Crisis, Department of Health
Sexual Assault & Trauma Resource Center of Rhode Island
South Carolina Coalition Against Domestic Violence & Sexual Assault
South Dakota Coalition Against Domestic Violence & Sexual Assault
Tennessee Coalition Against Domestic & Sexual Violence
Texas Association Against Sexual Assault
Virginians Aligned Against Domestic Violence
Northwest Women's Law Center
West Virginia Foundation for Rape Information and Services
Wisconsin Coalition Against Sexual Assault
Fond du Lac County Coordinated Community Response Against Violence
Women's Coalition of St. Croix

Center for Women Policy Studies
Feminist Majority Foundation
National Alliance of Sexual Assault Coalitions
National Center for Victims of Crime
National Center for Women & Policing
National Coalition Against Domestic Violence
National Organization for Women (NOW)
National Sexual Violence Resource Center
National Violence Against Women Prevention Research Center
National Women's Political Caucus
NOW Legal Defense and Education Fund
Sexual Assault Report
Women's Research and Education Institute (WREI)

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Testimony Julie Weil
Rape Survivor

United States Senate Committee on the Judiciary
Subcommittee on Crime and Drugs

"Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases"

September 14, 2010

Good afternoon Chairman Specter, Ranking Member Graham, and distinguished members of the Subcommittee on Crime and Drugs. Thank you for the invitation to participate in today's hearing. I am truly humbled to be able to share my experience with you and I hope that by hearing my story, you are empowered to help rape victims everywhere get the support they need to heal and to fight the injustice of sexual assault.

Improving the reporting and investigation of rape will happen only when we are committed to providing victims with comprehensive support services -- from that first 911 call all the way through to sentencing. My story demonstrates this: the support services I received sustained me through the longest, most grueling years of my life, a time when giving up sometimes seemed like the best thing to do.

My name is Julie Weil. I was raised in Miami, Florida. I graduated from the University of Virginia and then spent a brief time here in Washington, DC working for the Department of Justice. I returned to Miami in the mid-1990s for graduate school. I got married, and my husband and I chose to settle down in the same community where I had grown up in South Miami. We started a family, and I decided to take some time off to raise my infant son Peter and my three-year-old daughter Emily.

My story begins on a beautiful, hot October morning in 2002. My son and I went to pick up my daughter at noon from the church preschool around the corner from our house. I had attended this same church my entire life and thought nothing of parking in the area back by the playground and running in to get her. After going to the church bookstore and chatting with friends, we slowly made our way back to the parking lot. When we got to our minivan, my daughter jumped inside while I buckled my son into his car seat. I then walked around to other side of the van to make sure Emily's car seat was secure. As I was doing this, I was suddenly ambushed from behind and hit over the head.

My daughter screamed for her life and fought to escape the van, ultimately being thrown to the back of the vehicle. My assailant stripped the car keys from my hand and held a knife to my neck. He told me that if I did not want to see my children die, I should stop screaming and get into the van. He closed the door behind me, locked us in and turned the radio all the way up to drown out the sounds of my children's cries. As he pulled out of the church parking lot he asked me, "do you believe in God?" When I answered "yes",

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he said "good, then you will forgive me for what I am about to do to you and your children".

The first request our abductor made was for my driver's license. He informed us that he now knew where we lived and would kill us if we ever told anyone about what was going to happen. He then drove my children and me far away to an area that bordered the Everglades, parking our van on a canal bank surrounded by tall sawgrass. We were in the middle of nowhere. The hours that followed were the most terrifying of my life. The assailant beat me, held a knife on my children and me, and raped me four times. Each time I was violently raped, he forced both of my children to watch every moment of his crime. My daughter was forced to sit just inches from me as I screamed in pain during the brutal sexual assault. When he was done with me, he drove me to two ATMs and asked me to withdraw money. He then returned our van to the church and parked it behind some shrubbery. He told me to wipe down the surfaces of the car with my underwear to erase any fingerprints. Then he laid me naked on the floor of the van and stuck the knife at the base of my neck one last time. He made my daughter beg for for my life. The fear in Emily's tiny voice as she pleaded for him not to kill me still haunts me today. Then, he suddenly opened the van door and walked away - finished with his afternoon of rape and torture.

I immediately drove to my parents' house and limped inside. Half naked and bleeding, I sobbed while my parents begged me to call 911. At first, I couldn't make the call. I was too afraid of what he might do to my family if I reported the crime. However, I soon called the police. They arrived within two minutes, although it seemed like an eternity. I collapsed out of relief when I saw the blue uniform and police badge--a feeling of safety at last. The responding officer and the SVU detective who arrived at the house that night set the tone for how I would view my experiences with law enforcement. Although strangers to me, I felt instantly drawn to them because of their compassion and professionalism. The care that they provided me with fostered a sense of trust in my darkest and most vulnerable hours. Without that beginning, my story might have ended quite differently.

Eventually, they took me to the Roxcy Bolton Rape Treatment Center at Jackson Memorial Hospital in Miami. I was not permitted to have anyone from my family accompany me, which was very scary in light of the trauma I had just suffered. Thankfully, the police and the nurses at the rape treatment center were gentle and treated me with a great deal of respect and sensitivity. They were all veterans in dealing with the unique needs of rape victims. The rape exam was horrible and very painful. Being poked, prodded and photographed gave me flashbacks of the original assault. It was almost too much to take, but the excellent forensic nurse stuck by my side and helped me through the pain. She encouraged me to push through the fear and made me feel safe and cared for. I was offered STD testing and counseling, along with information about follow-up care and local advocacy services. After more police questioning, I finally returned to my parents' house some time after midnight.

The next few months were torture on my family for many reasons. First, the police

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recovered no fingerprints from my van and the rape treatment center found no DNA on my body. This was extremely disheartening. Fortunately, a few days after the rape I received a call from the police who informed me that tests revealed a tiny speck of DNA on my clothing. The DNA matched with a sample left at another rape. Unfortunately, the rapist's information was not in the system. In a city of millions of people, my attacker could be anyone. I was terrified.

Fortunately for me, while I remained secluded in my home battling PTSD and caring for my children, the community I lived in and the Metro-Dade police force put everything they had into looking for this man. My relationship with the detectives in my case served as a source of strength for me in the agonizing months after my rape. Because they communicated with me and checked in on me regularly, I felt like they were personally invested in securing justice for my family. This gave me the strength I needed to hold on -- and to continue forward with the process

By a stroke of luck and good police work, my rapist was finally identified months later in January 2003. Police were called to investigate a domestic dispute at a hotel where a man was beating up his pregnant girlfriend. Although she dropped the charges, police fingerprinted him and swabbed the man for DNA. It had become customary to perform voluntary swabbing on any man matching the general description of my rapist. Three weeks later, the DNA tests came back as a match to my rape and another prior assault. I finally had a face and a name to put with my attacker--Michael Thomas Seibert. One of the happiest and most freeing days of my life was the morning I received the call that he had finally been apprehended. It was finally over, I thought to myself. I did not know that the real endurance test was just beginning.

At this point, the State Attorney's Office in Miami-Dade took over the case. I was thrown headfirst into the complex criminal justice system, something totally foreign to me. The first eighteen months after my rapist's capture were filled with a great deal of confusion and disappointment. I learned that despite confessions and DNA, rape cases like mine move at a snail's pace. I went through two State prosecutors and suffered multiple delays due to events outside my control. I began to feel hopeless.

Finally, my case ended up on the desk of Assistant State Attorney Laura Adams. Laura and her team were amazing in every regard. They saved my life when I felt I couldn't go on another day. They promptly returned my phone calls, communicated with me about every motion and eased my anxiety during what seemed like endless continuances from the court. They empathized with my concerns and helped me to see the bigger picture, which translated into justice for my precious family. Amazingly, the case seemed as important to them as it was to me. They assisted me in finding the appropriate services to help my daughter cope emotionally and were especially sensitive to her needs through out the years -- yes, years -- it took to get the case to trial.

My positive experience with the system is illustrated by what happened at the end of my story when a plea deal was put on the table. The State Attorney's Office had definitively

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linked Michael Seibert to two other rapes besides mine, one through DNA and one by confession. The plea offer was thirty years total for all three cases. In order to avoid being dragged through the system again and having old wounds re-opened, the other two victims agreed to the light sentence. Significantly, in the wake of their attacks, they had not had the supportive experience that I did. They had done much of their healing alone and did not want to travel that difficult road again.

Miami-Dade County had, by this time, assembled a very effective network of services to support rape victims throughout their trial experience. In my opinion, thirty years was not enough time for my rapist to serve for all of the damage he had done to my life and, more importantly, to my children. I rejected the plea offer and we went to trial on my case alone.

In October 2006 my trial began. It had taken more than four years of work to get to this point but the end was finally in sight. Because of the trust I had built up in the officers, nurses and attorneys that had worked tirelessly on my case over the years, I was confident in their ability to secure justice for my family. Facing my rapist in court was extraordinarily difficult, not just for me but for my family. The compassionate care of wonderful counselors from the State Attorney's office was invaluable to my mother as she prepared to testify. It is something I will always be grateful for. Finally, after many days, it was my turn to take the stand. For nearly two hours, just feet away from my rapist, I relived the horrendous acts of October 16th, 2002 in graphic detail. I endured degrading questioning from his defense attorney and felt like I was being violated all over again as I recited all of the despicable details to a room full of strangers. Later that night, the jury deliberated for two and a half hours before returning to the courtroom with a verdict. I held my breath as they read their decision: guilty on three counts of armed kidnapping, guilty on 4 counts of rape in the first degree with a deadly weapon and guilty on one count of robbery. Cheers erupted in the courtroom as I hugged my family and the support team of officers and advocates who had been there for me through it all.

Sentencing came five weeks later on December 15th, 2006. My parents, my husband and I were all given the chance to make victim impact statements. I told the judge how Michael Seibert broke my dreams and destroyed the life I wanted for my family. I told of how his actions forced us to leave the city, home, friends and family we loved because we no longer felt safe. Michael Seibert took away our notion of security, left us with emotional scars bigger than could ever be imagined and had made us his prisoners for life. I asked the court to take away his freedom forever in return. The judge sentenced Michael Seibert to an astounding seven consecutive life sentences plus fifteen years for the events that occurred against my family. Justice was indeed served. It is gratifying to know that he received an individual life sentence for what he did to each of my children and it is, as a victim, important to me that the judge saw fit to give him a life sentence for each separate time he raped me.

In the immediate aftermath of the trial I realized that closure is not a myth. There is immense power in seeing a case through to the end for a victim. Being able to take the

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stand and to name a rapist publicly for what he is enables victims to regain the feeling of control that rape steals. Seeing my rapist led away from the courtroom in handcuffs was more gratifying than I ever thought it would be. While nothing can bring back the life we had before or replace what he stole from us that day, I know that I did everything I could to make sure he will never hurt anyone ever again. The justice system can work when victims are provided with the support we need in order to get justice for ourselves and to make our communities safer. Without that support, my rapist may still be free and victimizing other women and their families.

It is so important that we continue to improve the system for rape victims. Organizations like RAINN, the Rape, Abuse & Incest National Network, provide victims and their families valuable information on their website and much needed emotional support through their National Sexual Assault Hotlines.

Seven years ago I was lying on the floor of my van, in the presence of my children naked and bleeding. I never would have imagined having the strength to come here to Washington and speak to you as a survivor activist -- but it is too important for me not to. I suppose that is why I have made it my personal mission to attend law enforcement trainings and State Attorney meetings to share my story. We cannot underestimate the power that a positive experience with law enforcement and the legal system can have on a life -- and on public safety. Rape thrives on secrecy and shame. The details are often too painful and intimate to share with anyone. The crime of rape has an intense power to affect individuals in devastating ways that may not show up on the surface but last a lifetime.

In conclusion, I believe that to increase the reporting and investigating of rape cases -- and therefore get more rapists off our streets -- we must start with caring for the victims. The safest and healthiest communities acknowledge the severity of rape as a crime and begin by respecting all victims, providing specialized training to law enforcement and healthcare professionals, and not downplaying the prevalence or the severity of rape.

Recovery from sexual assault is an intensely personal journey but one that requires the company of professional and compassionate advocates who understand its complexity.

In order to put rapists behind bars, victims' well-being must be a priority throughout the criminal justice process. Specialized training to law enforcement and healthcare professionals is crucial to supporting victims and therefore to increasing chronically low reporting and prosecution rates. With the proper support in place, victims will feel more confident reporting the crime. They will have the knowledge that someone will stand with them to help them heal and seek justice. For me, Miami's coordinated response team's expert training, coupled with their compassion and dedication, helped me not to give up on the notion of justice or on my own recovery. Because of them, I reached the finish line and I am filled with hope for a bright future.

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Every victim of rape has suffered a horrible trauma. It should be our priority as citizens to make sure each victim is given the opportunity to heal and to seek justice.

Thank you for your time and for inviting me to speak on this important issue.