

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.").

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 States⁷), 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

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.

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

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.*

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).

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

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.

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.

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").

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,

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".

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

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.

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.

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.

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 necessary¹.

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).

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 years². 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 injury³.

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.

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
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Illinois Coalition Against Sexual Assault

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

RETURN A - MONTHLY RETURN OF OFFENSES KNOWN TO THE POLICE

1-720 (Rev. 3-08-06)

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.

OMB No. 1110-0001
Expires 03-13-13

CLASSIFICATION OF OFFENSES	DATA ENTRY	2	3	4	5	6
		OFFENSES REPORTED OR KNOWN TO POLICE (INCLUDE "UNFOUNDED" AND ATTEMPTS)	UNFOUNDED, I.E., FALSE OR BASELESS COMPLAINTS	NUMBER OF ACTUAL OFFENSES (COLUMN 2 MINUS COLUMN 3) (INCLUDE ATTEMPTS)	TOTAL OFFENSES CLEARED BY ARREST OR EXCEPTIONAL MEANS (INCLUDES COL. 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.

<input type="checkbox"/> NO SUPPLEMENTARY HOMICIDE REPORT SUBMITTED SINCE NO MURDERS, JUSTIFIABLE HOMICIDES, OR MANSLAUGHTERS BY NEGLIGENCE OCCURRED IN THIS JURISDICTION DURING THE MONTH.	<input type="checkbox"/> NO AGE, SEX, AND RACE OF PERSONS ARRESTED UNDER 18 YEARS OF AGE REPORT SINCE NO ARRESTS OF PERSONS WITHIN THIS AGE GROUP.
<input type="checkbox"/> NO SUPPLEMENT TO RETURN A REPORT SINCE NO CRIME OFFENSES OR RECOVERY OF PROPERTY REPORTED DURING THE MONTH.	<input type="checkbox"/> NO AGE, SEX, AND RACE OF PERSONS ARRESTED 18 YEARS OF AGE AND OVER REPORT SINCE NO ARREST OF PERSONS WITHIN THIS AGE GROUP.
<input type="checkbox"/> NO LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED REPORT SINCE NONE OF THE OFFICERS WERE ASSAULTED OR KILLED DURING THE MONTH.	<input type="checkbox"/> 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	