

Testimony of
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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
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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 Survey¹ 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.

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.

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%.

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

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.

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

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 Kavanaugh, 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.

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

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.

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

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

¹⁹ Mark Fazlollah, “Experts Question Accuracy 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)

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 met 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.

²² Dr. Kimberly A. Lonsway, EAW 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.