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The Response to Rape: Detours on the Road to Equal Justice

Prepared by the
Majority Staff
Of the
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VIOLENCE AGAINST WOMEN

THE RESPONSE TO RAPE:

DETOURS ON THE ROAD TO EQUAL JUSTICE

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INTRODUCTION

By Senator Joseph R. Biden, Jr.

Chairman, Senate Judiciary Committee

May 1993

The report I issue today culminates a three year investigation by the Judiciary Committee's majority staff concerning the causes and effects of violence against women. Women in America suffer all the crimes that plague the nation -- muggings, car thefts, and burglaries, to name a few. But there are also some crimes -- namely rape and family violence -- that disproportionately burden women. Through a series of hearings and reports, the committee has studied this violence in an effort to determine what steps we can take to make women more safe.

Through this process, I have become convinced that violence against women reflects as much a failure of our nation's collective moral imagination as it does the failure of our nation's laws and regulations. We are helpless to change the course of this violence unless, and until, we achieve a national consensus that it deserves our profound public outrage.

A. The Report's Findings

Today, the majority staff releases findings of a six-month investigation of state rape prosecutions. These findings reveal a justice system that fails by any standard to meet its goals -- apprehending, convicting, and incarcerating violent criminals:

- * 98% of the victims of rape never see their attacker caught, tried and imprisoned;
- * Over half of all rape prosecutions are either dismissed before trial or result in an acquittal;
- * Almost one quarter of convicted rapists never go to prison; another quarter receive sentences in local jails where the average sentence is 11 months:

This means that almost half of all convicted rapists can expect to serve an average of a year or less behind bars.

No crime carries a perfect record of arrest, prosecution, and incarceration, but the pattern that emerges for rape is strikingly inferior to that of other violent crimes:

- * A robber is 30% more likely to be convicted than a rapist;
- * A rape prosecution is more than twice as likely as a murder prosecution to be dismissed, and 30% more likely to be dismissed than a robbery prosecution; and,

- * A convicted rapist is 50% more likely to receive probation than a convicted robber.

Imagine the public outcry if we were to learn today that one quarter of convicted kidnappers or bank robbers were sentenced to probation or that 54% of arrests for these crimes never led to a conviction. We would consider such a system of justice inadequate to protect the nation's property, yet we tolerate precisely such results when the rape of women is at issue.

The disparity in how our system prosecutes rape, in contrast to other violent crime, mirrors the disparity in our society's attitude towards these acts. The American legal system has always treated cases of assault by a stranger on our streets as a serious crime. But violence that primarily targets women has too often been dismissed without response. Where the victim knows the perpetrator, there is a tendency to consider the crime a product of a private relationship, not a matter of public injustice. Even where the violence comes at the hands of a stranger, the victim may be seen not as an innocent target of intolerable criminal acts, but as a participant who somehow bears shame or even some responsibility for the violence.

A recent case from New Jersey vividly illustrates this attitude. A 17-year-old mentally retarded girl was raped by a group of young men she had known her entire life, who used a baseball bat, a broom handle, and a stick to abuse her. This was not the

furtive act of a lone individual, it was the afternoon activity of a group of young men who engaged in the rape of a girl as nonchalantly as a pick-up game of basketball. After the crime became publicly known, members of the community, according to press accounts, defended the young men's conduct on the ground that "boys will be boys."

The nonchalance displayed by the young men during and after the attack reveals the attitude that this incident does not constitute serious criminal activity. Worst of all, this same attitude is mirrored in the court's treatment of the case. Although three of the defendants were convicted of first degree aggravated sexual assault -- the most serious charge under New Jersey law -- and because of their age at the time of trial could have been sentenced as adults, the judge sentenced them as "youth offenders." As a result, they will likely serve less than two years in a youth camp. At sentencing, the judge made references to the attackers' status as successful high school athletes who presented "no threat" to society.

This is but one recent example of how our system discounts the severity of rape, how it "normalizes" rape as the mistakes of errant youth or negligent men. It is repeated day-in, day-out, in case after case, shaping women's perception that the system simply does not accept that violent acts against women are serious crimes. To reshape this perception, we must begin to ask the right questions:

Why do we discount violence that occurs between people who know each other?

Why do we seek to blame the victim for the rape -- focusing on her behavior

instead of her attacker's? Why is our system unresponsive to violence that occurs when a man terrorizes a woman through rape or other physical assault?

Survivors of rape and family violence pay a double price: like other victims of violent crime, they suffer the terrible toll of physical and psychological injury. But, unlike other crime victims, they also suffer the burden of defending the legitimacy of their suffering. It is bad enough when friends or neighbors ask why a survivor "let it happen," or why the survivor was in the "wrong place at the wrong time." But, when the criminal justice system adopts these attitudes of disbelief and hostility, survivors' only recourse is to blame themselves.

More than any other factor, the attitude of our society that this violence is not serious stands in the way of reducing this violence. This attitude must change.

The first step in altering our attitudes toward this violence is to understand the failures of our laws and policies in this regard. Our criminal laws must be judged by their effectiveness in responding to the injustices done to victims of violence. This is the covenant of equal protection guaranteed by our Constitution -- that our criminal justice system shall not make distinctions in practice that cannot be sustained in law. To fulfill this promise, we must put ourselves in the position of those who suffer this violence; we must use their experience as a measure of justice; and we must be vigilant in judging the laws as they operate in practice, as well as in theory.

The knowledge that society and its criminal justice system offer no real protection has the potential to victimize all women, forcing them to remain in abusive family situations, or to circumscribe their activities, to accept limitations on how they conduct their lives, because of fear. The stakes are high. If we do not succeed, we risk the faith of over half our citizens in the ability -- and the willingness -- of our criminal justice system to protect them. And, what is worse, we condemn future generations to accept not only the possibility of violence but the reality of lives too often limited by the fear of violence.

B. The Violence Against Women Act

To help focus the nation's attention on this issue and to provide the help that survivors need, I first introduced the Violence Against Women Act in 1990. Since that time, I have chaired numerous hearings, heard from scores of women who have suffered violence, and released a number of reports documenting our findings. This year, I have introduced the bill for what I hope is the last time -- it is my highest legislative priority to see S. 11 become law during this Congress.

The legislation is the first comprehensive approach to fighting all forms of violence against women, combining a broad array of needed reforms. These include:

- * New laws to reinforce the focus on the offender's conduct, rather than the victim's character;

- * New investments in local law enforcement efforts that treat rape and family violence as serious crime;
- * New evidentiary rules that extend "rape shield"-type protection to civil and criminal cases as well as sex harassment litigation; and
- * New education programs in our schools and in our law enforcement institutions about family violence and rape.

Most importantly, in my view, the Violence Against Women Act creates, for the first time, a civil rights remedy for victims of crimes "motivated by gender." I believe this provision is the key to changing the attitudes about violence against women. This provision recognizes that violent crimes committed because of a person's gender raise issues of equality as well as issues of safety and accountability. Long ago, we recognized that an individual who is attacked because of his race is deprived of his right to be free and equal; we should guarantee the same protection for victims who are attacked because of their gender. Whether the violence is motivated by racial bias or ethnic bias or gender bias, the law's protection should be the same.

I realize that this legislation will not eradicate violence against women, but I do believe that it is a step in the right direction -- in the direction of changing this nation's "false idea" that violence directed at women is "second-class" crime. Until we recognize that fact and brand the violence as brutal and wrong, we can never hope to stem the tide of violence against women in America.

C. Conclusion

The purpose of this report is to help us recognize that "violence against women" is simply "violence." We are all responsible for the beliefs and the attitudes that allow us to apply rape laws grudgingly, with suspicion rather than sympathy. As the Attorney General recently reminded us during her confirmation hearings, the doors of the Justice Department offer the following reminder to all who enter: "Justice in the Life and Conduct of the State is possible only as first it resides in the Heart and Souls of the Citizens." It is my hope that this report, with the others released by the committee on this subject, will move our hearts and souls and, in doing so, will help us to create a system that realizes the promise of equal justice for all.

ACKNOWLEDGMENTS

This Report was prepared with the assistance of literally hundreds of people throughout the United States who responded to our written questionnaire and spent significant time in telephone interviews reporting and explaining the data contained within this document. A full listing of the many people who consulted with and aided my staff appears in an Appendix to this Report.

I offer special acknowledgment and thanks to the members of my staff who spent so much of their time and energy on this report. In particular, Lisa Monaco and Steven Segaloff performed most of the information gathering and analysis that forms the bulk of this Report. They were ably assisted by Chris Putala, Cynthia Hogan, Don Long and Nancy Solomon.

Most of all, I want to give special recognition to the efforts of one woman who has shaped this report and, indeed, much of the committee's efforts in the area of violence against women. For the past three years, Victoria Nourse has served as my chief advisor on this issue, among others. She has played a critical role in the development and drafting of the Violence Against Women Act and has worked tirelessly to promote its passage. As she now prepares to leave the committee staff, I offer her my personal thanks for her tremendous energy and intellect and for her dedication to this issue.

Senator Joseph R. Biden, Jr.
May 1993

VIOLENCE AGAINST WOMEN:

THE RESPONSE TO RAPE: DETOURS ON THE ROAD TO EQUAL JUSTICE

SUMMARY

- * 98% of rape victims will never see their attacker apprehended, convicted and incarcerated;
- * Over half (54%) of all rape prosecutions result in either a dismissal or an acquittal;
- * A rape prosecution is more than twice as likely as a murder prosecution to be dismissed and 30% more likely to be dismissed than a robbery prosecution;
- * Approximately 1 in 10 rapes reported to the police results in time served in prison; 1 in 100 rapes (including those that go unreported) is sentenced to more than one year in prison;
- * Almost one quarter of convicted rapists are not sentenced to prison but, instead, are released on probation;
- * Nearly one quarter of convicted rapists receives a sentence to a local jail -- for only 11 months, (according to national estimates);
- * Adding together the convicted rapists sentenced to probation and those sentenced to local jails, almost half of all convicted rapists are sentenced to to less than one year behind bars.

CHAPTER I

DETOURS ON THE ROAD TO EQUAL JUSTICE:

A CASE STUDY OF RAPE

Try to imagine a legal system in which robberies of retail stores are treated seriously, but robberies of homes are not considered "real" crimes. Try to imagine a legal system predicated on the notion that robbery victims are likely to lie about whether the crime really occurred, or that renders the financial history of a robbery victim a central issue at trial. This is a fictional world for the victims of robbery. For the survivors of rape and family violence, it is all too real -- it is the criminal justice system of the United States, today, in 1993.

Over a year ago, the Judiciary Committee issued a Report that surveyed state rape laws. It documented how "traditional State law sources of protection have often proven to be difficult avenues of redress for some of the most serious crimes against

women." We found that, despite some reforms, serious legal barriers remained where women sought the prosecution of an attacker: "[S]ome States have eliminated entire classes of persons from the scope of rape statutes, or increased burdens on entire classes of people," like women raped by their husbands or children raped by their parents. We found that "women assaulted by sexual means are routinely subject to legal hurdles other victims never face," including requirements, in some cases, of psychiatric exams, polygraph tests, and special cautionary instructions to the jury.¹

These barriers of law, however, pale before the barriers of prejudice faced by women who are raped. Prejudice takes many practical forms in a rape prosecution -- policemen refuse to take a report; prosecutors encourage defendants to plead to minor offenses; judges rule against victims in evidentiary matters; and juries, despite instructions to the contrary, continue to lay the blame on the survivor. At every step of the way, the criminal justice system poses significant hurdles for rape survivors.

A. Barriers of Practice: The Toll

Ours is a system which responds to victims of rape with suspicion rather than compassion. The figures we release today demonstrate the scope of the failures of practice. They reveal that the detours on the road to a rape conviction are far greater than the detours on the road to a conviction for other violent crimes. We found:

¹See Committee on the Judiciary, The Violence Against Women Act of 1991, Report No. 102-197 at 42-46, (October 29, 1991).

- * More than half of those arrested for rape will not be convicted, making it 30% more likely that a robber is convicted than a rapist;
- * Over half of all rape prosecutions result in either a dismissal or an acquittal, almost double the number for murder and almost 30% higher than for robbery;
- * Almost one quarter of convicted rapists never go to prison, almost another quarter receive sentences to local jails housing minor offenders.
This means that almost half of all convicted rapists can expect to receive a sentence of less than a year.

B. Barriers of Practice: The Survivors

The figures tell only part of the story, though. Not every arrest leads to a prosecution in the case of car theft; not every prosecution leads to a conviction or even a jail sentence in a whole host of criminal cases. But a consistent pattern that diverges from the norm does reveal that, overall, rape is different.

Accounts of individual cases are illustrative. In 1993, we would like to believe that our criminal justice system is getting better. The reality is that from the survivor's perspective, the system remains woefully inadequate. In fact, despite decades of legal reform and increased attention to rape, studies indicate that there has been no significant

increase in the percentage of rape complaints that result in a conviction, or in arrest rates for rape.²

One would hope that legal reforms would yield new attitudes as well as new policies. Yet today, we still encounter stories of individual rape cases that horrify. Consider the recent Pennsylvania case in which a young woman was raped in the dorm room of an acquaintance. While the victim testified that she said "no" throughout the incident, the judge ruled that because the dorm room door, although locked, could have been opened from the inside, the victim was technically able to leave the room. The judge ruled that her repeated, "no," was not enough to support a rape conviction.³ Or, consider the South Carolina case in which a man tied up, blind folded and raped his wife. After being shown a videotape of the incident made by the husband with the woman pleading, "please don't tie me up again, I'll do anything you want me to," a jury acquitted the defendant, concluding that the videotape depicted a "sex game" rather than a rape.⁴ Or, consider the case in Texas in which a young woman was raped at knifepoint by an intruder in her home. The first grand jury to hear the case refused to indict because she

² Parrot, Andrea, and Laurie Bechhofer, ed., Acquaintance Rape: The Hidden Crime. New York: John Wiley and Sons, Inc., at 326. (Citing Loh, W.D., "The Impact of Common Law and Reform Rape Statutes on Prosecution: An Empirical Study," *Washington Law Review*, 1980; and, Polk, K., "Rape Reform and Criminal Justice Processing," *Crime and Delinquency*, 1985).

³ Commonwealth of Pennsylvania v. Robert A. Berkowitz, Appeal from the Judgment of Sentence May 23, 1990, in the Court of Common Pleas of Monroe County, Criminal, No. 241-1988.

⁴ "Man Cleared of Marital Rape," Washington Post, April 18, 1992, at A2.

had tried to protect her life by asking the attacker to wear a condom.⁵ Or, again, remember the recent New Jersey gang rape of a mentally retarded woman, where three of the four defendants in the case were convicted of first degree aggravated sexual assault, the most serious charge allowed, and yet were sentenced to a youth camp and are likely to be released in less than two years.⁶

C. Barriers of Practice: A Survey

Are these cases aberrations? After a survey of rape crisis centers throughout 12 states, we found that, unfortunately, cases like these happen on a daily basis. The old prejudices remain at work creating, one-by-one, the statistics we outline in Chapter II. For example, in our survey, we found cases of police officers who refused to take reports from rape victims, prosecutors who offered plea bargains that resulted in the release of dangerous attackers, and judges who sentenced convicted rapists so they were back on the street in months, often to rape again. These cases reflect a fundamental misunderstanding of the nature of rape -- a failure summed up by a report to committee staff of a county prosecutor's comments to rape crisis counselors that he had never seen a case of "real" rape.

⁵ "Condoms, Consent, and Rape," USA Today, November 2, 1992, at 16A.

⁶ "Three are Sentenced to Youth Center Over Sex Abuse of Retarded Girl," New York Times, April 24, 1993; and, "Four Are Convicted in Sexual Abuse of Retarded New Jersey Woman," New York Times, March 17, 1993.

We heard stories like these:

- * An 18-year-old woman is stranded on the highway because of car trouble. A man stops to help and grabs her, trying to get her clothes off. She fights the man off, and he runs. The police officer who responds to the scene initially refuses to help her from the scene of the attack, downplaying her allegations with: "I heard the guy was a little more interested in getting on you than with helping you fix your tire." The officer fails to make a report or investigate the allegation, although the woman has given a description of the attacker. Eventually, as a result of this mishandling, the officer is suspended for six days.
- * A young woman reports to the police that she was kidnapped and raped by a former boyfriend. He had beaten her in the past, leading to his arrest on at least one occasion. The prosecutor resists bringing rape charges due to the victim's prior relationship with her assailant, and offers the man a plea to reduced charges -- a misdemeanor assault for which the attacker receives a six-month suspended sentence and 18 months probation. Less than a year later, the attacker brutally rapes and almost kills another woman.
- * A group of young men meet a woman in a bar at night; they surreptitiously slip her a tab of LSD upon leaving the bar. At the home of one of the young men, they slip her four more doses of LSD. The woman is then repeatedly raped with objects as a group cheers and takes pictures, which are later destroyed. One of the assailants stops the attack when someone suggests raping the woman with a statue of Christ. Three of the attackers are given immunity for providing statements helpful to the prosecution; one defendant pleads to evidence tampering and failing to report a rape. The final defendant is convicted of evidence tampering and delivery of illegal drugs; he serves three months of an eight-month sentence in jail, with eight years probation. Not one of the defendants is convicted of sexual assault.
- * A 30-year-old woman is raped, choked to unconsciousness and stabbed in the throat. She knows the individual who attacked her; he had come to her apartment, and attacked her when she refused to have sex with him. The woman's child finds her in a pool of blood. The defendant is released without bail and continues to harass the victim, despite a court order. The rape and assault case drags on for more than a year, while defense counsel try to interview the survivor's child. At one point, the defense lawyer goes to the survivor's home to persuade her to change her testimony. Eventually, the prosecutor accepts a plea to a lesser sentence of aggravated assault and sexual assault.

- * A woman breaks off her engagement with a man. Several weeks later, he goes to her house and they get into an argument in his car. She tells the police that he dragged her into the back seat of the car and raped her. After the attack, she goes to the hospital and files a police report. The prosecutor in the case accepts the defendant's plea to "unlawful restraint" -- a fourth degree felony with a two-year sentence -- saying, "it's not like she didn't have sex with him before." The attacker serves six months and one day in jail.

- * Two women agree to go out for a drink with a man. He says he wants to stop at his house first. Once there, he pulls out a gun and rapes both women, threatening to kill them. The attacker is charged with aggravated sexual assault, but based on the police reports alone, the prosecutor concludes that the case is too difficult to win because the victims had voluntarily decided to accompany the attacker. The prosecutor accepts a plea to a fourth-degree felony -- without consulting the survivors -- and the attacker is given two years probation.

Unfortunately, these reports represent only the tip of the iceberg. Independent gender bias studies conducted across the nation conclude almost uniformly that prejudice pervades the system, citing cases similar to the ones we have described.⁷ As the Judiciary Committee stated in its report last year, "[s]tudy after study commissioned by

⁷See, e.g., Administrative Office of the California Courts, Judicial Council, "Achieving Equal Justice for Women and Men in the Courts" 65 (1990); Colorado Supreme Court Task Force on Gender Bias in the Courts, *Gender and Justice in the Colorado Courts* (1990); Connecticut Task Force, *Gender, Justice and the Courts* (1991); Florida Supreme Court Gender Bias Study Commission, "Report" (1990); Supreme Court of Georgia, "Gender and Justice in the Courts" (1991); Illinois Task Force, *Gender Bias in the Courts* (1990); Maryland Special Joint Committee, "Gender Bias in the Courts" (1989); Massachusetts Supreme Judicial Court, *Gender Bias Study of the Court System in Massachusetts* (1989); Michigan Supreme Court Task Force on Gender Issues in the Courts, "Final Report" (1989); Minnesota Supreme Court Task Force for Gender Fairness in the Courts, "Final Report" reprinted in *Wm. Mitchell Law Review*, No. 4 (1989); Nevada Supreme Court Gender Bias Task Force, "Justice for Women"; New Jersey Supreme Court Task Force, "Women in the Courts" (1984); New York Task Force on Women in the Courts, "Report"; Rhode Island Supreme Court Committee on Women in the Courts (1987); Utah Task Force on Gender and Justice, "Report to the Utah Judicial Council" (1990).

the highest courts of the States -- from Florida to New York, California to New Jersey, Nevada to Minnesota -- has concluded that crimes disproportionately affecting women are often treated less seriously than comparable crimes against men." Quoting an expert in the field, we stated then what our survey has again confirmed: "[C]ollectively these reports provide overwhelming evidence that gender bias permeates the court system and that women are most often its victims."⁸

D. Barriers of Practice: What Do These Stories Tell Us?

These stories portray, all too graphically, how the attitudes of those within the system affect how it works. Official skepticism means that a woman alone on the highway, threatened with attack, is not treated seriously by the police officer who responds to the scene. It means that a man who should be in prison for rape is out on the streets. It means that a prosecutor refuses to take a case because of a victim's social relationship with the offender. Time and again, day after day, victims of rape are victims of our beliefs about rape. We would not tolerate this with any other crime.

These stories also help us pinpoint why the system fails. Most violence against women challenges deeply embedded assumptions our society holds about violence. Our stereotype of violence is an attack by a stranger that results in public outcry and vindication by state authorities. But the reality of violence against women is far different.

⁸ Committee on the Judiciary, The Violence Against Women Act of 1991, Report No. 102-197 at 43-44 (Oct. 29, 1991). (Quoting Lynn Hecht Schafran in TRIAL, February 1990, at 28.)

These crimes are most often committed by someone the victim knows, not by strangers. These are crimes that, many times, take place in a home or at a job, as well as in parking garages and on lonely roads. These are crimes that for the most part go unreported, their victims silenced by a belief that they are to blame.

It is where the stereotypes we hold about violence diverge from the reality of individual cases, that the system is most vulnerable to failure. Our stereotypes tell us that families are not violent; therefore, when a husband assaults his wife, we tend to ask, why did the survivor stay? Our stereotypes tell us that people do not assault someone they know; when we see that a victim of rape is charging her husband or date, we ask why did she begin or pursue such a relationship? Our stereotypes about violence undeniably shape our response to rape. In the words of one rape survivor, "Rape is the only felony that places the onus on the survivor. If an assailant held you at knifepoint, asked you for your wallet, and you complied, there is no question that a crime was committed. You would not be asked if you had consented. You would not be asked if you tried to resist. Only survivors of rape are asked these questions."⁹ These are the wrong questions. But, they are the questions persistently posed to rape survivors by the criminal justice system.

⁹ "Victim tells jurors how life has changed," The Dallas Morning News, May 15, 1993 at 25A.

In fact, rape is not the only crime that suffers from a failure to meet our stereotypes of violence; and rape survivors are not the only ones who are not treated as crime victims. Other crimes that challenge the same stereotypes pose a significant challenge to our ideas of equal justice. For example, one study indicates that as many as 90% of all family violence defendants are never prosecuted, and one third of the cases that would be considered felonies if committed by strangers are filed as misdemeanors when committed by nonstrangers.¹⁰ Similarly, child sex abuse cases suffer from some of the same difficulties. One county task force reported that, while 60 individuals were sentenced for sexually assaulting children in a year, only one person received a prison sentence.¹¹ And, a recent National Institute of Justice Study found that "90 percent of all child abuse cases do not go forward to prosecution due to the trauma on the child victim and evidentiary/procedural factors."¹²

E. Conclusion

In the end, our challenge is as much one of imagination as legislation -- it is a challenge to test our assumptions. We must demand to know why prior sexual history is relevant in a rape case, when prior financial history is irrelevant in a robbery case. We

¹⁰ The Urban Institute, Family Violence: A Guide to Research, March 1993, at 41, (Citing Martin, M., Arresting Domestic Violence: A Study of the Connecticut Courts' Response to Mandatory Arrest for Family Violence, Brandeis University, April 1990).

¹¹ The Boulder County Rape Crisis Team, "Sexual Assault in Boulder County, Colorado: The Crimes and Their Consequences," June 17, 1992, at 17.

¹² Whitcom, D., Elizabeth R. Shapiro and Lindsey D. Stellwagen, When the Victim is a Child, U.S. Department of Justice, National Institute of Justice (Washington D.C.: Government Printing Office, 1985).

must ask why we doubt that a rape occurred if we know that the victim had something to drink earlier in the evening. We must ask why the clothes a rape victim wears has anything to do with whether she was forced to have sex. We must ask why our criminal justice system continues to disbelieve the survivor.

CHAPTER II

DETOURS ON THE ROAD TO EQUAL JUSTICE:

THE NUMBERS

For a rape survivor, the road from offense, to arrest, to conviction and sentence is filled with potential detours. The offense may not be reported, and the offender may not be arrested. Even where this occurs, the prosecutor may decide to dismiss the case or a jury may decide to acquit because they believe the victim is to blame.

Given all the points at which a case may be lost in the system, it is not surprising that many survivors ask whether it is worth reporting the crime at all. The figures we release today help to show why:

- * Approximately one in ten (reported) rapes result in time served in prison;
- * Nearly half of all reported rape cases are dismissed before trial, drastically reducing the chance that a victim will see her attacker sent to prison.

Given these circumstances, it is not surprising that rape victims express little confidence in the system: From their perspective, justice is remote.

To try to pinpoint the vulnerable parts of the system, we asked a series of questions of state criminal justice agencies. First, we asked how many individuals were charged with rape in their states. Second, we asked how many cases resulted in dismissal before or during trial. Third, we asked how many cases resulted in a conviction. And, finally, we asked how many convicted rapists were sent to prison or local jail.

A Summary of the Survey's Results

The results of our survey are alarming. In a system that, on paper, appears to be generally fair, overall outcomes are far from equitable. Far too many rape cases are lost in the system. They are lost when the system discourages victims from reporting; they are lost when the system fails to arrest; they are lost when the system fails to prosecute, and they are lost when the system refuses to punish. Unfortunately, each time a case is lost, we reenact the cycle that breeds a sense of injustice; with every case that demonstrates how difficult it is to prevail, one more case is likely to go unreported.

Our findings show severe difficulties both at the front end and at the back end of the system. At the front end, compared to the number of rapes actually committed in the United States, very few rape charges are ever brought. Of those that are brought,

almost one half are dismissed. At the back end of the system, almost one quarter of those charged with rape never go to jail but, instead, receive a sentence of probation, community service, or a fine.

In an effort to understand better the weaknesses of the system, we asked about each point at which a rape case could falter. What follows is an explanation of how we obtained the state data and how we analyzed that data, comparing our numbers to those generated by other sources. At each point we stop to consider the possible reasons why rape cases face detours on the road to equal justice.

From the Victim's Perspective

Most rape cases never reach our criminal justice system. While rape reports continue to increase -- between 1989 and 1990 reported rapes increased by six percent nationwide and topped 100,000 for the first time -- the vast majority of these crimes remain unreported.¹³ According to conservative estimates, as many as 84% of rapes each year are never reported.¹⁴ According to one study, "[T]he stigma, intrusiveness,

¹³Violence Against Women: The Increase of Rape in America 1990, Majority Staff of the Senate Committee on the Judiciary, 102nd Congress, 2d Session, at 2.

¹⁴Rape in America: A Report to the Nation, National Victim Center and the Crime Victims Research and Treatment Center, Medical University of South Carolina, 1992 at 6. According to this report, only 16% of all the sexual assaults experienced by respondents to the survey were reported to the police. This appears to be an extremely conservative estimate. Other studies show that the number of unreported and reported rapes may be as high as two million annually with an arrest rate of 1.6%. (See Testimony of Dr. Mary Koss before the Senate Committee on the Judiciary, Senate Hearing 101-939, Part 2, 101st Congress, 2d Session, August 29, 1990.)

and risk of retaliation that accompany criminal charges have kept rape the most underreported major felony."¹⁵ Often, the reason for this lack of reporting is fear of the criminal justice system. In the words of one witness before the Senate Judiciary Committee: "The message that gets out into the community is to not report because as a victim you will be tried, battered, and abused by the system."¹⁶ Survivors fear that they will not be believed, that reporting will be futile, and that they will be revictimized by the system.

Do rape victims have something to fear from the system? Unfortunately, the figures tend to bear out their concern. From the perspective of a rape survivor, there is less than a 2% chance that the attacker will be arrested, convicted, and sentenced to serve time behind bars. The "two percent response" of the system works out as follows. Applying our figures to conservative estimates of the number of rapes nationwide, we conclude that a woman has:

- * A 2.5% chance of seeing her attacker convicted, and;
- * A 1.9% chance of seeing her attacker incarcerated.¹⁷

¹⁵ Rhode, Deborah, L., Justice and Gender: Sex Discrimination and the Law, Cambridge, Harvard University Press, 1989 at 248.

¹⁶ Testimony of Gill Freeman before the Senate Judiciary Committee, Senate Hearing 102-369 at 137, April 9, 1991.

¹⁷ According to Deborah Rhode, "Even if only reported rapes are considered, the attrition rate from complaints to convictions is high....the likelihood of a complaint actually ending in conviction is generally estimated at two to five percent." (Citing James Galvin and Kenneth Polk, "Attrition in Rape Case Processing: Is Rape Unique?" Journal

Even if one excludes all unreported rapes, the odds are still slim. Applying the most conservative estimates of the number of reported rapes -- 102,555 according to the FBI's Uniform Crime Reports for 1990 -- to figures obtained by the committee from state criminal justice information centers yields disappointing results. These figures show that:

- * 84% of reported rapes never result in a conviction; and,
- * 88% never see their attacker actually incarcerated.¹

A. The First Detour: Arrest

An arrest begins the legal process in every criminal case. But, in rape cases, it begins the process of case attrition. Most reports of rape never result in an arrest. Simple division of existing FBI figures reveals that 62% of the reported rape cases never result in the apprehension of an individual for the crime.¹⁸ When you consider that over half of all rapes are committed by someone the victim knows,² this figure is startling. After all, this is not a faceless car theft or burglary where the criminal is never

of Research in Crime and Delinquency, 20:126 (1983).

¹⁸ This percentage is derived by comparing the number of reported rapes of 102,555 and the total number of arrests of 39,160. The FBI maintains that the "clearance rate" for rape cases is higher than what simple division reveals, but this "clearance rate" "adjusts" this figure to account for cases that drop from the system for a variety of reasons, including cases in which the offender cannot be extradited or cases in which police claim the victim will not "cooperate."

identified; the victim has almost always seen her attacker and, in many cases, knows her attacker.

There are no easy answers to why the arrest rate in rape cases is so low. In some cases, the defendant cannot be located; still other reports may languish because of limited law enforcement resources to conduct the necessary investigation. These factors may explain a less-than-perfect record; they do not explain why more than 60% of all rape reports do not result in an arrest.

We must consider what other factors explain such a high percentage of rape cases without arrest. Police officers who do not believe a victim, and therefore find the complaint to be without merit, have the power to decide that a rape complaint is "unfounded." Unfortunately, the discretion to "unfound" a reported crime is often influenced by the kind of prejudices we will see elsewhere in the system. For example, scholars have speculated that the high degree of rape cases lost at the arrest stage is due principally to the "unfounding" of complaints by police officers, who are operating based on stereotypes of violence that presume someone the victim knows is not a "real" rapist.¹⁹

¹⁹See Estrich, Susan, Real Rape. Cambridge: Harvard University Press, 1987. Estrich notes that national statistics on police unfounding of rape complaints are unreliable due to the fact that "...cases may be 'unfounded' for reasons that have nothing to do with the merits of the complaint." (Estrich at 15).

B. The Second Detour: Dismissal

Once a sex offender has been located and evidence has been gathered to show probable cause that a rape has been committed, the legal process has just begun. The road from arrest to prosecution is often complex. Unfortunately, in rape cases, this process leads too often to stalemate and dismissal, rather than successful prosecution.

Our figures show that a substantial number of rape cases are dismissed before trial. We found that, of nearly 6,000 rape cases disposed of through the criminal justice system, more than 3,000 cases were dismissed. That means:

- * Almost half (48%) of all rape cases are dismissed before trial;
- * Nine out of ten rape cases that do not result in a conviction are the result of a dismissal rather than an acquittal;
- * 25% more rape cases are dismissed before trial than result in a prison sentence.³

We compared these figures to the dismissal rates for other crimes. We found that rape dismissal rates were significantly higher:

- * A rape case is more than twice as likely to be dismissed as a murder case;
- * A rape case is nearly 40% more likely to be dismissed than a robbery case.

Prosecutors often argue that they have a very high rate of "prosecuting rape cases." Indeed, figures from the Bureau of Justice Statistics boast that 77% of persons arrested for rape are prosecuted.²⁰ But this figure does not present an accurate picture of the reality of rape prosecutions. In the fine print, we are told this figure includes cases where prosecutors agree to charge felonies as minor misdemeanors, and that it does not account for the many cases in which rape prosecutions are dismissed before trial. Clearly, this number is not the proper measure of the number of felony rape cases that actually result in prosecution and time served behind bars.

Cases may be dismissed before trial for any number of reasons. For instance, physical evidence may be subject to scientific challenge, or victims may decide not to testify. For most crimes, this leads to a number of "dismissals" before trial.

But, in rape cases, there is another factor at work. Prosecutors are hesitant to bring any case -- whether it be a robbery case, an assault case, or a kidnapping case -- in which the offender knew the victim. A study of the disposition of felony arrests in New York City concluded that a prior relationship between the victim and offender is the most common factor which prevents cases from going forward and results in their "deterioration" in the criminal justice system.²¹

²⁰ United States Department of Justice, Bureau of Justice Statistics, Tracking Offenders, 1988, Table 1.

²¹ Felony Arrests: Their Prosecution and Disposition in New York City's Courts, Vera Institute of Justice, New York, 1981. "And although this deterioration may be

This hesitation increases in the cases we call "acquaintance rape." Even though many of these situations involve persons who barely know each other,²² prosecutors nevertheless tend to believe that these cases are extremely difficult to win. As more than one gender bias study has concluded, prosecutors "do not file acquaintance-rape cases because they feel convictions are unlikely."²³ Indeed, prosecutors have acknowledged this publicly, defending their actions on the theory that the prior relationship of the parties will make it difficult for a jury to find lack of consent.²⁴

No one expects prosecutors to bring unwinnable cases -- cases that could not meet the "beyond a reasonable doubt" standard. But prosecutors must also understand that there is more at stake in the prosecution of rape cases than an individual "win" or "loss." In rape cases, the reputation of the system is at stake in every prosecution. When survivors hear that prosecutors will not bring cases if they happen to recognize the perpetrator -- the kid down the street, the UPS delivery man, the father of a friend --

rational from the perspective of the decision makers, it may not be rational or desirable in all cases from the perspective of injured wives, tenants, and neighbors." (Vera Institute of Justice at 135).

²² "Most acquaintance rapes, as discussed in these studies, do not include prior close or sexual relationships between the victim and the assailant." Minnesota Supreme Court Task Force for Gender Fairness in the Courts, reprinted in, William Mitchell Law Review, Vol. 15, no. 4 at 895 & n. 4 (1989).

²³ Committee on the Judiciary, The Violence Against Women Act of 1991, Report No. 102-197 at 47 (quoting Report of the Florida Supreme Court Gender Bias Study) at 142 (1990)).

²⁴ Colorado Supreme Court Task Force on Gender Bias in the Courts, Gender and Justice in the Colorado Courts, (1990).

that has consequences. Why report the crime if you know it will not be prosecuted? Why pursue a case if you know you will have to fight barriers of institutionalized disbelief? Why believe in our system of justice at all?

C. The Third Detour: Acquittal

98% of rape survivors have no chance of seeing their attacker brought to justice -- they have dropped out of the system one by one. At least 84% did not report the crime;²⁵ 62% found that the perpetrator could not be arrested; and 48% of those remaining found that their case was dismissed.

Having met these hurdles, a survivor faces yet another barrier -- the jury. It has often been said that a rape case is more difficult to prosecute than a murder case. There are a number of reasons why that may be true, including the availability of witnesses or other evidence. But, in rape cases, potential jury prejudice is also a significant factor. In general, prosecutors believe that juries are more likely to convict in cases where the offender is a stranger.²⁶

²⁵ This is based on an extremely conservative estimate of the number of rapes committed every year. According to Rape in America: A Report to the Nation, a 1992 report compiled by the National Victim Center and the Crime Victims Research and Treatment Center at the Medical University of South Carolina, there are 683,000 rapes every year. Other studies show that the reporting rate may be quite a bit lower. (See supra note at 13).

²⁶ Williams, Kristin, "The Prosecution of Sexual Assaults," Washington D.C., Institute for Law and Social Research at 32," (Cited in S. Estrich, Real Rape, "In the District of Columbia researchers found that the relationship between the victim and the accused was substantially more important than the seriousness of the incident in explaining conviction

Based on information collected from the states, we found that:

- * Less than half of the individuals arrested for rape are convicted of rape;
- * This compares to 69% convicted for murder and 61% convicted for robbery.²⁷

These differences in conviction rates tend to be masked by statistics that measure conviction rates only on cases that survive the dismissal process. Often, prosecutors claim very high conviction rates in rape cases, failing to acknowledge that many cases are weeded out long before trial. Once in the courtroom, rape conviction rates are roughly comparable to conviction rates for other crimes,²⁸ although jury stereotypes tend to affect the few acquaintance rape cases that actually go to trial. Studies have shown, for example, that juries are far more likely to convict, perhaps four times as likely, in a stranger rape case as opposed to an acquaintance rape case.²⁹

rates: the closer the relationship, the lower the conviction rate." (Estrich at 18.)

²⁷ The average conviction rate for all felonies, according to the Bureau of Justice Statistics, hovers in the 54% range. (U.S. Department of Justice, Bureau of Justice Statistics, The Prosecution of Felony Arrests, 1988 (Feb. 1992)).

²⁸ According to data in United States Department of Justice, Bureau of Justice Statistics, The Prosecution of Felony Arrests, 1988, Table 3, at 30-34, we can extrapolate that the conviction rates are comparable for murder, 84%, robbery, 85% and rape, 82%. The data contained in these charts details felony arrests that result in felony indictment. These cases, however, do not represent the disposition of all arrestees for a particular crime, but rather reflect only those cases that make it past the early dismissal process.

²⁹ See Kalven, Harry and Hans Zeisel, The American Jury, Boston: Little Brown, (1966); and Susan Estrich, Real Rape, Cambridge: Harvard University Press, 1987 at 4.

D. The Fourth Detour: Sentencing

Sentencing is the final stage in a criminal proceeding. Typically, judges have great discretion in determining the proper sentence, although that discretion has been narrowing as more and more states pass determinate sentencing laws. Rape has traditionally been viewed as a crime for which heavy sentences have been levied -- a legacy of the day in which rape was a capital crime.³⁰ Our figures show, however, that rape charges do not necessarily mean a stiff rape sentence.

Surveying states representing 50% of the population of the United States, we found that:

- * More than one fifth of convicted rapists (21%) are never sentenced to time in jail or prison;
- * Almost one quarter of convicted rapists (24%) receive sentences in a local jail, which typically means they will spend 11 months behind bars.³¹

³⁰ In a 1977 Supreme Court decision, Coker v. Georgia, (433 U.S. 584), the Court held that "a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment." (Coker v. Georgia, at 592).

³¹ Bureau of Justice Statistics, Felony Sentences in State Courts, 1990, table 3 (1992) (showing a mean jail sentence for rapists of 11 months and a median jail sentence for rapists of six months).

These figures show, dramatically, the differences in "theory" and "practice" present in our criminal justice system.

To ensure that our figures are meaningful, we used an extremely conservative methodology. Our figures reflect only convictions for forcible rape offenses, however those may be labelled in law. They do not include convictions for misdemeanor offenses or any offense "lesser" than forcible sexual assault. In theory, the sentences for rape are very high; in the states we surveyed, we found that sentences for forcible rape often extend to life imprisonment.³² But, as our figures show, many rapists are never sentenced to jail or prison at all, and many more serve sentences of extremely short duration.

How can the practice vary so much from the theory? First, it can vary because judges have the discretion to vary it; they have the discretion to set sentences in rape cases. Second, it can vary because prosecutors have the power to recommend a lesser sentence. Third, it can vary because both prosecutors and judges tend to sentence all first-time violent offenders -- including rapists -- to probation on the theory that first-time offenders are less dangerous to the community.³³ This assumption is questionable in

³² See e.g., Alabama Code Sec. 13A-5-6 & 13A-6-61 (prescribing a maximum penalty of life imprisonment for first degree rape); Rhode Island Code sec. 11-37-2 & 11-37-3 (prescribing a maximum of life imprisonment for first degree rape).

³³ According to Deborah Rhode, however, the opposite is true, "Studies of American rapists' attitudes have revealed a striking absence of guilt and a consistent perception of their conduct as normal sexual behavior." Rhode, Deborah, L., Justice and Gender: Sex

rape cases. It means that a convicted rapist may rape twice, in effect, before he ever sees the inside of a prison cell.

Finally, the assumptions we all share have a role to play here -- judges and prosecutors alike respond to the community's assumptions. When we assume that rape by an acquaintance deserves a less severe sentence, then we are likely to find judges handing down less severe sentences. When we assume that a rape victim is partially to blame for meeting her ex-boyfriend or going to a bar for a drink with an acquaintance, then we are likely to see less severe sentences. And, when we assume that a rapist who is young and otherwise an exemplary student and athlete is not sufficiently dangerous to send to prison, then we are likely to see less severe sentences.

Conclusion

The figures we release today powerfully demonstrate how our system of justice fails rape victims. But they also demonstrate how influential our attitudes are in the processing of rape claims. Far more rape claims fail before trial than at trial. It is the fear of what a jury will think that drives survivors not to report, police to refuse to arrest in "futile" cases, and prosecutors to dismiss prosecutions they describe as "unwinnable." In the end, the figures we release today provide dramatic testimony of the power of our stereotypes of crime -- how these stereotypes distort our understanding of violence against women and deprive individuals of the "equal protection" of our laws.

Discrimination and the Law, Cambridge: Harvard University Press, 1989 at 252.

Chapter III

THE VIOLENCE AGAINST WOMEN ACT:

A NATIONAL RESPONSE

The report we release today -- the latest in a three year investigation into the problem of violent crimes against women -- reveals that our system of justice remains constrained by attitudes, stereotypes, and policies that force victims to negotiate a long and uncertain road toward justice.

- Every week, more than 2,000 women are raped; if unreported rapes are counted the total may be as high as 12,000 per week.³⁴

³⁴Violence Against Women: A Week in the Life of America, Majority Staff of the Senate Judiciary Committee, October 1992 at ix.

- At least one-third of all women murdered in 1990 died at the hands of their husbands or boyfriends.³⁵
- One city zoo spends twice as much money to care for animals as the entire state spends to care for victims of domestic violence.³⁶
- According to one study, family violence alone may cost the country as much as \$5 to \$10 billion every year in health care and associated costs.³⁷

A national coordinated response to the problem of violence against women is long overdue.

The Violence Against Women Act

In January 1991, Senator Biden introduced the Violence Against Women Act. This legislation, the first comprehensive response to this violence, strikes not only at the epidemic's effects but also at the prejudices that lend it power. The Violence Against Women Act recognizes that there is no place -- home, street, or school -- where women are spared the fear of crime. This bill seeks above all to address the vital necessity and right of women to be free from violence.

³⁵ FBI Uniform Crime Reports, Table 2.11 and Table 2.10, (1991).

³⁶"Til Death Do Us Part," TIME, January 18, 1993, at 42. "In 1990, the Baltimore zoo spent twice as much money to care for animals as the state of Maryland spent on shelters for victims of domestic violence."

³⁷ "The Billion Dollar Epidemic," American Medical News, January 6, 1992, at 7.

Senator Biden has said on many occasions that no piece of legislation will put an end to violence against women and the lasting effects on those who survive. But this legislation takes an essential first step toward recognition of violence against women as a crime, like many others, with victims who merit equal protection and deserve equal justice for their attackers.

This chapter summarizes each of the five titles of the Violence Against Women Act of 1993.

Title I - Safe Streets for Women

Title I of the bill -- the Safe Streets for Women Act -- sends a signal that is long overdue, that crimes against women must be taken seriously and must be made a law enforcement priority. Title I:

- Provides \$300 million to states and areas most in need of assistance and ensures that states will have the resources they need to make violent crimes against women a top priority; and,
- Creates special units of police, prosecutors, and victim advocates to fight crimes against women and focuses on those areas with the highest rate of crimes against women.

Title I also takes the simple, but necessary, measures to increase safety for women in public parks and on public transit systems, it:

- Earmarks existing funding to put more lights and security cameras in bus stops and adjacent parking lots, in national parks, state parks, and subway stations.
- Sets aside existing park funds for emergency telephones and police in public parks.

This title also makes significant improvements in the Federal system's response to crimes against women, instructing the Federal Sentencing Commission to:

- Enhance federal penalties where more than one offender is involved;
- Review current sentence levels to ensure that they reflect the severity of the crime, and;
- Remove unwarranted disparities in sentences between cases where the offender is known to the victim and cases where the offender is not known.

Title I also recognizes that women are increasingly victimized by a system of justice that responds to them as if they are victims of a second-class crime. This title enhances the Federal system's response to violence against women by encouraging

women to prosecute their attackers. The encouragement comes in many forms, from educating women about their rights, to helping them prove their case, to making rape trials more bearable. The Act:

- Extends "rape shield law" protection to criminal and civil cases; bars the use of a woman's clothing to show, at trial, that the victim incited or invited a sexual assault.
- Mandates restitution to the victims of sex crimes by their attackers.
- Authorizes \$65 million in funds for rape prevention and education.
- Requires states to pay for all forensic rape examinations.

Finally, Title I establishes the National Commission on Violent Crimes Against Women. The Commission will promote a national policy on violent crimes against women and will make recommendations on curbing the rising number of these crimes.

Title II - Safe Homes for Women

Title II of the bill -- the Safe Homes for Women Act -- focuses on crimes in the home, whether they are classified as rape, assault, or robbery.

Last October, we reported that 20% of aggravated assaults reported to the police every week in America occur in the home.³⁸ Now, more than ever, national leadership on this issue is sorely needed. Since July 1992, when the National Domestic Violence Hotline was disconnected due to lack of funding -- even as it was receiving 10,000 calls per month³⁹ -- the country has been without a central resource for calls regarding domestic violence. Title II responds to the need of women to be free from violence, whether it occurs on the street or in the home. Moreover, it recognizes that domestic violence is anything but domestic -- it is not a private matter but a serious crime.

To protect women from abusive spouses or partners, Title II provides the following federal remedies:

- Creating the first federal penalties for crimes committed against spouses during interstate travel and crimes committed by spouse abusers who cross state lines to continue their abuse;
- Requiring that a protection order issued by the court of one state be accorded full faith and credit by the court of another state.

³⁸Violence Against Women: A Week in the Life of America, Majority Staff of the Senate Judiciary Committee, October 1992 at ix.

³⁹ Gibbs, Nancy, "'Til Death Do Us Part," TIME, January 18, 1992, at 42.

Title II provides incentives to encourage states to recognize that domestic violence should be dealt with by law enforcement as a violation of the law like any other; it:

- Authorizes \$25 million for states that implement pro-arrest programs and policies in police departments and improve case tracking to promote the arrest of abusing spouses.
- For states suffering from strain on their systems because of increased arrests, the bill provides additional assistance to centralize and systematize the process.
- More than triples existing levels of funding for battered women's shelters.

Title II heightens awareness about domestic violence by educating young people about domestic violence through schools and the media. The Act:

- Authorizes a national media campaign against such violence.
- Funds programs for education of young people about domestic violence and violence among intimate partners, with programs for primary, middle and secondary schools, as well as institutions of higher education.

Finally, two new provisions have been added to Title II with the bill's reintroduction as the Violence Against Women Act of 1993. These provisions respond to

the need to increase victims' access to information and increase efforts to gauge accurately the rising level of violence against women by people they know:

- Providing funding for a National Domestic Violence Hotline establishing a toll-free telephone hotline to provide information and assistance to victims of domestic violence (a proposal authored by Senator Kennedy).
- Boosting research and data collection of violent crimes focusing on the relationship between the victim and offender.

Title III - Civil Rights for Women

Title III of the bill -- the Civil Rights for Women Act -- creates the first civil rights remedy aimed at violent gender-based discrimination against women. Title III recognizes that violence against women not only raises issues of safety for women, it also raises issues of equality. This portion of the bill at last makes complete this nation's long-standing commitment against violent discrimination. While this country has refused to tolerate violent discrimination on the basis of race for more than 120 years, as a nation we have failed to extend that protection to victims of gender-motivated violence.

This legislation acknowledges the reality that women live with every day -- that they are the disproportionate victims of some violent crimes. In fact, 98.9% of the

victims of rape are women.⁴⁰ Women as a group significantly alter their behavior because of their fear of violence.⁴¹ It is the fundamental purpose of Title III to acknowledge this fact by providing an effective anti-discrimination remedy for violently expressed prejudice and to express the nation's recognition that violent gender-based discrimination will not be tolerated. Title III:

- Allows women to vindicate their right to be free of gender-based violence through a civil suit for monetary or other relief.
- Makes gender-based assaults a violation of federal civil rights laws.

Title III seeks to put gender-motivated bias crimes against women on the same footing as other bias crimes. Whether an attack is motivated by racial, ethnic or gender bias, that violence not only wounds physically, it degrades and terrorizes, instilling fear and inhibiting the lives of all those similarly situated. In the words of one witness who testified before the Senate Judiciary Committee: "... for it is the manner in which we view violence against women that will, in large part, be the measure by which our progress toward full and equal rights for women will be judged."⁴²

⁴⁰Sourcebook of Criminal Justice Statistics 1991, Bureau of Justice Statistics, Table 4.7, at 442.

⁴¹ Gordon, Margaret and Stephanie Riger, The Female Fear. New York: Free Press (1989), at 122.

⁴² Testimony of Illinois Attorney General Roland Burriss before the Senate Committee on the Judiciary, Senate Hearing 102-369, 101st Congress, 2d Session, at 62, (April 9, 1991).

Title IV - Safe Campuses for Women

Title IV of the bill -- the Safe Campuses for Women Act -- focuses on the special problems facing young women on campuses across the country. In fact, women between the ages of 18 and 24 are among those most likely to be raped, and a significant portion of these young women are in college. Title IV:

- Boosts to \$20 million funding for the neediest colleges for campus rape education and prevention programs.

Title V - Equal Justice for Women in the Courts

Title V of the bill -- the Equal Justice for Women in the Courts Act -- recognizes the crucial role played by the Judicial Branch in forming an effective response to violent crimes against women in our society.

Despite gains in many areas of our criminal justice system, as the Report we release today reveals, victims still must negotiate a system that is at times unfriendly toward the victims of violent crime -- especially when those victims are women. In fact, as this Report reveals, women who are rape victims are sometimes cavalierly dealt with by a system that is tougher on thieves than rapists. Title V seeks to correct this injustice through education and training:

- Creating training programs for State and Federal judges to raise awareness and increase sensitivity about rape, sexual assault, domestic violence and crimes of violence motivated by the victim's gender.

Training curricula must be developed in conjunction with a broad array of experts, including law enforcement officials, volunteer victim advocates, prosecutors, defense attorneys and other legal experts. The programs will focus on a number of issues including sexual assault, domestic violence and gender stereotyping.

Chapter IV

THE STATE SURVEY

The following charts represent a compilation of information gathered from state criminal justice information centers. As explained in the Methodology, the committee staff adhered to strict standards in collecting the data. As further explained in the Methodology, the following does not represent an interpretation of data from selected states. Rather, what follows is a presentation of data supplied to us by states.

Information obtained from the states is broken down in the following manner:

- * Conviction Rates
- * Prosecution Rates
- * Incarceration Rates
- * Sentencing Rates
- * Comparison of Rates

Rape Conviction Rates

CONVICTION %

<u>State</u>	<u>Total</u> <u>Dispositions</u>	<u>Dismissed or</u> <u>Acquitted</u>	<u>Convictions</u>	<u>Other</u>
California	1961	846	1111	4
Connecticut	316	229	87	0
Hawaii	561	321	240	0
Kentucky	207	101	101	5
New York	1841	1036	790	15
North Carolina	931	554	278	99
Oklahoma	275	124	141	10
Pennsylvania	452	241	211	0
South Carolina	911	588	235	88
Vermont	75	49	26	0

TOTAL	7530	4089 (54%)	3220 (43%)	221 (3%)
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(All data from 1990 except where otherwise indicated).

Rape Prosecution Rates

DISMISSAL %

<u>State</u>	<u>Total</u> <u>Dispositions</u>	<u>Dismissed/</u> <u>Nolle</u>
California	1961	807
Hawaii	561	280
Kentucky	207	101
New York	1841	965
North Carolina	931	520
Oklahoma	275	124
Pennsylvania	452	180
Vermont	75	43
<hr/>		
TOTAL	6303	3020 (48%)

DISMISSAL v. ACQUITTAL

<u>State</u>	<u>Non-</u> <u>Convicted</u>	<u>Dismissed/</u> <u>Nolle</u>	<u>Acquitted</u>	<u>Other</u>
California	846	807	39	0
Hawaii	321	280	41	0
Kentucky	106	101	0	5
New York	1051	965	71	15
North Carolina	653	520	34	99
Oklahoma	134	124	0	10
Pennsylvania	241	180	61	0
Vermont	49	43	6	0
<hr/>				
TOTAL	3401	3020 (89%)	252 (7%)	129 (4%)

(All data from 1990 except where otherwise indicated).

Rape Incarceration Rates

INCARCERATION %

<u>State</u>	<u>Total</u> <u>Convictions</u>	<u>Of Those Convicted</u>		
		<u>Probation</u>	<u>Incarcerated</u>	<u>Other</u>
Alabama	508	110	398	0
Alaska	57	3	54	0
Arkansas	105	7	86	12
California	1111	58	1053	0
Florida	1092	200	732	160
Hawaii	236	31	196	9
Kentucky	101	16	84	1
Minnesota	433	27	406	0
Montana	51	23	28	0
New York	790	197	587	6
North Carolina	278	87	191	0
Oklahoma	141	38	103	0
Oregon *	132	9	123	0
Pennsylvania	211	12	198	1
Rhode Island	79	0	79	0
South Carolina	317	44	273	0
Texas *	1556	669	887	0
Vermont	26	3	23	0
<hr/>				
TOTAL	7224	1534 (21%)	5501 (76%)	189 (3%)

* = only available data is from 1992.

(All data from 1990 except where otherwise indicated).

Rape Jail/Prison Comparison

JAIL/PRISON

<u>State</u>	<u>Incarcerated</u>	<u>Jail</u>	<u>Prison</u>
Alabama	398	155	243
California	1053	440	613
Florida	732	53	679
Minnesota	406	211	195
Montana	28	7	21
New York	587	232	355
Oregon *	123	8	115
Pennsylvania	198	23	175
Vermont	23	6	17

TOTAL 3548 1135 (32%) 2413 (68%)

* = only available data is from 1992.

(All data is from 1990 except where otherwise indicated)

Comparison of Rates

CONVICTION %

	<u>Dispositions</u>	<u>Dismissed/ Acquitted</u>	<u>Convicted</u>	<u>Other</u>
Rape	7530	4089 (54%)	3220 (43%)	221 (3%)
Murder	3920	1144 (29%)	2697 (69%)	79 (2%)
Robbery	14463	5582 (39%)	8775 (61%)	6 (0%)

DISMISSAL %

	<u>Dispositions</u>	<u>Dismissed/Nolle</u>
Rape	6303	3020 (48%)
Murder	3614	800 (22%)
Robbery	14463	5403 (37%)

DISMISSAL v. ACQUITTAL

	<u>Non- Convicted</u>	<u>Dismissed/ Nolle</u>	<u>Acquitted</u>	<u>Other</u>
Rape	3401	3020 (89%)	252 (7%)	129 (4%)
Murder	1058	800 (76%)	185 (17%)	73 (7%)
Robbery	5588	5403 (97%)	175 (3%)	10 (0%)

INCARCERATION%

	<u>Total Convictions</u>	<u>Of Those Convicted</u>		<u>Other</u>
		<u>Probation</u>	<u>Jail/Prison</u>	
Rape	7224	1534 (21%)	5501 (76%)	189 (3%)
Murder	5748	664 (11%)	4877 (85%)	207 (4%)
Robbery	18376	2589 (14%)	15161 (83%)	626 (3%)

JAIL/PRISON %

	<u>Incarcerated</u>	<u>Jail</u>	<u>Prison</u>
Rape	3548	1135 (32%)	2413 (68%)
Murder	3121	195 (6%)	2926 (94%)
Robbery	11056	3706 (34%)	7350 (66%)

Appendix A

Methodology

How did we arrive at today's findings? Below, we summarize a methodology intended to err on the conservative side -- eliminating at each step of the way, possible sources of error.

The Data Request

Several months ago, the Judiciary Committee sent out requests to state criminal justice statistical analysis centers in all 50 states. We specifically asked for any available data relating to the disposition of criminal prosecutions for the following crimes: murder, assault, kidnapping, child abuse, and rape. Additionally, we asked for information relating to the sentencing of convicted persons for the same set of crimes. In each case, we requested a specific breakdown of offenses covered. For example, if a state provided us with information labeled "sex offenses," we requested a further breakdown of offenses covered -- for example: forcible rape, statutory rape, aggravated sexual assault, etc.

Each state responded differently to our requests. In several instances, states had none of the requested information, and in others, data was readily accessible. The charts contained within this report present the final compilation of this information, provided that it met the standards of data accountability set forth below.

Data Integrity

The Committee took great pains to ensure that all figures could withstand the highest levels of scrutiny. The prevalence of rape -- and the criminal justice system's response -- has been a hotly debated issue in recent years. Above all, we felt it imperative to produce a report that responds to the areas of disagreement with consistent, thorough data. Thus, we developed a check-point system that was then applied to each states' data to determine whether that state would be included in the report.

Checkpoint 1: Consistent Information

* While every effort was made to garner data from as many states as possible, not every state was able to respond to our request with suitable information. The data in Chapter IV includes only those states that could provide figures that were compatible with our standards. For instance, some states were unable to provide information that could be broken down among various degrees of sexual assault, others did not distinguish among types of "sex offenses," while still other states provided information on multiple offenses. Where this was the case, only data

that reflected forcible rape, however it may be defined in the state's law, was ultimately used.

Checkpoint 2: Limiting Data to Forcible Rape Only

* We included only those cases we knew to be forcible rape, and only from those states that were able to provide a breakdown of their figures' coverage. For example, if a state provided a certain number of convictions for "sexual offenses," we included that state's figure only if we could verify from that state that the term sexual offense excluded non-forcible rape offenses such as statutory rape, fondling, or lewd and lascivious behavior.

Checkpoint 3: Classifying Sentencing Data Conservatively

* Sentencing data was classified conservatively. Any sentence that could have involved incarceration was included as an offense involving prison time, even if the prison or jail time involved was minimal. For example, states often classify offenses as "probation plus jail" -- all such sentences are included in the incarceration category.

Checkpoint 4: Jail/Prison Difference

* In compiling the jail/prison comparison, we were careful to ensure that those individuals included in the jail category fit particular standards. Several states specifically listed a category of "jail," as opposed to prison or another form of

incarceration. Other states' categories (e.g. "split sentence" or "suspended sentence") were included in the "jail" category only if the state confirmed that characterization after a telephone inquiry.

Checkpoint 5: Time Period of the Report

* We sought to present data that represented one particular time period -- calendar year 1990. Nevertheless, there were a few states included in the Chapter IV compilation that possessed data only from a more recent time period. Where such is the case, we have so indicated.

Appendix B

Acknowledgments

Chairman Biden and the Judiciary Committee would like to express their extreme gratitude to the many state organizations who were so helpful throughout the compilation of this report. Their hours of research provided us with the information necessary to produce our findings.

Of course the listing of these agencies in this appendix in no way implies their support of any of the ideas or recommendations in this document. But even where such differences exist, we appreciate the benefit of their input and views, which helped refine and shape ours.

State of Alabama
Alabama Criminal Justice
Information Center
Montgomery, Alabama

State of Arkansas
Administrative Office of the Courts
Little Rock, Arkansas

State of Connecticut
Superior Court
Court Operations
Hartford, Connecticut

State of Hawaii
Department of the Attorney General
Hawaii Criminal Justice Data Center
Honolulu, Hawaii

State of Minnesota
Minnesota Criminal Justice
Statistical Analysis Center,
Minnesota Planning
St. Paul, Minnesota

State of New York
Division of Criminal Justice Services
Office of Justice Systems Analysis
Bureau of Statistical Services

State of Oklahoma
Oklahoma State Bureau of Investigation
Oklahoma City, Oklahoma

State of Pennsylvania
Pennsylvania Commission on Crime and
Delinquency
Harrisburg, Pennsylvania

State of Alaska
Statistical Analysis Unit
University of Alaska-Anchorage
Anchorage, Alaska

State of California
California Attorney General's Office
Department of Justice
Division of Law Enforcement
Sacramento, California

State of Florida
Office of the State Courts Administrator
Tallahassee, Florida

Commonwealth of Kentucky
Office of the Attorney General
Frankfort, Kentucky

State of Montana
Department of Justice
Board of Crime Control
Helena, Montana

State of North Carolina
Governor's Crime Commission
Raleigh, North Carolina

State of Oregon
Criminal Justice Council
Portland State University
School of Urban and Public Affairs
Portland, Oregon

State of Rhode Island
Governor's Justice Commission
Warwick, Rhode Island

State of South Carolina
Office of the Governor
Division of Public Safety-Criminal
Justice Programs
Columbia, South Carolina

State of Texas
Criminal Justice Policy Council
Austin, Texas

State of Vermont
Norwich University
Northfield, Vermont

Endnotes

1. FBI Uniform Crime Reports show 39,160 arrests for 102,555 reported rapes. Simple division reveals that 38% of reported rapes result in an arrest. From this arrest rate we apply our own conviction rate of 43% (see Chapter IV), which yields an overall conviction rate of 16%. Thus 84% of rape victims will not see their attacker arrested and convicted. Finally, applying our incarceration rate of 76% extrapolated from the state survey (see Chapter IV), we yield a 12% overall incarceration rate. Therefore, using the contrapositive of this figure we conclude that 88% of those who are victims of rape will never see their attacker spend time behind bars.

2. According to the Bureau of Justice Statistics, 64% of all completed rapes and 53% of all attempted rapes are committed by an acquaintance. (Sourcebook of Criminal Justice Statistics, 1991, Table 3.27, United States Department of Justice, Bureau of Justice Statistics.) This is likely to be a conservative estimate. Susan Estrich notes in Real Rape that simple rape, i.e. by someone the victim knows, is not less likely, it is simply less likely to be talked about, (Estrich at 15). Citing a Massachusetts study, she notes that two-thirds of women who reported rapes to rape crisis centers knew their attackers, however, the majority did not report their attack to the police. (Estrich, Real Rape, at 11, citing "An Analysis of Sexual Assaults Reported to Rape Crisis Center in Massachusetts," Candace Waldron and Elizabeth Dodson-Cole; Boston, Massachusetts, Department of Public Health, 1986.)

3. Our figures of an over 40% dismissal rate are consistent with figures for major metropolitan locations, which show dismissal rates in 1988 as follows: Portland (44%); San Diego (43%); Manhattan (76%); and Washington, D.C. (67%). (US Department of Justice, Bureau of Justice Statistics, The Prosecution of Felony Arrests, 1988, Table 1.) Dismissal rates tend to drop dramatically the further the case progresses. (See *id.*, Tables 2 and 3.)

BJS shows a dismissal rate of 24% in sexual assault cases and 32% for rape cases. Our figures are comparable to their rape figures, since we eliminated any case involving a charge for lesser sexual offenses. It is not clear from the BJS data at what point in the system, they measure "dismissal"; figures may vary depending upon the base level of offenses used to calculate the dismissal rate. For example, prosecutors and state authorities typically claim that their "dismissal" rate for rape and other cases is low. They refer to two sources; to "post-indictment" dismissals, which are quite low, (See Table 3 in BJS, The Prosecution of Felony Arrests, 1988), and to the rates of dismissal during trial which are also quite low.