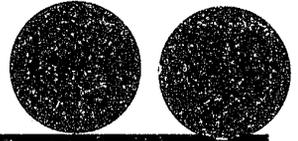


U.S. Department of Justice
Office of Justice Programs
National Institute of Justice



National Institute of Justice

Issues and Practices

The Criminal Justice and Community Response to Rape

148064
790871

About the National Institute of Justice

The National Institute of Justice (NIJ), a component of the Office of Justice Programs, is the research and development agency of the U.S. Department of Justice. NIJ was established to prevent and reduce crime and to improve the criminal justice system. Specific mandates established by Congress in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Anti-Drug Abuse Act of 1988 direct the National Institute of Justice to:

- *Sponsor special projects, and research and development programs* that will improve and strengthen the criminal justice system and reduce or prevent crime.
- *Conduct national demonstration projects* that employ innovative or promising approaches for improving criminal justice.
- *Develop new technologies* to fight crime and improve criminal justice.
- *Evaluate the effectiveness of criminal justice programs* and identify programs that promise to be successful if continued or repeated.
- *Recommend actions* that can be taken by Federal, State, and local governments as well as by private organizations to improve criminal justice.
- *Carry out research on criminal behavior.*
- *Develop new methods of crime prevention* and reduction of crime and delinquency.
- The research and development program that resulted in the creation of police body armor that has meant the difference between life and death to hundreds of police officers.
- Pioneering scientific advances such as the research and development of DNA analysis to positively identify suspects and eliminate the innocent from suspicion.
- The evaluation of innovative justice programs to determine what works, including drug enforcement, community policing, community anti-drug initiatives, prosecution of complex drug cases, drug testing throughout the criminal justice system, and user accountability programs.
- Creation of a corrections information-sharing system that enables State and local officials to exchange more efficient and cost-effective concepts and techniques for planning, financing, and constructing new prisons and jails.
- Operation of the world's largest criminal justice information clearinghouse, a resource used by State and local officials across the Nation and by criminal justice agencies in foreign countries.

The National Institute of Justice has a long history of accomplishments, including the following:

- Basic research on career criminals that led to development of special police and prosecutor units to deal with repeat offenders.
- Research that confirmed the link between drugs and crime.

The Institute Director, who is appointed by the President and confirmed by the Senate, establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the Department of Justice, and the needs of the criminal justice field. The Institute actively solicits the views of criminal justice professionals to identify their most critical problems. Dedicated to the priorities of Federal, State, and local criminal justice agencies, research and development at the National Institute of Justice continue to search for answers to what works and why in the Nation's war on drugs and crime.

148064

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

The Criminal Justice and Community Response to Rape

by
Joel Epstein, Esq.
and
Stacia Langenbahn

148064

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this [redacted] material has been granted by
Public Domain/OJP/NIJ

U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the [redacted] owner.

May 1994

Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Each report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion on the subject. The intent is to provide information to make informed choices in planning, implementing, and improving programs and practice in criminal justice.

National Institute of Justice

Paul Cascarano
Assistant Director

Cheryl Crawford
Carolyn Peake
NIJ Program Monitors

Advisory Panel

Barry Burkhart, Ph.D.
Department of Psychology
4082 Haley Center
Auburn University
Auburn, AL 36849-3501

Police Chief Robert P. Owens, Ret.
1744 Fisher Court
Oxnard, CA 93035

Mary Harvey, Ph.D., Director
Victims of Violence Program
Cambridge City Hospital
1493 Cambridge Street
Cambridge, MA 02139

The Honorable Leslie Crocker Snyder
Supreme Court, Criminal Term
Part 72
100 Centre Street, Room 411
New York, NY 10013

Prepared for the National Institute of Justice, U.S. Department of Justice, by Abt Associates Inc., under contract #OJP-89-C-009. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

Foreword

Growing awareness of the dimensions of the problem of sexual assault has spurred significant changes in the investigation and prosecution of these crimes. Victims' advocates, rape crisis centers, and criminal justice practitioners have worked to ease the burdens placed on victims of sexual assault.

This report describes recent key reforms adopted in some jurisdictions, such as protecting the anonymity of the victim and allowing complainants to report sexual assault even when the victim chooses not to press charges. Law enforcement officials and district attorneys have worked to support compensation for victims and also have created victim-witness advocate positions to help victims navigate the criminal justice process and speed their recovery.

Criminal justice agencies have expanded their initiatives with victims to reach out to those who have been unaware or unable to obtain the care and services they need—such as minority communities and immigrants. They also have initiated and strengthened coordination with hospitals where

medical evidence is collected. Some jurisdictions fund the medical exam for victims. Expanding prevention efforts in the community is another priority for stemming sexual assault, child sexual abuse, and domestic violence.

In reviewing approaches involving these strategies in a number of jurisdictions, this report represents one effort by the National Institute of Justice (NIJ) to provide information of practical utility to victim services providers and policymakers to better address the needs of rape victims. The results of this and other NIJ research is also shared with our companion agency in the Justice Department, the Office for Victims of Crime, to support development of programs of tangible benefit to those victimized by sexual assault and other crimes.

Carol V. Petrie
Acting Director
National Institute of Justice

Acknowledgements

This report would not have been possible without the generous cooperation of the many people in Boulder, Denver, Philadelphia, St. Paul, Seattle, and elsewhere whom we interviewed during the course of the study. We wish to acknowledge as well the support of our advisors, Dr. Barry Burkhart of Auburn University; Dr. Mary Harvey, Director and Co-Founder of the Victims of Violence Program at the Cambridge Hospital; Retired Chief Robert Owens of the Oxnard (California) Police Department; and the Honorable Leslie Crocker Snyder of the New York State Supreme Court, Criminal Term. Special thanks are due to our monitors at the National Institute of Justice, Cheryl Crawford and Carolyn Peake. Both Ms. Crawford and Ms. Peake were helpful and patient throughout the process of developing this

report. Finally, we wish to thank our colleagues at Abt Associates who assisted with the preparation of this report: Joan Mullen, Cathy Conly, and Dale Parent provided insightful comments; Shawna Mullen performed necessary editorial surgery on the text; Mary-Ellen Perry and Winn Sinclair handled the word processing (and our numerous revisions) with great forbearance; and Wendy Sanderson managed the publication process with intelligence, grace, and good sense.

Joel Epstein, Esq.
Stacia Langenbahn
Abt Associates Inc.

Table of Contents

	<i>Page</i>
Foreword	iii
Acknowledgements	v
Executive Summary	xi
Chapter 1: Introduction and Overview	1
Study Design	2
Overview and Organization of the Report	3
Endnotes	3
Chapter 2: Legal and Policy Reform	7
Overview	7
Statutory Reform	7
Redefining Rape	7
Witness Corroboration	9
Rape Shield Laws	9
Other Statutes and Court Decisions	9
Marital Rape	10
Fresh Complaint Doctrine	10
Privileged Communication for Victim Counseling	11
Bias Crime	11
Recent Federal Legislation	12
The Campus Sexual Assault Victim's Bill of Rights	12
The Student Right-to-Know and Campus Security Act of 1990	12
The Hate Crimes Statistics Act of 1990	12
Victims of Crime Act (VOCA)	12
Endnotes	13
Chapter 3: Law Enforcement Agencies	17
Overview	17
Organizational Changes	17
Specialized Sex Crimes Units	17
Victim Assistance Officers and In-House Victim/Witness Advocates (VWA's)	17

	<i>Page</i>
Procedures for Working With Victims	18
Reporting	18
Interviewing	19
Ensuring Privacy	21
Training	21
Academy Training	21
In-House Training	21
Specialized Training	22
Recruitment	22
Endnotes	23
Chapter 4: Prosecutors' Offices	27
Overview	27
Organizational Changes	27
Specialized Units	27
In-house Victim/Witness Advocates	28
Victim Compensation Programs	29
Approaches to Pretrial Procedure	29
Filing Decisions	29
Forming an Alliance With the Victim	30
No-Contact Orders	30
Preliminary Hearings	30
Plea Offers	31
Trial Strategies	31
Defense Strategies	31
Attitudinal Obstacles to Effective Prosecution	32
Evidentiary Issues	33
Aspects of Sentencing	37
Victim Impact Statements	37
Sentencing Alternatives	37
Training	38
In-House Training	38
Continuing Legal Education	39
Recruitment	39
Endnotes	39
Chapter 5: Rape Crisis Centers	45
Services to Victims	45
Services to Criminal Justice Agencies	47
Services to the Community	47
Organizational Structure	47

	<i>Page</i>
Staff and Volunteer Training	49
Endnotes	49
Chapter 6: Hospitals.....	53
Overview	53
Victim Services	53
Medical Services	53
Psychological Services	54
Evidence Collection	55
Protocols	55
Organizational Structure	56
Training	57
Financing of the Rape Examination	57
Endnotes	58
Chapter 7: Interagency Coordination	61
Overview	61
Sources of Leadership	61
Coordinating Strategies	61
Endnotes	63
Chapter 8: Emerging Issues	65
Overview	65
Acquaintance Rape	65
Definition and Defenses	65
Reporting of Acquaintance Rape	65
Law Enforcement Practice	66
Attitudes of Jurors	66
Outreach to Previously Underserved Populations	66
The Criminal Justice System	66
Rape Crisis Centers	67
DNA Typing of Accused Offenders	69
Scientific Basis	69
Obstacles to Using DNA Typing	69
HIV Antibody Testing of Accused Offenders	70
Testing for HIV Antibodies	71
The Arguments for and Against Mandatory Testing of Rapists	71
Legislation and the Courts	72
Criminal Justice and Victim Assistance Response	72
Civil Suits	72
Endnotes	74

	<i>Page</i>
Chapter 9: Prevention Education	79
Prevention Programs for Children	79
Prevention Programs for Adolescents	80
Prevention Programs for College Communities	80
Education Programs for Judges	82
Prevention Programs for the General Public	82
The Efficacy of Rape Prevention	82
Endnotes	83
Chapter 10: Conclusion	85
Future Issues for Research	86
Offender Treatment as a Condition of Sentencing	86
Evaluation of Rape and Sexual Assault Prevention Interventions	86
Endnotes	87
Glossary	89
Appendix A: Materials for Hospitals Treating Rape Victims	93
Appendix B: Cases Cited	105
Appendix C: Statutes Cited	107
Appendix D: Programs Visited, With Addresses and Contacts	109
Appendix E: National Victim Advocacy Organizations	115
Appendix F: Other Resources	117
Appendix G: Prevention and Education Materials	121

List of Tables

Table 1.1: Comparison of Rape Statistics Across Two Surveys	2
Table 1.2: The Criminal Justice and Victims' Services Response to Rape in Four Sites	4
Table 3.1: Characteristics of Law Enforcement Agencies by Site	24
Table 4.1: Admissibility of Expert Testimony	35
Table 4.2: Characteristics of Prosecutors' Offices by Site	40
Table 5.1: Characteristics of Rape Crisis Centers by Site	50
Table 6.1: Characteristics of Hospitals by Site	59

Executive Summary

In an increasing number of communities, law enforcement and social service agencies have formally coordinated their response to the crime of rape. Interagency coordination has grown in tandem with community awareness that successfully combating rape is a long-term project. Based on the approaches of four such communities and on a literature review, this report describes organizational and procedural changes that have helped law enforcement and victim service organizations maintain a successful stance against rape.

The acknowledgement of acquaintance rape and the significantly high incidence of rape among young people have caused most jurisdictions to focus their efforts on civic education as the path to rape prevention. The reluctance of rape victims to report to law enforcement is another cause for concern among communities dedicated to stopping rape.

Organizational Changes

Rape crisis centers, law enforcement agencies, prosecutors' offices, and hospitals are the four organizations primarily involved with rape victims. Although each group has a different mission, lessons learned from this report show that rape victims are best served when the four groups work cooperatively. Formal networks of these agencies aid rape prevention, rape prosecution, and rape victim protection. Specific changes and cooperative programs include:

Employing victim/witness advocates (VWA's) in prosecutors' offices and law enforcement agencies. In-house VWA's can be added either through direct hiring or through cooperative arrangements or contracts with rape crisis centers. By supporting victims through the investigation and prosecution process, VWA's reduce complainant attrition and free investigators and prosecutors to spend more time on their primary duties.

Adopting sensitivity training in criminal justice organizations and hospitals. Some studies have shown that rape victims are indifferent to the gender of those helping them. Of greater concern to them is the sensitivity and respect they are shown.

Instituting cross training and mechanisms for interagency cooperation. Interagency communication creates a more coordinated response to sexual assault and its victims within the community. Task forces and interagency meetings on individual cases are two forms of such interagency cooperation. During cross training, physicians may learn the evidentiary issues prosecutors face; law enforcement officers and prosecutors may learn about common reactions to trauma from rape crisis counselors; and victim advocates may learn more about the criminal justice system, so that they can better help victims prepare for court.

Sponsoring outreach programs. Victimization of minority women is disproportionately high, yet minorities and new immigrants do not appear to use rape crisis centers as extensively as Caucasian women do. Programs with multilingual services, staff trained in cross-cultural issues, and staff who mirror the populations served are more accessible to rape victims within traditionally underserved populations.

Procedural Changes

DNA typing, third-party reporting, and protecting victims' privacy are practices and techniques that prosecutors and criminal justice departments have found helpful in combating rape.

DNA Typing. DNA derived from physical evidence at a crime scene can be used to confirm the identity of a suspected offender. However, DNA typing is expensive and subjective, and investigators must first establish a connection between the source of the DNA and the offender.

Allowing third-party reporting. In every site visited for this report, victims who notify rape crisis centers far outnumber those who notify law enforcement agencies. Informational and third-party reporting can provide law enforcement agencies with intelligence on rapes and rapists in their communities.

Protecting victims' privacy. Supporting rape shield laws and allowing for delayed reporting of rape, as well as for the omission of victims' names on law enforcement reports (which are available to the press), protect victims. They may also encourage reporting of rape to law enforcement officials.

Civic Education

Despite an increased awareness of rape, incidence of the crime continues to rise. The Bureau of Justice Statistics (BJS) reported a 33 percent increase in rape between 1990 and 1991. The incidence of all types of rape is highest among

young people. The age group with the highest rates of rape in the 1991 BJS survey was 16- to 19-year-olds. The National Women's Survey also found that children and adolescents constituted the majority of victims and that the highest proportion (32 percent) were between the ages of 11 and 17.

Because of this high victimization rate, many communities have dedicated themselves to civic education focusing on the young. Successful programs typically involve community members, teach risk awareness and self-protection, and challenge cultural values that promote or condone sexual violence. Rape education and prevention programs may have the added benefit of producing more enlightened jurors.

Chapter 1

Introduction and Overview

In 1980, the National Institute of Justice issued a report on sexual assault that documented the changes in community and criminal justice responses to rape during the 1970's. These changes included:

- The emergence of rape crisis centers, which provided needed emotional support and legal and medical advocacy to rape victims and provided education and prevention programs to their communities.¹
- The development of medical protocols that met the needs of legal evidence collection.
- The designation of specific hospitals to treat rape victims and to collect medical forensic evidence.
- The creation of special prosecution units that saw only rape cases (in jurisdictions where caseloads were heavy).
- Reform of rape laws in many States, which included protecting the victim's sexual history from examination in the courtroom, eliminating the requirements for physical resistance and for witness corroboration, and redefining sexual assault to include all types of sexual penetration and to cover male victims² and marital rape (see chapter 2 for more details).

Rape continues to be a significant crime problem. The Bureau of Justice Statistics (BJS) reported 130,260 rapes in 1990 and 173,310 rapes in 1991.³ The National Women's Study estimated that 683,000 rapes occurred in 1990 and that 13 percent of all women and girls have been raped during their lifetimes.⁴

Since the early eighties, new awareness, new concerns, and new strategies have emerged in dealing with this all too prevalent crime. The existence and prevalence of acquaintance and marital rape has been widely acknowledged. The Bureau of Justice Statistics reported that 48 percent of rapes in 1991 were committed by an assailant known to the victim,⁵

and the National Women's Study found that 75 percent of rapes were committed by an acquaintance, relative, lover, or husband of the victim.⁶ Only one-half to one-fifth of rapes are reported to the police.⁷ See table 1.1.

Sadly, the incidence of all types of rape is highest among young people.⁸ The incidence of sexual assault among adolescents, especially assaults perpetrated by acquaintances in the context of courtship, is alarmingly high. Ageton estimated that 5 to 11 percent of all teenagers (700,000 to 1 million adolescents) are victimized annually.⁹ The age group with the highest rates of rape in the 1991 BJS survey was 16- to 19-year-olds.¹⁰ The National Women's Survey also found that children and adolescents constituted the overwhelming majority of victims; the highest proportion (32 percent) were between the ages of 11 and 17.¹¹

Because of this high victimization rate, rape- and sexual-abuse-prevention education for younger children has emerged as a significant concern during the 1980's (see chapter 9 for more information on prevention programs). Rape crisis centers, which during the 1980's became established institutions in their communities, operate many of these prevention programs.

Also during the last decade, victim advocates have been incorporated into prosecutors' offices and law enforcement agencies either through direct hiring or through cooperative agreements with rape crisis centers. This greater degree of interagency cooperation has resulted in the creation of task forces, interagency meetings on individual cases, interagency agreements, and cross training. It has also extended to programs that assist traditionally underserved groups, such as new immigrants, gays and lesbians, mentally and physically disabled persons, and members of minority racial and ethnic groups. These collaborations have helped provide translation, bilingual and bicultural services for victims, and technical assistance, training, and funding for the groups that serve them.

Table 1.1
Comparison of Rape Statistics Across Two Surveys

	National Crime Victimization Survey			Women's Study
	1979-1987 aggregate ¹	1990	1991	1990
Incidence ²	167,700 (average annual)	130,260	173,310	683,000 ³
Known Attacker	42%	58%	48%	75% ⁴
Reported to Police	53%	54%	59%	16% ⁴

¹This study looked at female victims only.

²The Uniform Crime Reports, based on reports from law enforcement agencies, listed 102,555 rapes in 1990 and 106,593 rapes in 1991.

³The National Women's Study is based on a national probability sample of American women of all ages, including children younger than those interviewed for the National Crime Victimization Study. The discrepancy between this study and the NCVS may be attributable in part to the indirect questioning methods of the NCVS and to the National Women's Study's inclusion of child rape.

⁴These figures are based on lifetime prevalence, not on a survey of experience over the past year.

Sources: Bureau of Justice Statistics, *Female Victims of Violent Crime* (Washington, D.C.: Department of Justice, 1992); Bureau of Justice Statistics, *Crime Victimization in the United States, 1991* (Washington, D.C.: Department of Justice, 1992); Bureau of Justice Statistics, *Crime Victimization in the United States, 1990* (Washington, D.C.: Department of Justice, 1991); National Victim Center and the Crime Victims Research and Treatment Center, *Rape in America* (Fort Worth, Tex.: National Victim Center, 1992).

In addition, some prosecutors have incorporated procedures that help protect and empower victims. No-contact orders have proven helpful in protecting complainants who know their assailants, and victim impact statements have been a powerful presentation for the prosecution at sentencing hearings as well as an empowering experience for rape complainants. Meanwhile, DNA typing is a useful, if expensive, tool for confirming the identity of offenders.

On the law enforcement side, units that specialize in the investigation of rape complaints have emerged in some communities with high caseloads. Some law enforcement agencies have also moved to protect the privacy of victims by encouraging informational reporting by victims who do not wish to prosecute¹² and by allowing the omission of victims' names on law enforcement reports (and other documents available to the press) for those who do.

Study Design

These changes, which have occurred since 1980, prompted the National Institute of Justice to revisit the topic of sexual assault, the product of which is this report. Its purpose is to inform law enforcement professionals, prosecutors, and other criminal justice and victim service workers who are combating rape about organizational and procedural changes that have assisted their peers in several urban jurisdictions.

This report is based on a review of recent research literature on rape and sexual assault, on input from the project's advisors, on interviews with leading researchers and practitioners in the field, and on site visits to four jurisdictions that have national reputations for successful approaches to the investigation and prosecution of sexual assault and for successful coordination among criminal justice agencies,

hospitals, and rape crisis centers. The four jurisdictions selected were Colorado's Second Judicial District (Denver); King County (Seattle), Washington; Philadelphia County, Pennsylvania; and Ramsey County (St. Paul), Minnesota. During the site visits, interviews were conducted with prosecutors, sex crimes investigators, judges, physicians, and social workers who treat rape victims in emergency rooms, program directors and legal advocates in rape crisis centers, coordinators of sexual assault prevention programs on college campuses, and mental health professionals at offender treatment programs. Interview protocols were developed that covered the history and evolution of the organizations' responses to sex crimes; staffing; training; procedures; victim services provided; numbers and demographics of complainants, clients, or patients; mechanisms for interagency coordination; and legislative issues.

Table 1.2 provides a summary comparison of the four sites visited for this study.

Overview and Organization of the Report

Chapter 2 examines the reform of rape laws, which in turn has informed many of the prosecutorial responses to rape. The report then turns to the organizational, procedural, and training issues of the four primary organizations involved with rape victims: law enforcement agencies (chapter 3), prosecutors' offices (chapter 4), rape crisis centers (chapter 5), and hospitals (chapter 6). Chapter 7 discusses how these agencies work together. Chapter 8 focuses on issues of emerging importance: responding to acquaintance rape, working with traditionally underserved populations in the community, the technical innovation of DNA typing, the arguments for and against HIV testing of offenders, and the use of civil suits by rape victims. Chapter 9 explores efforts to educate various audiences about rape, from making safety plans with small children to educating judges on the issues surrounding acquaintance rape. Finally, chapter 10 contains the report's conclusions, including the consensus among all organizations that serve rape victims that rape prevention education may be the most crucial element in confronting rape as a society.

Appendix A provides a medical rape examination protocol, a forensic medical evidence collection protocol, and sample patient information for rape victims. Appendixes B and C provide lists of cases and statutes cited, respectively. Appendixes D, E, and F provide contact information for the sites visited (appendix D), national advocacy organizations (appendix E), and other resources (appendix F). Appendix G

provides a list of prevention education films as well as judicial education materials. A glossary of terms and acronyms supplements the report.

Endnotes

1. For simplicity's sake, the term "victim" is used in this report to describe all those who have survived rape or sexual assault. The authors understand and respect the use of the term "survivors" to describe victims as they recover from the effects of this violent crime.
2. According to the National Crime Victimization Survey (NCVS) conducted by the Bureau of Justice Statistics (BJS), in 1991 the rate of rape per 1,000 persons was 1.4 for women and 0.2 for men, (BJS, *Criminal Victimization in the United States* [Washington, D.C.: BJS, 1992], table 3). However, treatment centers report higher rates. For example, in 1990, 10 percent of the rape victims counseled in the San Francisco Rape Treatment Center and in the rape crisis program at Beth Israel Hospital in Boston were men ("Silent Victims," *The Advocate* 582 [July 30, 1991]: 40). Male rape victims also made up 10 percent of the clients seen at university-affiliated facilities and 6 percent of the clients treated at a Columbia, South Carolina, program (M. Koss and M. Harvey, *The Rape Victim: Clinical and Community Interventions* [Newbury Park, Calif.: Sage, 1991], pp. 55-56, citing Kaufman et al., "Male Rape Victims: Noninstitutionalized Assault," *American Journal of Public Health* 67 [1980]: 221-23; Forman, "Assessing the Impact of Rape and Its Significance in Psychotherapy," *Psychotherapy: Theory, Research, and Practice* 20 [1983]: 315-519.)
3. BJS, *Crime Victimization in the United States, 1991* (Washington, D.C.: Department of Justice, 1992); BJS, *Crime Victimization in the United States, 1990* (Washington, D.C.: Department of Justice, 1991). The Bureau of Justice Statistics surveys respondents aged 12 years and older from a nationally representative sample of households for the National Crime Victimization Survey (NCVS). Because the survey does not directly ask respondents about rape, each respondent defines rape for herself. For these reasons, the NCVS probably underestimates rape victimization. The survey is currently being redesigned. In 1993, direct questions will be asked concerning rape, including rape by family members or intimates.
4. National Victim Center and the Crime Victims Research and Treatment Center, Medical University of South Carolina, *Rape in America* (Fort Worth, Tex.: National

Table 1.2

The Criminal Justice and Victims' Services Response to Rape in Four Sites

	Second Judicial District of Colorado (Denver)	King County (Seattle)	Philadelphia	Ramsey County (St. Paul)
Population¹	467,610	1,507,319	1,585,577	485,765
Impetus for Response	Highly motivated assistant district attorney	King County Prosecuting Attorney's Office and Harborview Medical Center	Women Organized Against Rape (WOAR)	Ramsey County Attorney's Office and rape crisis workers
Task Force Name	Rape Kit Network, Domestic Violence Network	King County Special Assault Network	Sexual Assault Program (SAP)	Discontinued, became Sexual Offense Services (SOS) of Ramsey County
Lead Agency	Second Judicial District (Denver) Attorney's Office	King County Prosecuting Attorney's Office and Harborview Medical Center	Women Organized Against Rape (WOAR)	Ramsey County Attorney's Office, and Sexual Offense Services (SOS) of Ramsey County
Focus Prosecutor	Adults and children Second Judicial District Attorney's Office, Domestic Violence Unit	Adults and children King County Prosecuting Attorney's Office, Special Assault Unit	Adults Philadelphia District Attorney's Office, Rape Prosecution Unit	Adults Ramsey County Attorney's Office, Crimes Against Persons Unit
Police Department	Sex Crimes Unit, Denver Police Department	Special Assault Unit, King County Police Department; Special Assault Unit, Seattle Police Department	Sex Crimes Unit, Philadelphia Police Department	Sex and Domestic Crimes Unit, St. Paul Police Department
Rape Crisis Centers	Rape Assistance and Awareness (RAAP)	King County Sexual Assault Resource Center (KCSARC); Seattle Rape Relief (SRR)	Women Organized Against Rape (WOAR)	Sexual Offense Services (SOS) of Ramsey County
Hospitals	Denver General Hospital	Harborview Medical Center	Thomas Jefferson University Hospital; Episcopal Hospital (both designated facilities)	St. Paul-Ramsey Medical Center
Inception of Current Response	Mid-1970's	Mid-1970's	Mid-1970's	1976

¹1990 census data.

-
- Victim Center, 1992), p. 2. The National Women's Study is based on a national probability sample of American women of all ages, including children younger than those interviewed for the National Crime Victimization Study. For this study, rape was defined as penetration by force or threat of force, which is equivalent to the definition of forcible rape in the States in which respondents were surveyed. The discrepancy between this study and the NCVS may be attributable in part to the indirect questioning methods of the NCVS and to the National Women's Study's inclusion of child rape.
5. Bureau of Justice Statistics, *Criminal Victimization in the United States*, computed from table 37. The vulnerability of women in their homes is highly correlated with the fact that most rapes occur between acquaintances and intimates: according to nine years (1979–1987) of aggregated data from BJS, attacks by assailants known to the victim were more than twice as likely to occur in the victim's home (Bureau of Justice Statistics, *Female Victims of Crime* [Washington, D.C.: BJS, 1991], No. NCJ–126826, table 29).
 6. National Victim Center, *Rape in America*, p. 4. Three percent of the respondents were not sure of their relationship to the offender or refused to answer.
 7. Bureau of Justice Statistics, *Female Victims of Violent Crime*, p. 9, table 18. BJS estimated that 53 percent of rape victims report to the police. This particular study was based on statistics aggregated over the years 1979–1987. The National Women's Study found that only 16 percent of victims report to the police (National Victim Center, *Rape in America*, p. 6).
 8. Because this report focuses on adult victims, sexual abuse of children is not explored in detail.
 9. S. Ageton, *Sexual Assault among Adolescents* (Lexington, Mass.: D. C. Heath, 1983), cited in B. Burkhardt and A. Sherry, "Sexual Victimization in Adolescents," *Medical Psychotherapy*, in press.
 10. BJS, *Criminal Victimization in the United States*, table 4.
 11. National Victim Center, *Rape in America*, p. 3.
 12. Informational reports collect data regarding the assault but do not identify the victim, and no complaint is filed.

Chapter 2

Legal and Policy Reform

Overview

During the last two decades most States have reformed their rape laws and broadened the definition of rape¹ to include any type of sexual penetration. These rape laws remove corroboration and resistance requirements and make the victim's sexual history inadmissible as evidence. They also emphasize the offender's acts rather than the victim's history, and they draw attention to rape's violent aspects, as opposed to its sexual ones.² In some States, the term "rape" is being replaced by "sexual assault," "sexual battery," and other terms that emphasize its violent nature.³

Certain States have also removed the marital-rape exemption from their criminal codes, while others have made inroads in traditional discrimination statutes. New statutes now define some rapes as gender-biased hate crimes, allowing for increased criminal penalties or civil actions. Federal legislation defining some rapes as hate crimes against women has also been introduced, and Federal legislation to reduce the incidence of rape on college campuses has been enacted.

Statutory Reform

Until the 1970's, most State statutes required:

- Prompt reporting, which barred a victim's delayed criminal report.
- Cautionary instructions, which admonished jurors to evaluate a complainant's testimony with special care because of the difficulty of determining its truth.
- Corroboration by other witnesses.
- Resistance, which required that the victim physically resist her⁴ attacker.

In short, rape laws in most States covered only situations in which a man forced a woman to have sexual intercourse under the threat of bodily injury, she resisted strenuously,

and there was outside corroboration.⁵ In the early 1970's, for example, New York defined rape very narrowly, requiring outside corroboration of every element of the crime. Consequently, there were only an average of 18 rape convictions a year statewide, even though more than a thousand rape complaints were filed.

By the mid-1980's, nearly all States had enacted legislation that treated rape like other crimes. The reformed laws focus on the unlawful acts of the offender, not on the behavior or reputation of the victim.⁶ The most common changes include:

- Redefining rape more broadly to include sexual penetration of any type and replacing the single crime of rape with a series of gender-neutral, graded offenses defined by the presence or absence of aggravating conditions.
- Eliminating the requirement that the victim's testimony be corroborated and changing the consent standard by eliminating the requirement that the victim physically resist her attacker.
- Restricting the use of the victim's prior sexual conduct as evidence.⁷

Redefining Rape

The Definition of Rape in the Model Penal Code. In common law, the offense of rape was defined as "carnal knowledge" (penile vaginal penetration only) of a woman not one's wife by force and against her will.⁸ One of the first revisions of rape law drafted was the Model Penal Code (MPC) of 1962. It departed from the traditional definition of rape by stating: "A man who has sexual intercourse with a female not his wife is guilty of rape if . . . he compels her to submit by force or threat of imminent death, serious bodily injury, extreme pain or kidnapping."⁹ However, the MPC statute retained much of the language of the traditional statutes, such as the marital-rape exemption (which was extended to couples living

together), and emphasized the victim's nonconsent rather than the defendant's forcible conduct. The law's drafters further emphasized the importance of nonconsent by warning that "the possibility of consent by the victim, even in the face of conduct that may give some evidence of overreaching, cannot be ignored."¹⁰

The MPC also perpetuated some of the myths and injustices of traditional rape law. First, it graded rape by "a voluntary social companion" as a less serious offense than rape by a stranger. The grading structure is based on the assumption that the woman's nonconsent to sexual intercourse in the context of a date is ambiguous, and therefore the voluntary social companion is less culpable for his actions than is a stranger.¹¹ Second, the Code declined to criminalize sexual contact (nonconsensual touching as contrasted with penetration), characterizing such complaints as "petty."¹² The MPC also graded the offense based on the gender of the victim: rape of men, including aggravated rape, was graded as a second-degree felony.

The Definition of Rape in Reformed Statutes of the 1970's and 1980's. During the past 20 years, there have been extensive reforms of these laws. Modern statutes in general may redefine rape in the following ways:

- Rape includes not only penile vaginal penetration but other types of sexual penetration as well, including oral and anal sodomy and penetration by fingers or objects.
- Rape is defined as gender-neutral, which acknowledges the existence and seriousness of the rape of men.
- Definitions of rape recognize methods of obtaining submission other than overt force, such as various types of threats. A new category of rape that does not involve force or threats is also recognized—taking improper advantage of an incapacitated victim. Mental illness, mental retardation, and drug and alcohol intoxication are often acknowledged as constituting incapacitation. In some States, however, the offender must have administered the intoxicating substance for the express purpose of obtaining sexual access.¹³
- Marital rape is no longer exempted in some States (see section below on marital rape).¹⁴
- Crimes of sexual assault may be graded according to whether there was sexual penetration and whether there were aggravating conditions (such as more than one assailant; use of a weapon; physical injury; or commission of another felony simultaneously, such as kidnapping).

Enacted in 1975, Michigan's Criminal Sexual Conduct Statute is considered a model of rape law reform. Establishing four degrees of gender-neutral criminal sexual conduct based on the seriousness of the offense, the amount of coercion used, the degree of injury inflicted, and the age and incapacitation of the victim, the statute redefined rape and other forms of sexual assault. Under Michigan's law, a person is guilty of criminal sexual conduct if he or she engages in sexual penetration under one of several circumstances, such as during the commission of any other felony, while armed, or while injuring the victim or using force or coercion to accomplish the sexual penetration.¹⁵

Although the Michigan rape statute contains the traditional marital-rape exemption,¹⁶ it includes many important reforms, such as expressly eliminating the resistance requirement.¹⁷ Departing from traditional rape statutes, the Michigan law defines the crime by objective factors and circumstances that describe the forceful or coercive nature of the defendant's conduct, rather than defining it by evidence of the victim's nonconsent.¹⁸ The Michigan law effectively eliminates the requirement for the prosecutor to prove that the victim resisted and therefore did not consent.

In the Michigan law, consent is not specified as an element of or defense to the crime.¹⁹ This relieves the prosecution of the burden of proving the victim's nonconsent beyond a reasonable doubt.²⁰ Instead the prosecutor must prove that the defendant used force or coercion. Consent defenses still arise, however, and the defense counsel may either present evidence of consent to disprove the prosecution's evidence of force or raise consent as a defense to admittedly forceful conduct.²¹

Although the enactment of the Michigan Criminal Sexual Conduct Statute had the effect of raising the arrest and conviction rates for rape in the State, it did not shift the focus of the rape away from the victim's behavior. The victim's nonconsent and demeanor at trial remained the two most important factors of a successful prosecution. Accordingly, the consent defense is easily raised, and it remains the focal issue at trial.²²

To many students of rape law reform, the Illinois Criminal Sexual Assault Statute²³ is the most progressive of the nation's rape reform statutes. The law, adopted in 1984, defines criminal sexual assault as "an act of sexual penetration by the use of force or threat of force."²⁴ Under the law, the victim's nonconsent is not an element of the offense, but consent is a statutory defense to the crime. The statute defines consent as a "freely given agreement to the act of sexual penetration or sexual conduct in question."²⁵ In addition, the

Illinois statute eliminates the marital-rape exemption under limited circumstances.²⁶

Under the new laws, law enforcement officers, prosecutors, judges, and juries will be more concerned with determining whether the accused had a weapon, had an accomplice, or threatened to injure the victim than with discovering whether the victim resisted, whether her story can be corroborated, or whether she is chaste or promiscuous.²⁷

Witness Corroboration

Because most rapes involve only one offender who takes care to perpetrate the crime while in seclusion with his victim, witness corroboration has often been very hard to provide, thus making many rapes difficult to prosecute before the reform of rape statutes did away with this requirement in many States. While New York State's Penal Law²⁸ generally does not require witness corroboration, it makes an exception for cases when the victim could not consent due to age, mental defect, or mental incapacity. In such cases, there must be evidence that establishes that an attempt was made to engage the victim in the activity charged and to connect the defendant with the offense. In the view of some defense attorneys, this change means that a defendant charged with a sex crime not involving such exceptions can be convicted solely upon the testimony of the complainant.

Rape Shield Laws

While no longer new to most jurisdictions (they have been enacted in some form in every jurisdiction except Utah), rape shield laws remain perhaps the most important of the rape law reforms. While rape shield laws vary among the States, they all restrict how much the victim can be asked about her sexual history.²⁹ Twenty-five States have adopted an approach modeled after Michigan's rape shield statute,³⁰ which was designed to protect rape victims from being exposed at trial to harassing or irrelevant questions concerning their past sexual behavior.³¹ The Michigan statute reads as follows:

- (1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted . . . unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:
 - (a) Evidence of the victim's past sexual conduct with the actor.

- (b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

- (2) If the defendant proposes to offer evidence described in subsection (1)(a) or (b), the defendant within 10 days after the arraignment on the information shall file a written motion and offer of proof. The court may order an *in camera* hearing to determine whether the proposed evidence is admissible under subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1)(a) or (b) admissible, the judge may order an *in camera* hearing to determine whether the proposed evidence is admissible under subsection (1).³²

In *Michigan v. Lucas*, a 1991 Supreme Court case, the high court examined whether the Michigan rape shield statute's notice-and-hearing requirement violated the defendant's rights under the Sixth Amendment's Compulsory Process Clause.³³ Writing for the majority, Justice O'Connor declared that the Michigan law's notice-and-hearing requirement serves legitimate State interests: protecting rape victims against surprise, harassment, and unnecessary invasions of privacy; and protecting against surprise to the prosecution. When a prior sexual relationship between the defendant and the complainant is conceded, the notice-and-hearing procedure allows a court to determine before the trial whether evidence of the relationship "is material to a fact at issue in the case" and whether "its inflammatory or prejudicial nature . . . outweigh[s] its probative value."³⁴

Rape shield provisions have regularly withstood constitutional challenges based on due process, equal protection, the right to confrontation, and the right to cross-examination of witnesses.³⁵ Because of their essential role in protecting rape victims, these laws will probably continue to be an important tool of prosecutors in rape cases for many years.³⁶

Rape shield laws also convey an important message to rape victims. According to prosecutors interviewed, knowing that an evidentiary rule is in place that bars the defense counsel from making unwarranted inquiries into the complainant's sexual history is a comfort to many victims.³⁷ (See chapter 4 for practical issues relating to rape shield laws.)

Other Statutes and Court Decisions

Other reform legislation at the State level concerns removing the marital-rape exemption, extending confidentiality privilege to rape crisis counselors, and expanding hate crimes to include crimes based on gender bias. In addition, State courts

have had an impact on the uses and limitations of fresh complaint doctrine. The following pages offer an overview of victim-centered reform at the State level.

Marital Rape

As of 1985, 14 States had enacted legislation making the rape of a woman by her husband a crime.³⁸ One example of such laws is Pennsylvania's Spousal Sexual Assault statute.³⁹ The law makes marital rape a specific offense, defining it as follows:

- (a) Sexual Assault. A person commits a felony of second degree when that person engages in sexual intercourse with that person's spouse:
 - (1) by forcible compulsion;
 - (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
 - (3) who is unconscious.
- (b) Involuntary spousal deviate sexual intercourse. A person commits a felony of the second degree when that person engages in deviate sexual intercourse with that person's spouse:
 - (1) by forcible compulsion;
 - (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
 - (3) who is unconscious.
- (c) Crime to be reported. The crime of spousal sexual assault shall be personally reported by the victim or her agent to a law enforcement agency having the requisite jurisdiction within 90 days of the commission of the offense.⁴⁰

Elsewhere, State appeals courts and supreme courts have precipitated reform of rape law so that marital rape is no longer exempted. In *Merton v. State*,⁴¹ the Court of Criminal Appeals of Alabama held that Alabama's rape statute, which contained a marital exemption, discriminated on the basis of the marital status of the defendant, violating the Equal Protection Clause of the Fourteenth Amendment. The *Merton* court's ruling severed the marital exemption from the statute and enlarged the statute's proscription to include married as well as unmarried persons.⁴² However, in only a few States has the spousal exclusion been totally excised from the law.⁴³ In Pennsylvania, for example, marital rape is a second-degree felony.

In addition to offering judicial recognition to wives who would seek legal protection against an assaultive husband, eliminating the spousal exemption would help redress injustice and create a significant legal deterrent. In the view of Finkelhor and Yllo, "An important part of the marital rape problem is that not enough husbands recognize that what they are doing is wrong, and too many wives believe they have little legal right to resist and object."⁴⁴

Fresh Complaint Doctrine

The fresh complaint doctrine concerns the admissibility of statements made by a rape victim "shortly after the attack."⁴⁵ The doctrine is an exception to the ordinary rule that a party may not introduce on direct examination a witness' out-of-court statements to bolster the witness' in-court testimony. In rape cases, such out-of-court statements by a rape victim may be admitted in the prosecutor's case so long as the statements were made within a certain period after the offense, in other words, so long as the statements were "fresh." In Massachusetts (unlike in most States), the prosecution may introduce not only the fact that the victim made a complaint but also the details of what the victim said.⁴⁶

However, a recent Massachusetts Supreme Judicial Court case seems to signal an end to the expansive use of fresh complaint testimony in that State. In *Commonwealth v. Lavalley*,⁴⁷ the issue was the manner in which the fresh complaint testimony was admitted. The prosecutor presented five fresh complaint witnesses, each of whom apparently testified in detail about how the defendant raped the victim. In addition, the prosecution offered a videotape, made on the night of the rape, which recorded a statement the victim made to the police describing the attack. The *Lavalley* court went so far as to declare that it is ready to reconsider the rule that permits the prosecution to offer evidence of the details of the victim's out-of-court statements, not simply evidence of the fact that the victim complained.⁴⁸

Legislators and prosecutors in Massachusetts and elsewhere may want to consider the *Lavalley* court's frank and unusually harsh criticism of the origins of the fresh complaint rule. The court observed that the rule was initially premised on the view that every rape victim would immediately accuse her attacker, publicly and vocally, when, in fact, "due to the social stigma and skepticism which victims of rape often confront, the opposite may be true. . . . We are . . . troubled," the court observed, by such "sexist reasoning" and "by a rule which assumes that only those victims who complain of rape were actually raped, while those who remain silent somehow consented to the sexual assault."⁴⁹

Privileged Communication for Victim Counseling

Because communications between rape crisis counselors and victims have no statutory privilege in many States, the kinds of information that are privileged are a source of considerable conflict between prosecutors and defense attorneys.⁵⁰ Because most victim advocates are not psychologists, social workers, or psychiatrists but rather lay advocates without adequate formal training to qualify for any of the available privileges for professional-patient communications, the law of privilege is increasingly being challenged by advocacy groups for rape victims. In 1982, the President's Task Force on Victims of Crime recommended that the counseling of victims be made a privileged communication. Wigmore identified four elements necessary for establishing privilege, all of which are met by rape crisis counseling:

- Communications must originate in confidence.
- Confidentiality must be essential to maintaining the relationship (a necessity for successful therapeutic treatment).
- The relationship must be deemed worthy of protecting (societal benefits of rape crisis counseling include shorter terms of welfare, disability, and unemployment payments to victims whose psychological injuries had inhibited their return to a productive life, and increased victim participation and cooperation in reporting and prosecuting crime).
- Disclosure must injure the relationship more than it benefits the litigation (much of counselors' testimony would be hearsay and therefore inadmissible; counselors may not know the details of the crime because the details are not germane to counseling, or, for those facts that are admissible, other witnesses may be available).⁵¹

The Criminal Justice Section of the American Bar Association and the Office for Victims of Crime (OVC) collaborated on a model statute granting the privilege of confidentiality to counselors of rape victims. Counselors receive a testimonial privilege, and their records are made immune from discovery or legal process. However, counselors who are part of law enforcement agencies or prosecutors' offices are exempt because any information available to the government that is favorable to the accused must be disclosed to the defense upon request. Victim counselors who are protected must be identifiable statutorily or administratively, usually by their affiliation with a victim counseling center, and they must receive a specified number of hours of academic or formal training, or they must have a specified number of years of

experience (otherwise any friend or relative of the victim could claim privileged status).⁵²

In 1982 Pennsylvania granted the confidentiality privilege to statements made by victims to rape crisis workers.⁵³ The statute requires 40 hours of training for volunteers and staff. Counselors must be careful not to breach their privilege by becoming privy to government information—for example, by being present during law enforcement interviews. Confronted with a challenge to the law, the Pennsylvania Supreme Court affirmed the inviolability of the State's privilege to rape crisis counselors. In its decision the State's high court wrote:

The very nature of the relationship between a counselor and the victim of such a crime exposes the necessity for the same confidentiality that would exist if private psychotherapeutic treatment were obtained. If that confidentiality is removed, that trust is severely undermined, and the maximum therapeutic benefit is lost. The inability of the crisis center to achieve its goals is detrimental not only to the victim but also to society, whose interest in the report and prosecution of sexual assault crimes is furthered by the emotional and physical well being of the victim.⁵⁴

However, in *Commonwealth v. Stockhammer*,⁵⁵ a 1991 Massachusetts Supreme Judicial Court case, the Commonwealth's high court handed down a decision on patient confidentiality that prosecutors and victim rights advocates have loudly criticized. Under Massachusetts law, rape crisis center records were considered conditionally privileged: they could only be disclosed to the judge for *in camera* review, where he or she would determine whether they contained any evidence of bias, prejudice, or motive to lie.⁵⁶ The *Stockhammer* decision has been interpreted to mean that the defense counsel has the right to inspect the treatment records of a rape victim for such evidence.⁵⁷ In its decision, the court noted that "the judge is not necessarily in the best position to know what is necessary to the defense." The court added, "When a judge undertakes to decide if [evidence] benefits the defendant's case, he is assuming vicariously and uncomfortably the role of counsel."⁵⁸

Bias Crime

While women are often the victims of violence for the same reasons that men become victims, women are also victims of violence by virtue of their status as women. Certain States are redefining some sexual assaults as bias or hate crimes, where such gender discrimination can be proven. The most compre-

hensive definition of hate or bias crime, the one accepted by many organizations that oppose crimes of bias, is the definition developed by the California Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence.⁵⁹ The California attorney general defines a hate crime as

any act of intimidation, harassment, physical force, or threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by hostility to their real or perceived race, ethnic background, national origin, religious belief, sex, age, disability, or sexual orientation, with the intention of causing fear or intimidation, or to deter the free exercise, or enjoyment of any rights or privileges secured by the constitution of the United States or the State . . . whether or not performed under color of law.⁶⁰

Eight States have passed statutes against hate crimes that include gender hatred.⁶¹ Some statutes create harsher criminal penalties in cases where gender bias can be proved. Others allow victims to bring civil actions in addition to the criminal case. A Federal law that posits violent crime against women as a civil rights violation as well as a criminal offense has also been introduced in the Senate and the House of Representatives (see below).

Recent Federal Legislation

The Campus Sexual Assault Victim's Bill of Rights

Signed into law in July 1992, the Campus Sexual Assault Victim's Bill of Rights⁶² amends the provisions of the Higher Education Act of 1965 to ensure that campus authorities treat sexual assault victims with respect, clearly explain their rights and legal options, and fully cooperate with victims in the exercise of those rights. The legislation guarantees that campus sexual assaults are investigated by civil and criminal authorities without pressure to refrain from reporting to any authority or to report the offense as less serious. It further ensures that victims are given the same representation and right for others to be present as the accused is permitted in campus proceedings. In addition, the legislation requires higher education institutions to provide policy statements to the Department of Education regarding their sexual assault prevention programs, procedures for assisting victims, and procedures for disciplinary hearings and sanctions facing

perpetrators of sexual offenses. The law does not allow private citizens to bring suit for violation of these rights.

The Student Right-to-Know and Campus Security Act of 1990

The Student Right-to-Know and Campus Security Act requires that institutions of higher education report the number of on-campus crimes including murder, sexual assault, robbery, aggravated assault, burglary, motor-vehicle theft, and arrests for weapons possession and drug and alcohol offenses.⁶³ The act further requires colleges and universities to publish safety-related policies and procedures.

The first reporting period was August 1, 1991 through July 31, 1992. The Department of Education is required only to collect the information on a yearly basis and to report on five-year trends in the data. The Department must report to the House and Senate Committees on Education and Labor on September 1, 1995 on these trends, exemplary campus security policies and practices, and security and safety recommendations for post-secondary institutions.

The Hate Crimes Statistics Act of 1990

The Hate Crimes Statistics Act of 1990⁶⁴ mandates that data be collected and published about crimes that manifest prejudice based on race, religion, sexual orientation, or ethnicity.⁶⁵ While crimes motivated by gender are not included in the statute's mandate, data are collected on violent crime, including rape. The act has been criticized by some feminists and others because it excludes gender as a protected class. However, sexually violent acts against a woman who is included in a protected category and can claim that she was raped because of her race, ethnicity, sexual orientation, or religion are covered by the act.⁶⁶

Victims of Crime Act (VOCA)

The Victims of Crime Act established the Office for Victims of Crime (OVC) in the Office of Justice Programs, Department of Justice, in 1984. OVC provides grants to States for programs with direct services for victims of all crimes, including rape crisis centers and victims' compensation offices.⁶⁷ To receive Federal funding, States must certify that priority is given "to eligible crime assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse."⁶⁸ (See chapter 4 for more information on procedural aspects of victims' compensation.)

Endnotes

1. Because the focus of this study is adult rape and sexual assault, this report will not address the rape of children, nor will it discuss statutory rape, which is usually defined by statutes as vaginal intercourse with a girl under a stated age, with or without her consent. For the purposes of this report, the terms "rape" and "sexual assault" are used interchangeably.
2. M. Koss and M. Harvey, *The Rape Victim: Clinical and Community Interventions*, 2d ed. (Newbury Park, Calif.: Sage Publications, 1991), citing P. Searles and R. J. Berger, "The Current Status of Rape Reform Legislation: An Examination of State Statutes," *Women's Rights Law Reporter* (1987): 25-43.
3. J. R. Chapman, M. A. Largent, and B. Smith, *Sexual Assault Legislation: An Assessment From the Field* (Washington, D.C.: Center for Women Policy Studies, 1986), p. 10. However, some of the prosecutors interviewed for this report disagree over whether changing the crime from "rape" to "sexual assault" is beneficial or harmful to the prosecution of such cases. Critics argue that while it may make charging the crime easier, obtaining the conviction of a defendant may be made more difficult by the reluctance of jurors to impose a severe sentence on a defendant charged with "assault," a charge associated with lesser offenses. Some prosecutors also believe that the greater personal violation of sexual assault, as opposed to physical assault, should be emphasized in the definition of the crime, rather than the violent aspects that rape shares with other crimes against persons.
4. In this report, feminine pronouns are used when referring to victims. This decision was made to make the report easier to read and because the vast majority of known victims are women. The authors do not intend this as a negation or minimization of the sexual victimization of men and boys.
5. T. Lewin, "Tougher Laws Mean More Cases Are Called Rape," *New York Times*, May 27, 1991.
6. J. Horney and C. Spohn, "The Impact of Rape Reform Legislation," final report to the National Institute of Justice and the National Science Foundation, based on work supported by NIJ Grant No. SES-8508323 and NSF Grant No. 85-IJ-CX-0048, p. 2; Lewin, "Tougher Laws Mean More Cases Are Called Rape."
7. Horney and Spohn, "The Impact of Rape Reform Legislation," p. 2.
8. L. B. Bienen, "Rape III — National Developments in Rape Reform Legislation," *Women's Rights Law Reporter* (1981): 171, 174.
9. Model Penal Code § 213.1 (Official Draft 1962).
10. C. A. Wicktom, "Focusing on the Offender's Forceful Conduct: A Proposal for the Redefinition of Rape Laws," *George Washington Law Review* 56 (January 1988): 399, 415-16, citing Model Penal Code § 213.1 comments at 303 (Official Draft and Revised Comments 1980).
11. *Ibid.*, p. 416.
12. S. Estrich, *Real Rape* (Cambridge, Mass.: Harvard University Press, 1987) p. 83, n. 19, citing the MPC and Commentaries, § 213.1, p. 298.
13. Koss and Harvey, *The Rape Victim*, p. 4.
14. Lewin, "Tougher Laws Mean More Cases Are Called Rape."
15. Mich. Comp. Laws Ann. § 750.520a-1 (West 1991).
16. Mich. Comp. Laws Ann. § 750.520l (West 1991).
17. *Ibid.*, § 750.520i (West 1991).
18. Wicktom, "Focusing on the Offender's Forceful Conduct," p. 419, citing Mich. Comp. Laws Ann. § 750.520b (West 1991).
19. *Ibid.*, p. 418.
20. *Ibid.*, p. 419, citing *People v. Stull*, 338 N.W.2d 403, 406 (Mich. App. 1983); *People v. Jansson*, 323 N.W.2d 508, 512 (Mich. App. 1982).
21. Although the law does not state that consent is an affirmative defense to sexual assault, in 1982 the Michigan Court of Appeals ruled that it was reversible error for a trial judge to fail to instruct the jury on the defense of consent when the defendant has alleged the complainant consented. *People v. Thompson*, 324 N.W.2d 22 (Mich. App. 1982).
22. Wicktom, "Focusing on the Offender's Forceful Conduct," pp. 420-1.
23. Ill. Ann. Stat. ch. 38, paras. 12-12 to 12-18 (Smith-Hurd 1992 Supp.).

24. Ill. Ann. Stat. ch. 38, para. 12-13 (Smith-Hurd 1992 Supp.).
25. Ill. Ann. Stat. ch. 38, para. 12-17 (Smith-Hurd 1992 Supp.).
26. Wicktom, "Focusing on the Offender's Forceful Conduct," p. 421.
27. Horney and Spohn, "The Impact of Rape Reform Legislation," p. 5.
28. N.Y. Penal Law §§ 130.00 et seq. (McKinney 1981).
29. Rape shield laws vary considerably in what kind of evidence is prohibited and what kinds of procedures must be used for introducing sexual history evidence. Moreover, in Comment, "The Rape Shield Paradox: Complainant Protection Amidst Oscillating Trends of State Judicial Interpretation," *J. Crim. L. & Criminology* 78 (1987): 644-98, the author argues that ambiguity in State rape shield laws frequently leads to judicial overprotection of defendants' constitutional rights.
30. B. Balos and M. L. Fellows, "Guilty of the Crime of Trust: Nonstranger Rape," *Minn. L. Rev.* 75 (1991): 599, citing Galvin, "Shielding Rape Victims in the State and Federal Courts," *Minn. L. Rev.* 70 (1986): 763, 773; Mich. Comp. Laws Ann. § 750.520j (West 1990 Supp.).
31. *Michigan v. Lucas*, 500 U.S. ___, 114 L. Ed.2d 205, 210 (1991).
32. Mich. Comp. Laws Ann. § 750.520j (West 1990 Supp.).
33. *Michigan v. Lucas*, 500 U.S. ___, 114 L. Ed.2d 205 (1991).
34. *Ibid.*, 210, citing Mich. Comp. Laws § 750.520j(1) (1979).
35. J. E. Smith, "Constitutionality of 'Rape Shield' Statute Restricting Use of Evidence of Victim's Sexual Experiences," *1 ALR4th* 283.
36. In light of the failure of all legal challenges to rape shield laws, a defense strategy has emerged wherein the defendant files a civil suit (e.g., for defamation) against the woman who has accused him of rape. See Note, "Rape Shield Laws—Is It Time for Reinforcement?" *U. Mich. J. L. Ref.* 21 (1988): 317.
37. Although no prosecutor was entirely satisfied that courts sufficiently enforce the rape shield provisions, prosecutors in all four jurisdictions visited confirmed the importance to victims of the existence of rape shield provisions.
38. See D. Finkelhor and K. Yllo, *License to Rape* (New York: Holt, Rinehart and Winston, 1985).
39. 18 PA. C.S.A. § 3128. Spousal Sexual Assault (Purdon 1983).
40. *Ibid.*
41. *Merton v. State*, 500 So.2d 1301 (Ala. Cr. App. 1986).
42. Similarly, the express marital exemption in New York's statute (N.Y. Penal Law § 130.35[1] [McKinney 1987]) was stricken from the law by the New York Court of Appeals in *People v. Liberta* (474 N.E.2d 567, 573-75 [N.Y. 1984]).
43. C. Bohmer, "Acquaintance Rape and the Law," in A. Parrot, ed., *Acquaintance Rape* (New York: John Wiley, 1990); P. Searles and R. J. Berger, "The Current Status of Rape Reform Legislation: An Examination of State Statutes," *Women's Rights Law Reporter* (1987): 25-43.
44. Finkelhor and Yllo, *License to Rape*, p. 198.
45. *Commonwealth v. Bailey*, 370 Mass. 388, 391 (1976).
46. D. M. Kottmyer and M. F. Murphy, "Developments in Criminal Law: The Changing Face of Rape Prosecutions," *Boston Bar Journal* 36 (May/June 1992): 31, 34, citing *Commonwealth v. Bailey*, 370 Mass. 388, 392 (1976).
47. *Commonwealth v. Lavalley*, 410 Mass. 641 (1991).
48. Kottmyer and Murphy, "Developments in Criminal Law," pp. 31, 35, citing *Commonwealth v. Lavalley*, 410 Mass. 641, 642-43, 645 (1991).
49. *Ibid.*, citing *Commonwealth v. Lavalley*, 410 Mass. 641, 646, n. 7 (1991).
50. Conversations between rape victims and rape crisis counselors may involve highly personal matters that, in the view of prosecutors, have no bearing on or relevance to the charges made against the accused. To defense attorneys, these same conversations may contain evidence that the victim consented to the alleged acts of the accused.
51. J. H. Wigmore, *Evidence in Trials at Common Law*, rev. ed. J. H. Chadbourne (Boston: Little, Brown, 1970) (originally published in 1904). Harvard Law Professor John Henry Wigmore's treatise on evidence, first published in 1904, remains a leading authority in the field.

-
52. OVC, "Privileged Communication Between Victim and Counselor: A Model Statute," *Response 9*, No. 3 (1986): 13.
 53. 42 PA. C.S.A. § 5945.1 (Purdon 1989).
 54. *Commonwealth of Pennsylvania v. Jerry Paul Wilson, Commonwealth v. Wayne O'Brien Aultman*, J-229-1990 (Supreme Court of Pennsylvania, Eastern-Western District). Defendants in both *Wilson* and *Aultman* had sought through *subpoenas duces tecum* to obtain victim records maintained by rape crisis centers.
 55. *Commonwealth v. Stockhammer*, 409 Mass. 867 (1991), 570 N.E.2d 992 (Mass. 1991).
 56. Massachusetts G.L. c.233, Sec. 20J.
 57. D.M. Kottmyer and M.F. Murphy, "Developments in Criminal Law: The Changing Face of Rape Prosecutions," *Boston Bar Journal*, 36 (May/June 1992): 31, 33.
 58. *Commonwealth v. Stockhammer*, 409 Mass. 867, 882 (1991).
 59. L. Copeland and L.R. Wolfe, "Violence Against Women as Bias Motivated Hate Crime: Defining the Issues" (Washington, D.C.: Center for Women Policy Studies, 1991), p. 8.
 60. California Department of Justice, 1986.
 61. Copeland and Wolfe, "Violence Against Women as Bias Motivated Hate Crime," p. 15. The eight States are California, Connecticut, Michigan, Minnesota, New Hampshire, North Dakota, Vermont, and West Virginia.
 62. The Campus Sexual Assault Victim's Bill of Rights Act, H.R. 2363.
 63. The Student Right-to-Know and Campus Security Act of 1990, Pub. L. 101-542, Title I, November 8, 1990, 104 Stat. 2381; Pub. L. 102-26 § 10(e), April 19, 1991, 105 Stat. 128.
 64. The Hate Crimes Statistics Act of 1990, P.L. 101-275.
 65. Copeland and Wolfe, "Violence Against Women as Bias Motivated Hate Crime," p. 12, citing U.S. Congress, 1990.
 66. Copeland and Wolfe, "Violence Against Women as Bias Motivated Hate Crime," p. 13.
 67. Victims of Crime Act of 1984, 42 U.S.C. § 10601.
 68. 42 U.S.C. § 10603(a)(2)(A); E. M. Schneider (Professor of Law, Brooklyn Law School), "Legal Reform Efforts To Assist Battered Women: Past, Present and Future," unpublished manuscript, July 1990, p. 18. OVC's proposed program guidelines require States to certify that at least 10 percent of the VOCA funds they receive are spent on such "priority" victims (*Federal Register* 58, No. 164 [August 26, 1993]: 45128).

Chapter 3

Law Enforcement Agencies

"A good detective soon realizes that the victim in a sexual assault case is by far the most important piece of evidence you have, and that if you trample on that evidence, it is much worse than trampling on a crime scene."

— Barry Burkhart, Professor of Psychology,
Auburn University

Overview

Recognizing that a victim of rape is their most valuable ally in investigating the crime and charging the offender, many law enforcement agencies have adapted their organizations and their methods to better assist rape victims. Some areas with a high sex crimes caseload have designated special sex crimes units. Special units can more effectively investigate the crime, but the difficulty of staffing them and the likelihood of professional burnout are factors to be considered.

More sensitive approaches to interviewing victims, more flexible criminal reporting procedures, and methods designed to preserve a victim's privacy are some new procedures that law enforcement agencies have adopted in order to address the underreporting of this crime. This chapter discusses these and other reforms designed to improve the police response to rape victims.

Organizational Changes

Specialized Sex Crimes Units

Law enforcement agencies may create specialized sex crimes units to enhance the agencies' efficiency or to send a message to the community that the department is deeply committed to solving sex crimes cases.¹ Some departments rotate staff through these units. Others enlist only investigators who apply for the unit. In smaller communities, where the number of sex crimes cases does not warrant a special unit, agencies

may bolster its response to sex crimes by developing the expertise of individual investigators.

All of the police departments visited for this study had special sex crimes units. Each department had developed its response to sexual assault individually, based on its experience in the community. While some sex crimes units focus exclusively on adults, the more common approach is similar to that of the Philadelphia Police Department, where the specialized Sex Crimes Unit investigates all sex crimes regardless of the victim's age.

Victim Assistance Officers and In-House Victim/Witness Advocates (VWA's)

Because rape victims require sensitive treatment by line officers and sex crimes investigators, many law enforcement agencies are experimenting with ways to improve investigator-victim relations. The Philadelphia Police Department's Sex Crimes Unit employs a victim assistance officer who reviews all reports, sorts out the felonies, and personally contacts each victim of a felony crime, usually by phone. The victim assistance officer refers the victim to the local rape crisis center, local counseling services, and the rape treatment program at the Medical College of Pennsylvania. Part of the victim assistance officer's role is to contact victims who have delayed reporting (and therefore may not have received medical or rape crisis treatment) and to provide community education programs in preventing rape.²

In 1978, the Seattle Police Department established a victim assistance section whose personnel work with the detective

agencies, usually 24 to 48 hours after a rape is reported. In-house victim assistance sections are valuable to a sex crimes unit because the work of the VWA's frees detectives to focus on the investigation. VWA's often attend the first interview between victim and detective to offer support and to orient the victim to the criminal justice process. When cases are sent to the prosecutor's office but are not charged immediately, the VWA can become the link between the prosecution and investigation phase. In many departments VWA's are responsible for keeping the victim apprised of delays and for assisting the victim until support from the prosecuting attorney's office or from a rape crisis center becomes available. A key component of the Seattle program is continuity. Seattle VWA's follow cases through the entire criminal justice process, so that victims do not have to switch to a new advocate midway through the case.³

Procedures for Working With Victims

A rape victim's contact with the criminal justice system begins when law enforcement officers respond to the report of rape. The investigating officer's priority is the victim's welfare; so she is sent to the nearest hospital emergency room (ER) for treatment.

At the ER, medical examination of the victim takes precedence over the officer's need to interview her. The investigator's first opportunity to question the victim about the rape and about the assailant often arises only after the medical examination, and possibly also after a rape crisis center volunteer or member of the hospital social work staff has spoken with the victim. Once the investigator has taken the victim's initial statement and notified the law enforcement agency's victim assistance unit (if one exists) or referred the victim to the local rape crisis center, the investigator interviews witnesses and works through normal investigative techniques to identify and apprehend the suspect.

Because victims may subsequently drop rape charges, many investigators follow up with a second interview the next day, to learn more about the circumstances of the rape and to reassure the victim of the department's commitment to her case. If the investigation uncovers enough evidence to prosecute a suspect, a report is forwarded to the prosecutor's office for further action.⁴

New methods for reporting rape and for guarding victims' privacy have been developed over the last decade in an attempt to increase victims' willingness to report the crime and to cooperate throughout the investigation.

Reporting

In deciding whether to report the assault a victim confronts the following options:

- To immediately file a report of the rape with law enforcement.
- To report the rape to hospital emergency room personnel (who may or may not be required by law to report the incident to law enforcement).
- To defer filing a report while further considering the issue.
- To tell a friend, relative, therapist, or rape crisis center counselor, requesting that the person not report the assault.
- To not report the crime to anyone.

Underreporting. According to some studies, rape may be vastly underreported.⁵ The Bureau of Justice Statistics found that about half of all rape victims report the rape to law enforcement officials.⁶ The National Women's Study reports that only 16 percent of victims report the crime.⁷ Victims of acquaintance rape are less likely to report to the police than victims of stranger rape.⁸ Acquaintance rape victims are more than three times as likely to construe the rape as a private matter and are more afraid of reprisal by the offender.⁹

What accounts for this underreporting? Some victims fail to label coerced sex as rape. Many victims are afraid of the stigma they may face as acknowledged rape victims; the National Women's Study found that more than two-thirds of victims fear they will be blamed for having invited the rape.¹⁰ A study by Holmstrom and Burgess cites three primary reasons that victims choose not to press charges: the ordeal of court, fear of the assailant's taking revenge, and fear of sending a person to jail.¹¹ On the other hand, the Bureau of Justice Statistics found that the two most common reasons female victims gave for wanting to press charges were to keep the incident from happening again and to punish the assailant. The presence of a weapon, or the infliction of serious injury, also increased the likelihood of a rape's being reported.¹²

False reporting. In 1991, the FBI reported that 8 percent of rape complaints were later deemed unfounded by reporting law enforcement agencies. However, Estrich argues that the number of unfounded cases should not be confused with the

incidence of false reporting. Cases are sometimes unfounded for reasons that have nothing to do with the merits of the complaint. Law enforcement officers may disbelieve the victim, or the initial report may be made to the wrong authority. In addition, criteria for unfounded cases vary from jurisdiction to jurisdiction, so national statistics may reflect inconsistent policies on filing charges rather than the actual incidence of false reporting.¹³

False accusations of rape do, of course, occur, and as with all false criminal reporting pose a problem for law enforcement agencies and prosecutors. If the victim is involved in drugs, prostitution, or other criminal activities, the police confront a more complex investigation. Unfaithful spouses may make a false report to avoid the discovery of their infidelity, or sexually active adolescents may report falsely to excuse their absence from home. (However, given the high incidence of acquaintance and marital rape, all reports of rape should be treated respectfully and evaluated for investigation with the same criteria.) In addition, extreme intoxication from drugs or alcohol may produce hallucinatory episodes, but these can usually be discerned by emergency room staff.

Delayed, Third-Party, and Informational Reporting. Some law enforcement agencies, such as the King County Police Department, offer the option of filing an incident report when and where the victim feels comfortable. This may mean allowing a victim to file a report several months after the rape has occurred. The King County Police Department also informally offers three levels of reporting. Third-party reports are made to the police by rape crisis centers and other agencies without identifying the victim, and the report does not become part of official law enforcement statistics. However, the report includes information identifying the suspect, his modus operandi, and the location of the assault, and law enforcement agencies can use these data in other investigations. A victim may directly file an information-only report with a law enforcement agency, indicating her wish not to pursue prosecution. Standard reports are those in which the victim wishes to pursue prosecution.

Interviewing

Victims are now interviewed at different stages and with new techniques. The following section covers various interviewing issues and stresses the importance of the officer's or investigator's developing a good rapport with the victim. The section draws on lessons learned during interviews with law enforcement professionals in the jurisdictions visited.

Initial interview. The initial interview and the offense report can be limited to establishing probable cause that a crime has been committed and determining what evidence is available to prove the offense. Keeping the initial interview short can help reduce the trauma the victim may experience immediately after the assault. In addition, if the victim is still in shock, she may be unable to recount events well.¹⁴

The King County Prosecuting Attorney's Office prepared a checklist for law enforcement officers as part of a training course in sexual assault cases. The checklist advises:

- Approach the victim in a gentle, supportive manner, bearing in mind the physical and psychological damage she has endured. Be patient and nonjudgmental.
- Assure the victim that she is safe now and that you are there to help her.
- Avoid any forceful or aggressive behavior [that] might be threatening to the victim.
- Minimize unwarranted attention and publicity. Protect the victim's anonymity.
- Protect the victim from unnecessary questioning by other police officers and afford her whatever privacy is available.
- Request that the victim . . . not wash or douche and explain the rationale for this instruction [it may destroy physical evidence].
- Avoid in-depth questioning of the victim unless you will be assigned to conduct the entire investigation. However, do obtain a physical description [of the suspect], clothing, . . . vehicle, if any, direction of flight, and type of weapon if suspect is armed.
- Transmit a radio alarm for the suspect based on this description.
- Include in the supplement to [the] initial report a specific description of the victim's physical and emotional condition [recorded nonjudgmentally and without editorial comment], any injuries, damage to clothing, and any information [that] will be of value in establishing proof of forcible compulsion.
- Accompany the victim to [a] hospital or personal doctor of her choice. Explain procedures in order to demystify the medical procedures and put her more at ease.

- If necessary, inform hospital emergency personnel or doctors of the importance of an internal and external examination and of what police evidentiary needs are: semen slide from site of penetration as proof of penetration, and documentation of any bruises or injuries and overall physical and emotional condition as proof of forcible compulsion.
- Insure that the victim is treated for possible pregnancy and venereal disease.
- If the victim has visible scars, marks, or bruises, take photos. If marks or bruises are in [the] genital area, have them taken by [a] nurse or female police officer.
- Obtain a rape kit from [the] doctor and deliver to [the] lab for analysis.
- Take the victim's garments and other stained or torn objects for [a] semen and blood analysis, and as proof of force and penetration. Make sure all garments worn during and after the assault are accounted for. If the assault occurred on a bed, take the bedclothes. Place garments and other items in clean paper sacks to avoid contamination during transport and storage.
- If [an] arrest is made soon after the crime, examine the defendant's clothing and underwear for rips, [and] blood or semen stains and note his general condition. Take pictures of him if possible.
- Carefully note any statements or admissions by [the] defendant.
- Advise the victim of available counseling groups and other victim services. Make sure a victim/witness advocate has been contacted.
- Remember that the actions of the first officer on the scene may have a vital impact on the future psychological well-being of the victim. Every effort should be made to relieve feelings of shame or guilt and to treat the victim with a sense of dignity and professionalism [that] will aid her on the road to recovery and . . . help her to regain her self-esteem.¹⁵

Special investigator interview. When a sex crimes unit investigator is assigned to the case, he or she travels to the ER to assess the victim's willingness to be interviewed. Sex crimes unit investigators interviewed for this report recommend giving the victim a chance to compose herself by waiting until the day after the rape to conduct an in-depth interview. The Seattle Police Department's Special Assault Unit has found that because of the initial trauma, the victim

recalls the attack more accurately when she is allowed to wait six or seven hours before talking to a detective.¹⁶

The investigator seeks to form an alliance with the victim by supporting her emotional response to the rape and by asking nonaccusatory questions that invite her spontaneous remarks. Appropriate interviewing techniques can defuse the victim's embarrassment and elicit more candid responses that can greatly assist the investigation. The investigator assesses the relationship between the victim and the offender prior to the assault, including when and whether the victim previously engaged in sexual intercourse with the assailant. The investigator can emphasize the importance of the victim's willingness to divulge a prior relationship by explaining that prosecution of the case becomes much more difficult if this information is not volunteered as early as possible. Sex crimes investigators are also trained to develop a chronological sequence of events. The following list of issues was prepared by an Arizona assistant attorney general who conducts training in adult sexual assault case preparation and trial techniques:

- Any prior relationship with the suspect.
- Any physical evidence, even when the victim thinks it unimportant.
- The names of any persons to whom the victim has reported.
- The names of any witnesses.
- What was on the victim's mind during the assault (this information may be important to a prosecutor seeking to explain to a jury the state of danger the victim believed herself to be in).
- Any contact the victim has had with the suspect or his friends since the incident.
- What the victim was wearing at the time of the attack (making sure the clothing is accounted for).
- What injuries were sustained, if any (have a female officer take photos of any injuries).
- Whether the victim has received medical attention and if so when and where.
- Furniture or objects at the crime scene the suspect touched (for the fingerprint technician).¹⁷

Investigating officers are also trained to address issues related to the standard rape defenses employed by the defense counsel. Concerning consent, for example, the inves-

tigating officer will ask what the attacker said or did to make the victim submit, whether the victim expressed nonconsent, and whether she resisted verbally or physically. Misidentification and incapacity are the other standard defenses raised by counsel for accused sex offenders, and so investigators can make inquiries that can be used to assess the victim's mental state as it pertains to identification and capacity. (See chapter 4 for a more detailed discussion of standard defenses.) If there appears to be any foundation for the question, the investigator will also inquire about drug and alcohol use that might have impaired a victim's capacity to consent.

Follow-up interview. The follow-up interview of a rape victim is unlike most other kinds of crime victim interviewing in that it usually takes place before charges are filed. The interview is usually taped or the investigator takes notes. He or she asks questions that will help detail the circumstances of the crime, identify or describe the assailant, and explore the element of nonconsent. Investigators can make every effort to keep their questioning nonjudgmental and to reassure the victim that the investigator believes her. A confidential setting away from the victim's home, such as an interview room in a police precinct, is considered by many the best place to conduct a follow-up interview.

If there is no prior or existing relationship between the victim and the assailant, the statement the investigator takes from the victim will suffice for charging the suspect. However, if there is a preexisting relationship between the parties, so that the identity of the offender is known, the prosecutor and investigator often conduct a joint interview with the victim. If the assailant is unknown to the victim, the investigator tries to develop a composite of the suspect, noting any difficulty the victim has in creating the composite.

Ensuring Privacy

According to the National Women's Study, which surveyed both rape victims and victim assistance centers, most of the issues that concern victims reflect the shame, blame, and stigma they face. Almost three-quarters of the victims surveyed worried that their families would discover the rape, feared discovery by people outside their families, or were concerned that people would blame them for the rape. Half of the victims surveyed feared their names would be publicized by the news media.¹⁸

Victims have a right to confidentiality with respect to both their identity and the information they provide the investigator.¹⁹ At the beginning of the interview, the officer or investigator can check to see if the victim would feel more

comfortable with another woman present and can then request a social worker, victim advocate, nurse, female police officer, or other female professional to join the interview. A female relative may be less valuable in this role, because the victim may be less willing to speak freely.²⁰ This may be particularly so if the accused is a family member.

Some law enforcement agencies, such as the St. Paul Police Department, employ a "blackout policy" in rape cases. This allows the police to obscure the name and address of the victim on any reports available to the public to prevent disclosure of her identity and to prevent unwelcome press attention.

Training

To ensure that police officers treat rape victims sensitively, many law enforcement agencies are strengthening their in-house training and sending officers to specialized training. Basic academy training is incorporating training that teaches sensitivity toward crime victims, including victims of rape. Steps that selected departments have taken to address these issues are described below.

Academy Training

Most uniformed officers are given the same basic training. On the assumption that all uniformed officers will encounter the crime of rape, a study sponsored by the National Institute of Justice recommended more than a decade ago that basic training teach the legal requirements for obtaining evidence, aiding the victim (particularly in getting medical attention), and what is needed for the initial report.²¹

In the King County and Seattle Police Departments, recruits attend the State's police academy for three hours of training on how to respond to rape victims. The Seattle Police Department's Special Assault Unit prepared a video for the course in which a male police officer plays the role of a rape victim, who goes through the initial processing by police. This unique approach is reported to be extremely effective. Recruits can readily relate to the victim in the scenario, and the experience helps them when they must attend to actual victims.

In-House Training

In-house training for investigators of adult sex crimes may cover the following topics:

- Physical evidence unique to rape cases.

- Techniques for interviewing rape victims.
- The jurisdiction's sexual offense statutes.
- The victim's emotional needs.
- Techniques for interviewing suspects.
- Coordination with rape crisis centers and medical personnel.²²

In the Seattle Police Department Special Assault Unit, new detectives are assigned to work with experienced detectives, who act as mentors by training them in the field, particularly in the area of interviewing victims. Detectives new to the unit merely observe during their first two weeks. They read case files to learn the structure and format of investigations, then they observe joint interviews of the victim conducted by more experienced investigators and prosecutors.

A field training detective in Seattle's Special Assault Unit works for two to three months with investigators new to the unit, even if they have extensive investigative experience in equivalent units or other types of cases. Leaders in the King County Police Department's Special Assault Unit believe that new detectives require about six months of on-the-job training. Many departments also try to set aside one day a month for in-service training. In King County, this training is usually cross-disciplinary, with speakers from outside agencies addressing issues of concern to investigators.

Investigator training in the Philadelphia Police Department's Sex Crimes Unit incorporates presentations by all the other institutions that work on behalf of rape victims: the local rape crisis center, the hospital designated to treat all rape victims in the jurisdiction, and the local district attorney's office. These presentations, which supplement the training in investigation skills, allow investigators to learn firsthand the needs and contributions of each component of the criminal justice and victim assistance communities.

Investigators from a local agency's sex crimes unit may also provide ongoing training for uniformed officers by speaking at roll calls to explain the unit's role in the department, to stress the importance of doing an appropriate initial investigation, and to provide tips on how to investigate sex crimes and how to treat victims.²³

Specialized Training

The FBI's National Center for the Analysis of Violent Crime (NCAVC) and the FBI National Academy are useful training resources for law enforcement professionals involved in the investigation of sex crimes. NCAVC is a behavioral science

and data processing center that is oriented toward law enforcement. NCAVC offers research, training, and support functions for investigations and operations so that law enforcement agencies confronted with unusual, bizarre, and/or repetitive violent crime(s) can obtain expertise. The FBI National Academy, affiliated with the University of Virginia, offers undergraduate courses on interpersonal violence and community policing, the latter including instruction in sexual assault awareness.²⁴ The FBI National Academy's course in interpersonal violence is designed to familiarize the student with criminal sexual deviancy and the behavior patterns of offenders. Typologies of rapists, sexual sadists, and murderers are discussed in detail. The National Academy and NCAVC periodically offer seminars and conferences on topics of interest to sex crimes investigators. NCAVC has also published *Deviant and Criminal Sexuality*,²⁵ a compilation of articles written by members of its faculty. The book's first section contains an article describing the role of sex crimes investigators and the effect on them of dealing with such offenses.²⁶ The book's fifth section contains 10 articles discussing various aspects of rape: police attitudes, the serial rapist, predicting rapists by type and extent of violence, false allegations, providing advice to potential victims, and interviewing victims in order to profile the offender.²⁷ (See appendix F for information on contacting NCAVC and the FBI National Academy.)

Other sources of information on specialized training are State or regional associations such as the California Sexual Assault Investigator's Association and the Minnesota Sex Crimes Investigators Association. At the local level the FBI also conducts a significant amount of training in the investigation of interpersonal violence, including criminal sexuality. Interested law enforcement professionals can contact the training coordinator for the FBI office in their area.

Some sex crimes investigators receive training in interview and interrogation techniques from the Child Abuse and Exploitation Investigation Training Program of the Federal Law Enforcement Training Center (FLETC). Because of the similarity in the issues and laws concerning child sexual abuse and adult sexual assault, law enforcement officers and lieutenants interviewed for this report stressed the merit of programs such as the FLETC training (see appendix F for contact information).

Recruitment

Recruiters for sex crimes units report looking for well-developed interpersonal skills: good interviewing skills and sensitivity toward victims and witnesses, displayed in the

hiring interviews and in the manner in which the officer deals with his or her co-workers.²⁸ Sex crimes investigators must be sensitive to victims and at the same time be effective at getting the information they require from victims, witnesses, and suspects.²⁹ Recruiters also look for investigators who can develop a strong rapport with the victim by offering her some feeling of protection and by helping her feel comfortable enough to relate the assault in detail. Other important skills include the abilities to process crime scenes and to handle suspects in a productive manner. Sex crimes investigators should also be well acquainted with recent research on offender typologies, underlying motivations for the various types of sexual offenses encountered, and the short- and long-term emotional impact of sexual crimes on victims. Finally, recruiters often seek out officers who are motivated to work specifically in a sex crimes unit. Some law enforcement professionals are drawn to this type of work because they were victims of childhood sexual abuse or sexual assault. Such persons are sometimes automatically excluded from investigating sexual crimes, but a careful evaluation can ensure that they function as objective fact-finders.³⁰

Some special assault or sex crimes units can use their status within the department to recruit high-caliber investigators. The Special Assault Unit of the King County Police Department is recognized as a pathway to the Homicide Unit, the department's most sought-after assignment. Investigators in sex crimes units receive excellent experience in investigation, including interrogation, obtaining and serving search warrants, conducting lineups, and collecting and processing many types of evidence.

The gender distribution of a sex crimes unit may depend on historical factors as well as on investigator preference for particular kinds of cases or personal motivation. In St. Paul, for example, the absence of female investigators in the Sex and Domestic Crimes Unit is directly related to the fact that prospective staff must have achieved the rank of sergeant before being considered for the specialized unit, and very few female officers have achieved that status. Because relatively few women hold the rank of detective or sergeant, some departments have revised their rules in order to recruit female officers. When Philadelphia's police department first established its Sex Crimes Unit, it had only a few female detectives. The department decided to staff the unit with officers, rather than with detectives or sergeants, so that highly motivated female officers would be eligible for service in the unit.

Many factors enter into determining the number of years an officer should serve in a specialized sex crimes investigation

unit. Staff burnout, caseloads, complexity of the cases, case types, professional development, and the preferences and professional capabilities of staff may be considered. Career-development policies that move investigators in and out of specialized units usually have a two-year tenure for each specialized unit, including the sex crimes unit. Entry-level investigators are often motivated to sign on with a sex crimes unit because they view it as a positive career move. Nevertheless, some investigators seek transfers before their tenure is completed because of the emotional demands of the work.³¹

Interviews with law enforcement professionals in the jurisdictions visited and elsewhere generated several recommendations. It is important that staff recruiting be handled by the supervisor with the best sense of the right temperament for the job. Allowing supervisors of sex crimes units to select staff may reduce burnout rates.³² However, every unit has devised strategies for preventing burnout. Many sex crimes units assign each investigator to a wide variety of cases. Other law enforcement agencies rotate staff in and out of specialized units. A potential drawback of this approach is that some officers recruited in this manner may be less motivated than those who have volunteered for such service. Investigators who feel supported by their supervisors may exhibit low rates of burnout. In addition, investigators in units with highly regarded supervisors are thought to work more cooperatively and to be more likely to help each other solve problems. Cooperating on disturbing cases may make investigators feel less isolated. Effective training can include teaching personnel to recognize the early warning signs of professional burnout. Allowing for confidential staff-counseling services seems to help reduce staff burnout as well.³³

Table 3.1 summarizes the characteristics of the law enforcement agencies visited for this report.

Endnotes

1. Law enforcement agencies do not appear to rely on objective guidelines for the formation of specialized units. Instead, they tend to establish specialized units when that organizational structure best suits their needs.
2. Interview with Officer Veronica Sypherd, Philadelphia Police Department, Sex Crimes Unit, Philadelphia, Pennsylvania, March 23, 1992.
3. Correspondence from Cathy Wenderoth, Supervisor, Victim Assistance Section, Crime Prevention Division, Seattle Police Department, Washington, April 14, 1993.

Table 3.1
Characteristics of Law Enforcement Agencies by Site

	Second Judicial District of Colorado (Denver)	King County (Seattle)	Philadelphia	Ramsey County (St. Paul)
Department	Denver Police Department	Seattle Police Department; King County Police Department	Philadelphia Police Department	St. Paul Police Department
Specialized Unit	Sex Crimes Unit	Special Assault Unit	Sex Crimes Unit	Sex and Domestic Crimes Unit
Staffing/Rank	Not available	Seattle: 1 lieutenant 2 sergeants 14 Detectives King County: 2 sergeants 16 detectives	1 lieutenant 4 sergeants 3 corporals 41 officers	1 lieutenant 8 investigators
Training	In-house and at police academy	In-service, private, State, cross-disciplinary training	In-service, supplemented by guest presentations	In-service, private
In-house VWA's	None	Yes	Victim service officer	None
Stage at Which Specialized Unit Gets Involved	At crime scene	Supervises line officer at scene	Investigators process crime scenes themselves	As soon as possible

4. While the decision whether to prosecute a rape remains with the prosecutor's office, the police also exercise a certain degree of control over such cases, since they control the initial investigation of any alleged crime.
5. Rape crisis counselors and others believe that men report sexual victimization even less often than women (Sue Rochman, "Silent Victims: Bringing Male Rape Out of the Closet," *The Advocate* 582 [July 30, 1991]: 38-43). One victim service agency (Pierce County Rape Relief of Tacoma, Washington) estimated that as many as 90 percent of male victims may not report to criminal justice agencies.
6. Bureau of Justice Statistics, *Criminal Victimization in the United States, 1991* (Washington, D.C.: U.S. Department of Justice, 1992), No. NCJ-139563, p. 102, table 101. According to the National Crime Victimization Survey, about 60 percent of victims reported to the police.
7. National Victim Center and Crime Victims Research and Treatment Center, *Rape in America* (Fort Worth, Tex.: National Victim Center, 1992), p. 6.
8. Bureau of Justice Statistics, *Female Victims of Violent Crime* (Washington, D.C.: Department of Justice, 1991), No. NCJ-126826, p. 9, table 18. Forty-seven percent of acquaintance rape victims, as opposed to 57 percent of stranger rape victims, report the assault to police.
9. C. A. Skelton and B. R. Burkhardt, "Sexual Assault: Determinants of Victim Disclosure," *Criminal Justice and Behavior* 7 (1980): 229-236; Bureau of Justice

- Statistics, *The Crime of Rape* (Washington, D.C.: Government Printing Office, March 1985).
10. National Victim Center, *Rape in America*, Figure 6.
 11. L. L. Holmstrom and A. W. Burgess, *The Victim of Rape* (New Brunswick, N.J.: Transaction Publishers, 1991), p. 58.
 12. Bureau of Justice Statistics, *Female Victims of Crime*, tables 18 and 20.
 13. S. Estrich, *Real Rape* (Cambridge, Mass.: Harvard University Press, 1987), pp. 15-16.
 14. "The Investigation of Rape," *Training Bulletin*, No. 89-7 (Seattle, Wash.: Seattle Police Department Sexual Assault Unit, June 1989), p. 3.
 15. David R. Ramage-White, "Adult Sexual Assault Preparation and Trial Techniques," Presented at King County Prosecuting Attorney's conference on sex crimes prosecution, Seattle, Washington, August 23-26, 1987.
 16. Interview with Sergeant Ted Jacoby, Seattle Police Department Special Assault Unit, Washington, February 21, 1992.
 17. Ibid.
 18. National Victim Center, *Rape in America*, p. 5.
 19. K. V. Lanning and R. R. Hazelwood, "The Maligned Investigator of Criminal Sexuality," *Law Enforcement Bulletin* (Washington, D.C.: Federal Bureau of Investigation, September 1988), p. 3.
 20. Seattle Police Department Sexual Assault Unit, "The Investigation of Rape," p. 3.
 21. Deborah Carrow, *Rape: Guidelines for a Community Response* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1980), p. 82, No. NCJ-066818, available from NCJRS, telephone number 1-800-851-3420.
 22. Ibid.
 23. Interview with Lieutenant Richard Gardell, St. Paul Police Department Sex Crimes Unit, Minnesota, February 18, 1992. Conducting outreach through roll calls can also serve as good departmental public relations for a specialized unit.
 24. FBI National Academy, *Community Policing Issues: Strategies and Programs*, Course Number CJ 387; *Interpersonal Violence*, Course Number CJ 465 (Quantico, Va.: FBI National Academy, 171st session, September 27-December 11, 1992).
 25. National Center for the Analysis of Violent Crime, *Deviant and Criminal Sexuality* (Quantico, Va.: FBI National Academy, 1991).
 26. Lanning and Hazelwood, "The Maligned Investigator of Criminal Sexuality."
 27. In preparing a rapist profile, three basic steps are essential: a careful interview of the victim regarding the rapist's behavior, analysis of that behavior in order to ascertain the motivation underlying the assault, and compilation of the characteristics of the individual likely to have committed the crime in the manner reported and having the assumed motivation, (see R. R. Hazelwood, "The Behavior-Oriented Interview of Rape Victims: The Key to Profiling," *Law Enforcement Bulletin* [Washington, D.C.: Federal Bureau of Investigation, September 1983]). Other sections of the compilation are less relevant to the subject of this report.
 28. Interview with Sergeant Ted Jacoby; interview with Lieutenant William Broadbent, Philadelphia Police Department Sex Crimes Unit, Pennsylvania, March 23, 1992; interview with Lieutenant Richard Gardell, St. Paul Police Department Sex Crimes Unit, Minnesota, February 18, 1992.
 29. Interview with Lieutenant Richard Gardell, St. Paul Police Department Sex Crimes Unit, Minnesota, February 18, 1992.
 30. Lanning and Hazelwood, "The Maligned Investigator of Criminal Sexuality," p. 4.
 31. Interview with Sergeant Dwight Chamberlain, King County Police Department Special Assault Unit, Seattle, Washington, February 20, 1992.
 32. Interview with Sergeant Ted Jacoby, Seattle Police Department Special Assault Unit, Washington, February 21, 1992.
 33. Also see R. M. Ayres and G. S. Flanagan, *Preventing Law Enforcement Stress: The Organization's Role* (Washington, D.C.: Bureau of Justice Assistance, 1990), available from NCJRS, telephone no. 1-800-851-3420.

Chapter 4

Prosecutors' Offices

"... the crime of rape results in the most violent and intimate violation of its victim or survivor—physically, emotionally and psychologically. It is an offense which radically alters the life of its victim, both in the trauma experienced during the occurrence of the crime as well as in the lengthy recovery process which inevitably follows."

—Linda Fairstein, Chief, Sex Crimes Prosecution Unit,
New York County District Attorney's Office.¹

Overview

Although individual adaptations vary, each of the four prosecutors' offices visited for this report has adopted some form of organizational specialization, made use of in-house victim/witness advocates, and devised new procedures in an attempt to prosecute rape cases more successfully. Their increased sensitivity to victim concerns has led prosecutors' offices to interact with victims as early as possible after the crime has occurred, to seek no-contact orders when warranted, to rethink criteria for filing decisions, and to make fewer and less generous plea offers to accused sex offenders. Their intensified concern about a victim's apprehensiveness during the trial has made prosecutors' offices more alert to defense strategies aimed at undermining the victim. It has also helped them overcome attitudinal obstacles to prosecution on the part of jurors, judges, and victims and to more effectively preserve and use evidence. This chapter reviews these and other important changes in prosecutorial practice.

Organizational Changes

Creating a specialized unit to handle sex crimes cases and employing victim/witness advocates are organizational changes that can be implemented at little or no cost, whether the office is small or large, rural or urban. Examples are taken from the several prosecutors' offices visited for this report.

Specialized Units

Some of the benefits of creating specialized units to handle sex crimes include:

- Enhanced prosecutorial expertise in rape prosecution.
- Increased familiarity with the law of rape.
- Closer coordination between prosecutors, law enforcement agencies, rape crisis centers, and hospitals.

The specialized units created by the offices visited for this report range from a crimes against persons unit to a domestic violence unit, a rape prosecution unit, and a special assault unit. While some county prosecutors' offices have original jurisdiction over misdemeanors, including gross misdemeanor sex crimes (generally crimes involving nonconsensual sexual contact but not sexual penetration), elsewhere city attorneys' offices have original jurisdiction over misdemeanor sex crimes.²

The Crimes Against Persons Division of the Ramsey County Attorney's Office (St. Paul) handles all prosecutions of felony sex crimes involving adult victims, as well as domestic assault and terroristic threats. Another specialized unit, a child abuse prosecution unit, pursues felony sex crimes involving child victims.

The Domestic Violence Unit of the Second Judicial District Attorney's Office (Denver) handles incest, child sexual assault, child abuse, and domestic violence, including sexual assault. The Domestic Violence Unit defines domestic violence as violence between two people who have a prior sexual relationship (defined as having had sexual relations at least once). It employs four attorneys, two VWA's, two criminal investigators, and one paralegal.³

The Philadelphia District Attorney's Office has a Rape Prosecution Unit that is charged with prosecuting all felony sex offenses. Specialized units of this type exist only in large urban jurisdictions with high rape caseloads. Employing a staff of only six attorneys, the Philadelphia Rape Prosecution Unit closely coordinates its efforts with the Philadelphia Police Department's Sex Crimes Unit and with Women Organized Against Rape (WOAR), a local rape crisis center that accompanies rape victims to court. The unit prosecutes sex crimes against both adults and children.

Two of the special units reviewed for this report follow vertical prosecution practices. A single deputy prosecutor assigned to all aspects of the case, from filing charges through final adjudication, increases the efficiency of the prosecution by avoiding duplication. Victims benefit because they are not asked to narrate the events of the crime repeatedly, and this in turn increases the offices' sensitivity to victim concerns.

In-House Victim/Witness Advocates

Several prosecutors' offices have found victim/witness advocacy programs cost-effective since VWA's serve the prosecutor as well as the victim. VWA's reduce complainant attrition and encourage deputy prosecutors to meet with victims prior to the preliminary hearing and to form strong alliances with victims. They also remind deputy prosecutors who display attitudes implying victim culpability that if they lose the complainant they lose the prosecution. VWA's:

- Explain the criminal justice system to the victim.
- Help the victim anticipate and prepare for court.
- Notify the victim of court appearances.
- Accompany the victim during court appearances.
- Refer the victim to other social services.⁴

According to a Ramsey County VWA,

It's a balancing act—50 percent advocate and 50 percent assistance for the prosecution. Both the

VWA and the prosecutor have conviction as the goal, but the VWA's role is also to help the victim figure out what she wants . . . and then advocate with the prosecutor on the victim's behalf for a resolution consistent with the victim's best interest.⁵

VWA's are often notified of a rape case by the law enforcement officer who receives the report, or at least before the case is charged. By the defendant's second court appearance, the VWA has contacted the complainant and acted as a liaison between the complainant and the prosecutor handling arraignment. VWA's may often encourage the victim to attend the defendant's sentencing and to submit a victim impact statement, both of which can be important parts of the healing process for her.⁶

Because of the complexity involved in determining which of a complainant's comments to a VWA are privileged communications and which are protected as work product, many VWA's no longer take notes or maintain files on complainants. Instead, every time a victim calls a VWA with a specific question, the VWA notifies the deputy prosecutor without writing down the question. The deputy district attorney can then judge whether the communication is discoverable. Unless State law provides otherwise concerning the confidentiality of a victim's statements to a VWA, the advocates explain to the victim that whatever she may say to the VWA may be discoverable by the defense.

Although some VWA's believe that placing these programs in county prosecutors' offices creates an inherent conflict of interest, the VWA's interviewed for this study report that their organizational affiliation allows them to more easily provide victims with the ample resources of the prosecutor's office. At the same time, in-house VWA's facilitate unparalleled access to the victims for deputy prosecutors.

Staffing of VWA programs varies with the volume and types of cases handled. In the Ramsey County Attorney's Office, where VWA's have been employed since 1985, the program is staffed by five VWA's and a secretary. Denver employs two VWA's, while Philadelphia uses staff from a local rape crisis center. VWA's in the King County Prosecuting Attorney's Office are not unit specific, working on Special Assault Unit cases as well as on cases for other units in the office.

Some of the VWA programs created during the 1980's and early 1990's have become part of the civil service system, but some observers fear that the civil service examination does not always accurately measure the important skills VWA's

must have, such as strong interpersonal skills, an ability to empathize with crime victims, and objectivity. Special language skills or outreach abilities are also valuable. Some VWA's themselves have been victims of violent crimes, including rape.⁷

Training of VWA's usually occurs on the job. At a minimum, it includes basic information on how the criminal justice system operates and on the limits advocates must observe so as not to jeopardize the prosecution.

Victim Compensation Programs

Though now often mandated by State legislatures, victim compensation programs were not always a part of the landscape. These programs are the hard-earned result of persuasive lobbying by the movement for victims' rights and services. Because of these efforts, many prosecutors have established formal mechanisms for notifying crime victims and for processing requests for funds. Such programs are not equipped to provide the kinds of direct services offered by in-house victim/witness assistance programs (see chapter 3) and rape crisis centers (see chapter 5). Instead, most of the work of victims' assistance programs, such as the Crime Victim Compensation Fund housed in the Denver District Attorney's Office, is conducted by writing letters to crime victims explaining their right to receive victims' compensation and listing the types of services the fund will pay for. The Denver fund is supported by offender fees and fees for traffic violations. Most of this money pays for mental health services. Rape cases often involve secondary victims, such as parents, siblings, spouses, and lovers, and the fund may cover treatment services that they require as a result of the rape.⁸

Approaches to Pretrial Procedure

The prosecutor's office assigns a deputy to each rape case, and the deputy meets with the victim as early as possible to discover potential problems with the case, to determine whether a higher level of offense may be charged, and, if the parties had an ongoing relationship, whether there was prior abuse. The head of the sex crimes unit or, if there is no special unit, the senior deputy screens all case files. Screening the case helps ensure that evidence is not lost or destroyed and may involve the following steps:

- Ordering the 911 tape.
- Contacting witnesses not yet interviewed.

- Obtaining statements from the first person or persons with whom the victim spoke regarding the assault.
- Interviewing the person who transported the victim to the hospital.
- Interviewing the defendant's witnesses.
- Reviewing the suspect's version of the facts with the victim.
- Having evidence of physical trauma photographed.
- Collecting evidence of emotional trauma suffered by the victim (such as excited utterances, a doctor's report or diagnosis, or a uniformed officer's report or statement).⁹

Filing Decisions

The prosecutor's office then decides whether to charge the case by considering the following significant factors:

- The strengths and weaknesses of the case, including the victim's ability to proceed, the credibility of the victim and the defendant, and any corroboration.
- The investigator's assessment of the case.
- Whether the facts present all of the elements of a legally defined rape.
- Whether the relationship between the parties has an impact on the case.
- Whether there is a reasonable likelihood that the case will persuade a jury of the defendant's guilt.¹⁰

Until the late 1970's, prosecutors in certain jurisdictions believed that certain kinds of cases were appropriate for prosecution and that others, usually involving preexisting relationships, were not.¹¹ The chief of the New York County District Attorney's Sex Crimes Prosecution Unit argues that this criterion is inappropriate:

Among our lessons have been the fact that although there are two broad distinctions in kinds of offenses—those which involve assaults by individuals *not* known to the victim, and those by acquaintances—once the *legal* elements of the crime are committed by the assailant—once he has subjected his victim to sexual intercourse by forcible compulsion we can *not* accord the victim of one incident any less respect as a witness than we would another.¹²

Prosecutors interviewed for this report now focus instead on whether drugs, alcohol, or life-style issues are involved and how their involvement will affect the jury. Prosecutors and law enforcement officers cite the high incidence of alcohol and drug use by victims. While alcohol use by a complainant does not pose as difficult a problem for prosecutors as the use of illicit drugs, juries may apply a double standard, condoning the defendant's use of either substance but frowning on the complainant's use.¹³ Finding jurors who can consider the evidence objectively, in spite of disapproving of the complainant's life-style, may also pose a challenge for prosecutors.

Filing decisions are difficult in adult cases involving consent defenses. Often the charging deputy is faced with two versions of the same event, both of which are equally plausible on their face. Filing a rape charge against a suspect is a weighty action under any circumstance, because the stigma of the accusation alone has a devastating impact on the defendant's life. Yet, by declining to file charges, the prosecutor can similarly devastate the victim. The prosecutors' offices visited for this study file charges for which there is a reasonable chance of conviction, filing lesser charges only in cases in which the likelihood of conviction for a greater offense is slight.¹⁴

The deputy prosecutor assigned to a case may feel an obligation to go forward with the case even when the victim is reluctant to testify. In one domestic violence case, attorneys in the Crimes Against Persons Division in the Ramsey County Prosecutor's Office pursued the case because they were convinced that the woman, who had failed to follow through with prosecution on 11 prior occasions, would otherwise be killed by her assailant.

Responsibility for the charging decision is handled differently by various offices. In some, individual prosecutors make charging decisions with or without recommendations from a supervising deputy prosecutor. Elsewhere, a charging deputy makes the decision, and the case file reaches the line prosecutor with the charging decision already made. Some offices have the file reviewed by a second attorney with expertise in sex crimes cases. Regardless of who makes the decision, the prosecuting attorney has the crucial responsibility of drafting the charging document.¹⁵

After considering the law enforcement agency's recommendation and findings, and perhaps conducting further investigation on its own, the prosecutor's office decides whether to file the case. The prosecutor's office may also decide whether to make a plea offer. State sentencing guidelines, and an office's caseload and backlog in the courts, may influence the nature and extent of plea bargaining an office conducts.

Forming an Alliance With the Victim

Recognizing the importance of the victim's cooperation in successfully prosecuting rape cases, many prosecutors' offices have modified some of these standard procedures to better address victim concerns. Many prosecutors' offices are trying to ensure positive interactions with victims by:

- Meeting with the victim early on in order to establish rapport.
- Maintaining regular phone contact throughout the trial preparation phase in order to reduce the incidence of problems and attrition.
- Holding a joint interview, with law enforcement and a deputy prosecutor interviewing the victim together shortly after the rape, in order to spare the victim from having to repeat her story unnecessarily.
- Spending more time with the victim, so that she will come to trust the prosecutor and reveal subtleties about the case that will improve its presentation to a jury.

No-Contact Orders

If a no-contact order is warranted, most prosecutors now seek it as early as possible, usually in addition to bail.¹⁶ Since bail is set according to the severity of the crime, the accused's criminal history, and the likelihood that he will make court appearances, many defendants will make bail. An unemployed defendant with a long history of bench warrants is a likely candidate for high bail, but employed defendants who have no criminal record or record of nonappearances, and may be quite dangerous to the victim, often pay the set amount. If the defendant makes bail, he usually does so during the first two weeks after being charged. For this reason, prosecutors now try to guarantee protection to victims early.

Preliminary Hearings

At the preliminary hearing, the prosecutor is required to show only that there is sufficient evidence to try the defendant on the charges. Preliminary hearings are used by the court to determine whether evidence (including confessions) seized by law enforcement is legally admissible. During this stage of the criminal trial process, the court may also consider motions by the defense and prosecution concerning discovery.

In jurisdictions in which cross-examination is not permitted, the preliminary hearing may be less adversarial than later

stages of the trial process. Prosecutors can observe the complainant testifying under relatively nonconfrontational circumstances, and the complainant gains a sense of what testifying at trial would be like.¹⁷ All of the mock preparation a complainant may undergo with the deputy cannot substitute for taking the stand in a public courtroom at the preliminary hearing. According to the chief of the Rape Prosecution Unit of the Philadelphia District Attorney's Office, rape victims are terrified about going into the preliminary hearing, but the experience makes them more confident at trial. Moreover, she explains, "We give as little information to the defense as possible on the direct examination. You do give the defense more by calling the victim on prelim, but if the defense sees a strong victim at the preliminary hearing, they may opt for a plea."¹⁸

Prosecutors also find it good strategy to be proactive about revealing any aspects of the State's case that a judge or jury may perceive as negative (for example, the victim was a prostitute or was intoxicated at the time of the rape). The preliminary hearing offers the prosecutor a good opportunity to test the judge's attitudes about such issues.

Plea Offers

Prosecutors interviewed for this report suggest that in an initial meeting with a complainant the screening attorney should inquire whether she wishes to press charges. In some cases prosecutors may refuse plea bargaining when victims indicate from the outset that they would not be satisfied with that result. Other cases may be negotiated or taken to trial over a victim's objections. In the view of prosecutors, in all criminal cases the decision whether to prosecute ultimately rests with the prosecutor alone, based on a professional assessment of the quality of the evidence and the prosecutor's duty to protect the public.¹⁹ Plea agreements help victims by expediting processing, especially if the defendant is particularly remorseful and willing to accept a plea offer mutually satisfactory to the prosecution and the defense.

Plea negotiations may present the parties with an opportunity to craft a suitable alternative to incarceration. A Ramsey County Attorney's Office VWA interviewed for this report commented on a case in which the Crimes Against Persons Division worked closely with the victim, ultimately offering the defendant local jail time in lieu of prison and a probationary period of 15 to 20 years with a no-contact order.

The no-contact order protects the victim from contact with this person for that many years. Meanwhile her kids can grow up and she can kind of get her life back together, versus three years in the

slammer, then the guy walks and she's left with a five-year-old and an eight-year-old and worrying about this guy coming over.²⁰

Persons interviewed during this study report that in certain situations (for example, domestic violence cases), a negotiated settlement at any juncture in the process may be very beneficial to the victim. With trusted access to both the victim and the prosecutor, VWA's can be major facilitators in plea negotiations by communicating a victim's wishes to the prosecutor.

Deputies who make plea offers commonly become less generous as the prosecution progresses. Sometimes defendants to whom a plea offer is made will not plead until the day of the trial, waiting to see whether the victim shows up ready to testify. In particularly egregious cases, a charging deputy may not even consider making a plea offer.

Trial Strategies

Prosecutors' offices are devising new strategies to deal with the major issues they confront during rape trials. These include defense strategies; attitudinal obstacles in the victim, jurors, and judges; and evidentiary issues (including the use of expert witnesses).

Defense Strategies

In most rape cases, defense attorneys have only three possible defenses: consent, identification, and denying that the crime occurred. In the consent defense, the attorney acknowledges that the defendant engaged in sexual relations with the complainant but argues that the complainant consented. In the identification defense, the attorney neither denies nor acknowledges that rape occurred but claims that the accused was not the attacker. In the third defense, the attorney argues either that the alleged acts do not constitute rape or that no such acts occurred. A fourth defense, infrequently employed, is that the defendant lacked the physical or mental capacity to engage in the acts alleged.

As with most crimes, it is not uncommon for the defendant initially to deny that the offense occurred and then to change to one of the other defenses upon discovering that the prosecution has a strong case. Some attorneys employ the novel defense that a VWA they identify in the courtroom coerced or persuaded the victim to allege rape.²¹

Prosecutors in the visited jurisdictions are learning to discredit the defense's case by better marshaling the physical

evidence. A well-conducted rape exam, for example, may demonstrate trauma to the victim not normally associated with consensual sexual intercourse. Likewise, depriving the defense of the opportunity to question a lab test's reliability or the integrity of a police department's evidence-collection procedures benefits the prosecution. Prosecutors interviewed for this report confirm that close coordination between the prosecutor's office, law enforcement, hospitals, and rape crisis centers can help ensure that evidence is collected, preserved, and tested properly.

Defense attorneys often request continuances (postponement of a scheduled trial or hearing), knowing that the delay can be emotionally difficult for rape complainants and that an aging case increases the prosecutor's difficulty. While entirely legal, prosecutors and victim advocates alike assail the use of dilatory trial tactics by the defense. The chief of Philadelphia's Rape Prosecution Unit notes:

Delays in proceeding to trial are usually due to the defense or to a clogged court calendar. If the defendant is in custody, speedy trial rules apply, but it is common knowledge that victims tend to disappear in rape cases. It works to the defense's advantage to delay.²²

Articulating the sentiments of the other judges interviewed for this report, a judge on the Court of Common Pleas in Philadelphia asserts that attorneys should be prepared when cases are called, and that witnesses should not have to be called unnecessarily.

Continuances are either the result of a sloppy courtroom or a disorganized lawyer. There's no excuse for it. Judges must approve continuances, and, as with all judicial decisions, approval should be based on the merits, not just rubber-stamped.²³

Some defense attorneys also judge-shop: they use continuances and other dilatory trial tactics until a judge whom the attorney prefers becomes available to try the case. By calling the use of these tactics to the attention of busy judges, prosecutors may be able to limit somewhat the number of continuances and the practice of judge-shopping. Although much of the problem is due to crowded court dockets, prosecutors who are able to impress upon the court the desire of a victim to go forward on the date scheduled may achieve some success in keeping a rape case on the calendar.

On cross-examination, some defense lawyers affect a sympathetic stance, hoping to induce the complainant to impeach herself on the witness stand. Others attempt to pierce the State's rape shield law (which protects the victim's sexual

history) by demanding production of records and asking questions about the victim's sexual and psychological history. Such efforts are aimed at changing jurors' perceptions of the complainant by playing on a jury's distaste for a victim's life-style. If a prosecutor fails to object, defense attorneys may use cross-examination to learn privileged information from a victim to which they have no right. Nonetheless, in most courtrooms, the judge will not allow the defense to inquire into the complainant's mental health history unless the attorney has some *prima facie* factual basis for believing that the victim's credibility might be seriously impaired by mental illness or by prior evidence of fabrication of an accusation of rape. Responding to the high number of defense requests for such information, the Pennsylvania Supreme Court has ruled that psychological records, including communications between victims and rape crisis counselors, are absolutely privileged communications.²⁴ (See chapter 2 for a discussion of statutes that grant confidential privilege to communications between rape crisis counselors and victims.)

In Minnesota and elsewhere such records may be subpoenaed for a private *in camera* review by the judge to determine whether they contain exculpatory information.²⁵ The trial judge must balance the privileged nature of the material against the defendant's constitutional right to confrontation.²⁶

Though many in the victim service community are critical of the defense bar, others observe that most defense attorneys realize that trying to tarnish the reputation of a rape complainant is not a good trial strategy. Prosecutors can protect victims and other prosecution witnesses from inappropriate probes into the victim's personal life by carefully listening to the defense's approach with a particular witness. Prosecutors interviewed report that firmly and swiftly made objections to a line of questioning can spare a victim from inappropriate scrutiny of her personal life.

Attitudinal Obstacles to Effective Prosecution

In the jurisdictions visited, prosecutors are combating attitudinal obstacles to prosecution by doing what they can to educate victims, jurors, and judges and by supporting the efforts of others to educate the public about rape. This section discusses issues prosecutors face when they bring a rape case to trial. Other strategies prosecutors are using to combat attitudinal obstacles include the use of VWA's, coordination with rape crisis centers, speaking to community groups about rape, setting up anonymous reporting systems, and encouraging changes in the judicial educational curriculum.

Victims. The victim of a rape is often apprehensive about how she will be treated during the trial, even after deciding to press charges. Because the allegations in a rape case may lack corroboration, proving the defendant's guilt beyond a reasonable doubt may be difficult, particularly in cases involving a preexisting relationship. The victim may therefore fear personal attacks by the defense counsel or disbelief on the part of prosecutors, jurors, and the public. Expressing a concern shared by many, the director of the Ramsey County rape crisis center, Sexual Offense Services (SOS), notes:

No matter how carefully it is explained to the victim about reasonable doubt and that an acquittal does not mean that the jury disbelieved her, guess what? If he's acquitted, the victim is going to feel that the jury didn't believe her and that, moreover, they did believe him.²⁷

Rape is the only crime in which the victim's consent and the extent of her resistance may be issues. The victim may fear having to take a polygraph test or submit to a psychiatric examination. The reactions of the victim's family and friends can have a dramatic impact on her willingness to proceed criminally. Loved ones, often traumatized by the victim's experience, may blame the victim for what has occurred. Prosecutors and police can ease the trial process by meeting with the victim as soon as possible, by actively engaging her in the prosecution, and by being sensitive to her concerns and feelings.²⁸ Rape victims may be in a state of shock or in denial; they may be angry and want immediate retribution or revenge. They may consider the interview with the prosecutor a continuation of the assault they have suffered and the prosecutor as another authority figure to whom they must tell the story.

Jurors. Prosecutors often use jury selection to inform the future jury that the victim and defendant in the case may live in a different social world or may dress and speak differently than the jury, and they may have different mores and values from those of the jury. According to prosecutors interviewed for this report, most judges will allow prosecutors to be very frank about these issues. In addition, the prosecutor can gauge potential jurors' attitudes by exploring their knowledge of the various responses to trauma that may delay a victim's reporting of rape, or their knowledge that a seemingly calm demeanor may be a result of shock. For example, a prosecutor may want to ask prospective jurors, "Do you have an opinion as to how a person should react if raped?" or, "Have you heard the myth that a woman cannot be raped if she really does not want to be? What is your opinion of that myth?"²⁹ At the end of jury selection, if the prosecutor is not satisfied with a potential juror's responses to his or her

questions, the prosecutor can remove the juror from the panel by using for-cause or, if necessary, peremptory challenges, the former requiring a reason for the challenge, the latter not.

Judges. Judges' attitudes toward their role in cases involving rape and other forms of interpersonal violence vary considerably, because they must define in their courtroom a middle ground between the constitutionally protected rights of the accused and the rights of victims. The judicial philosophy of some judges bars their objecting to a line of questioning by the defense counsel that may cause emotional distress to a rape victim. In these courtrooms, judges hold the view that it is up to the parties to keep the trial focused on the allegations against the defendant. The prosecutor thereby becomes the sole guardian of the rape victim and the other prosecution witnesses, responsible for ensuring that the privacy and rape shield protections of the victim are not trampled upon.

The judicial philosophy of other judges makes them strong advocates for the rights of rape victims, and they do not tolerate tactics that embarrass victims. For example, either the prosecution or the defense counsel may ask the defendant to approach the complainant in order to demonstrate to the jury the comparative heights or weights of the accuser and the accused. A judge sensitive to victim concerns will anticipate the victim's extreme discomfort at being physically close to the accused rapist and will require the attorney to use other means, such as charts that the complainant and the defendant can approach separately. By attempting to understand the victim's state of mind, judges can use these and other ways of treating victims with dignity and respect, and, when a defendant is found guilty, they can fashion an appropriate sentence.

Evidentiary Issues

Presenting corroborating evidence, anticipating the defense counsel's efforts to circumvent rape shield laws, using experts as witnesses, and preventing disclosure of privileged communications are germane to all rape prosecutions. Many prosecutors' offices keep their assistant prosecutors abreast of case law developments in the evidentiary area by preparing periodic case law updates. Typically these updates also describe other relevant developments in the law.³⁰

Corroborating Evidence. Although most States have reformed their sexual-assault laws to eliminate the need for corroboration to prove guilt beyond a reasonable doubt, corroborative evidence of a crime is very useful. The chief of the Ramsey County Attorney's Crimes Against Persons Division notes, "Sex crimes cases are inherently different

from other kinds of prosecutions because they are almost always unwitnessed and typically involve one person's word against another."³¹ Prosecutors in most jurisdictions therefore try to identify for the jury as much evidence as possible that corroborates the crime.

Evidence collected as part of a forensic rape examination is not subject to the motivations and biases of subjective testimony. The prosecution can also use laboratory analyses of physical evidence, such as blood groupings and tests for static acid phosphatase, an enzyme found in semen. However, the defense can also use analyses of physical evidence to convince the judge or the jury to rule out certain suspects.³² Such evidence is corroborative but does not fully dispose of the case.

How the complaint came to light is important corroborative evidence. The prosecution will want to show the jury when the initial report was made and, if there was a delay in reporting, why it occurred. Prosecutors can also try to introduce evidence of the victim's emotional state at the time of reporting (either to law enforcement or to others), thereby presenting to the jury the significance of the assailant's behavior. Tapes of 911 or other emergency calls can demonstrate for juries when and under what circumstances the rape was reported.

The Victim's Sexual History. Despite the nearly universal adoption of rape shield statutes (see chapter 2), motions to admit elements of the victim's sexual history may be made and in some cases granted. Certain situations may be excepted under rape shield laws, such as cases in which the victim has been convicted of prostitution or has had a consensual sexual relationship with the defendant, or even if the victim has a particular motive to lie. Some States even have catchall provisions for the judge to allow evidence of the victim's sexual history if he or she believes it is in the best interest of justice, or if the judge believes the evidence's probative value outweighs its prejudicial effect. These exceptions may mean that in practice rape shield laws may be quite permeable according to the judge's discretion.³³

Expert Witness Testimony. In the four jurisdictions visited for this study, there is little agreement on the efficacy of using expert testimony about the medical and psychological trauma suffered by rape victims in the prosecution's case in chief. However, in cases with such evidence, the testimony of medical and lab experts would be routinely used.³⁴ The admissibility of expert testimony hinges on fairly simple Federal and State rules of evidence that afford the trial judge broad discretion. Although courts and legislatures invoke numerous phrases to describe the standard of admissibility,

all jurisdictions require that the expert testimony be helpful to the jury.³⁵ Table 4.1 reflects the Federal Rules of Evidence position with respect to the use of expert opinion testimony in rape prosecutions. Because many jurisdictions have adopted the Federal Rules of Evidence as their own evidentiary rules, the table is offered to clarify when expert testimony may be admitted in such jurisdictions.³⁶

Although some of the prosecutors interviewed rejected the use of expert testimony to explain medical or psychological trauma in all but the rarest cases, others found such testimony from somewhat to very useful. Prosecutors who use expert witnesses will want to:

- Establish the relevance of the expert's testimony so that they can place it in context.
- Remind the witness to use lay terminology when testifying.
- Ask the witness questions that teach the jury about the expert's area of expertise.
- Let the jury hear the witness's expertise.³⁷

In general, experts are used only when absolutely necessary, and they are usually either emergency room physicians or psychiatric experts.³⁸ One of the recurring criticisms of expert testimony is that each side presents the expert most willing to give testimony that favors the party paying the expert's fee.³⁹

On the use of nurse practitioners and other medical professionals as expert witnesses, many prosecutors express the view that any expert they use must have the highest credentials and the greatest perceived credibility. Often this means having a doctor rather than a nurse practitioner testify, because the prosecutor knows from experience that juries expect a physician's testimony. For testimony about such general evidence as the typical behaviors of rape victims (as distinguished from formal rape-trauma-syndrome testimony), the expert may be a law enforcement officer, a rape crisis counselor, a social worker, or any other person with long experience working with rape victims.⁴⁰

Several prosecutors interviewed for this report recommend using a serologist to explain the results of tests conducted on bodily fluids during the forensic rape examination. A serologist's testimony may be especially helpful to a jury's understanding of what may be inferred from tests for static acid phosphatase and from identifying a defendant's blood group. Such testimony is not usually relevant to the physical evidence itself but rather serves to bolster the credibility of

Table 4.1
Admissibility of Expert Testimony

	<u>Expert Testimony of Typical Victim Behavior</u>	<u>Expert Opinion of Victim's Veracity</u>	<u>Expert Testimony of Typical Victim Behavior, With Effect of Bolstering Credibility</u>
Prior to Attack on Credibility	Admissible	Inadmissible	Inadmissible if only for bolstering
Following Attack on Credibility	Admissible	Inadmissible	Admissible

Source: Second Judicial District Attorney's Domestic Violence Unit, Denver, Colorado, 1990.

the victim. Where identity is the issue, tests including DNA typing must be explained by an expert. In cases in which the defendant's guilt or innocence rests on the question of consent, expert testimony regarding the presence of the defendant's semen is generally inconsequential because the defense has conceded that sex has occurred.

If lack of vaginal trauma appears to be an issue on which jurors might become deadlocked, a prosecutor might want to have a physician testify that rape does not always result in vaginal trauma. Nonetheless, prosecutors interviewed for this study report that there is very rarely a need to bring in this type of medical testimony.

Expert Testimony on Posttraumatic Stress Disorder. Persons who have been raped, mugged, taken hostage, or have survived flood, fire, terrorism, or internment often suffer from posttraumatic stress disorder (PTSD), a cluster of immediate or delayed long-term psychological symptoms.⁴¹ Rape victims are thought to be the largest single group of sufferers. The hallmark of the disorder is intrusive re-experiencing of the trauma, which may not occur until months or years afterward when an actual or symbolic event triggers recollections. Recollections intrude as daytime memories or as nightmares and are accompanied by intense psychological distress. Rape trauma syndrome (RTS), a posttraumatic disorder, is the acute phase and long-term reorganization process that occurs as a result of attempted or completed

rape. The term was coined in a 1972–1973 study of 146 rape victims conducted by Burgess and Holmstrom at Boston City Hospital. Based on their interviews and later consultations with the victims, the researchers concluded that rape victims evince a group of symptoms in two phases as a result of being raped. Phase I of RTS, the "acute phase," occurs immediately after the attack and is marked by a disorganization of the victim's life. The most prominent symptom in this stage is extreme fear. Phase II is the long-term reorganization process that victims undergo after a rape.⁴² Victims of both RTS and PTSD often go to great lengths to avoid reminders of the trauma.

State courts vary in their thinking on the admissibility of PTSD evidence.⁴³ For example, while the Kansas Supreme Court has concluded that PTSD evidence is admissible when offered to prove nonconsent to intercourse, the supreme courts of California, Minnesota, and Missouri have concluded that it is inadmissible.⁴⁴ Using the admissibility standard of "helpfulness to the jury," the Missouri and Minnesota courts concluded that expert testimony of PTSD is not admissible in a rape trial in which the defense is consent, because the testimony does not help the jury.⁴⁵ Since PTSD can result from any psychologically traumatic event, the courts did not view PTSD as a test that can accurately determine whether a rape had occurred. Thus, an expert on PTSD cannot testify that a victim's symptoms were caused by a particular incident but only that the victim

exhibits characteristics that are consistent with a stress reaction to any traumatic event, including rape.

The Minnesota and Missouri courts offered a second argument against PTSD evidence that the California court found especially persuasive. The courts concluded that because mental health professionals use PTSD theory as a therapeutic tool in counseling victims and not as a fact-finding tool, it is unhelpful when offered as proof that a rape occurred.⁴⁶ The California court, in adopting this argument in its own ruling on PTSD, stressed the nonjudgmental nature of therapy, saying that rape counselors "do not probe inconsistencies in their clients' descriptions of the facts of the incident."⁴⁷ All three of the State supreme courts viewed PTSD evidence as prejudicial. They variously speculated that expert testimony on PTSD would have an aura of reliability and certainty, that it would divert the jury's attention away from the real issue by confusing it with numerous collateral issues, and that it could trigger a "battle of the experts."⁴⁸

Equally strong arguments can be made in support of admitting PTSD expert testimony. First, most jurors do not know about the psychological and behavioral aspects of rape. Indeed, the studies on what jurors know about rape indicate that jurors enter the courtroom with false assumptions and biases that will make them peculiarly unreceptive to a woman's claim that intercourse with the defendant was nonconsensual, especially in the absence of overt physical injuries.⁴⁹ Expert testimony about PTSD can therefore assist in overcoming this tendency of jurors to blame and disbelieve the victim; it may reveal the psychological trauma suffered by a victim, even though that trauma may have progressed to a less obvious stage by the time of the trial. Jurors are not trained to identify trauma or evaluate the extent of a victim's psychological injuries. Psychological experts, like physicians diagnosing the extent of physical injuries, are better able to diagnose and explain a victim's psychological injuries than is an untrained person.

A second argument for admitting PTSD expert testimony is that the testimony need not confuse, prejudice, or overawe the jury. Advocates of admitting PTSD testimony cite studies of jury attitudes by Kalven and Zeisel and by Simon, which suggest that withholding expert testimony from jurors because it may prejudice or "overawe the jury" is paternalistic. If the expert's testimony is too complex, the jurors (and the judge) may ignore it; if a battle of experts ensues, fact finders are likely to discount the evidence; if neither occurs, the indications are that the jury will not treat the expert's testimony as conclusive.⁵⁰

Advocates of admitting PTSD expert testimony point out that as the law of sexual assault and attitudes toward the crime

and its victims change, the role of mental health experts in sexual assault cases will also change. They note, for example, that public education about sexual assault may eventually reduce the need for the education of the fact finder about the psychological aftermath of a typical assault. For advocates of PTSD expert testimony, until that time, the experts can help an imperfect process work in a more informed and enlightened way.⁵¹

The Philadelphia District Attorney's Rape Prosecution Unit does not rely heavily on psychiatric expert testimony.⁵² In Denver's Domestic Violence Unit, expert witnesses are not used to introduce evidence of rape trauma syndrome. The unit's philosophy holds that such testimony tends to confuse rather than assist jurors' understanding of a victim's behavior, but these prosecutors may use experts to explain other characteristics of victim behavior, such as psychiatric witnesses to explain why a victim might recant, why she might be living with the perpetrator, and why she might have been reluctant to press charges. Likewise, prosecutors in the King County Prosecuting Attorney's Special Assault Unit do not introduce syndrome testimony at trial. They argue that evidence of PTSD is not a reliable determinant of whether the alleged act amounted to a rape. Behaviors related to the rape, such as delayed reporting, need not be explained by PTSD. Instead nonpsychiatric factors, such as the victim's fear of humiliation during criminal justice processing, her fear of embarrassment, or her fear of being stigmatized as a rape victim by parents or others close to her, can be cited.

Use of Condoms in Rape. Rapists have been known to use condoms during assaults on their victims. *Texas v. Valdez* involved the case of a man who claimed that a woman had implied her consent to sex during a knife-point attack by convincing him to use a condom.⁵³ The case received national attention in 1992 when an Austin, Texas grand jury declined to indict the suspect.⁵⁴ After local protests and a nationwide outcry, a second grand jury indicted Mr. Valdez on aggravated sexual assault and burglary charges.⁵⁵

Although this case may signal otherwise, the chief of the Philadelphia District Attorney's Rape Prosecution Unit does not believe that the use of a condom by a rapist poses evidentiary problems for sex crimes prosecutors, since it can demonstrate both an intent to have sex and a degree of premeditation.⁵⁶ A prosecutor can also explain the lack of physical evidence (semen) by underscoring that the defendant used a condom. The chief deputy in Denver's District Attorney's Office notes that condom use can be an issue in both consent and identity defense cases.⁵⁷ It may indicate premeditation, indicate that the parties discussed engaging in sexual intercourse, or confound the question of the assailant's identity.

How the prosecutor addresses these issues will depend on the particular facts of the case. All three issues may be viewed as either a hindrance or an aid to a prosecution, depending on the accompanying circumstances.

Aspects of Sentencing

Sentencing hearings occur four to six weeks after conviction for rape or after a guilty plea has been entered with the court.⁵⁸ The sentencing judge usually will have received at least two recommendations for sentencing, one from the prosecutor and one from the defense attorney. In most jurisdictions victims are encouraged to attend the sentencing and to submit a victim impact statement.⁵⁹

In the view of many rape-victim advocates, the lenient treatment by the courts with respect to the sentencing of convicted sex offenders is an issue of great concern. For example, in a recent case, three Glen Ridge, New Jersey, high school students were convicted of first-degree aggravated sexual assault of a retarded schoolmate with a baseball bat, stick, and broomstick and were sentenced to up to 15 years to be served in a youth facility. However, the young men will probably serve no more than 22 months. Many trial observers and jurors were shocked by the short time to be served.⁶⁰ One victims' rights advocate noted, "What should shock people is that . . . this is really not far off from the national average of what people serve when they rape someone."⁶¹

Victim Impact Statements

A victim impact statement is the victim's recorded thoughts or her spoken statement at sentencing on how the rape has affected her life and what she believes to be an appropriate sentence for her attacker. In the view of prosecutors interviewed for this report, offering this statement can enhance the rape victim's role in the criminal trial process, and it can have a significant effect on sentencing.

The victim's presence in the courtroom during sentencing can also have an impact on a judge's sentencing decision. The chief of the King County Prosecuting Attorney's Special Assault Unit explains:

Judges spend four days at trial with the defendant in the courtroom and the defendant's family sitting there and being supportive. It is so important to the sentence itself for the victim to be there, and it is really important for the victim to see it through to the final outcome. Their being there definitely influences what judges do.⁶²

Many victim advocates assert that the entire criminal justice process seems to focus on the defendant and his rights. They are troubled by the fact that the defendant is permitted to hear everything the prosecution's witnesses say before deciding whether he wants to take the stand and make a statement, whereas the rights of victims are secondary. A Philadelphia judge interviewed for this report adds that he listens carefully to victim impact statements, particularly when the victim knows the offender, because the victim's insight into the offender is greater than his.⁶³ Although Pennsylvania and many other States do not mandate victim impact statements, the prosecution may request them or a judge may order them. Many judges may prefer to speak in person with the victim about her sentencing wishes in lieu of a written report. In Colorado and Minnesota, victim impact statements are required as part of the presentencing process. In addition, deputy prosecutors in both Denver and Ramsey County ascertain victims' wishes regarding sentencing in conversations with the victim.

Sentencing Alternatives

In most jurisdictions and regardless of the rapist's age, level of sophistication, or recidivism rate, the sentencing judge has little to consider and the parties have little to propose other than incarceration.⁶⁴ In Colorado, for example, there are no secure facilities outside the correctional system which provide treatment, and most judges are quite reluctant to place a convicted rapist in anything but a secure facility.

Many professionals involved in the criminal justice and community response to rape do not consider probation and outpatient treatment appropriate sentences for rape offenders. Conceding that treatment may be appropriate for cases of indecent exposure and incest, a Philadelphia judge and former head of that city's Rape Prosecution Unit notes that Pennsylvania's guidelines require a minimum of two and one-half years of incarceration for rape. This frequently eliminates treatment as a viable option.

Many staffers at rape crisis centers believe that sentences should stipulate longer terms of incarceration and should involve mandatory treatment for the sex offender following release.⁶⁵ The legal advocacy coordinator for the King County Sexual Assault Resource Center (KCSARC) argues that the problem is basically systemic:

I think part of the problem for victims results from the way the legal system has been designed to scrutinize the evidence and to assume that the defendant is innocent until proven guilty. From the standpoint of the person victimized, the criminal

justice system is hard to understand. One might hear from a victim, "How can he say he didn't do it?" when she hears the accused plead "not guilty." She knows from the experience that the accused did do it.⁶⁶

Arguably, the lack of available alternatives in a specific State means that many judges are not familiar with sentencing alternatives elsewhere. Although some sex offenders are strong candidates for alternative sentencing (including outpatient treatment), the long waiting lists at many secure and outpatient treatment programs for sex offenders and the high cost of treatment bar many offenders who might otherwise qualify for treatment. Most of the more than 85,000 sex offenders in State and Federal prisons receive little or no treatment specifically aimed at preventing them from committing sex offenses in the future.⁶⁷ According to the director of the Safer Society Program, a national referral service for sex offenders seeking therapy, "By conservative estimates, more than 75 percent of jailed sex offenders get no help at all."⁶⁸ California, with more than 15,000 jailed sex offenders, has only one experimental program, which offers treatment to 46 rapists and child molesters. New York State, with more than 3,800 jailed sex offenders, has a treatment program in only one prison. Yet treatment as a sentencing alternative may be one means for dealing with the remarkable growth rate in the population of incarcerated sex offenders: between 1988 and 1990, the total prison population increased by 20 percent, whereas the sex offender population grew by 48 percent.⁶⁹

Under a recent ruling of the Washington Supreme Court in *In re Young, In re Cunningham*,⁷⁰ convicted violent sex offenders judged likely to commit further crimes can be confined indefinitely after serving their prison terms. In its decision upholding Washington State's sexual predator law the Washington Supreme Court reasoned that this law is a civil, rather than a criminal, statute designed to treat, rather than punish, sex offenders. The Court rejected arguments that a "mental abnormality or personality disorder" that makes a person likely to commit sex crimes is not the same as mental illness and held that opponents of the law failed to demonstrate that treatment goals can not be met.⁷¹ According to King County, Washington Prosecutor Norm Maleng, who headed the statewide task force that created the sexual predator law, the Court's ruling will increase prosecutors' use of the law.⁷² Although the Washington Supreme Court upheld the law, it found fault with the way officials handled two cases involving inmates who were plaintiffs in the lawsuit. Ruling that the state failed to show that the defendant had committed a recent dangerous act before he was involuntarily confined as a predator, the Court reversed the

commitment of Cunningham, a habitual rapist. Cunningham had been out of prison more than four months and had a clean record at the time he was ordered confined. Addressing the case of Andre Brigham Young, who was convicted of six violent rapes since the 1960's, the Court reversed Young's confinement saying the law should give violent sex offenders the same rights to "less restrictive alternatives" provided to other mentally ill people facing involuntary commitment. Young's case was remanded to King County Superior Court for consideration of alternatives to keeping him in a special commitment center within a maximum-security prison.

The U.S. Supreme Court recently declined to rule in a case that was expected to have considerable impact on the use of offender treatment in sentencing. In *State v. Imlay*,⁷³ the Montana Supreme Court, overruling *State v. Donnelly*⁷⁴ and controlling decisions of the U.S. Supreme Court,⁷⁵ ruled that a sex offender's probation could not be revoked for failure to obtain treatment (ordered as a condition of probation) when the offender's failure was due solely to his refusal to admit, to a treatment provider, the molestation he denied at trial. Joined by 20 other States, Montana appealed the Montana Supreme Court's ruling to the U.S. Supreme Court, arguing in its pleadings that the ruling "effectively eviscerates sex offender programs" that routinely ask participants to accept responsibility for their behavior.⁷⁶

Prosecutors who closely followed this case recommended that treatment be considered only when a defendant has admitted his crimes and accepted responsibility prior to sentencing, with the voluntary nature of that acceptance appearing in the court record. If the defendant enters a no-contest plea, in which guilt is not admitted, treatment as a condition of probation may not be advisable.⁷⁷

Training

A good way to increase prosecutors' effectiveness is through training on the issues, techniques, and procedures involved in rape cases.⁷⁸ The debate, however, is not over whether to provide training but rather what means most effectively provide it.

In-House Training

For most prosecutors the experience of more senior attorneys are their greatest source of information. King County's Special Assault Unit (SAU) relies on in-house training because its attorneys serve short rotation terms. Each new class in the SAU spends four to five hours with the unit's supervisor, reviewing the unit's operational procedures,

criminal procedural matters related to sex crimes, and the substantive legal issues in rape cases. Senior deputies also spend time with the novices reviewing a regularly revised case law outline. As part of their training, new sex crimes deputies are commonly assisted by a senior deputy prosecutor when they conduct their first interviews. There may also be weekly unit meetings where cases can be reviewed and/or periodic in-service training provided by outside experts.

Continuing Legal Education

While the offices visited for this report have chosen to keep their training mostly in-house, other prosecutors' offices send their sex crimes prosecutors to training sessions run by groups including the National College of District Attorneys (NCDA). As part of its National Prosecutors' Training Center, NCDA offers a series of seminars on assaults, including one presentation on prosecuting difficult adult sexual assault cases. The NCDA trainer and other trainers emphasize the importance of establishing positive juror attitudes toward the victim of acquaintance rape while educating the jury about the crime of rape. The prosecutor is instructed to minimize the accused's defenses while convincing the jury that "nice guys can be rapists, too!" The NCDA training stresses the need for understanding the underlying psychological/emotional dynamics in prosecuting a sexual assault case and trains prosecutors to keep the jury's attention focused on the person on trial, the defendant.⁷⁹

NCDA is developing curriculums on the prosecution of stranger rape cases, serial rapes, and the use of DNA evidence in sex offense prosecutions (see chapter 8 for a discussion of DNA typing). Relevant training in these areas is also currently available as part of NCDA's "Evidence for Prosecutors," "Prosecution of Violent Assaults," "Prosecution of Violent Assault/Homicide," and "Forensic Evidence" courses.

Recruitment

Sex crimes prosecution units in the offices studied are usually staffed by more senior deputy prosecutors.⁸⁰ Sex crimes prosecutions demand more intensive contact with victims than most other crimes, thus drawing heavily on a prosecutor's interpersonal skills. All of the prosecutors interviewed for this study indicated that strong interpersonal skills, sensitivity, objectivity, and an interest in sexual assault cases, as well as more traditional prosecution skills, especially experience in handling complex evidentiary issues, are helpful criteria in the selection of sex crimes prosecutors.

Prosecutors' offices struggle with the question of length of tenure in specialized units. Although there are many advantages to having prosecutors remain with the units for several years, short-term arrangements can also work and may offer unexpected benefits. In the King County Special Assault Unit, deputies rotate out of the unit after nine months. Because of the rotation policy, the experience and skill level of these deputy prosecutors varies considerably. However, these relatively short terms give deputies, who might not otherwise elect to work in a sexual assault unit, training in handling these cases.

The female prosecutors interviewed for this study believe that their gender was less of a factor in their being selected to prosecute sex crimes than their skill level, including their ability to empathize with the victim and to present the victim's case to a jury or judge. Although some victims may be reluctant to tell a male attorney certain facts or details relevant to a case, a female deputy prosecutor's desire to separate herself from the facts of a particularly heinous crime may become an obstacle to better communication with the victim. However, because these are such emotionally demanding cases, male prosecutors may be equally susceptible to wanting to keep the complainant at a distance.

Some sex crimes prosecutors express concern that being assigned to a specialized unit might impair their professional development by limiting their exposure to other kinds of prosecutions. However, the difficulty of the work is recognized by unit chiefs, and deputies successful in these units often advance quickly.⁸¹

Because rape cases contain very disturbing content, job burnout is often a greater problem in these units than in other units in the prosecutor's office. Burnout is dealt with in prosecutors' offices by employing strategies similar to those used in law enforcement. Most said that a lower than usual caseload is essential. In many offices sex crime deputies are assigned a variety of cases (both adult and child cases, or both rape cases and other crimes against persons). Many prosecutors' offices rotate their attorneys in and out of specialized bureaus, such as a sex crimes unit, thereby offering attorneys exposure to a range of prosecutions.

Table 4.2 summarizes the characteristics of the four prosecutors' offices visited.

Endnotes

1. Linda Fairstein, testimony before the U.S. Senate Committee on the Judiciary, Senate Hearing, 101-931, part 1, Serial No. J-101-80, (June 20, 1990), p. 51.

2. Interview with Assistant County Attorney Jeanne Schleh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, February 18, 1992.
3. Interview with Assistant District Attorney Kyra Jenner, Second Judicial District Attorney's Office, Denver, Colorado, February 24, 1992.
4. These functions are performed by VWA's in the prosecutors' offices visited for this report. In other counties, a

variety of services are offered. Several offices employ professional social workers to provide short-term counseling on-site. One benefit of this approach is that it may offer an effective means of assisting a diverse population unaccustomed to seeking outside counseling. The social workers may also aid victims in obtaining entitlements and may participate in the training of prosecutors.

Table 4.2
Characteristics of Prosecutors' Offices by Site

	Denver	King County (Seattle)	Philadelphia	Ramsey County (St. Paul)
Office	Second Judicial District Attorney's Office	King County Prosecuting Attorney	Philadelphia District Attorney's Office	Ramsey County Attorney's Office
Specialized Unit	Domestic Violence Unit	Special Assault Unit	Rape Prosecution Unit	Crimes Against Persons Unit
Case Type	Adult and child ¹	Adult and child	Adult and child	Adult and child ²
Staffing	4 attorneys	9 attorneys	6 attorneys	6 attorneys
Training	In-service course, American Prosecutors Research Institute (APRI)	In-service course, cross-disciplinary training with law enforcement and medical community	Novice assistants mentored by more experienced assistant prosecutors	In-service training, case supervision by senior attorneys in division
In-House VWA's	2 VWA's	Use Seattle Police Department VWA's, KCSARC staff, and SRR staff	Use WOAR staff	5 VWA's
In-House Criminal Investigators	2 investigators	None	3 investigators	None
Vertical Prosecution	No	Yes	Partial	Yes, after charging
Recruitment	Volunteer	Rotation every 9 months	Volunteer	Volunteer
Joint Interviews	Not used	Conducted by prosecutor and police investigator	Not used	Not used

¹Line prosecutors handle nondomestic and stranger rape cases.

²Line prosecutors handle all crimes against persons involving adult victims. A separate child abuse prosecution unit prosecutes sex crimes involving child victims.

5. Interview with Victim/Witness Advocate Barbara Leigh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, February 18, 1992.
6. The opportunity to see one's attacker taken away in handcuffs may offer the victim a certain degree of catharsis or closure, which the rest of the criminal justice process may not provide.
7. Interview with Victim/Witness Assistant Anne Gabel, Second Judicial District Attorney's Office, Denver, Colorado, February 25, 1992.
8. Interview with Luanne T. Richie, coordinator of the Crime Victim Compensation Fund, Second Judicial District Attorney's Office, Denver, Colorado, February 25, 1992.
9. David R. Ramage-White, "Adult Sexual Assault Preparation and Trial Techniques," Assistant Attorney General, Arizona Attorney General's Office, presented at the King County Prosecuting Attorney's conference on sex crimes prosecution, Seattle, Washington, August 23-26, 1987.
10. Some prosecutors and researchers allege that relying too heavily on these criteria, given the difficulty of proving acquaintance rape cases, may perpetuate prejudices rather than challenging them. See A. Vachss, *Sex Crimes* (New York: Random House, 1993); L. G. Frohmann, "Screening Sexual Assault Cases: Prosecutorial Decisions To File or Reject Rape Complaints" (Ph.D. diss., UCLA, 1992).
11. *Ibid.*
12. Linda Fairstein, testimony before the U.S. Senate Committee on the Judiciary, Senate Hearing 101-931, Part 1, Serial No. J-101-80 (June 20, 1990).
13. Interview with Victim/Witness Advocate Barbara Leigh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, February 18, 1992.
14. Prosecutors interviewed for this report concur that in rape cases, as in other criminal cases, it is not uncommon for the prosecuting attorney to charge the defendant with a number of offenses in the hope of obtaining some type of conviction.
15. Interview with Assistant County Attorney Jeanne Schleh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, February 18, 1992.
16. Interviews conducted for this report with prosecutors in Denver, Seattle, St. Paul, Philadelphia, and elsewhere.
17. In many jurisdictions, under certain circumstances, the charging of the defendant comes in the form of a grand jury indictment. At these proceedings, not open to the public, the prosecuting attorney often asks the victim to testify against the accused. Even though the proceedings of the grand jury are not open to the public, testifying can be difficult for victims, because they must relate their victimization to a group of strangers.
18. Interview with Chief Assistant District Attorney Dianne Granlund, Philadelphia District Attorney's Office Rape Prosecution Unit, Philadelphia, Pennsylvania, March 24, 1992.
19. Correspondence from Assistant Ramsey County Attorney Jeanne Schleh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, April 28, 1993.
20. Interview with Victim/Witness Advocate Barbara Leigh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, February 18, 1992.
21. *Ibid.*
22. Interview with Chief Assistant District Attorney Dianne Granlund, Philadelphia District Attorney's Office Rape Prosecution Unit, Philadelphia, Pennsylvania, March 24, 1992.
23. Interview with Judge Legrome Davis, Court of Common Pleas, Philadelphia, Pennsylvania, March 24, 1992.
24. *Commonwealth of Pennsylvania v. Lloyd*, *Commonwealth v. Jerome Wall*, 2493 Philadelphia 1990 (Superior Ct., Penn.); *Commonwealth of Pennsylvania v. Michael Kennedy*, 474 Philadelphia 1989 (Superior Ct., Penn.).
25. *State v. Paradee*, 403 N.W.2d 640 (Minn. 1987). An inspection might reveal fabrication of this or prior rape charges. If it does not, the records may not be disclosed or used.
26. See *Pennsylvania v. Ritchie*, 107 S.Ct. 989 (1987).
27. Interview with Marjory Singher, Director, Sexual Offense Services of Ramsey County, St. Paul, Minnesota, February 19, 1992.

28. M. A. Young, "Sexual Assault: The Crime and Its Consequences," *NOVA Newsletter* 15, No. 7 (1991): 6.
29. *Ibid.*
30. Interview with Assistant County Prosecuting Attorney Rebecca Roe, King County Prosecuting Attorney's Office Special Assault Unit, Seattle, Washington, February 21, 1992.
31. Interview with Assistant County Attorney Jeanne Schleh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, February 18, 1992.
32. For a discussion of the use of DNA typing of blood and semen samples by the defense, see chapter 8.
33. T. Lewin, "Rape and the Accuser: A Debate Still Rages on Citing Sexual Past," *New York Times*.
34. Correspondence from Assistant Ramsey County Attorney Jeanne Schleh, Ramsey County Attorney's Office, St. Paul, Minnesota, April 28, 1993.
35. T. M. Massaro, "Experts, Psychology, Credibility, and Rape: The Rape Trauma Syndrome and Its Implications for Expert Psychological Testimony," *70 Minn. L. Rev.* 395, 432 (1985), citing Federal Rule of Evidence 702, which has served as a model for many State evidence codes. Rule 702 states: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify in the form of an opinion or otherwise."
36. The U.S. Supreme Court's recent decision in *Daubert v. Merrell Dow Pharmaceuticals* (61 U.S. 6W 4805 [1993]) may have important implications for the presentation of scientific evidence in rape trials. In *Daubert v. Merrell Dow Pharmaceuticals*, a case involving a morning-sickness drug blamed for birth defects, the Supreme Court ruled that Federal judges must ensure that scientific evidence and testimony admitted in trials "is not only relevant, but reliable." The Court ruled that Federal judges must assume strong responsibility for the quality of scientific evidence presented in their courts and that they must look at the data under question to make sure scientific conventions were followed in generating the results. Although the ruling applies only to Federal courts, State courts are expected to use the rule as a guideline. According to some legal scholars, the decision could have a vast and immediate effect on issues such as the use of DNA-typing technology, that rely in part on disputed scientific or technical matters. See N. Angier, "Court Ruling on Scientific Evidence: A Just Burden," *New York Times*, June 30, 1993, p. A12; L. Greenhouse, "Justices Put Judges in Charge of Deciding Reliability of Scientific Testimony," *New York Times*, June 29, 1993, p. A13.
37. Kathleen A. Kearney, *Prosecuting Difficult Adult Sexual Assault Cases* (Houston, Tex.: National College of District Attorneys, 1989).
38. In the view of Assistant Ramsey County Attorney Jeanne Schleh, experienced law enforcement officers and sexual-assault-victim advocates may also qualify to testify as experts. Correspondence from Jeanne Schleh, Ramsey County Attorney's Office, St. Paul, Minnesota, April 28, 1993.
39. R. L. Carlson, E. J. Imwinkelreid, and E. J. Kionka, *Materials for the Study of Evidence* (Charlottesville, Va.: Michie Company, 1983), p. 402.
40. Correspondence from Assistant Ramsey County Attorney Jeanne Schleh, Ramsey County Attorney's Office, St. Paul, Minnesota, April 28, 1993.
41. M. Koss and M. Harvey, *The Rape Victim: Clinical and Community Interventions*, 2d ed. (Newbury Park, Calif.: Sage Publications, 1991), p. 78, citing the American Psychological Association, 1987. These symptoms include flashbacks triggered by actual or symbolic reminders of the trauma, persistent avoidance of reminders of the trauma (including thoughts and feelings associated with the trauma, activities or situations that trigger recollections, inability to recall important aspects of the trauma, loss of interest in formerly significant activities, feelings of isolation, affective numbness, expectation of a foreshortened future), and increased reactivity (including insomnia, irritability, difficulty concentrating, edginess, jumpiness, and physiological reactions such as sweating or a fast heartbeat when exposed to events that symbolize or resemble the trauma). Symptoms must continue for one month to be diagnosed (see American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. [Washington, D.C.: American Psychological Association, 1987]). Rape victims are believed to be the largest single group of PTSD sufferers (see Foa, Olasov, and Steketee, "Treatment of Rape Victims," [paper presented at the conference "State-of-the-Art in Sexual Assault," Charleston, S.C., 1987]). One study found a lifetime prevalence of PTSD among rape victims of 57 percent (see Kilpatrick et al., "Victim

- and Crime Factors Associated With the Development of Crime-Related Post-Traumatic Stress Disorders." *Behavior Therapy* 20: 199-214; and Rothbaum, Foa, and Hoge, "Responses Following Sexual and Non-Sexual Assault" [paper presented at the Twenty-second Annual Association for the Advancement of Behavior Therapy Convention, New York, November 1988], as cited in Koss and Harvey, *The Rape Victim*, pp. 77-80.
42. In their follow-up study published in 1979, Burgess and Holmstrom reported that four to six years after a sexual assault, 26 of the 81 victims responding stated that they had not yet recovered from or adjusted to their assault. Massaro, "Experts, Psychology, Credibility, and Rape," pp. 395, 426, (n. 127), 425, 426.
43. Although expert testimony about rape trauma syndrome is most often associated with the prosecution's case, it may be used by the defense as well. In *Henson v. State* (535 N.E. 2d 1189 [Ind. 1989]) the Indiana Supreme Court considered a trial court's refusal to allow a criminal defendant to present expert testimony that would have shown the complainant's behavior after an alleged rape to be inconsistent with that of a person who had suffered a traumatic forcible rape. At trial, the defense had introduced evidence that the complainant was seen drinking and dancing in the same bar from which she had allegedly been kidnapped, then raped, the night before. The defense sought to have its expert witness testify that in his opinion a person who had endured a sexual assault would not return to the site of the kidnapping and behave as the complainant did. The Indiana Supreme Court overruled the trial court's decision, holding that evidence regarding rape trauma syndrome was relevant because it tended to lessen the probability that a rape had occurred, and that excluding such evidence impermissibly impinged upon the defendant's right to present a defense.
44. *State v. Marks*, 647 P.2d 1292 (Kansas 1982); *People v. Bledsoe*, 681 P.2d 291 (Ca. 1984); *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982); *State v. Taylor*, 663 S.W.2d 235 (Mo. 1984).
45. Massaro, "Experts, Psychology, Credibility, and Rape," pp. 395, 438; *State v. Saldana*, 324 N.W.2d 227, 229 (Minn. 1982); *State v. Taylor*, 663 S.W.2d 235, 240 (Mo. 1984).
46. Massaro, "Experts, Psychology, Credibility, and Rape," pp. 395, 438, citing *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982); *State v. Marks*, 647 P.2d 1292 (Kansas 1982); *People v. Bledsoe*, 681 P.2d 291 (Ca. 1984); *State v. Taylor*, 663 S.W.2d 235 (Mo. 1984).
47. *People v. Bledsoe*, 681 P.2d 291, 300 (Ca. 1984).
48. Massaro, "Experts, Psychology, Credibility, and Rape," pp. 395, 438-39.
49. *Ibid.*, p. 442.
50. *Ibid.*, pp. 444-45, citing H. Kalven and H. Zeisel, *The American Jury* (Boston: Little Boston, 1966).
51. Massaro, "Experts, Psychology, Credibility, and Rape," p. 470.
52. However, in a case in which the defense is insanity, these prosecutors would probably call whichever psychiatrist had examined the defendant.
53. *Texas v. Valdez*, discussed in "Man Is Convicted of Rape in Case Involving Condom," *New York Times*, May 14, 1993, p. A12.
54. R. E. Milloy, "Furor Over a Decision Not To Indict in a Rape Case," *New York Times*, October 25, 1992; "Groups Voice Ire Over Rape Case," *Boston Globe*, October 12, 1992.
55. "Man Is Convicted of Rape in Case Involving Condom." Mr. Valdez was sentenced to 40 years in prison for the rape. See "Rapist Who Agreed To Use Condom Gets Forty Years," *New York Times*, May 15, 1993, p. 7.
56. Interview with Chief Assistant District Attorney Dianne Granlund, Philadelphia District Attorney's Office Rape Prosecution Unit, Philadelphia, Pennsylvania, March 24, 1992.
57. Interview with Chief Deputy District Attorney Sheila Rappaport, Second Judicial District Attorney's Office, Denver, Colorado, February 25, 1992.
58. In 1988, 56 percent of felony rape cases ended in convictions. (Forty-five percent resulted from guilty pleas, and the remaining 11 percent from conviction at trial.) A little more than one-third of rape cases were dismissed; only 3 percent resulted in acquittals; and 5 percent of rape defendants had their charges reduced to misdemeanors (U.S. Department of Justice, Bureau of Justice Statistics, *Felony Sentences in State Courts, 1988* [Washington, D.C.: U.S. Department of Justice, December 1990], NCJ Bulletin 126923, tables 1 and 2).
59. Interviews conducted for this report indicate that this is true even though victim impact statements are not mandated in all States. See discussion of victim impact statements, following.

-
60. E. Nieves, "Jail Sentences for Sex Crimes Are Rarely Very Harsh," *New York Times*, May 2, 1993, *The Week in Review*, p. 3.
61. *Ibid.*, citing Christine Edmunds of the National Victim Center. Address and contact information for the National Victim Center is provided in appendix E. According to a 1990 survey by the Bureau of Justice Statistics, the median sentence in State prisons for those convicted of rape was 96 months, but the median time served was 44 months (Bureau of Justice Statistics, *National Corrections Reporting Program* [Washington, D.C.: Department of Justice, 1993]).
62. Interview with Assistant County Prosecuting Attorney Rebecca Roe, King County Prosecuting Attorney's Office Special Assault Unit, Seattle, Washington, February 21, 1992.
63. Interview with Judge Legrome Davis, Court of Common Pleas, Philadelphia, Pennsylvania, March 24, 1992.
64. In 1988, State courts imprisoned 69 percent, jailed 18 percent, and placed on probation 13 percent of those convicted of the crime (Bureau of Justice Statistics, *Felony Sentences in State Courts, 1988*, tables 1 and 2).
65. Interview with Legal Advocacy Coordinator Mo Corrigan Fain, King County Sexual Assault Resource Center, Renton, Washington, February 21, 1992.
66. *Ibid.*
67. Sex offenders constituted one-sixth of all prisoners in this country in 1990. The number of imprisoned sex offenders is growing at a rate second only to that of prisoners incarcerated for drug crimes, apparently in large part because victims are increasingly willing to report the crime (D. Goleman, "Therapies Offer Hope for Sex Offenders," *New York Times*, April 14, 1992, p. C1).
68. *Ibid.*
69. *Ibid.*
70. *In re Young, In re Cunningham*, 122 Wash. 2d 1 (August 20, 1993).
71. Interview with Rebecca Roe, Chief, Special Assault Unit, King County Prosecuting Attorney's Office, Seattle, Washington, October 19, 1993.
72. "Court Ok's Indefinite Lockups For Sex Offenders," *Law Enforcement News* (September 30, 1993): 8.
73. *State v. Imlay*, 813 P.2d 979 (Mont. 1991).
74. *State v. Donnelly*, 798 P.2d 89 (Mont. 1990).
75. See *Allen v. Illinois*, 478 U.S. 364 (1986); *Minnesota v. Murphy*, 465 U.S. 420 (1984); *Reina v. United States*, 364 U.S. 507 (1960).
76. L. Greenhouse, "High Court Drops Case on Forcing Sex Offenders To Undergo Therapy," *New York Times*, November 4, 1992, p. A28, citing *Montana v. Imlay*, No. 91-687.
77. National Center for Prosecution of Child Abuse, "Upcoming Offender Treatment Ruling," *Update* 5, No. 3 (March 1992).
78. D. M. Carrow, *Rape: Guidelines for a Community Response* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Law Enforcement Assistance Administration, January 1980), available from NCJRS, telephone no. 1-800-851-3420.
79. Kearney, "Prosecuting Difficult Adult Sexual Assault Cases."
80. For example, in Philadelphia, trial lawyers with between two and two and one-half years of experience are chosen for the Rape Prosecution Unit. The usual route for these assistant district attorneys is from general preliminary hearings to misdemeanor trials to felony nonjury trials to a jury unit and then to the specialized unit.
81. Interview with Assistant County Prosecutor Rebecca Roe, King County Prosecuting Attorney's Office Special Assault Unit, Seattle, Washington, February 21, 1992.

Chapter 5

Rape Crisis Centers

Most rape crisis centers were founded by women in the early 1970's as part of the women's movement. Initially, rape crisis centers gave emotional and logistical support to rape victims and obtained medical care for them as quickly as possible. Today, rape crisis centers do more, providing services to victims, to criminal justice agencies, and to the communities in which they are located.

Services to Victims

Most rape crisis centers use 24-hour hotlines to provide crisis counseling and referral to victims immediately after a rape. When victims of a recent attack call, counselors help the victim assess whether she needs immediate medical attention and whether she is safe in her current environment. Counselors provide emotional support, helping the victim cope with her feelings of fear, anxiety, self-blame, and rage. By providing information, hotline counselors also help victims make choices about how to deal with the crisis. Rape victims may also contact the hotline after the initial crisis has passed. Seattle Rape Relief notes that, on average, victims contact the rape crisis hotline six months after they were assaulted.¹ The staff of rape crisis centers may also:

- Accompany victims to hospitals to provide support and to advocate for prompt and adequate medical care.
- Advocate for victims in the legal system.
- Assess clients for counseling and refer them to therapists.
- Provide individual therapy for a limited time.
- Provide support groups or group therapy (including specialized groups for members of ethnic minorities, for developmentally delayed victims, for chronically mentally ill clients, and for the partners of victims).²

Volunteers and staff at rape crisis centers work to empower victims, primarily by letting them make their own choices in the recovery process. This includes letting the victim decide if and when she wants to enter therapy and conducting therapy in a manner that allows the victim to rely on her inner resources and to take control of her life. Many practitioners believe that group therapy, as opposed to individual therapy, is the most effective treatment for the isolation and self-blame many rape victims feel. The director of victim services at the Rape Assistance and Awareness Program in Denver puts it this way:

Rape is not seen as something that is wrong with the victim[s]; rather their reaction to the rape is [seen as] a normal response to an abnormal circumstance. Posttraumatic stress disorder is a normal reaction. It's very helpful for victims to be able to see that what they're going through is normal.³

Some rape crisis centers, such as the Sexual Assault Resource Center in Memphis, Tennessee, perform medical examinations and collect forensic evidence for all rape victims (except those with severe physical injuries). In addition, rape crisis counselors may act as liaisons between the medical and legal systems and victims. Advocates with Seattle Rape Relief will even make victim impact statements at sentencing if the victim so wishes.

Rape crisis counselors may be able to provide special kinds of support that VWA's in law enforcement agencies or in prosecutors' offices cannot provide. In States that recognize victim interactions with rape crisis counselors as privileged communications, rape crisis counselors can offer victims confidentiality that in-house advocates, whose communications are not privileged, cannot. However, this privilege has certain drawbacks; for example, rape crisis counselors may not be able to accompany victims during interviews with investigators or prosecutors. VWA's in prosecutors' offices

may discourage the victim from repeating her story (a key part of emotional recovery from the rape) because the VWA must report any variation from the victim's original story, however slight, to the prosecuting attorney. Counselors in rape crisis centers do not have to work under such constraints. Finally, most VWA's in law enforcement and in prosecutors' offices work during standard business hours, whereas most rape crisis centers operate 24-hour hotlines. In addition to being available at any time, these hotlines let victims maintain their anonymity, an issue of great concern to victims.⁴

All of the rape crisis centers visited for this study take a neutral stance on advising victims about filing a police report, a concept based on victim empowerment. The counselor may explore several factors with the victim that may influence her decision whether to report:

- Her internal psychological resources, including the strength of her self-esteem, the strength of her feelings of guilt or fear, and her ability to withstand pressure.
- The support the victim can rely on in her social environment.
- When relevant, the seriousness of the rapist's threat of reprisal (for reporting the crime) and the likelihood of the rapist's locating her.⁵

The director of victim services for the Rape Assistance and Awareness Program (RAAP) in Denver explains the factors that a victim must weigh in making the decision to report:

The power needs to be returned to the victim, and I can't guarantee that [she] will not feel revictimized by the criminal justice system. Sometimes people have felt very empowered. Other times people wish they had never reported . . . Reporting can be a public way of counteracting shame as long as the criminal justice process isn't framed in such a way that the verdict becomes the goal: the victim needs to do it for herself, not with the expectation that the perpetrator will be put away.

A lot of people don't report because they don't know what it entails or what the advantages of reporting are. One of the main advantages is very practical: victim compensation, which may cover moving, medical, and therapy expenses. I don't think it's fair not to let victims know that coverage may be contingent on prompt reporting [within 72 hours in some States].

We encourage victims to consider reporting because quite often down the road people wish they had reported. In the initial stages of recovering from a rape the shock and fear are so overwhelming that the most important thing to [the victim] is to be safe and to never see the perpetrator again. We don't badger or push. If [she is] ambivalent, we give [her] information on filing a report and offer [her] support [whether she decides to report or not].⁶

The legal advocacy coordinator for the King County Sexual Assault Resource Center (KCSARC) in Seattle expresses a similar position. KCSARC provides victims with information about the criminal justice system and offers them legal advocacy and support should they decide to report. In KCSARC's experience although victims may not want to report or to have evidence collected in the immediate aftermath of the rape, they may change their minds a few days later. KCSARC encourages victims to seek immediate medical care, which may include a rape exam, so that any problems resulting from the sexual assault get attention and the victim is assured that she is physically sound or recovering. While evidence gathering is not the primary reason to seek medical attention, having the exam keeps open the option of reporting.

In every site visited, victims' reports to rape crisis centers vastly outnumbered reports to law enforcement agencies. In 1990, 40 to 45 percent of the victims who called the Boulder Rape Crisis Team's hotline reported to law enforcement, but in 1991 only 27 percent did so. The director of the team attributes this decline to highly publicized cases of acquaintance rape in which defendants were acquitted or victims were not treated well in court. After evaluating the disposition of all sexual assault cases charged in Boulder County in 1990, the team found that most sentences were fairly light, resulting only in probation and supervision.⁷

In a national survey, rape victim service providers suggested actions likely to increase victims' willingness to report rape to law enforcement agencies. The changes most often cited were public education about acquaintance rape, better protection of the victim's confidentiality (especially disclosure of the victim's name), laws and procedures that lead to better treatment of the victim during the trial, expanded counseling and advocacy services, and increased sensitivity by prosecutors and police.⁸

Services to Criminal Justice Agencies

Rape crisis workers consider their primary duty to be supporting and advocating for the victim, meaning that they will inform a victim about her rights in both the medical and legal systems but do not see it as their duty to report the rape to law enforcement nor to persuade the victim to report it. If the victim decides to report to law enforcement, a volunteer will assist her; if she wishes to file a report without pursuing prosecution, a volunteer will act as her advocate. Volunteers will also act as agents for the victim by reporting rapes to law enforcement without information that identifies the victim, if the victim so desires. This third-party reporting provides intelligence information to law enforcement that may prove helpful in the investigation of other rapes.

Just as law enforcement and emergency room personnel provide training for rape crisis center volunteers, some police academies and prosecutors' offices avail themselves of the training expertise of staff in rape crisis centers. For example, volunteers from RAAP in Denver augment academy training by participating in role-playing and mock interviews with cadets. In addition, rape crisis center staff can help officers and prosecutors resolve any emotional issues that may arise as they handle sexual assault cases.

More specialized training may be appropriate for sex crimes investigators, community resource officers, and new prosecuting attorneys. Women Organized Against Rape (WOAR) in Philadelphia provides sensitivity training to each new class of assistant district attorneys and provides one-on-one support regarding victim issues during their tenure. Participation in cross-disciplinary training and task forces can help rape crisis centers and criminal justice agencies work out differences, air concerns, and revise policies. Such interactions improve collaboration. The director of Sexual Offense Services (SOS) of Ramsey County in St. Paul puts it this way: "Cross-training gives each agency a stake in the others." Rape crisis centers and criminal justice agencies may discover common agendas and can work together to lobby for legislation that benefits victims as well as investigators and prosecutors.

Services to the Community

The agencies visited provide a range of rape prevention services to their communities. The Rape Assistance and Awareness Program (RAAP) has designed programs that are

appropriate for audiences from preschool age through senior high school. In programs for younger children, a short play teaches assertiveness, appropriate and inappropriate touch, and how to report sexual abuse. The programs also train parents and teachers to encourage assertiveness, how to detect sexual abuse, and how to support children if they are victimized. The junior and senior high school programs feature an invited speaker who leads a group discussion on defining consent, myths and facts surrounding sexual assault, the dynamics of acquaintance and date rape, the motivations behind blaming victims, how to get help in case of a sexual assault, and how to provide support to friends who have been assaulted.

RAAP also offers self-defense programs, which cover resisting attacks, home safety, assertiveness training, and psychological preparedness. Businesses and apartment complexes have contracted with RAAP for these courses, perhaps because of a growing awareness of the prevalence and threat of sexual assault and perhaps because of the growing number of civil suits brought against property owners and employers on whose premises rapes have occurred. WOAR in Philadelphia provides programs for people in residential programs—such as juvenile detention centers, foster care facilities, rehabilitation facilities, and mental health and mental retardation programs.

Some rape crisis centers train human service professionals, teachers, and counselors by providing consultation, formal training, and written and videotaped training and educational materials. The Boulder team has produced a videotape, *From Victim to Survivor*, that features interviews with male and female rape victims. The team is currently producing a companion video that interviews adult and juvenile offenders and explores the links between childhood sexual abuse and adult offending behavior. KCSARC has published a wealth of written materials and produced videotapes. (Contact information for both centers is listed in appendix D.)

Most rape crisis center staff hope that in time these educational programs will reduce the incidence of sexual assault. Rape education programs may also have the added benefit of producing more enlightened jurors.

Organizational Structure

Some of the early rape crisis centers that began as small feminist collectives retain their grass-roots structures: everyone collaborates in directing the organization, much of the labor is donated by volunteers, and the center remains

independent of government agencies. Other rape crisis centers more nearly replicate the hierarchical structure of traditional social service agencies.¹⁰

Many of the programs visited for this study were established with Law Enforcement Assistance Administration (LEAA) funds. All of them still receive some public funding, usually from States, counties, or municipalities. Traditional private agencies, such as United Way, contribute funds to rape crisis centers, as do alternative organizations, such as Women's Way in Pennsylvania and the Women's Funding Alliance in Washington State.

The rape crisis centers in most States have formed coalitions to share information and assistance more efficiently and to reshape legislation at the State level more effectively. Most of these coalitions are private, but the coalition in Pennsylvania is part of the State's public welfare agency. Short descriptions of the six programs visited for this report follow.

Sexual Offense Services of Ramsey County, St. Paul, began as a multidisciplinary task force. Although it retains some grass-roots structures, SOS now has four paid staff: a director, an assistant director, a community education director, and a volunteer coordinator. Although responsible for its own funding, SOS is administered through the county's community human services agency.

Three friends of a rape victim founded Rape Assistance and Awareness Program in Denver as a grass-roots response to the lack of victim services outside of law enforcement agencies. All of the founders had fund-raising experience, and the program continues to garner a significant portion of its funding from canvassing door-to-door. The agency has five full-time staff members: an executive director, a director of victim services, a volunteer coordinator, a fund-raising director, and an administrative assistant. There are also two half-time staff: a prevention education coordinator and an outreach coordinator. Therapists and self-defense instructors are funded through client fees or by grants.

Unlike most rape crisis centers, which were started exclusively by women, both men and women formed the Boulder County Rape Crisis Team in 1972 after two local girls were kidnapped and sexually assaulted and one of them was murdered. Originally called Humans Against Rape and Molestation, the team counsels male and female victims and recruits both male and female volunteers. (However, most of the team's clients and volunteers are women.) Headed by a psychologist and a lawyer, the Boulder County Rape Crisis Team is the smallest of the rape crisis centers visited. Only the director and an administrative assistant are paid; 60 to 70

volunteers staff the hotline. The team is independent of criminal justice agencies; however, it is housed in the community mental health center, which contributes some administrative support. This physical location mirrors the team's approach to rape prevention and treatment: it sees rape as a mental health issue that concerns the community as well as the individual.¹¹

Seattle Rape Relief (SRR) serves victims within the Seattle city limits. It is co-directed by the heads of its two divisions: Intervention, and Education and Outreach. Paid coordinators organize the medical advocacy and legal advocacy efforts as well as the hotline, and the staff includes outreach workers for four minority communities: Hispanic women, African-American women, Southeast Asian women, and disabled women. Seattle Rape Relief maintains a great deal of independence from local criminal justice agencies and makes extensive use of volunteers.

King County Sexual Assault Resource Center, in Renton, Washington, serves all of King County, Washington, except for Seattle, which is also in King County. KCSARC has a hierarchical staffing structure similar to that of a traditional social service agency. It has an executive director, a director of client services, directors of educational and financial services, therapists, legal advocates, trainers, community educators, support and financial staff, and specialists in services for children, adolescents, outreach, the Korean community, and other Southeast Asian communities. A private, nonprofit organization, KCSARC works closely with the King County Prosecutor's Office. While the prosecutor's office has VWA's who assist victims with compensation claims and notify them of court appearances, KCSARC provides support and accompanies sexual assault victims through the investigation and prosecution process.

Women Organized Against Rape, in Philadelphia, is also a more traditional social service agency. Its staff is organized hierarchically with an executive director, a development director, an associate director, a fiscal director, and a head for each of its four divisions: hospital and court advocacy, clinical services, intervention services, and education and training. Counselors, advocates, educational specialists, support staff, and volunteers round out WOAR's work force, which includes 19 full-time and 7 part-time paid staff. The program retains about 100 volunteers to provide crisis intervention services. WOAR has a contractual agreement with the city to accompany victims through the rape examination at the two local hospitals to which law enforcement officers and ambulances take sexual assault victims. It also receives funds from the Philadelphia District Attorney's Office to accompany victims through the courts.

Staff and Volunteer Training

Most counselors at rape crisis centers hold bachelor's degrees in human services and have related experience. Outreach workers generally hold bachelor's degrees or have equivalent life experience, such as community organizing. Therapists and program managers often hold master's or higher degrees in psychology, counseling, or social work. Training for staff is often provided on the job and through in-service programs presented by experienced staff members or outside experts. Topics are similar to those covered in volunteer trainings but may also include time and caseload management, more in-depth coverage of counseling and advocacy techniques, and civil litigation issues as they relate to rape victims. In addition, the National Coalition Against Sexual Assault (NCASA) and active State coalitions often hold conferences that include training workshops.¹²

Volunteer training is extensive. At WOAR, RAAP, and Boulder County Rape Crisis Team, volunteers receive 40 hours of training; at Seattle Rape Relief, they receive 80 hours. Boulder's hotline training for volunteers is particularly comprehensive. Volunteers are required to play roles in 61 scenarios based on common counseling mistakes. The training also spells out both process and content goals, which increase in complexity as the training progresses. This system of training ensures reliability and consistency in the training provided to each group of volunteers.

RAAP trains its volunteers in skills most rape crisis centers teach:

- Counseling.
- Crisis intervention.
- Knowledge of rape trauma syndrome and the stages of emotional resolution.
- Assessing victims for suicide risk.
- Sensitivity in working with clients from ethnic and racial minority populations, gay and lesbian clients, and clients with physical and mental disabilities.
- Feminist perspectives on rape.

Rape crisis centers lessen professional burnout by using methods similar to those used in the criminal justice system: supervisor support, autonomy over assignments, participation in interagency task forces, and alternating assignments between providing direct services to victims and presenting programs for preventing rape within the community.

Table 5.1 summarizes the characteristics of the rape crisis centers visited for this study. All of the visited programs rely heavily on volunteer counselors, and all offer rape crisis hotlines.

Endnotes

1. Interview with Audrey Haberman, Legal Advocacy Coordinator, and Ellen Hurtado, Co-Director of Intervention Services, Seattle Rape Relief, Seattle, Washington, February 20, 1992.
2. Staff with professional degrees in social work, counseling, or psychology conduct therapeutic assessments and formal individual and group therapy.
3. Interview with Marte McNally, Victim Services Program Director, Rape Assistance and Awareness Program, Denver, Colorado, February 25, 1992. Unfortunately, the normal emotional trauma associated with rape may be severe. About half of all victims fear death or serious injury when they are attacked. The life-threatening nature and the extremely personal violation of sexual assault explain the pronounced psychological and emotional effects that most rape victims must contend with. Rape victims are six times more likely than women who have not been sexually victimized to develop posttraumatic stress disorder, three times more likely to develop depression, and four times more likely to contemplate suicide. Thirteen percent of rape victims attempted suicide, compared with 1 percent of women who had not been sexually victimized (National Victim Center and Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* [Fort Worth, Tex.: National Victim Center, 1992], pp. 4, 7).
4. According to a national survey of rape victims, 71 percent were somewhat or extremely concerned about their families learning that they had been raped; 68 percent registered concern that others would discover they had been raped; and 50 percent had concerns about their names' being made public (National Victim Center, *Rape in America*, p. 5).
5. King County Sexual Assault Resource Center (KCSARC), "Volunteer Training Manual" (Renton, Wash., 1990).
6. Interview with Marte McNally, Victim Services Program Director, Rape Assistance and Awareness Program, Denver, Colorado, February 25, 1992.

Table 5.1

Characteristics of Rape Crisis Centers by Site

	<u>Denver</u>	<u>King County (Seattle)</u>	<u>Philadelphia</u>	<u>Ramsey County (St. Paul)</u>	<u>Boulder County</u>
Rape Crisis Center	Rape Assistance and Awareness Program (RAAP)	King County Sexual Assault Resource Center (KCSARC), Seattle Rape Relief (SRR)	Women Organized Against Rape (WOAR)	Sexual Offense Services (SOS)	Boulder County Rape Crisis Team
Population Served	Adults, adolescents, and secondary victims	Adults and children	Adults and children	Adults and children	Adults, adolescents, secondary victims, and children
Number of Paid Staff	7	KCSARC: 26; SRR:8	26	4	2
Volunteer Training	40 hours	KCSARC: 50 hours SRR: 80 hours	40 hours, mandated by State coalition	40 hours and ongoing in-service	40 hours
Number of Volunteers	40 to 60	Varies	Approximately 100	20 to 30	60 to 70
Attitudes Toward Criminal Reporting	Neutral but points out that compensation is a benefit of prompt reporting	KCSARC is neutral; SRR is neutral	Neutral	Neutral	Neutral
Hotlines	Yes, TDD hotline, and a hotline for Spanish-speaking clients	KCSARC: yes; SRR: yes, TTY hotline	Yes	Yes	Yes
Advising About HIV	Referred to anonymous testing center; brochure	Referred to anonymous testing center; brochure	Referred to anonymous testing center; brochure	Referred to anonymous testing center; brochure	Referred to testing sites

-
7. Interview with Leigh Allen, Director, and Claudia Bayliff, Assistant Director, Boulder County Rape Crisis Team, Colorado, February 25, 1992.
 8. National Victim Center, *Rape in America*, pp. 10-11.
 9. Interview with Marjory Singher, Director, Sexual Offense Services, St. Paul, Minnesota, February 19, 1992.
 10. For more information on starting a community rape crisis center, becoming a nonprofit corporation, and structuring advisory boards or boards of directors, see chapter 3 of D. M. Carrow, *Rape: Guidelines for a Community Response* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, January 1980), Publication No. NCJ-066818, available from the National Criminal Justice Reference Service, 1-800-851-3420. For more in-depth, evaluative descriptions of other rape crisis centers, see M. Harvey, *Exemplary Rape Crisis Programs: A Cross-Site Analysis and Case Studies* (Rockville, Md.: National Institute of Mental Health, 1985).
 11. Interview with Leigh Allen, Director, and Claudia Bayliff, Assistant Director, Boulder County Rape Crisis Team, Colorado, February 25, 1992. The Boulder County Rape Crisis Team has begun a study of victim and offender interaction with community entities, including victim and offender service agencies, law enforcement, the courts, the district attorney, and the local university to determine where the community fails and succeeds in confronting rape. After they have analyzed all of the community systems that victims and offenders encounter, they hope to form a cooperative community group that can work to eradicate sexual assault by confronting its causes.
 12. For a training manual applicable to inexperienced and experienced victim service professionals as well as program managers, see National Organization for Victim Assistance (NOVA) and National Victim Center, *The Road to Victim Justice: Mapping Strategies for Service* (Arlington, Va.: National Victim Center, 1993).

Chapter 6

Hospitals

"The rape protocol is unique because it is the only medical protocol designed primarily to meet legal needs."

—Joseph Zeccardi, Chair of Emergency Medicine,
Thomas Jefferson University Hospital

Overview

Medical staff who treat rape victims in a hospital emergency room (ER) have dual roles that sometimes conflict: they must attend to the medical and emotional needs of their patients, and they must collect evidence from those patients for the legal system.¹ Many hospitals have devised protocols that accommodate both goals. Some hospitals have created new organizational structures for delivering services to rape victims, and most hospitals have instituted new training for medical and support staff to better serve victim needs.

Victim Services

The goals of emergency room staff in treating rape victims include:

- Treating physical injuries.
- Attending to the immediate psychological crisis.
- Preventing future psychological crises.
- Diagnosing and treating sexually transmitted diseases (STD's).
- Conducting pregnancy tests, counseling about options if pregnancy is established, and dispensing drugs for terminating pregnancy if the patient so wishes.

Medical Services

The physician takes a brief medical history and treats whatever complaints the victim voices, checking for bleeding,

pain, and apparent injury. Physicians may perform a pelvic examination or an anal examination to check for internal injuries if necessary.

In diagnosing and treating STD's, most examining physicians prepare cultures to be tested for chlamydia and gonorrhea at all the sites of assault (oral, anal, and genital), vaginal swabs for trichomoniasis (in female victims), and a blood sample for syphilis. Some ER's automatically dispense prophylactic medication for gonorrhea and chlamydia because they fear victims may not return to receive the results of testing and follow-up treatment if the cultures are positive for these STD's. Other ER's treat for these STD's only if cultures test positive.

For other, viral STD's, such as herpes, hepatitis B, and AIDS, there are no preventive treatments.² According to the Centers for Disease Control and the American Liver Foundation, the chances of contracting these viruses from a onetime contact are unknown and are based on a matrix of risk factors. Herpes is generally diagnosed based on the appearance of symptoms. Victims can begin the series of tests to diagnose the presence of hepatitis B virus immediately, if the physician and patient decide they are necessary. Likewise, victims may request a baseline human immunodeficiency virus (HIV) test immediately after the assault (the victim may also wish to seek out an anonymous testing site for the baseline test). However, the test for HIV can only detect antibodies to the virus, and it takes three to six months for the immune system to produce these antibodies, so the tests must be repeated after this interval. The doctors and social workers interviewed for this report do not bring up the topic of HIV infection during the emergency room visit because it would

introduce another life-and-death issue to victims who have just survived sexual assault. Most ER's provide written information so that, if patients have concerns about these diseases, they can identify the symptoms and know whom to contact for testing. Most include referral to anonymous HIV antibody testing sites by organizations that also provide pre- and posttest counseling. (A discussion of HIV antibody testing of accused offenders can be found in chapter 8.)

Almost immediately after a rape victim is admitted to the ER, a nurse draws two blood samples. One sample goes to the crime laboratory for blood typing; the other is used for an immediate pregnancy test. Since most rape victims wish to prevent pregnancy, ER staff can offer various forms of postcoital contraception (sometimes called the morning-after pill), either in pill form, to be taken over several days, or in a single injection.³ These treatments are very effective if administered within 72 hours after the assault, and most rape victims reportedly choose them.⁴ Dispensing medication that prevents pregnancy requires informing the patient of its possible side effects and dangers.⁵

Because victims may experience some emotional shock immediately after the assault, it can be helpful to provide them with written information about what has transpired during the ER visit and about additional steps that can safeguard their physical and emotional health. The specific information may include:

- The patient's hospital number.
- The name of the examining physician.
- A short description of the medical care and medical tests the patient has received.
- Directions for taking any antibiotics prescribed for preventing sexually transmitted diseases.
- Directions for taking medication for preventing pregnancy, if the patient has so chosen, as well as warning signs of the side effects of these drugs.
- Information on follow-up medical appointments recommended.
- Warning symptoms of physical injuries.
- Referrals to anonymous HIV antibody testing facilities.
- Common emotional reactions to sexual assault and suggestions for coping with them.
- Counseling referrals.

- Information on detective follow-up to the initial law enforcement report.
- Referrals to victim assistance and victim compensation programs in the district attorney's office.

A patient information sheet can be gender-neutral except where it relates to pregnancy issues. (A sample patient information sheet can be found in appendix A.)

Medical staff usually recommend that victims return for a follow-up visit to ensure that all physical injuries have healed or are healing, to take repeat cultures for gonorrhea and chlamydia, and to administer antibiotics if they have not been dispensed in the emergency room. At the follow-up visit, the mental health of the victim, the risk of her committing suicide, and symptoms of posttraumatic stress disorder can also be evaluated. Six weeks after the assault, victims may need to have a second test for syphilis performed. The series of hepatitis B tests may also be continued or begun at this time.

Psychological Services

Although only 4 to 7 percent of rape victims suffer severe physical trauma,⁶ many victims experience extreme emotional trauma immediately after the assault. While the first task of emergency room physicians is to stabilize any life-threatening injuries the victim may have sustained, ER staff can also protect the privacy of and provide support to the victim.

Rather than taking the victim through the standard intake procedure, admissions staff can try to conduct the intake interview with the rape victim in a private room. In some hospitals, a rape crisis center volunteer, a hospital social worker, or a member of the hospital's psychiatry staff may remain with the victim during the examination or during the entire ER stay, depending on the victim's emotional needs. Having a support person of her choice present during the examination may ease the victim's emotional stress. Although each victim of rape experiences similar emotional trauma, the degree of the trauma may be exacerbated by the circumstances of her life, the degree of social support she has, and the events surrounding the assault (for example, kidnapping, break-in, or acquaintance rape).

The social worker or volunteer can explain to the patient what will occur during the examination and why each item of evidence must be collected.⁷ He or she can also explain that the victim has the right to refuse any medical treatment or any portion of the forensic examination. This explanation is

especially important, because it returns control to the victim. By understanding the invasive procedures to be performed and the legal purposes they accomplish, the victim may be better able to tolerate the examination and may view the hospital experience as supportive.⁸

Clinical social workers can also assess the patient's safety needs. If there was a break-in, the victim may need to have windows or doors repaired. If the victim does not have a home to return to, social work staff can help locate temporary shelter. Law enforcement officers can be contacted to transport the victim home and/or to secure her residence. If legal protocols require that the victim's clothing be collected as evidence for trial, the social work department or the rape crisis center may provide the victim with a change of clothes.

Most social workers discuss the availability of counseling or support services and provide patients with written referrals to these services. If the patient is in emotional shock, these referrals can be discussed in the presence of a family member or friend of the victim.

Evidence Collection

Most hospitals are legally obligated to cooperate with law enforcement in preserving and securing the forensic medical evidence. In some States, such as Pennsylvania, physicians and other health care workers are required to report any injury that is the result of a crime to the local law enforcement agency.⁹ However, this report to the police is usually the only information that may be released without the patient's specific consent, a subpoena, or a court order. Formal hospital policies that protect patient confidentiality and staff who support these policies are important components of sensitive victim care.

A clear chain of custody for medical evidence can be maintained by having law enforcement agents or forensic laboratory personnel receive the rape evidence kit directly from the examining physician or retrieve it from a locked evidence cabinet in the ER for delivery to the forensic laboratory. Forensic medical evidence may include the victim's clothing, fingernail scrapings, a saliva sample to determine the victim's secretor status for a comparison with foreign bodily fluids detected in or on the victim's body,¹⁰ blood for typing, any foreign material on the victim's body or in her hair, pubic hair combings (for foreign hairs), head and pubic hair samples to use for comparison with suspected foreign hair, and swabs from all areas of the victim's body that were penetrated. Injuries may be documented by photographs taken by the physician or by a law enforcement

officer. If the victim suffered injuries to the genitals, the officer may wish to tape a statement from the examining physician describing the injuries. Physicians can also photograph minute injuries with a photocolposcope.

Protocols

A well-designed medical protocol that helps ensure the proper collection and storage of all forensic medical evidence of sexual assault and the physician's unambiguous recording of the patient's medical examination can benefit both prosecuting attorneys and physicians. A clear medical record can mean the difference between the physician's having to testify in court and the prosecutor's being able to enter the medical record into evidence by stipulation of the parties.¹¹ If the physician does testify, a clear medical record can help reinforce the credibility of the medical testimony. A standardized, easy-to-use kit for collecting forensic evidence improves the chances that all the relevant evidence will be collected and properly preserved. Use of a standardized kit may be even more important in hospitals that handle only a few rape cases. (Appendix A provides a sample of forms for collecting the medical history relevant to sexual assault and for collecting the evidence necessary for a criminal investigation.) Collaboration between social workers, physicians, and forensic laboratory specialists at Denver General Hospital resulted in a protocol designed to be as tolerable as possible for the patient and as clear as possible for the physician.¹²

In addition, the Denver General Hospital's Clinical Social Work Department created special forms for rape examinations that supplement the physical examination forms regularly used in the ER. The specialized forms encourage physicians to record observations objectively, using measurements whenever possible. For example, the recording of an injury by using medical terms such as "superficial" is discouraged, since these terms may be misunderstood by those outside the medical profession. A more objective presentation of an injury would include a precise measurement, such as "two-centimeter laceration." In Seattle, the Sexual Assault Center at Harborview Medical Center designed a "traumagram," a special form to help physicians conduct a very complete general physical examination, including minor injuries that might not require medical attention but that are pertinent evidence in the legal system.

Recording the victim's emotional state and any of its physical manifestations (shaking or signs of emotional shock) may also be helpful for the prosecution of the criminal case. However, editorial comments about the victim's life-style,

alcohol use, psychiatric history, and refusal of treatment (especially by describing the patient as uncooperative) are irrelevant to the medical history and can be quite damaging to the victim if admitted at trial. Although the victim's recent sexual history (last voluntary intercourse, birth control method, and pregnancies) is medically relevant, the victim's long-term sexual history (age at first intercourse, and so on) is not necessary and may jeopardize the prosecution's case.¹³ Medical personnel should also avoid drawing conclusions that the injuries and evidence collected resulted from rape or sexual assault (these are legal findings to be determined by the court and not the hospital), the final diagnosis can be written as "sexual assault complaint."¹⁴

Usually, the physician examining the victim takes a brief history of the assault to determine the foci of the medical exam and the evidence collection. Trauma specialists Koss and Harvey suggest that physicians alternate questions about the attack with questions that relate to the victim's feelings about the violence. To reduce the victim's discomfort or traumatization by the rape exam itself, they suggest reassuring the victim that:

- The physician acknowledges and sympathizes with her physical and emotional pain.
- She is safe.
- She did not deserve her victimization.
- She handled the situation well because she survived it.

They also stress the importance of asking the victim's permission to do each part of the exam and performing the exam gently and slowly, with full explanation of what procedures are being performed and why. This approach to performing the rape examination helps to return control to the victim.¹⁵

Some victims can tolerate a portion of the rape examination but not all of it. Other victims may refuse to permit evidence of the rape to be collected at all, because they can not tolerate an invasive medical examination after the physical violation of the assault, because they fear reprisal if a police report is made, or because they are suffering from severe emotional trauma. As Holmstrom and Burgess point out in their study of rape victims, the medical care and evidence collection required in the rape examination violate the boundary of the body at the same places as the sexual assault. If the examination is performed against the patient's will, she probably experiences it as a second, symbolic rape.¹⁶ In addition, if the assailant is an acquaintance, employer, husband, or other person who has power over some aspect of her life, the victim

may hesitate to allow the collection of evidence that will positively identify him.

Organizational Structure

Hospital ER's are organized to give first priority to patients with life-threatening injuries or injuries that threaten loss of limbs. If victims of rape suffer from such injuries, they are treated as priority patients. Otherwise, they are typically the first to be treated after patients with such injuries are cared for. The treatment team often includes a physician, a nurse, and a social worker or volunteer counselor.

Matching the gender of the health care provider to the victim does not appear to affect the victim's comfort. According to a study of rape victims' perceptions of their treatment in emergency rooms, the gender of the physician was rarely mentioned as a concern, except by adolescents. Instead, victims considered a physician's respectful and empathetic attitude to be of primary importance.¹⁷

In some densely populated urban areas, specific hospitals have been designated as treatment centers for rape victims. All rape victims who report to police, rape crisis centers, or other medical facilities within such areas are referred to the designated hospital unless their injuries dictate that they be taken to the nearest hospital. In Philadelphia, these designated hospitals are called Code R hospitals. This abbreviation serves to avoid identifying patients as rape victims in the busy ER environment.¹⁸ Designated hospitals may be better able to ensure that the physicians, nurses, and social workers who treat rape victims are specially trained and have developed expertise in caring for and treating them.

In other communities, such as Memphis, Tennessee, rape victims who have not sustained serious physical injury are seen at a rape crisis center (the Sexual Assault Resource Center) with a medical examining room and nurse practitioners on-site. In this way, victims can receive medical care in a setting dedicated to the emotional support of rape victims, rather than receiving emotional support in a medical setting.

The four hospitals visited for this report differed in the extent to which they created new structures for dealing with rape victims. Harborview Medical Center in Seattle has a Sexual Assault Center housed in a facility separate from the main hospital. The ER of the main hospital provides acute care to victims of sexual assault, and the center provides medical and psychological treatment for the long-term effects of rape. This specialized department has increased the sensitivity of both hospital personnel and law enforcement officers, thereby

encouraging more victims to request treatment from the hospital and to be more willing to report and prosecute rapes.¹⁹ The medical director of the Sexual Assault Center oversees all medical treatment of sexual assault victims in the emergency room and throughout the hospital. Medical residents perform all the evaluations of adult victims.

The Crisis Program at St. Paul-Ramsey Medical Center in St. Paul is a part of the hospital's emergency medicine service. Emergency physicians who work with the program use protocols that make the victim feel in control as much as possible.

The Thomas Jefferson University Hospital in Philadelphia is one of two designated hospitals for treating sexual assault victims in the city. Emergency room physicians treat most patients unless gynecologists are available to treat adult female victims.²⁰ Psychiatric nurses serve as the victims' primary advocates. Women Organized Against Rape (WOAR), the local rape crisis center, has an office in the ER, and WOAR volunteers assist the psychiatric nurses in providing emotional support to victims.

Denver County General Hospital is the county's public hospital as well as its designated hospital for treating rape victims. Victims are seen in the emergency room by first-year residents. The ER at Denver County General Hospital has two social workers on staff, and they train volunteers to provide support and advocacy to victims. To maintain quality control, the volunteers are required to write reports of their contacts with clients, which the social workers then review. The social workers also telephone patients to offer support and to obtain feedback on the victim's interaction with ER staff, law enforcement, and volunteers.

Training

Medical staff and support staff at the hospitals visited receive training that helps them to address the medical and emotional needs of rape victims. At Denver General Hospital, first-year emergency medicine residents learn the procedure for examining rape victims in three hours of formal instruction and in on-the-job training in which senior staff offer feedback. First-year residents are chosen because they are beginning a three-year commitment to the hospital and therefore will be available to testify at trial if necessary.

In Seattle, the Harborview Medical Center trains six new doctors each month in the rape protocols used by the hospital's Sexual Assault Center. These physicians develop a new perspective on patient care, as they are taught to allow the

rape victim to partially control the treatment given to her. The medical director of the Sexual Assault Center believes that Harborview and other programs of its kind are training a generation of doctors who will be more sensitive to the needs of rape victims.²¹

At Philadelphia's Thomas Jefferson University Hospital, ER residents receive sensitivity training from WOAR, training in interactional processes from the hospital's psychiatric nurses, and attitudinal and medical training from the chief of Emergency Medicine. The attitudinal issues include teaching the resident:

- To accept the role of evidence collector, as well as that of physician.
- To avoid passing judgment on whether a sexual assault has occurred.
- To avoid judging the life-style or behavior of the patient.
- To avoid editorializing in the medical record.

This training helps counteract prejudices that physicians may have against victims of acquaintance rape (versus stranger rape), victims who are emotionally or psychologically disturbed, victims who are under the influence of drugs or alcohol, and victims who are prostitutes.²²

Denver General Hospital's Clinical Social Work Department trains its own volunteers. The initial 16-hour training provides information about the criminal justice system—the police department's sex crimes unit, the district attorney's office, the crime laboratory, and criminal procedural issues—and a tour of the emergency room. The volunteer program also reviews cases monthly and provides in-service training. In recruiting for such programs, directors look for good listeners, nonjudgmental people, and those from diverse ethnic and social backgrounds. The Clinical Social Work Department asks volunteers (all women) for a one-year commitment to the program; many stay longer.

Financing of the Rape Examination

In 1982, the final report of the President's Task Force on Victims of Crime included a recommendation for legislation to ensure that rape victims would not have to pay for the forensic examination. The report stated, "Victims of other crimes such as burglary or robbery are not charged when police examine their homes for evidence such as latent fingerprints, and it is unfair and inappropriate to assess rape victims for the cost of evidence collection."²³

By 1985, 28 States had paid for at least a part of the forensic exam. In States with no provision for government payment of forensic examination, a victim's health insurance or victim compensation programs may partly or fully compensate her for this cost. Hospitals, police departments, prosecutors, and even rape crisis centers may also pay the bill.²⁴

Largen, a policy researcher, proposed a model statute under which service providers are prohibited from passing on any costs to victims. Public health agencies or criminal justice agencies in the state would pay for all treatment and all evidence collection. This aspect of the statute corresponds to the dual function of the rape examination, which may corroborate evidence of sexual assault and provide diagnostic information for treating the victim, such as pregnancy and STD tests. States will probably want to accord the same confidentiality to billing records as to other medical records.²⁵ An indirect benefit of the model statute is that "victims whose personal emergency medical and mental health needs have been met may make more cooperative and effective witnesses."²⁶

The guarantee of payment may also provide an incentive to hospitals and private physicians to offer adequate services to rape victims. Thomas Jefferson University Hospital in Philadelphia takes an economic loss on every rape case it sees, according to the hospital's chief of Emergency Medicine. The examination costs the hospital about \$150, but the city pays only \$35, and public assistance pays only \$8 to \$12. In addition, only one-third of victims carry private insurance.

Table 6.1 shows the characteristics of the medical response to rape in hospital emergency rooms in the cities visited for this report.

Endnotes

1. L. L. Holmstrom and A. W. Burgess, *The Victim of Rape* (New Brunswick, N.J.: Transaction Publishers, 1991), p. 63.
2. Although there is a vaccine for hepatitis B, it is ineffective after exposure to the virus.
3. Postcoital contraception takes the form of either a high dose of norgestrel and estradiol, ethinyl estradiol alone, both taken orally, or intravenous conjugated estrogens. If the likelihood of pregnancy is minimal, the victim may choose to wait until her menstrual period before deciding whether to undergo abortion.
4. Interview with Linda Lenander, Coordinator, and Kerry Ziller, Social Worker, Clinical Social Work Department, a Denver General Hospital, Colorado, February 24, 1992.
5. Patients generally need to sign written informed consent forms in order to obtain the morning-after pill. Side effects include nausea, vomiting, and abnormal bleeding. In addition, high levels of estrogen may cause complications in the fetus if the victim is or becomes pregnant while taking the drug.
6. According to the National Crime Victimization Survey (conducted by the Bureau of Justice Statistics), only 7 percent of rape victims who survive rape sustain serious injuries. According to the National Women's Survey (conducted by the National Victim Center and the Crime Victims Research and Treatment Center), only 4 percent of rape victims were seriously injured. Bureau of Justice Statistics, *Female Victims of Violent Crime* (Washington, D.C.: Government Printing Office, 1991), No. NCJ-126826, p. 11, table 28; National Victim Center and Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* (Fort Worth, Tex.: National Victim Center, 1992), p. 4.
7. If a law enforcement officer transported the victim to the hospital, she or he may also have explained the importance of forensic evidence collection to the victim.
8. Holmstrom and Burgess, *The Victim of Rape*, pp. 94-96.
9. Under Pennsylvania law (18 PA. C.S.A. § 5106 [Purdon 1989]), the report must identify the victim and her address as well as the character and extent of her injury.
10. A person's secretor status indicates whether the individual secretes indicators of blood type in his or her saliva and other bodily fluids.
11. A stipulation of the parties to admit evidence without testimony concerning the evidence means that both the prosecution and the defense agree to the admission of the evidence.
12. Interview with Linda Lenander and Kerry Ziller, Clinical Social Work Department, General Hospital, Colorado, February 24, 1992.
13. Holmstrom and Burgess, *The Victim of Rape*, pp. 114-115.
14. In *Commonwealth v. Baldwin* (509 N.E. 2d 4 [Mass. App. Ct. 1987]; review denied, 509 N.E. 2d 1202 [1987]),

Table 6.1
Characteristics of Hospitals by Site

	Denver	King County (Seattle)	Philadelphia	Ramsey County (St. Paul)
Name of Hospital/ER	Denver General Hospital	Harborview Medical Center	Thomas Jefferson University Hospital	St. Paul-Ramsey Medical Center
Rape Protocol	Yes	Yes; gender-specific; uses traumagram ¹	Yes	Yes
Rape Kit	Has developed its own	Has developed its own	Has developed its own	Uses BCA ² rape kit
Professional Conducting Examination	First-year resident in emergency medicine	Physician; female hospital employee is also present	Emergency room physician or gynecologist on call	Emergency room staff physicians
Law Enforcement Interview in Hospital	Yes	Joint interview	Yes	Yes
On-Call Counselors in ER	Clinical Social Work Department staff or volunteer	SRR volunteer	WOAR volunteer	St. Paul-Ramsey Crisis Program staff (social worker)
Time Period During Which Forensic Exam May be Performed	Up to 72 hours	Up to 72 hours	Up to 72 hours	Up to 72 hours
Advising about HIV and Other STD's	Referred to confidential testing center; brochure	Referred to confidential testing center; brochure	Referred to confidential testing center; brochure	Referred to immunology department; brochure
Referrals	Patient information sheet	Patient information sheet	Patient information sheet	Patient information sheet

¹A traumagram is a form specifically structured to help physicians clearly record all the information pertinent for prosecution while conducting a thorough examination.

²Minnesota Bureau of Criminal Apprehension.

admission into evidence of a hospital record that stated "diagnosis: sexual molestation" was held to be reversible error. The court held that since this was not an "admitting diagnosis" and since the statement was unequivocal, the statement exceeded the bounds of the statute that authorizes the admission of hospital records.

15. M. Koss and M. Harvey, *The Rape Victim: Clinical and Community Interventions*, 2d ed. (Newbury Park, Calif.: Sage, 1991), p. 166.

16. Holmstrom and Burgess, *The Victim of Rape*, pp. 92-93.

-
17. Ibid., p. 83.
 18. Interview with Dr. Joseph Zeccardi, Chair, Emergency Medicine Department, Thomas Jefferson University Hospital, Philadelphia, Pennsylvania, March 23, 1992.
 19. M. A. Largen, "Payment for Sexual Assault Victim Medical Examinations: A Model Statute," *Response* 9, No. 4 (1986): 1, citing "Hospital," *Journal of the American Hospital Association* 48, No. 11 (1977).
 20. According to Dr. Joseph Zeccardi, Thomas Jefferson University Hospital sees approximately 30 to 40 adult male rape victims each year. They make up about 10 percent of the hospital's sexual assault victim caseload. Interview with Dr. Joseph Zeccardi, Chair, Emergency Medicine Department, Thomas Jefferson University Hospital, Philadelphia, Pennsylvania, March 23, 1992.
 21. Interview with Mary Gibbons, M.D., Medical Director, Sexual Assault Center, Harborview Medical Center, Seattle, Washington, February 20, 1992.
 22. Holmstrom and Burgess, *The Victim of Rape*, pp. 72-80.
 23. President's Task Force on Victims of Crime, *Final Report* (Washington, D.C.: U.S. Government Printing Office, 1982), p. 36.
 24. M. A. Largen, "Payment for Forensic Examinations for Sexual Assault Victims: A Comparison of State Laws," *Response* (Winter 1985): 15.
 25. Largen, "Payment for Sexual Assault Victim Medical Examinations," pp. 17-20.
 26. Ibid., p. 18.

Chapter 7

Interagency Coordination

Overview

Cooperation and close coordination among law enforcement officials, prosecutors, rape crisis counselors, and medical service providers can result in a more swift and effective response to rape. Achieving a balance between the missions of these agencies requires considerable ingenuity and compromise. However, victims and the criminal justice system have benefited where these organizations have been able to work well together.

Sources of Leadership

Any person who works with any aspect of the problem of rape can initiate the activities that will lead to close cooperation of all the agencies within a community. Professionals within criminal justice or medical institutions—prosecutors, police chiefs, physicians, or social workers—or from grass-roots sources—a vocal victim, a rape crisis center, parents, or students—can spark successful cooperation. No government decree is needed to act as a catalyst for a more robust response to rape. The head of the Special Assault Unit of the King County Prosecuting Attorney's Office notes:

It really only takes one person in a community. . . . A leader can help the community identify a road map for the response and the key players. Some are going to be in the police department. Some are going to be in [the local rape crisis center]. Some are going to be prosecutor-based. Every system is going to be different. While small communities tend to view themselves as resource-poor, they're really not. Communities need to identify a motivated person in the community or a mental health counselor who has a particular interest in rape. If the community does not have a victim assistance program, every jurisdiction has a mental health professional who's interested in getting involved in the

area. The community needs to designate a police person and a prosecutor and come up with a workable way to strategize cases.¹

In King County, the prosecuting attorney and the founder of the University of Washington's Harborview Medical Center's Sexual Assault Center have been continuing sources of inspiration and innovative thinking regarding integrating resources to combat the problem of rape and sexual assault. What started in the late 1970's as an informal gathering of the prosecuting attorney, the head of the Sexual Assault Center, and 8 other local professionals concerned about the problem of rape and sexual assault has mushroomed over the past 15 years into a system involving more than 150 people. Similarly, in Philadelphia during the 1970's, Women Organized Against Rape (WOAR) emerged as a strong catalyst for developing a coordinated response to the problem of rape. According to the chair of Emergency Medicine at Thomas Jefferson University Hospital in Philadelphia, WOAR is the facilitator, networker, and mobilizer of the city's task force. It maintains a unique position in the Philadelphia community. WOAR works both inside and outside the medical and legal systems. The group has contractual agreements with the city to accompany rape victims in the two local hospitals designated to treat rape victims and with the district attorney's office to provide victim assistance and advocacy.

Coordinating Strategies

Some of the successful interagency strategies employed in the jurisdictions visited include:

- Creating interagency networks and task forces.
- Improving relations between law enforcement and the community.
- Conducting joint interviews with victims.
- Monitoring one another's performance.

- Heightening the sensitivity of law enforcement and prosecutors to victim concerns.
- Streamlining rape evidence collection kits.
- Training across disciplines ("cross training").
- Providing mixed staffing.
- Performing information and referral services.

Across the country, sexual offense networks and task forces composed of representatives from law enforcement, prosecutors, hospital emergency room personnel, mental health providers, and rape crisis center staff have spearheaded community responses to rape. Such task forces are a continuing mechanism for communication among members. Interagency coordination can entail one agency delegating greater responsibility to another for services for which the second agency may be better suited. At the same time, each member of the task force may discover what it needs to incorporate into its own services. For example, prosecutors may learn that no matter how much support their VWA's or the rape crisis center provides, they still need to form a bond with the victim by establishing trust, by meeting with the victim several times, and by demonstrating sensitivity to the emotional effects the prosecution and trial may have on the victim. Attending interagency task force meetings on rape and sexual assault can also re-energize professionals who are feeling discouraged by the facts of a particular case or by the volume of these offenses, thereby combating burnout.

Through informal contacts as well as planned interagency meetings, many criminal justice officials have learned that the objectives of rape crisis counselors can complement rather than conflict with criminal justice goals. As the chief of the Rape Prosecution Unit in Philadelphia explains,

I'm not running a social service agency, and I don't see any good coming from our being in conflict with WOAR. They're involved with the victim long before I am. What they do helps me as a prosecutor.²

Creating the position of legal advocacy coordinator in community-based rape crisis centers has also helped interagency relations. Since legal advocates have a grasp of both the prosecutor's objective and the rape crisis center's goals, they can facilitate communication between both participants.

Many physicians feel anxious about working with law enforcement officials and the prosecutor's office.³ If a physician conducts a forensic examination, he or she must be prepared to be called to testify in court. By speaking as allies

in a nonconfrontational context, prosecutors can ease physicians' concerns by explaining, and thereby demystifying, the criminal trial process and helping doctors better understand that testifying is part of the process of caring for a rape victim. Prosecutors may have an idea of what constitutes strong evidence, but a social worker or a medical professional can tell them what a victim will realistically tolerate as part of a forensic rape examination. Cooperative rather than confrontational attitudes may enable victim advocates and law enforcement officials to compromise on a rape exam protocol that both collects the evidence needed for prosecution and maintains the victim's dignity.⁴

In King County and some other jurisdictions, a sex crimes detective and a prosecutor conduct joint interviews with the victim. A rape crisis counselor may also be present if the victim so desires. Such interviews spare the victim having to relate the facts of a rape repeatedly. Without the close coordination that exists in King County among the various agencies, joint interviewing would not be possible.

Monitoring one another's activities can help member agencies of a task force respond to rape more effectively. In Philadelphia, WOAR monitors prosecutors, emergency room staff, police investigators, and local judges. The group was instrumental in persuading a judge who frequently made offensive comments to victims from the bench to stop hearing sexual assault cases. Such open monitoring of agencies in the task force appears to promote greater self-scrutiny in the organizations monitored. In some communities, the success with which community-based rape crisis centers have argued the case for a better institutional response to rape may have diminished their own role in the criminal justice process. In the jurisdictions where law enforcement and prosecutors have developed in-house VWA programs and where hospitals have social workers on call, around the clock, for victims of rape and sexual assault, accompaniment and advocacy by community-based rape crisis counselors may be more sporadic. However, if a victim has formed a close relationship with a counselor at a rape crisis center, the counselor may still serve as her advocate throughout the court process, even if VWA's are available through the prosecutor's office. In jurisdictions with VWA's, rape crisis centers continue to provide valuable counseling services to both those victims who decide to report and those who choose not to report.

For victims, the incorporation of VWA's into the criminal justice system has its limitations as well as its advantages. In many communities, budgetary restraints and political struggles over whether providing victim services should be the role of

the government may mean that in-house VWA's can assist rape complainants only during the course of a trial. However, rape crisis centers can provide emotional support to rape victims before, during, and after the trial. These groups may have more freedom to advocate and lobby for legislation that protects and supports victims and to work jointly with other groups having similar agendas, because they are not part of a governmental agency. For example, Seattle Rape Relief participates in many coalitions of community groups, including the Women's Funding Alliance, the Washington Coalition of Sexual Assault Programs, Washington Women United, the King County Domestic Violence Coalition, the Minority Executive Directors Coalition, and the King County Refugee Forum.⁵

Cross-disciplinary training can help all agencies to understand their colleagues' concerns. Rape crisis center staff can train prosecutors, law enforcement officers, and hospital personnel regarding common emotional responses to sexual assault and the concerns rape victims may express. They can teach effective methods for helping the victim feel more at ease and for dealing sensitively with elements of the medical and criminal justice investigations that may be upsetting to the victim. Police departments may educate those outside law enforcement about the process of investigating and interviewing, while the prosecutor's office may educate VWA's and rape crisis center staff about prosecution and trial processes. Law enforcement officers are also trained by prosecutors' offices to be mindful of the importance of filing objective reports free of editorial comment, of filing reports promptly, and of the procedures for processing delayed reports of sexual assault so that both the case and the victim will be treated properly. In many communities the prosecutor's office also works closely with the local hospital(s), instructing doctors about the importance to the prosecution of documenting physical and emotional trauma in the medical record. Training for physicians may also focus on testifying at trial, developing effective rape protocols and rape evidence collection kits, and orienting health service providers to the criminal justice system. Medical personnel may instruct sex crimes investigators in how to read medical reports, and forensic laboratory specialists may instruct physicians in the proper handling and labeling of specimens so that valuable evidence will not be contaminated or invalidated. Periodic in-service training on specific topics usually supplements initial cross-disciplinary training.

The mechanisms that agencies use to foster the exchange of information described in this section vary from community

to community. In some cities interagency coordination is publicly funded, and cross-training sessions and task force meetings are scheduled at regular intervals. Elsewhere, cross-training and information exchange is ad hoc and informal, organized as the need arises or as new staff need to be trained.

Finally, in communities with closely coordinated responses, participant agencies act as information and referral systems. In some of these communities, agencies that work together have also focused their attention on lobbying for legislative or policy changes.

A recently published report, "Looking Back, Moving Forward: A Guidebook for Communities Responding to Sexual Assault," explains the development and implementation of multidisciplinary protocols by community sexual assault interagency councils. The guidebook, developed by the National Victim Center with funding from the Office for Victims of Crime and the Bureau of Justice Assistance, contains a great deal of information for communities seeking to provide a victim-centered approach to victim services and the investigation and prosecution of rape. (See the contact information for the National Victim Center in appendix E for information on ordering this guidebook.)

Endnotes

1. Interview with Assistant Prosecuting Attorney Rebecca Roe, King County Prosecuting Attorney's Office Special Assault Unit, Seattle, Washington, February 21, 1992.
2. Interview with Chief Assistant District Attorney Dianne Granlund, Philadelphia District Attorney's Office Rape Prosecution Unit, Philadelphia, Pennsylvania, March 29, 1992.
3. Interview with Dr. Joseph Zeccardi, Chief, Emergency Medicine Department, Thomas Jefferson University Hospital, Philadelphia, Pennsylvania, March 29, 1992.
4. Interview with Clinical Social Work Coordinator Linda Lenander, Denver General Hospital, Colorado, February 24, 1992.
5. WOAR's relationship with the Philadelphia District Attorney's Office is multifaceted: it was a force behind the creation of the Philadelphia District Attorney's Office Rape Prosecution Unit, and it currently serves as a contractee and monitor of the unit.

Chapter 8

Emerging Issues

Overview

Acquaintance rape, outreach to traditionally underserved groups, DNA typing of accused offenders, HIV antibody testing of accused offenders, and the increasing use of civil suits by victims of rape and sexual assault surfaced during the 1980's as issues that are likely to have a profound influence on the investigation and prosecution of future rape cases.

Acquaintance Rape

"We would not even think about saying we are not going to pursue [a] shooting because the victim knew the suspect. We are certainly not going to position ourselves so that we're not going to investigate [a] rape because the victim knew the suspect. It's a violent crime, and we pursue them [because] they are violent crimes."

—Lieutenant Richard Gardell,
Sex Crimes Unit, St. Paul Police Department

Definition and Defenses

Although not a new phenomenon, acquaintance rape is discussed in this chapter on emerging issues because of the considerable notoriety these offenses have received in recent years. How the criminal justice system and the public view these offenses is dramatically changing, with consequences for victims and defendants as well as institutions that respond to such crimes. Acquaintance rape can be defined as any factual situation containing all of the elements of the crime of rape, as defined by the relevant State statute, in which the defendant and complainant know each other. Stranger rapes are identical to acquaintance rapes in all respects except that no prior relationship exists between the parties.

In most stranger rape cases, the defense counsel argues that the victim has not adequately identified the defendant as her

attacker. In almost all acquaintance rape cases, the defense argues that the complainant consented. A Denver judge who has presided over a large number of both acquaintance and stranger rape cases explains:

In acquaintance rape cases, there is a much greater effort on the part of the defense to [defame the victim's character]. Whereas in stranger rape cases, where ID is the defense, the character of the victim [is] rarely [an issue], in acquaintance rape cases issues related to the State's rape shield law and relevancy issues are paramount.¹

Reporting of Acquaintance Rape

According to legal advocates for rape victims, criminal reporting by victims of acquaintance rape remains well below the actual incidence of the crime, which appears to be high.² For example, in Philadelphia, WOAR reports that about 70 percent of the victims they see have been raped by acquaintances. Yet many rape crisis centers perceive that acquaintance rapists are rarely charged. According to the director of Sexual Offense Services of Ramsey County, an acquaintance rapist is most likely to be charged criminally only when all of the following conditions are met: physical injury, corroboration, witnesses who can testify to similar crimes committed by the suspect, and a prompt report.

KCSARC's legal advocacy coordinator comments that fear of reprisal may be greater for victims of acquaintance rape, because the assailant may know the victim's residence or workplace. Of all rape victims, survivors of acquaintance rape also encounter the most skepticism from the public. It is therefore very difficult for them to go through the criminal justice system. In particular, *in camera* reviews of counseling records can be very painful for victims because they betray the confidentiality of the counseling relationship.³ In addition, the defendant and his counsel may know more

about the victim than do rapists who are strangers, and they can distort this information and use it to badger the complainant.

Law Enforcement Practice

Law enforcement personnel interviewed for this report insist that they do not distinguish between acquaintance rape and stranger rape. Rape is a crime of violence, whether the offender chooses to be violent against someone he knows or against a stranger. In both instances the criminal behavior is the same, and the impact on the victim is just as injurious whether she knew her attacker or not.

In spite of the interviewees' insistence that they do not distinguish between acquaintance and stranger cases, most prosecutors and law enforcement officers acknowledge that certain cases are more likely to be charged than others. In practice, the type of acquaintance rape case most likely to be charged is one in which there are corroborating witnesses whose testimony is deemed admissible as evidence. In most cases, if the victim does not have physical injuries or corroborating witnesses or if the case involves a delayed report, the attacker will not be charged.

Attitudes of Jurors

Prosecutors can evaluate and try cases of acquaintance rape just as they deal with cases of rape by a stranger. Nonetheless, it is important for them to be aware that juries may view acquaintance rape cases differently from stranger rape cases. Many prosecutors and judges note that juror attitudes about acquaintance rape are still a problem. Some prosecutors suggest that female jurors in particular may struggle with attitudes that cause them to look for differences between themselves and the complainant in order to protect themselves from identifying with the rape victim and thereby admitting their own vulnerability to this type of crime. Jurors of both sexes may be highly judgmental about a complainant's life-style, particularly as it relates to sexual relations, drug and alcohol use, and multiple partners. In most cases, prosecutors select people with conservative life-styles to serve on the jury, but according to some of the prosecutors interviewed for this report, this type of juror may lead a significantly different kind of life and may, on average, be older than complainants in acquaintance rape cases. In a break from tradition, a prosecutor might want to impanel younger people and others who lead lives similar to those of the complainant, as they may tend to be more sympathetic to her. However, younger people may not fully understand the magnitude of the crime and may be disinclined to convict.

Myths about rape pervade juror attitudes toward rape cases. Juries appear to rely on social (as opposed to legal) definitions of rape and on their own perceptions of the victim's assumption of risk.⁴ Kalven and Zeisel's study of jury trials found not only that juries are prejudiced against the prosecution in rape cases but also that they were extremely lenient with defendants if there was any suggestion of "contributory behavior" on the part of the victim. "Contributory behavior" mentioned by these jurors included hitchhiking, dating, and talking with men at parties.⁵ More recent studies of potential jurors, sampled from the general population, support Kalven and Zeisel's findings that jurors make decisions based on factors such as the prior relationship of victim and offender and the circumstances of the initial contact, even though these factors are not part of the legal definition of the crime.⁶ The criminal justice system's response to acquaintance rape confirms the suspicions of many victim advocates that juror attitudes critical of victims continue to be obstacles to more effective criminal prosecution.

Outreach to Previously Underserved Populations

Criminal justice and victim service agencies are being challenged to develop innovative strategies for reaching out to previously underserved populations, including ethnic and racial minorities, recent immigrants, lesbians and gay men, and the mentally and physically disabled. This section discusses the outreach activities of the criminal justice system and of rape crisis centers in the jurisdictions visited.

The Criminal Justice System

Some minority communities and many communities of recent immigrants mistrust the criminal justice system, because they may not understand its purposes or how it functions. Law enforcement agencies are exploring ways to increase criminal reporting by rape victims from these communities. Prosecutors' offices are concerned that, even after a case is filed, the process may be stymied if jurors have trouble understanding the culture or life-style of a victim.

Through outreach, professionals who work with rape victims can explain to populations unfamiliar with the criminal justice process that many agencies within the larger community will work together to help them. At the same time, effective outreach programs offer professionals access to communities with which they may not be familiar. Finding translators or impartial native speakers who can communicate with victims from recent immigrant communities re-

mains a problem in many jurisdictions, as does bridging generational problems between older foreign-born people and their more Americanized children. In developing outreach programs to special populations, Seattle and other cities make use of ethnographers and others with access to the community.

The outreach strategies that criminal justice agencies have implemented in the jurisdictions visited for this study include:

- Offering multilingual services.
- Policing communities with officers of the same racial or ethnic background.
- Hiring staff who mirror the populations served.

The Seattle Police Department's Victim Assistance Section began its outreach to the Asian community 15 years ago after 15 people were murdered in a gambling hall in the city's international district. The killings prompted Seattle to focus on the Asian community, and the resulting outreach program has since been extended to other minority communities. The St. Paul Police Department has a program known as ACOP, A Community Outreach Program. Initially called the Asian Community Outreach Program, ACOP was designed around four officers, two of whom are Southeast Asian Americans, whose beat is the area most densely populated by immigrants from Southeast Asia. Since most of the Asian community in St. Paul is Hmong, an ethnic group from Cambodia, ACOP provides direct police services to the community through an officer who speaks the language of many area residents. ACOP also provides training to the rest of the police department on Asian cultural issues.

Prosecutors report that in some cultures the stigma of rape is so severe that victims are extremely reluctant to report to law enforcement agencies.⁷ In these instances it is important to find someone from the victim's community who can support and facilitate her reporting to the criminal justice system. In the view of some prosecutors, the criminal justice system can make important inroads into minority communities that have traditionally been reluctant to report crime by assigning a deputy prosecutor of the same race or ethnicity as the victim whenever possible. According to this view, diversifying the staff of prosecutors' offices and law enforcement agencies also helps dispel the distrust that minorities and others may have about the criminal justice system. However, it is also important to vary the caseload of all prosecutors and law enforcement officers in order to promote their professional development.

Cases involving recent immigrants whose customs differ significantly from mainstream American culture can pose particularly difficult problems for the criminal justice system. In one recent case involving a young Hmong victim, the Ramsey County Attorney's Office was unable to find anyone locally who was willing to testify about customs in the Hmong community for fear of being perceived as testifying against the defendant. Ultimately, it was necessary for the prosecutor to bring in an expert from a university in another community to explain the cultural dynamics of rape within the Hmong community. By then, four months had elapsed since the filing of the original report.⁸ When the hearing was finally held, the prosecutor's office seated the complainant's family in the front of the courtroom in the belief that this would be supportive and make her feel more comfortable. A senior VWA commented:

We came to find out that it was the worst thing we could have done, because it degraded the victim in front of her father. The concept of rape does not exist in Hmong society. A Hmong woman who has been raped is treated as though she committed adultery.⁹

Rape Crisis Centers

Victimization of minority women, particularly African-American women, is disproportionate to their representation in the population: African-American women are twice as likely to suffer a sexual assault as Caucasian women.¹⁰ Nevertheless, minorities and new immigrants do not appear to use rape crisis centers as extensively as Caucasian women. According to rape crisis center staff interviewed for this report, many members of minority communities are unaware of rape crisis centers or misperceive their role. Concerned about this phenomenon, the Rape Awareness and Assistance Program (RAAP) in Denver commissioned the Women's Political Training Institute to run focus groups at Denver's minority community agencies. The institute found that many women had not heard of RAAP, and those who had believed that RAAP was part of the department of social services. Seattle Rape Relief has found that many recent immigrants believe that their organization is part of law enforcement. Many victims fear that if they contact a rape crisis center, they will be compelled to report to the police.

Rape crisis centers identified three major components of effective outreach:

- Hiring minority staff.

- Reaching out to existing community agencies rather than expecting victims to cross cultural barriers after they are traumatized.
- Sensitizing staff and volunteers to issues facing minority and disadvantaged populations.

Minority staff members both educate other staff on special issues affecting their communities and give victims a sense of affiliation and ownership of the agency. In some rape crisis centers, staff members reflect the minority composition of the jurisdiction. For example, the Minneapolis/St. Paul area has a significant Native American population, and the Sexual Offense Service's coordinator of community education is Native American. In Seattle, half the staff of Seattle Rape Relief are minority women. In Philadelphia, 40 percent of the population is African-American, and approximately 50 percent of the WOAR staff is African-American, including its executive director. Nevertheless, recent immigrants, refugees, or victims whose communities are based on cultural or ethnic ties may altogether distrust the social service as well as the criminal justice systems of their new country. These victims may feel that sexual assault is an issue to be resolved by the family, the clan, or the ethnic or racial community, not by professionals or public agencies. In addition, methods of seeking help in minority communities may differ significantly from the mechanisms set up by rape crisis centers. As the director of Intervention Services at Seattle Rape Relief (SRR) comments, "Recent immigrants do not use telephones [and therefore hotlines] like we do, especially to relate a personal violation of this type."¹¹

Language difficulties may be another obstacle for rape victims. Several rape crisis center directors interviewed for this study mention the difficulty of finding translators or multilingual staff members, particularly among Asian groups. The King County Sexual Assault Resource Center in Seattle has specialists in Korean and Southeast Asian communities who are multilingual and who have designed specialized programs. Seattle Rape Relief has an outreach coordinator for three minority communities: Southeast Asian, Latina, and African-American; it also provides brochures in eleven languages. RAAP offers bilingual (English and Spanish) brochures and has Spanish-speaking counselors, who staff a hotline for Spanish speakers. The Boulder County Rape Crisis Team, with a paid staff of only two, tries to have at least one, preferably three, Spanish-speaking volunteers available to serve the Latina population in the area.

Many of the rape crisis centers visited reach out to minority communities in part by forging organizational links or referral agreements with existing community agencies. WOAR

distributes public service announcements to radio stations with large minority listenerships. Drawing from RAAP's community study to determine why their services were not utilized by minority women in proportion to their representation in the population, RAAP's director states:

[It's not] that we tend to go out into communities and say we have this service for you. That doesn't work. It's a question of ownership. . . . We had to get over the idea that we would provide the [direct] service, [and accept the idea] that the service we might provide would be finding funding for, or providing training to, established agencies in the community. Groups who are already in the community are a thousand times better able to provide that service than we are.¹²

This perspective is echoed at Sexual Offense Services (SOS), which serves victims from many ethnic groups and also refers them to agencies within the social service structure that specialize in serving particular populations. Seattle Rape Relief (SRR) is also networking with and educating agencies within minority communities rather than expecting minority victims to seek them out. WOAR's executive director says that rape crisis centers must commit significant financial and human resources to these efforts: "Commitment to reaching minority groups must be a high priority for the organization as a whole. . . . It requires going into minority communities and developing relationships with minority members before a crisis occurs."¹³

Rape crisis centers also endeavor to reach out to victims with physical disabilities. SRR has a special program entitled Project Action that conducts outreach to disabled women. SRR and RAAP also have TTY hotlines, specially designed telephone systems for persons whose hearing is impaired. RAAP provides prevention programs and education programs to people who are physically and developmentally disabled and to deaf and hearing-impaired people. Their office is accessible to wheelchairs. The Boulder County Rape Crisis Team conducts outreach to physically disabled victims, and one of their volunteers is fluent in American Sign Language. Their office is not wheelchair-accessible, but accessible space is available in the community mental health center in the same building, and plans are under way to make the center's space accessible.

All of the rape crisis centers visited for this report are working to address these culture, language, and access barriers so that victims from all communities will utilize their services. Staff and volunteer training can address all types of discrimination, whether based on race, culture, sexual preference, age, or mental or physical disability.

DNA Typing of Accused Offenders

When investigators search a crime scene, they often find blood and semen stains of unknown origin. To use this material to identify a perpetrator, the investigators must establish a connection between the stains and the offender. Evidence derived from deoxyribonucleic acid (DNA) identification, or DNA typing, purports to establish this connection, because the composition of DNA molecules in each human being is as unique as a fingerprint.¹⁴ However, admissibility of evidence based on these techniques has become one of the most controversial issues in law today.¹⁵ Because advances in the technology are moving so quickly, certain aspects of the following technical discussion of DNA typing may no longer be current.

Scientific Basis

The methods used in DNA fingerprinting were originally developed by molecular biologists to determine the genes responsible for a variety of inherited diseases.¹⁶ The methods rely on a statistical calculation of the frequency with which the characteristics they examine can be expected to appear in the population.¹⁷ Two kinds of tests are now in forensic use: (1) restriction fragment length polymorphism and (2) polymerase chain reaction amplification (also called allele-specific probe analysis).

Restriction fragment length polymorphism (RFLP) is the most widely used identification method. It compares segments of DNA from two different samples to determine whether the sequences of their bases (the rungs of DNA's dual spirals) match. Fragments of the DNA are isolated and tagged with radioactive markers. The fragments are then exposed to X-ray film, and the resulting print has become widely known as the DNA fingerprint.¹⁸ It resembles the bar code on grocery store packages. This print, which has been obtained by using the suspect's DNA, is then compared with the print obtained from the sample retrieved from the crime scene. In most cases, the two prints are compared by using only the unaided human eye. However, machines can also read the prints and convert each of them into a numerical code, and the codes can then be compared.

Methods based on polymerase chain reaction (PCR) amplification are more specific, determining whether specific alleles (alternative forms of a gene) rather than whole fragments of DNA match on two different samples of DNA.¹⁹ The "fingerprint" created by PCR amplification records dots corresponding to each gene rather than bands corresponding to fragments of DNA.

Obstacles to Using DNA Typing

Despite the widespread enthusiasm for DNA typing among the prosecutors interviewed for this report, there are still scientific, legal, and financial obstacles to overcome. DNA identification testing is an extraordinarily exacting procedure, requiring a high degree of technical expertise and uniform testing conditions before reliable results can be obtained.²⁰ Even minor inconsistencies in testing conditions or procedure may affect the appearance, intensity, and resolution of bands or dots (the elements of the DNA "fingerprint"), thereby complicating their interpretation.²¹ In addition, critics (including some scientists) have pointed out the lack of scientific consensus or uniform standards for performing forensic DNA testing.²² Few studies designed to evaluate the reliability of DNA typing have been conducted, except by commercial laboratories that market the test. These clinical researchers work with fresh, hygienic, and relatively unlimited amounts of DNA, while forensic testing, especially in rape cases, requires analysis of blood or semen stains that are small, old, and exposed to adverse environmental conditions.²³

Among the criticisms made of DNA typing are the following:

- RFLP analysis relies on subjective interpretations of band patterns, which are often faint and blurry, and there are no generally accepted objective criteria for determining a match between prints.²⁴
- The probability of a coincidental match between patterns has not been calculated.
- A consensus is lacking on the proper size of the database from which statistics for the entire population can acceptably be projected.
- The extensive data necessary to accurately assess the frequency of a given allele in the general population or in ethnic subgroups do not exist.²⁵

The scientific criticisms of DNA testing are particularly significant for the prosecutor in a rape trial, because it is critical that he or she present evidence showing that the standards and procedures used by the testing laboratory in analyzing and comparing the biological samples were appropriate and sufficient to ensure the reliability of its results. Prosecutors may also need to establish the general scientific acceptance and reliability of DNA identification testing in court. Commonly, this will involve presenting expert testimony by a molecular biologist and a population geneticist from the academic community, as well as testimony by a qualified senior scientist from the testing laboratory.

In some jurisdictions, statutes may expressly declare DNA identification evidence to be admissible in criminal proceedings, thus removing the need for a prior hearing to determine the technique's reliability or general scientific acceptance.²⁶ In addition, guidelines have been or are currently being issued by the FBI's Technical Working Group on DNA Analysis Methods, the California Association of Crime Laboratory Directors, the New York State Forensic DNA Analysis Panel, the Congressional Office of Technology Assessment, and the National Academy of Sciences. Procedurally, a criminal defendant may be entitled to prompt notice of the prosecution's intent to offer DNA identification evidence.²⁷

The U.S. Supreme Court recently refused to hear the case of *Jakobetz v. United States*,²⁸ which involved a criminal defendant's appeal of a rape conviction by challenging the scientific reliability of DNA evidence as insufficiently established for acceptance in court. The Supreme Court's refusal to hear the appeal leaves in place the ruling of the U.S. Court of Appeals for the Second Circuit, which upheld the defendant's conviction. The ruling essentially declared that the technique was reliable and would be accepted in future cases without extensive hearings,²⁹ but the Supreme Court's refusal to hear the case means that the debate will continue over the admissibility of the genetic profile derived from a suspect's DNA.³⁰

Defense attorneys are also now using DNA testing when seeking to have rape convictions reconsidered. A Suffolk County (New York) court recently overturned the rape conviction of a man who had served 11 years in prison, and in at least a dozen other cases in the last two years DNA tests have led to the release of men convicted of rape.³¹ According to one of the defense attorneys in the New York case, defense lawyers are simply making use of a tool that had been considered as solely in the prosecutor's domain.³² In another recent case in Virginia, citing a new analysis of genetic evidence, Virginia Governor L. Douglas Wilder pardoned a man who had served six and a half years on a rape conviction. The prisoner was exonerated by a DNA test from semen left on the victim's body. In issuing his pardon Governor Wilder said, "In the absence of that DNA, the evidence would have been pretty damning. If it can be used to convict, it must also be used to protect the innocent."³³

For those who believe that DNA typing will become a universally accepted practice, the technology has the potential of one day becoming as widely used as fingerprinting is today. The head of the King County Prosecuting Attorney's Special Assault Unit remarks, "I think it is going to be great for everybody, defendants too, because it can exclude a

suspect, just like it can identify him."³⁴ Other prosecutors note the promise DNA typing holds for creating databanks to store information about convicted rapists that may be useful in solving serial rape cases.³⁵

Law enforcement DNA databanks on sex offenders may become increasingly important to the investigation and prosecution of sex crimes in the years to come. Minnesota requires DNA specimens to be taken of every convicted sex offender.³⁶ The Ramsey County Attorney's Office has already identified an unknown assailant by his DNA specimen in the databank and has subsequently convicted him.³⁷

For now at least, rape cases in which DNA typing is relied upon by the prosecution remain a novelty, both because of the high cost of testing (sometimes in excess of \$2,000) and because of the time it takes to receive test results from a qualified testing laboratory. Several commercial laboratories currently perform the tests, as does the FBI. In addition, some States have instituted methods for testing DNA samples locally. Local testing is expected to be a boon to prosecutors: samples for analysis no longer have to be sent to the FBI, where the wait for test results can be as long as nine months.

HIV Antibody Testing of Accused Offenders

Victims of sexual assault face the possibility of being infected with HIV, the virus that causes AIDS. The risk of contracting HIV from a rapist depends on several factors, the most obvious of which is whether the assailant is infected with the virus.³⁸ The type of assault and the degree of exposure to the blood and semen of the attacker may also affect the likelihood of transmission. Studies reported in the *Journal of Interpersonal Violence* and the *Journal of Emergency Nursing* suggest that other factors may affect the risk of HIV infection during sexual assault:

- The number of assailants.
- The amount of virus the victim was exposed to in each exposure.
- The number of exposures.
- The virulence of the viral strain.
- The kind of assault (vaginal, anal, or oral).
- The victim's susceptibility to infection.³⁹

Several studies suggest that the risk of transmission increases with either additional exposures or anal intercourse.⁴⁰ If

physical trauma is associated with sexual assault, mucosal barriers to infection may be compromised, and the abraded or torn tissue may be more vulnerable to transmission of HIV infection.⁴¹

Testing for HIV Antibodies

Current widely used screening tests determine the presence of antibodies to HIV rather than the presence of HIV itself.⁴² The immune system normally produces sufficient antibodies to cause a positive screening test within three to six months of HIV infection, although longer "window periods" have been found among some individuals. A negative HIV test after the normal window period is not an assurance that one is free of HIV infection, because some people do not develop antibodies for a year or more.⁴³

Several serum HIV antibody tests are available. The most common initial screening technique is the enzyme-linked immunosorbent assay (ELISA), also known as enzyme immunoassay (EIA). Originally developed to screen blood products, ELISA tests can be performed quickly and easily. The western blot is more expensive and requires more technical expertise than the ELISA. However, it is more specific and therefore is used to confirm ELISA-positive results and to rule out false positive ELISA results.

ELISA and the western blot have sometimes failed to identify individuals infected with HIV by providing false negative results, and they have sometimes labeled uninfected people as carriers by providing false positive results. Inaccurate test results may be due to the "window period," laboratory error, certain medical conditions that may confound antibody tests, or the condition of the blood sample. Sometimes repeat testing with a new sample can resolve ambiguous results.⁴⁴ Posttest counseling of HIV-seropositive persons should stress their responsibility to inform their sexual and drug-using partners of their HIV status and to avoid exposing others to the risk of infection. For HIV-seronegative persons, counseling should emphasize that the result is no guarantee of remaining negative and, particularly for those with risk factors, the importance of positive behavior change to maintaining seronegative status.

The Arguments for and Against Mandatory Testing of Rapists

Advocates of mandatory testing assert that the right of a rape victim to know the HIV status of a convicted offender or, in some cases, of an accused rapist supersedes that person's right to privacy.⁴⁵ Some victims' rights advocates argue that

the purpose of testing accused persons for HIV is to protect the victim's health and peace of mind and to reduce the further spread of the virus. Studies indicate that sexual offenders often have numerous victims and high rates of recidivism; even a limited number of HIV-infected offenders can transmit the virus to a considerable number of victims. These and other considerations have led some legislators to contend that any information with respect to the HIV status of an assailant should be valuable to the victim—for the protection of not only the victim but also those with whom the victim has intimate contact.⁴⁶

Under Florida's 1990 sex offender testing law, one of the Nation's most stringent, victims are entitled to know at the earliest possible opportunity whether the person charged with the crime has tested positive for HIV.⁴⁷ California's penal code was amended in 1988 to require that any person bound over for a violent sexual assault be tested for HIV.⁴⁸ The results of the test are released to the victim.⁴⁹ California makes the victim's right to know absolute as long as there is cause to believe that the assault involved the transfer of bodily fluids.⁵⁰ In the view of the executive director of the National Network for Victims of Sexual Assault (NNVSA), mandatory testing accomplishes two additional goals:

- It prevents convicted offenders from bargaining for a lighter sentence if they volunteer to be tested.
- It provides evidence to a woman who has contracted HIV from a rape, should she wish to bring a civil suit against a convicted rapist.⁵¹

Opponents of mandatory testing agree that with respect to HIV transmission the government should be concerned with the health of the victim and of the public in general.⁵² However, they assert that knowledge of a defendant's HIV status is of minimal use to the victim, since the only real issue is whether the victim herself has acquired HIV. Opponents of testing, including many victim advocates, recommend anonymous testing of the victim instead. A related concern is that of subjecting a rape victim to public scrutiny by associating a public court order involving HIV testing of the defendant with a case in which she is the identified victim. The privacy rights of the victim, argue opponents of testing, and her ability to obtain health insurance following a rape should be paramount.⁵³

In addition, the defendant's test may not prove useful to the victim. If a defendant's test result is negative soon after the assault, it may be a false negative because of the several months-long interval between HIV infection and the production of antibodies. Such a result would give a victim a false sense of security. Although less likely, a defendant's test

result may be a false positive, causing the victim to suffer needless mental anguish. Even if the defendant's test result is a true positive, this information may be of little use to a rape victim. If there is a significant interval between the assault and the testing procedure, then the perpetrator could have been infected at any of several times: before he attacked the victim, between the attack and his arrest, or in jail while awaiting trial.⁵⁴ "An offender's HIV status really does not give very much usable information to a victim," said the director of Sexual Offense Services (SOS) of Ramsey County. "If a defendant tests positive, this really doesn't tell the victim anything. The bottom line is . . . the victim's test."⁵⁵

Those who argue against mandatory testing because the testing process is imperfect contend that only testing, re-testing, and counseling of the victim protect her interests.⁵⁶ Opponents further argue that the call for testing diverts attention from the psychological, medical, and financial needs of rape victims. In the view of these critics, victims' interests are better served through free anonymous HIV testing, counseling, and early medical intervention.⁵⁷

Legislation and the Courts

According to the AIDS Policy Center, as of 1991, at least 24 States have moved to mandate HIV testing for alleged or convicted rapists and disclosure of test results to rape victims. Ten States mandate HIV testing for convicted sex offenders,⁵⁸ and four others allow a court to order testing.⁵⁹ Four mandate testing of arrestees for sexual assaults,⁶⁰ while six others⁶¹ authorize testing of arrestees.⁶² The question remains whether all of these legislative actions effectively address the HIV epidemic in general and protect the rape victim's interests in particular, or whether they serve to heighten existing fears and to violate the civil rights of arrestees and offenders.⁶³

Legislative action on this issue has now largely displaced the role of courts in mandating testing of accused offenders. In *People v. Thomas* a 1988 New York State case that considered the issue before the state enacted its AIDS Testing and Confidentiality Law, the court determined that a defendant who pleaded guilty to attempted rape in the first degree could be ordered to undergo an HIV test at the victim's request and that the test was reasonable and proper. After considering the defendant's argument that such a blood test would violate his Fourth Amendment right to be free from unlawful searches and seizures and would expose him to further criminal prosecution, the court held that it had discretionary power to compel the test "simply because it [was] the intelligent, humane, logical, and proper course of action in this situation."⁶⁴

Criminal Justice and Victim Assistance Response

Although the policies of county prosecutors vary across jurisdictions, the deputy prosecutors interviewed for this report do not ask the court to have accused rapists tested for the HIV antibody. Reports of defendants bargaining for lighter sentences in exchange for agreeing to be tested are increasingly common in jurisdictions that do not mandate testing. For prosecutors, the question of testing accused sex offenders raises constitutional questions regarding:

- The presumption of innocence.
- Rights to unwarranted search and seizure.
- Rights to privacy.

The more immediate and important goal of the criminal justice system, according to these prosecutors, should be to advise the victim to be tested.

Most rape crisis centers emphasize the health of the victim over testing the accused rapist. The policy of Seattle Rape Relief is to counsel victims to seek anonymous and confidential testing in clinics that offer pre- and posttest counseling. Protocols in rape crisis centers and in many emergency rooms advise victims to have an HIV test three months and six months after the rape. In addition, she may have a baseline test, conducted shortly after the offense to determine her HIV status before the rape. In the event a victim tests positive, rape crisis centers can offer counseling and referrals to medical and social services.

Civil Suits

Some victims of sexual assault have begun turning to civil actions as a means of obtaining redress for the injuries they have suffered. In many jurisdictions tenants have brought lawsuits against landlords and building management companies, and workers have sued employers. Among the institutions named as defendants in the last two years have been colleges and universities where male students raped their female classmates, a California hospital where a male nurse raped a female patient in the emergency room, and several hotels, motels, and condominium associations.⁶⁵ In one 1991 civil suit brought in Massachusetts against a chain of convenience stores, an employee who was raped on the premises won a \$600,000 settlement. The plaintiff's lawyers argued in court that the management of the convenience store had resisted installing surveillance cameras, "panic button" alarms with which to summon police, and even mirrors to let the

clerk observe shoppers in the aisles.⁶⁶ They also called the rapist as a witness to testify to the lax security in the store. The fact that the plaintiff called the convicted rapist as a witness at the civil trial is important, because it suggests a novel approach to demonstrating contributory negligence.

With many civil cases ending in confidential out-of-court settlements, it is impossible to say what the highest damage award has been to date. But most experts on rape say that while there were only a few civil suits 15 years ago, women now bring suit because they are less shamed by rape and more aware of the legal options for fighting back.⁶⁷ Victims of rape file civil suits to seek the vindication that the criminal justice system may not provide.⁶⁸

The victim service community is also becoming interested in the use of civil suits by rape victims. According to the executive director of the National Organization for Victim Assistance (NOVA), in the coming years civil and criminal litigation will better define victims' rights and third-party duties to protect such rights in the following areas:

- Duty of employers to hire employees with care.
- Duty of landlords and hotel owners to make premises secure.
- Duty of schools to make premises, including dormitories, secure.
- Duty of State officials to make the early release of convicted persons only if there is reasonable evidence that they will not harm others or, when release is not discretionary, to inform anyone who may be endangered by the release.⁶⁹

The National Coalition Against Sexual Assault (NCASA) has started encouraging victims of rape and sexual assault to seek redress in civil courts for the injuries they have suffered.⁷⁰ Civil suits may compensate victims for their immediate and long-term physical and psychological injuries.

Many rape victims seek civil remedies because a lawsuit restores some control to them. Whereas a rape victim in the criminal system is merely a State's witness, in a civil case she is the plaintiff and has more power in the decision-making process. In addition, the standard of proof is lower in the civil courts, usually requiring only a preponderance of the evidence, whereas the criminal system requires the standard of "guilt beyond a reasonable doubt."

In contrast to criminal actions, the defendant in a civil action must take the stand when called as a witness, although on the stand he is entitled to invoke the Fifth Amendment privilege

against compelled self-incrimination. Moreover, in a civil trial the victim's attorney may comment on the defendant's refusal to testify, whereas prosecutors in criminal cases may not. Finally, unlike criminal trials, the jury's decision in a civil case need not be unanimous for the victim to prevail.

There are three main disadvantages of civil actions:

- As plaintiff the victim bears the cost of civil litigation. Since many victims lack the funds to sue, they may be unable to secure the services of a private counsel on a contingency fee basis.
- Civil suits often take years to resolve.
- A State's rape shield law applies only in criminal cases. In a civil action, the defense counsel is often free to question the victim about her sexual history.

Civil suits in rape cases may be brought against the assailant, against third parties, or against both.⁷¹ A civil suit against the assailant is generally brought under intentional tort liability theories, such as assault, battery, and intentional infliction of emotional distress.⁷² Such suits do not subject the defendant to double jeopardy, since their only purpose is to compensate the victim for damages resulting from the crime.⁷³ Rape victims may file civil actions against criminally acquitted or convicted defendants. Evidence of an assailant's criminal conviction is admissible in the civil trial.

Civil suits against third parties are based on negligence theories. To prevail, the victim must prove all four of the basic elements of negligence:

- A duty of care owed to the victim.
- A breach of that duty.
- Harm suffered by the victim.
- The third party's breach of duty proximately caused the victim harm.⁷⁴

The third party's duty to the victim may arise because of the party's relationship with the victim, because of the party's relationship with the assailant, or because the third party created a condition that contributed to the rape or failed to take some action that could have prevented the rape.⁷⁵ Landlords, hotel owners, and employers may be held liable in rare instances for sexual assaults committed by employees, under the doctrine of *respondeat superior*. More typically, an employer may be liable if he or she was negligent in hiring the employee. An employer's duty to the victim is based on his or her relationship with the employee and on his or her relationship with the victim.⁷⁶

Asked about civil suits and their impact on rape prosecutions, a King County judge and former sex crimes prosecutor recalls a recent civil case over which he presided: "The civil process subjects the plaintiff victim to depositions, a psychiatric exam, careful scrutiny of his or her personal life, and his or her therapist taking the stand. The idea is that the civil arena is easier because the [standard] of proof is [lower], but I'm not so sure."⁷⁷ The ultimate impact of the increase in civil suits on criminal reporting is far from certain. Some judges and other observers do not believe that civil cases brought by rape victims have had any appreciable impact on criminal outcomes.⁷⁸ Civil suits have perhaps had their greatest impact by prompting third parties, such as employers and landlords, to take measures that will prevent criminal attacks on those to whom they owe a duty of care. If so, civil suits brought by rape victims may help to create a safer society.⁷⁹

Endnotes

1. Interview with Judge Lynne Hufnagel, Denver, Colorado, February 24, 1992.
2. Interview with Audrey Haberman, Legal Advocacy Coordinator, Seattle Rape Relief, Washington, February 20, 1992; interview with Mo Corrigan Fain, Legal Advocate, King County Sexual Assault Resource Center, Renton, Washington, February 21, 1992.
3. Interview with Mo Corrigan Fain, Legal Advocate, King County Sexual Assault Resource Center, Renton, February 21, 1992.
4. L. L. Holmstrom and A. W. Burgess, *The Victim of Rape*, 3d ed. (New Brunswick, N.J.: Transaction Publishers, 1991), pp. 168-69.
5. S. Estrich, *Real Rape*, (Cambridge, Mass.: Harvard University Press, 1987) p. 19 and note 55 of chapter 2, citing H. Kalven and H. Zeisel, *The American Jury* (Boston, Mass.: Little, Brown, 1966), pp. 249-254.
6. Estrich, *Real Rape*, citing H. Field and L. Bienen, *Jurors and Rape* (Lexington, Mass.: Lexington Books, 1980), pp. 125-41; S. Klemmack and D. Klemmack, "The Social Definition of Rape," in M. Walker and S. Brodsky, eds., *Sexual Assault: The Victim and the Rapist* (Lexington, Mass.: Lexington Books, 1976), pp. 135-46; K. L'Armand and A. Pepitone, "Judgments of Rape: A Study of Victim-Rapist Relationship and Victim Sexual History," *Personality and Social Psychology Bulletin* 8 (March 1982): 134-39; J. Krulowitz and E. Johnson Payne, "Attributions About Rape: Effects of Rapist Force, Observer Sex and Sex Role Attitudes," *Journal of Applied Social Psychology* 8 (1978): 291-305.
7. Interview with Assistant District Attorney Karen Steinhauser, Second Judicial District Attorney's Office, Denver, Colorado, February 24, 1992.
8. Interview with Assistant Ramsey County Attorney Clayton Robinson, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, February 18, 1992.
9. Interview with VWA Mary Biermaier, Ramsey County Attorney's Office, St. Paul, Minnesota, February 18, 1992.
10. BJS, *Female Victims of Violent Crime*, (Washington, D.C.: U.S. Department of Justice, 1991), No. NCJ-126826, p. 8, table 13.
11. Interview with Ellen Hurtado, Co-Director, Intervention Services, Seattle Rape Relief, Washington, February 20, 1992.
12. Interview with Marte McNally, Victim Service Program Director, Rape Assistance and Awareness Program, Denver, Colorado, February 25, 1992.
13. Interview with Vanessa Grant-Jackson, Executive Director, Women Organized Against Rape, Philadelphia, Pennsylvania, March 23, 1992.
14. J. Hanner, "DNA Fingerprinting: Evidence of the Future," *Kentucky Law Journal*, 79(1991): 415, 417.
15. T. M. Fleming, "Admissibility of DNA Identification Evidence," *ALR4th*, 84(1991): 313, 318.
16. Comment, "DNA Identification Tests and the Courts," *Washington L. Rev.* 63 (October 1988).
17. Fleming, "Admissibility of DNA Identification Evidence," p. 318.
18. *Ibid.*
19. *Forensic DNA Analysis: Issues, Criminal Justice Information Policy* (Washington, D.C.: U.S. Department of Justice, 1991), No. NCJ-128567.
20. Burk, "DNA Fingerprinting: Possibilities and Pitfalls of a New Technique," *Jurimetrics J.* 28 (1988): 455, 465.
21. Hoeffel, "The Dark Side of DNA Profiling: Unreliable Scientific Evidence Meets the Criminal Defendant," *Stanford Law Review* 42 (January 1990): 465, 481.

22. Sherman, "DNA Tests Unravel?" *National Law Journal* 12, No. 15 (December 18, 1989): 24.
 23. Fleming, "Admissibility of DNA Identification Evidence," p. 325, citing Pearsall, "DNA Printing: The Unexamined 'Witness' in Criminal Trials," *California L. Rev.*, 77 (May 1989): 665, 668, 669.
 24. Hoeffel, "The Dark Side of DNA Profiling," pp. 486, 487.
 25. Fleming, "Admissibility of DNA Identification Evidence," p. 326.
 26. See, for example, *Cobey v. State*, 559 A.2d 391 (Md. 1989); *State v. Schwartz*, 447 N.W.2d 422 (Minn. 1989).
 27. See, for example, *People v. Castro*, 545 N.Y.S.2d 985 (1989).
 28. *Jakobetz v. United States*, No. 91-7921 (cert. denied).
 29. *Ibid.*, 955 F.2d 786 (1991).
 30. In *U.S. v. Bonds* (No. 91-3608 [6th Cir. December 15, 1993]), the Federal Court of Appeals for the Sixth Circuit affirmed a district court's admission of DNA evidence in a case in which DNA taken from a sample of the defendant's blood "matched" the DNA profile of a bloodstain found in a shooting victim's car. In its ruling upholding the new standard for scientific evidence set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (61 LW 4805 [1993]), the Appeals Court declared, "[I]t is irrelevant that the FBI's DNA matching and statistical techniques are still being refined or that the results produced may not be wholly accurate. The results of the DNA testing were clearly derived from tests based on methods and procedures of science and not based merely on speculation, and were supported by sound and cogent reasoning, even if these methods and procedures are not perfected."
- Under the U.S. Supreme Court's ruling in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the test for admission of scientific evidence should be the permissive Federal Rules of Evidence. The Federal Rules of Evidence generally allow use of evidence that has "any tendency to make the existence of any fact that is of consequence. . . more probable or less probable than it would be without the evidence." "FBI's DNA Testing Easily Passes New Admissibility Standard," *Criminal Justice Newsletter* 25, No. 1 (January 3, 1994): 1-2.
31. *People v. Kerry Kotler*, No. Cr. 2480-81 (Suffolk Co., N.Y. Sup. Ct. 1992).
 32. J. Ravinovitz, "Rape Conviction Overturned in DNA Tests," *New York Times*, December 2, 1992, p. B6, citing Peter Newfeld, Esq. Newfeld and Barry Scheck, a professor of law at Cardozo School of Law, are co-chairs of the National Association of Criminal Defense Lawyers' DNA task force and the authors of a 5,000-page manual for defense lawyers on how to make use of DNA testing.
 33. "DNA Testing Frees Man Jailed in Rape," *New York Times*, April 25, 1993, p. 29.
 34. Interview with Assistant Prosecuting Attorney Rebecca Roe, King County Prosecuting Attorney's Office, Seattle, Washington, February 21, 1992.
 35. Linda Fairstein, Chief, Sex Crimes Prosecution Unit, New York County District Attorney's Office testimony before the U.S. Senate Committee on the Judiciary, Senate Hearing 101-931, Part 1, Serial No. J-101-80, p.54.
 36. Minn. Stat. § 609.3461, DNA Analysis of Sex Offenders Required.
 37. Correspondence from Assistant Ramsey County Attorney Jeanne Schleh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, April 28, 1993.
 38. AIDS Policy Center, *Intergovernmental AIDS Report* (Washington, D.C., May 1991), pp. 7-9. Contact information for the center is provided in appendix F.
 39. *Ibid.*
 40. Note, "AIDS and Rape: The Constitutional Dimensions of Mandatory Testing of Sex Offenders," 76 *Cornell L. Rev.* 238, nos. 24, 25 (1990), pp. 241-242.
 41. P.H. MacDonald, "AIDS, Rape and the Fourth Amendment: Schemes for Mandatory AIDS Testing of Sex Offenders," *Vanderbilt L. Rev.* 43 (1990): 1607, 1630, citing *Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic* (June 1988).
 42. There are far more expensive technologies, including viral culture and polymerase chain reaction analysis, currently used in research, which can detect the presence of the virus itself.

43. MacDonald, "AIDS, Rape and the Fourth Amendment," pp. 1607-36, citing Note, "Constitutional Questions: Mandatory Testing for AIDS Under Washington AIDS Legislation," *Gonz. L. Rev.* 24 (1988-89): 433, 437.
44. MacDonald, "AIDS, Rape and the Fourth Amendment," p. 1616.
45. AIDS Policy Center, *Intergovernmental AIDS Report*, p.7.
46. MacDonald, "AIDS, Rape and the Fourth Amendment," p. 1630-31.
47. F.S.A. §951.27, F.S.A. §960.003(2)(West 1992 Supp.).
48. Cal. Penal Code § 1524.1(b)(1) (West 1990 Supp.).
49. *Ibid.* Colorado and Texas, like California, require the accused to be tested for AIDS and the results to be released to the victim. Colo. Rev. Stat. § 18-3-415 (1989 Supp.); Tex. Crim. Proc. Code Ann. § 21.31 (Vernon 1989).
50. Cal. Penal Code § 1524.1(b)(1) (West 1990 Supp.).
51. AIDS Policy Center, *Intergovernmental AIDS Report*, pp. 7-9.
52. MacDonald, "AIDS, Rape and the Fourth Amendment," p. 1634.
53. Correspondence from Assistant Ramsey County Attorney Jeanne Schleh, Ramsey County Attorney's Office Crimes Against Persons Unit, St. Paul, Minnesota, April 28, 1993.
54. MacDonald, "AIDS, Rape and the Fourth Amendment," p. 1632.
55. Interview with Marjory Singher, Director, Sexual Offense Services (SOS) of Ramsey County, St. Paul, Minnesota, February 18, 1992.
56. *Ibid.*
57. AIDS Policy Center, *Intergovernmental AIDS Report*, p. 7. Other opponents of testing assert that because AIDS is still incurable and because HIV and AIDS are highly stigmatized diseases that can trigger discrimination on the basis of actual or perceived status, the potential prejudice offenders may face outweighs the limited benefits of testing for both victims and the State.
58. California, Florida, Illinois, Indiana, North Dakota, Oregon, South Carolina, Tennessee, Virginia, and West Virginia. In *People of the State of California v. Jillie*, Ca. Ct. of App., 3rd Dist., No. C011236 (July 22, 1992), an appeals court in California ruled that California's mandatory HIV testing statute, Ca. Penal Code § 1202.1, clearly does not apply to persons convicted of uncompleted sexual offenses. In *Jillie*, the accused was apprehended before he had any physical contact with the victim. "CA AIDS Testing Statute Not Applicable to Uncompleted Offenses," *AIDS Litigation Reporter* (Westtown, Penn.: Andrews Publications, 1992), p. 8769.
59. Kansas, Michigan, Minnesota, Texas, and Washington.
60. Colorado, Florida, Nevada, and Ohio.
61. Arkansas, Georgia, Indiana, Michigan, Texas, and Virginia.
62. AIDS Policy Center, *Intergovernmental AIDS Report*, p. 8.
63. MacDonald, "AIDS, Rape and the Fourth Amendment," p. 1617.
64. *People v. Thomas*, 529 N.Y.S. 2d 429 (Schoharie Cnty. 1988). See also *People v. Cook*, 532 N.Y.S.2d 940 (App. Div. 1988), maintaining that the constitutional rights of a defendant who pleaded guilty to rape were not violated by a court-ordered HIV test conducted at the victim's request.
65. M. Balleza, "Many Rape Victims Finding Justice Through Civil Courts," *New York Times*, September 20, 1991, p. A1.
66. P. Langner, "Rape Victim Settles Lawsuit Over White Hen Security," *Boston Globe*, November 22, 1991, p. 50.
67. Balleza, "Many Rape Victims Finding Justice Through Civil Courts," p. A1.
68. Comment, "Civil Compensation for the Victim of Rape," *Cooley L. Rev.* 7(1990): 193, citing Epstein, "Faced With Humiliating Trials and Unsatisfactory Treatment by Criminal Courts, Rape Victims Have Taken a New Course of Action: They Sue," *Student Law* (1988): 51.
69. M. A. Young, "Sexual Assault: The Crime and Its Consequences," *NOVA Newsletter* 15, No. 7 (1991): 9.
70. Balleza, "Many Rape Victims Finding Justice Through Civil Courts," p. B7, quoting Cassandra Thomas.

-
71. Third-party defendants in civil cases involving rape have included landlords, hotel owners, employers, businesses, government entities, schools, and hospitals. Comment, "Civil Compensation for the Victim of Rape," 204-205.
72. LeGrand, "Civil Suits for Sexual Assault: Compensating Rape Victims," 8 *Golden Gate U. L. Rev.* 479 (1979).
73. Double jeopardy refers to the prohibition against a second prosecution after a first trial for the same offense. *Black's Law Dictionary* 440 (5th ed., 1979); *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938).
74. Restatement (Second) of Torts, § 328A (1965).
75. Comment, "Civil Compensation for the Victim of Rape," p. 204.
76. *Respondeat superior* means that a master is liable in certain cases for the wrongful acts of his servant and a principal for those of his agent. *Black's Law Dictionary* 1179 (5th ed. 1979); *Ponticas v. K.M.S. Investments*, 331 N.W.2d 907 (Minn. 1983).
77. Interview with Judge Robert S. Lasnik, King County Court, Seattle, Washington, February 20, 1992.
78. Interview with Judge Bertrand Poritsky, Juvenile Court, St. Paul, Minnesota, February 19, 1992.
79. Comment, "Civil Compensation for the Victim of Rape," p. 211.

Chapter 9

Prevention Education

"Rape is rape. However, it's hard to get convictions in acquaintance rape cases because the jury doesn't believe it's rape. We need an educational effort for elementary-school-aged kids directed at both boys and girls. Boys should not perpetrate it, and girls should not tolerate it and . . . should strike back. Education is the most important factor in stemming the tide . . . Education needs to start at an earlier age and needs to be a long-term and ongoing process."

—Dianne Granlund, Chief, Rape Prosecution Unit,
Philadelphia District Attorney's Office

Teaching techniques for avoiding rape is the core of rape prevention education, but to reduce the incidence and prevalence of sexual assault, it may be necessary to challenge the societal beliefs and cultural values that promote and condone sexual violence. Young men and women appear to subscribe to beliefs that promote or condone rape; Goodchilds and Zellman presented nine scenarios involving forced sexuality to adolescents. Only 24 percent of male adolescents and 44 percent of female adolescents found forced sexuality unacceptable in all the scenarios.¹ Malamuth's study found that 35 percent of college-aged men would rape if they could be assured of not being caught.²

Because myths about rape are instilled at an early age and because the incidence of rape is highest among young people,³ the need for educating school-age children and adolescents in preventing sexual assault is urgent. All of the prosecutors, judges, and directors of rape crisis centers interviewed for this study agree that prevention education is crucial for protecting children and adolescents and for educating future potential jurors. California is a leader in this regard, requiring that students be instructed in rape prevention four times before graduating from high school.⁴

Prevention Programs for Children

Parents may help prevent rape by nurturing their children's self-esteem, modeling and encouraging assertiveness, en-

couraging children to trust their instincts, communicating openly about sex, discussing rape prevention strategies with their children, helping adolescents to understand their ability to control their lives, and helping teenagers solve problems and make decisions in a collaborative rather than a dictatorial way.⁵

Interactive educational programs for children provide an opportunity for youngsters to explore assertiveness and control in physical affection. In Seattle, community service officers from the School Safety Unit of the police department present programs to help children distinguish between different kinds of touch: good touch, bad touch, and confusing touch. Children also learn the importance of trusting their feelings, basic self-defense (saying no, breaking holds, escaping to safety),⁶ and identifying sexual abuse and reporting it to adults who will provide protection.⁷

Many programs integrate parents into the curriculum, where they learn:

- How to make safety plans with their children.
- Early warning signs of child sexual abuse.
- The importance of listening to, believing, and acting on behalf of their children.
- Helping children trust their feelings.

- Supporting and structuring their children's assertiveness in all interactions.

Theatrical presentations can simultaneously educate and entertain, adapting concerns to the interests, vocabularies, attention spans, and abstraction levels of their audiences. The Illusion Theater of Minneapolis is nationally known for its dramatic presentations to young people on issues of sexual assault. The Illusion Theater began as a collaboration between local theater directors and the staff of the sexual assault services of the Hennepin County Attorney's Office. Believing that keeping children ignorant is equivalent to keeping them vulnerable,⁸ the Illusion Theater has developed several dramatic presentations by conducting surveys of children that ask about their knowledge, fears, and understanding of sexual assault and then extensively refining the plays they present. They also use a moderator, who stops the action to engage the audience in discussion.

Touch, their most well-known play, presents a continuum of acceptability for touch that extends from nurturing touch through ambiguous touch to exploitative touch.⁹ *Touch* emphasizes abuse by persons known to the child. (Children appear to be particularly vulnerable to acquaintances and intimates: family, friends, neighbors, and caretakers.)¹⁰ In addition, the Illusion Theater has developed formal curriculums for elementary students, including coloring books, plays, puppet theater productions, and films. It also manages a national clearinghouse of materials for preventing child abuse (see appendix F for contact information). The theater also runs seminars for parents and trains teachers in holding follow-up discussions with their students.

Prevention Programs for Adolescents

With all students, but especially with adolescents, educators stress the importance of eliciting student participation rather than presenting an entirely didactic program. Programs for older students may include:

- Setting clear personal boundaries.
- Confronting sex role stereotypes.
- Developing healthy attitudes toward emotional and sexual intimacy.
- Distinguishing between nonassertiveness, assertiveness, and aggressiveness.
- Managing emotions (as opposed to acting out impulses).

- Bolstering self-esteem.
- Overcoming peer pressure to behave harmfully and supporting the efforts of others to behave constructively and ethically.
- Feeling empowered to decline sex.
- Understanding the commonality of boys and girls.
- Understanding what constitutes sexual assault, including acquaintance rape, and the adverse consequences of perpetrating rape.
- Providing positive models of intimate relationships.

One such program, the Teen Project, run by Alternatives to Fear (ATF), emphasizes acquaintance rape and teaches psychological assertiveness, boundary setting, and self-defense tactics. The ATF play, *Truth or Consequences*, skillfully presents the disbelief one may encounter when reporting an attempted rape by an acquaintance. Two characters try to work out an equal relationship, while the other two have an abusive one: the boy tries to rape the girl, who fights back and copes with the issues surrounding reporting. The audience witnesses the attempted rape, but the other characters do not. These other characters disbelieve the girl's report, voicing many of the myths about rape. The director of ATF reports that audience members often shout the "truth" at the disbelieving characters, breaking through rape myths as they watch.¹¹ Another adolescent-oriented program teaches adolescent girls self-defense in a "slumber party" format. Parents join the participants for dinner and breakfast, where they learn how to support their children in developing assertiveness skills. In addition, the director of ATF has developed a curriculum for boys to explore their attitudes about gender roles, aggression, and sexuality called *Macho: Is That Really What I Want?* (see appendix D for ATF's address).

Prevention Programs for College Communities

Koss's landmark study found that 15 percent of a nationally representative college population had been raped and that the mean age of victimization was 18.¹² It also appears that for a large percentage of these young women (41 to 59 percent), a sexual assault is their first sexual experience.¹³ Most of these rapes occurred on campus and involved acquaintances or dates. Almost 90 percent of the victims did not report to the police.¹⁴

Many colleges and universities can help prevent rape on their campuses by improving campus security with:

- Campus security call boxes.
- Well-lit walkways.
- Safe landscaping.
- Nighttime escort services (including foot patrols and bus service).
- Security telephones at potential trouble spots.

Dormitories can be equipped with effective security systems, including:

- Dead-bolt locks.
- Self-locking doors on residents' rooms.
- Twenty-four-hour card entry control systems for the main doors of each dormitory.
- Staffing for the front desks of each dormitory from midnight to 6:00 A.M.
- Periodic internal and external building patrols by community service officers.¹⁵

Colleges can also provide students with safety whistles and self-defense classes. Campus police and other staff members can receive training in rape prevention and in sensitivity to rape victims so that they feel competent in assisting and protecting them.

Universities and colleges have developed some innovative strategies for changing student attitudes about rape. They have devised peer education programs that define acquaintance rape and spell out the disciplinary and criminal penalties for such behavior; confront sex role stereotyping; discuss assertive, compliant, and aggressive behavior; teach women to trust their instincts when they feel discomfort or alarm; and detail the resources available to students who are victimized and the procedures and options for reporting to university officials and law enforcement. (A list of educational films suitable for acquaintance rape prevention programs is listed in appendix G. In addition, the Santa Monica Hospital Rape Treatment Center has developed pamphlets, posters, and a video on preventing acquaintance rape on campus, as well as general rape prevention materials (see appendix F for contact information).

These programs may also address the role that drugs and alcohol play in acquaintance rape by helping set the stage for sexual coercion. The mood-altering effects of these sub-

stances reduce men's inhibitions and may encourage them to excuse or rationalize their abusive behavior, and they weaken women's ability to assess dangerous situations and diminish their capacity to take effective steps to safeguard themselves. Alcohol is a common factor in many acquaintance rapes.¹⁶

On the positive side, peer education can teach attitudes and techniques that promote responsible drinking. University officials may want to make attendance at peer education sessions mandatory for all first-year students. If not presented during orientation week or rush week, these programs may be presented on an ongoing basis in dormitories, fraternities, and sororities and for athletic organizations. This type of consciousness raising may also be reinforced through rape awareness weeks or months, with educational discussion programs and "speak-outs."

Rape education on college campuses assumes many forms:

- At Cornell University, student actors play date rapists and victims in short skits and then stay in character to reenact the scenes along healthier lines, taking direction from the student audience.
- At Washington State University, an educational program called "When Sex Becomes a Crime" is conducted by law enforcement officers to remind students that nonconsensual sex is a crime under State law.¹⁷
- The University of Michigan has a nationally known, full-fledged Sexual Assault Prevention and Awareness Center that offers a wealth of services to the campus community. Their campus rape crisis center provides peer education on rape prevention, organizes rape awareness weeks, and provides programs for men through the Men's Outreach Committee.

Prevention programs for men have been developed at many colleges and universities. Hobart College, for instance, requires that all its male students attend peer education programs on acquaintance rape. At Yale University, single-sex sessions allow men to talk about attitudes that lead to sexual assault. Responding to concern that college fraternity houses have been the sites of gang rapes, some fraternities have taken a public stand against sexual harassment and assault. In August 1985, the national fraternity Pi Kappa Phi unanimously passed a statement condemning sexual assault and later developed a poster campaign using the slogan "Against Her Will Is Against the Law." In one of its posters, Pi Kappa Phi featured a reproduction of the Pollaiuolo painting *The Rape of the Sabine Women*, with the slogan "Today's Greeks Call It Date Rape." Sigma Alpha Epsilon has adopted a policy of not tolerating sexually abusive behavior, including verbal harassment, date rape, and gang rape. Such actions

are cause for expulsion of individual offenders and possible suspension of a fraternity chapter's charter.¹⁸

University staff members can encourage victims to report a rape both to local law enforcement, because rape is a felony, and to the university's disciplinary board, because rape violates student codes of conduct. To encourage reporting to law enforcement, the University of Pennsylvania provides an anonymous reporting option to campus victims. To encourage reporting to university officials, the Santa Monica Hospital Rape Treatment Center suggests granting victims immunity from minor infractions such as drinking on campus and setting up systems for confidential or third-party reporting.

Education Programs for Judges

The Legal Defense and Education Fund of the National Organization for Women (NOW) and the National Association of Women Judges have designed the National Judicial Education Program (To Promote Equality for Women and Men in the Courts). This pilot education program on sexual assault will provide judges with the knowledge and skills to conduct trials and to impose sentences that reflect a greater understanding of rape. The training will cover rape myths, questioning juries to uncover biases about rape, parameters of the rape shield law, jury instructions, the psychological consequences of rape, and treatment for offenders. In addition the State Justice Institute (SJI) funds the collection and distribution of judicial educational materials, including conference proceedings, audiotape and videotape instruction materials, and training manuals. SJI has designated sites (law and court libraries, and court administrative offices) in each State where judges and other interested parties can have access to these materials. (A list of educational materials related to sex crimes as well as a listing of the 50 SJI State contacts is provided in appendix G.)

Prevention Programs for the General Public

Many rape crisis centers, YWCA's, police departments, and specialized training groups provide self-defense classes. Some businesses and building management companies, concerned about their employees' safety and possible liability suits, contract with these groups for on-site training. These programs may emphasize how women can change their attitudes about assertiveness. They also adapt traditional martial arts techniques for actual attack situations (how to break out of holds, how to stay on one's feet, how to fall safely, and how to fight from the floor).¹⁹

Alternatives to Fear integrates psychological and physical self-defense techniques as well as safety awareness for all environments (home, work, in transit). In addition to its Teen Project, ATF provides self-defense and awareness training for adults (sometimes in free community workshops), elderly people, and mentally and physically disabled people, including hearing-impaired clients and a new program for visually impaired women. ATF's self-defense course for visually impaired women focuses on psychological self-defense through assertiveness and self-confidence, on the physical abilities of the participants, and on identifying the weaknesses of potential assailants.²⁰ ATF's self-protection program for elderly persons goes beyond sexual assault prevention to include defense against purse snatching, mugging, burglary, elderly abuse, and schemes to defraud the elderly.

The executive director of ATF feels strongly that such training must be psychologically empowering to women and must address the fact that women are socialized to passively accept victimization.²¹ The course explores the issues of sexual entitlement, power and control, anger and hostility, and the unacceptability of interpersonal violence.²² ATF stresses that rape prevention plans should be individualized, in accordance with the person's personal strengths and weaknesses and her personal and cultural values. ATF categorizes prevention plans into strategies for escape, for getting help, and for resistance.²³ Its self-defense techniques were chosen from traditional martial arts for their versatility, effectiveness, and the ease with which they can be learned and remembered—even under the stress of an attack.²⁴

The Efficacy of Rape Prevention

Although it is hoped that rape prevention education can reduce the number of completed sexual assaults, it is important not to hold the person attacked responsible for the outcome of the attempted assault. The victim is never to blame for "failing" to ward off an attack. She is the only person who can best judge how to survive an attack. If faced with an imminent assault, victims have three valid options for survival:

- Active resistance, which includes physical self-defense, screaming, and fleeing.
- Passive resistance, which includes attempting to persuade the rapist not to complete the assault by appealing to the rapist's sense of morality, engaging in offensive behavior, bargaining, or promising future voluntary sex in order to find an avenue of escape or to launch a physical attack.

- Submission for fear of one's own or another's personal safety.

Parrot, who has researched acquaintance rape, found that women who have had assertiveness training and self-defense training are more likely to avoid situations that might lead to acquaintance rape.²⁵ By exuding confidence, projecting an image that does not convey fear or anger, having the resources to get out of an uncomfortable situation (for example, making sure to have a ride home, cab or bus fare, or public transportation tokens), and maintaining awareness of their environment, women may be less likely to be victimized.

Bart found that attacks were more likely to end in completed rape when:

- The victim knew the offender.
- The victim used passive resistance.
- The assault occurred in the victim's home.
- The women's primary concern was fear of murder or mutilation.
- The assailant used threat or force.

Rape was more likely to be avoided when:

- The victim was attacked by a stranger.
- The assault happened outdoors.
- The victim was primarily concerned with avoiding rape rather than avoiding injury or death.²⁶

Siegel and colleagues also found that resistance reduces the probability of a completed assault.²⁷ In studying the chronology of events, they found that the victim's resistance increased in response to the intensity of the assailant's physical attack. Thus, although active resistance was associated with greater chances of injury, these strategies were consequences, not causes, of increased injury.²⁸ Similarly, Quinsey and Upfold found that "women who are being injured are likely to begin resistance and avoid further injury."²⁹ McIntyre found an association between minor injury and successful resistance to rape but no association between serious injury and active resistance.³⁰ Although this research is encouraging concerning the effectiveness of resistance techniques, resistance may not be the best choice in all situations.³¹ As Mary Harvey and Mary Koss point out,

It is important to remember . . . that available research findings do not warrant the conclusion that physical resistance is appropriate or effective for all

women, with all assailants, or across all circumstances. Many victims of completed rape self-report the unsuccessful use of one or more resistance strategies.³²

Endnotes

1. M. Koss and M. Harvey, *The Rape Victim: Clinical and Community Interventions*, 2d ed. (Newbury Park, Calif.: Sage Publications, 1991), p. 269, citing J. Goodchilds et al., "Adolescents and Their Perceptions of Sexual Interactions," in A. W. Burgess, ed., *Rape and Sexual Assault*, vol. 2 (New York: Garland, 1984), pp. 245-70.
2. A. Parrot, *Acquaintance Rape and Sexual Assault Prevention Training Manual*, 4th ed. (Ithaca, N.Y.: Department of Human Service Studies, Cornell University, 1990) p. 9., citing N. Malamuth, "Rape Proclivity Among Males," *Journal of Social Issues* 37, No. 4: 138-157.
3. According to the National Crime Victimization Survey, which surveys only household members ages 12 and older, the highest rate of victimization occurs among 16- to 19-year-olds. The National Women's Study found that the highest rate of victimization occurred among minors 11 to 17 years old. Bureau of Justice Statistics, *Female Victims of Violent Crime* (Washington, D.C.: Bureau of Justice Statistics, 1991), NCJ-126826, p. 8; National Victim Center and Crime Victims Research and Treatment Center, *Rape in America* (Fort Worth, Tex.: National Victim Center, 1992), p. 3.
4. L. Weil, "Youths Made Aware of Dangers: Center Goes to School To Prevent Teen Date Rape," *Los Angeles Times*, August 30, 1987.
5. A. Parrot, *Acquaintance Rape and Sexual Assault Prevention Training Manual*, pp. 17-26.
6. Interview with Py Bateman, Director, Alternatives to Fear, Seattle, Washington, February 21, 1992.
7. Koss and Harvey, *The Rape Victim*, p. 261.
8. M. Harvey, *Exemplary Rape Crisis Programs: A Cross-Site Analysis and Case Studies* (Rockville, Md.: National Institute of Mental Health, 1985), pp. 148-49.
9. *Ibid.*, p. 150.
10. Koss and Harvey, *The Rape Victim*, pp. 265, 275.
11. Interview with Py Bateman, Director, Alternatives to Fear, Seattle, Washington, February 22, 1992.

12. B. Burkhart and A. Sherry, "Sexual Victimization in Adolescents," *Medical Psychotherapy*, in press, citing M. P. Koss, "Hidden Rape: Sexual Aggression and Victimization in a National Sample in Higher Education," in A. W. Burgess, ed., *Rape and Sexual Assault II* (New York: Garland, 1988); M. P. Koss, C. A. Gidycz, and N. Wisniewski, "The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students," *Journal of Consulting and Clinical Psychology* 55 (1987): 162-70.
13. C. A. Mandoki and B. R. Burkhart, "Sexual Victimization: Is There a Vicious Cycle?" *Victims and Violence* 4 (1989): 179-89; Koss, "Hidden Rape."
14. A. Adams and G. Abarbanel, "Sexual Assault on Campus: What Colleges Can Do" (Santa Monica, Calif.: Santa Monica Hospital Rape Treatment Center, August 1988), p. 5, citing E. Sweet, "Date Rape: The Story of an Epidemic and Those Who Deny It," *Ms./Campus Times* (October 1985). Sweet's research was based on Mary Koss's 1985 Sexual Experiences Survey data.
15. Adams and Abarbanel, "Sexual Assault on Campus," pp. 39-40.
16. R. T. Rada, "Alcohol and Rape," *Medical Aspects of Human Sexuality* 9, No. 3 (1975); D. E. H. Russell, *The Politics of Rape* (New York: Stein & Day, 1984).
17. Adams and Abarbanel, "Sexual Assault on Campus," p. 28.
18. *Ibid.* p. 29.
19. Interview with Py Bateman, Director, Alternatives to Fear, Seattle, Washington, February 22, 1992.
20. *Ibid.*
21. *Ibid.*
22. Py Bateman, "Rape Prevention and Self Defense for Women, Part 1: Instructor's Script," unpublished draft (Seattle: Alternatives to Fear, January 28, 1992), session 6, pp. 1-2.
23. *Ibid.*, session 3, p. 3.
24. *Ibid.*, session 2, p. 6.
25. Parrot, *Acquaintance Rape and Sexual Assault Prevention Training Manual*, p. 13, citing A. Parrot and R. Lynk, "Acquaintance Rape in a College Population," paper presented at the 1983 National American Association of Sex Educators, Counselors, and Therapists Convention, Chicago, Ill., 1983.
26. Parrot, *Acquaintance Rape and Sexual Assault Prevention Training Manual*, pp. 12-13, citing P. Bart, "A Study of Women Who Both Were Raped and Avoided Rape," *Journal of Social Issues* 37, No. 4 (1981): 123-37.
27. According to the National Women's Survey, serious physical injury to rape victims was rare (only 4 percent suffered such injury); 24 percent of victims suffered minor injuries (National Victim Center, *Rape in America*, p. 4).
28. J. Siegel, et al., "Resistance to Sexual Assault: Who Resists and What Happens?" *American Journal of Public Health* 79, No. 1 (January 1989). This study did not take into account victims who were injured to the point of incapacitation or death.
29. P. Bateman, "Let's Get Out From Between the Rock and the Hard Place" [commentary], *Journal of Interpersonal Violence* (March 1986): 108, citing V. L. Quinsey and D. Upfold, "Rape Completion and Victim Injury as a Function of Female Resistance Strategy," *Canadian Journal of Behavioral Science* 17, No. 1 (1985).
30. Bateman, "Let's Get Out From Between the Rock and the Hard Place," pp. 105-11, citing J. J. McIntyre, *Victim Response to Rape: Alternative Outcomes*, report to the National Center for the Prevention and Control of Rape, National Institute of Mental Health, 1980.
31. According to the National Crime Victimization Survey for 1991, 82 percent of rape victims took self-protective measures against their attackers, and 57 percent of those who took such measures said they helped the situation. Bureau of Justice Statistics, *Criminal Victimization in the United States, 1991* (Washington, D.C.: Bureau of Justice Statistics, 1992), NCJ-139563, table 73, p. 84; table 77, p. 86.
32. Koss and Harvey, *The Rape Victim*, p. 268.

Chapter 10

Conclusion

This report describes an evolution of several jurisdictions' approaches to the investigation and prosecution of rape and the provision of services to rape victims. Many communities have concluded that the key to rape prevention is civic education. Successfully combating sexual assault is a long-term project; it involves changing the way the entire community views rape.

An important lesson of this research is that almost any community member can be an instrument for change in the way that a community responds to rape. Although leadership typically comes from a concerned prosecutor, police chief, victim advocacy organization, or medical rape treatment center, other citizens may also be catalysts for change. In addition, the gender of the investigating officer, prosecutor, or physician working with a rape victim appears to have less impact on the victim's comfort than the professional's attitude, compassion, and sensitivity.

The experiences of the professionals interviewed for this report suggest that cooperation and close coordination among law enforcement officers, prosecutors, counselors, doctors, and victim advocates results in a faster, less intrusive, and more effective response to rape victims. In the studied communities, victims and the criminal justice system appear to have benefited where rape crisis centers have accepted rather than rejected criminal justice efforts on behalf of rape victims and where law enforcement and prosecutors acknowledge the roles of the victim service community and of hospitals in combating rape. Some of the actions taken in the jurisdictions visited are as follows:

- Establishing interagency working groups and interagency rape protocols has helped define and smooth relations between the various agencies involved in victim care, rape investigation, and prosecution.
- Making criminal justice and victim service programs for traditionally underserved groups (including ethnic and racial minorities, new immigrants, gays and lesbians,

and mentally or physically disabled persons) as accessible as possible by providing multilingual services, hiring staff who mirror the populations served, training staff in cross-cultural issues, and establishing links with organizations in minority communities.

- Collaborating on streamlined rape exam and evidence collection protocols that ensure the necessary evidence is collected and that the exam is as tolerable as possible for the victim.
- Cross-training between criminal justice and victim assistance professionals in relevant interdisciplinary issues. Cross-training allows physicians to learn the evidentiary issues prosecutors face, law enforcement officers and prosecutors to learn about common reactions to trauma from rape crisis counselors, and victim advocates to learn more about the criminal justice system, so that they can better help victims prepare for court. As one of the rape crisis center directors interviewed points out, "Cross-training gives each agency a stake in the other."¹
- Offering victims the option of informational and third-party reporting. This can be implemented by law enforcement agencies in coordination with rape crisis centers. Both options allow law enforcement to gather intelligence about rapists in cases where the victim does not wish to pursue investigation and prosecution.

Most of the lessons learned from this study apply primarily to criminal justice agencies. Having recognized that a rape victim is their most valuable ally in investigating and charging the offender, law enforcement departments and prosecutors' offices have restructured their approach to investigating sex crimes by:

- Creating specialized sex crimes units in law enforcement agencies and prosecutors' offices. These units help individual agencies develop expertise in the investiga-

tion and prosecution of rape and sexual assault cases and help jurisdictions manage heavy caseloads.

- Using in-house victim witness advocates (VWA's), victim service officers, or rape crisis counselors to provide emotional support and to educate victims about the criminal justice system may reduce victims' reluctance to report to law enforcement and to pursue prosecution. It also frees investigators and prosecutors to focus on their primary tasks.
- Sensitizing prosecutors and law enforcement personnel to victim concerns through formal and informal training. Training may give officers and investigators a greater sense of what rape victims have experienced and why it is essential that they be treated sensitively.
- Establishing an alliance with the victim early in the investigation.
- Offering victims the option of having their names blacked out on law enforcement reports, which are made public and, therefore, are available to the press.
- Arranging for interviews to be held in private.
- Allowing the victim to delay reporting for a day or two if she is very distressed or reluctant to talk about the assault immediately after it occurs.
- Acknowledging the high rate of acquaintance rape and accepting such cases for investigation and prosecution using the same guidelines as are used for stranger rape.
- Recruiting investigators and prosecutors for specialized sex crimes units based on their interest and suitability for handling rape cases rather than through routine staff rotation.

The importance of rape prevention has been underscored during the last decade. Recent studies of rape victimization show large increases in sexual assault, especially assaults in which the attacker is known to the victim. Young women and girls appear to be especially at risk. If society seeks to alter the widespread acceptance of acquaintance rape deeply rooted in social beliefs, education—beginning with young children and continuing through college—may be the best prevention.² Several findings emerged from this study:

- Educational efforts, including programs in the schools, can be aimed at changing the perception of victim culpability, changing sexually aggressive behavior among boys, and teaching assertiveness and self-defense to girls and women.

- Recent research shows that active resistance to attack lessens the probability that an attack will be completed,³ but the victim is always the best judge of how best to survive an attack.
- Providing rape education and prevention programs to the general public may have the added benefit of producing more enlightened jurors.
- Curriculums for children may couch sexual assault prevention in terms of general violence prevention and may include assertiveness training, re-examining gender roles, and making safety plans.
- Prevention education for adolescents may also include examining substance abuse and its role in sexual violence, managing peer pressure, and taking responsibility for healthy sexuality.

Future Issues for Research

Two issues not covered in this report that may warrant future research are offender treatment as a condition of sentence and the need for an evaluation of rape and sexual assault prevention interventions.

Offender Treatment as a Condition of Sentencing

In sentencing sex offenders, courts often craft sentences that include offender treatment. However, in many jurisdictions there are few openings in offender treatment programs. The unfortunate result is that many sex offenders serve out their terms without ever receiving treatment or, because of the demands on service providers, without having the optimal length of stay in treatment. This research might assess the efficacy of making offender treatment a condition of sentence. It could also explore the extent to which judges use such sentencing schemes and what factors affect their decisions (for example, evidence of the effectiveness of treatment in the rehabilitation of certain sex offenders).

Evaluation of Rape and Sexual Assault Prevention Interventions

How effective are rape and sexual assault prevention interventions? What lessons can be learned from these approaches to rape prevention? What are the limitations on prevention education, and what are the forces that contribute to a high incidence of rape in America?

Endnotes

1. Interview with Marjory Singher, Director, Sexual Offense Services of Ramsey County, St. Paul, Minnesota, February 19, 1992.
2. Testimony of Robin Warshaw, author of *I Never Called It Rape*, before the U.S. Senate Committee on the Judiciary, Senate Hearing 101-931, Part 2, Serial No. J-101-80 (June 20, 1990) p. 54. Both male offenders and nonoffenders as well as women appear to subscribe to beliefs that promote or condone rape. J. Goodchilds et al., "Adolescents and Their Perceptions of Sexual Interactions," in A. W. Burgess, ed., *Rape and Sexual Assault*, vol. 2 (New York: Garland, 1984), pp. 245-70.
3. J. Siegel et al., "Resistance to Sexual Assault: Who Resists and What Happens?" *American Journal of Public Health* 79, No. 1 (January 1989). This study did not take into account victims who were injured to the point of incapacitation or death.

Glossary

AA:	Alcoholics Anonymous.	CBI:	Colorado Bureau of Investigation.
ACOP:	A Community Outreach Program (St. Paul, Minnesota).	CDC:	Centers for Disease Control.
ADA:	Assistant District Attorney.	CLE:	Continuing Legal Education.
ADAPT:	A program of the Minnesota Security Hospital for mentally ill or mentally deficient sex offenders.	Continuance:	The adjournment or delay of a scheduled session of the court.
AG:	Attorney General.	CSO:	Community Service Officer (King County Police Department).
AIDS:	Acquired Immunodeficiency Syndrome. It is caused by the human immunodeficiency virus (HIV). AIDS is an acquired defect in immune system function that impairs the body's ability to fight disease. AIDS is the final and usually fatal stage of HIV.	DA:	District Attorney.
APRI:	American Prosecutors Research Institute.	DHS:	Department of Health Services (Pennsylvania).
ATF:	Alternatives to Fear. A Seattle-based women's self-defense and rape awareness program.	DNA:	Deoxyribonucleic Acid.
Bail:	Security, usually money and/or property, that releases a suspect or defendant from jail while ensuring his or her appearance at subsequent hearings or trial.	DNA typing:	A complex scientific process, increasingly used in rape cases, to determine whether a blood or semen sample taken at a crime scene is that of the accused. The process involves comparing the DNA structure of the sample with that of the accused.
BCA:	Bureau of Criminal Apprehension (Minnesota).	EIA:	Enzyme immunoassay. Another name for the ELISA test for the presence of antibodies to HIV.
BJA:	The Bureau of Justice Assistance in the Office of Justice Programs, U.S. Department of Justice. It funds programs and research on preventing sexual assault and abuse, as well as on other criminal justice issues.	ELISA:	Enzyme-linked immunoabsorbent assay. This is a blood test that indicates the presence of antibodies to HIV. Various ELISA's are used to detect other infections as well. The ELISA does not detect AIDS but only indicates if viral infection has occurred. The term is used to screen blood supplies, in certain research projects, and in specific health care situations.
BJS:	Bureau of Justice Statistics.	ER:	Emergency Room.
CACLD:	California Association of Crime Laboratory Directors.	False negative:	An erroneous test result that indicates that no antibodies are present when in fact they are.
Case in chief:	That portion of a trial in which the party with the initial burden of proof presents his evidence.	False positive:	An erroneous test result that indicates that antibodies are present when in fact there are none.

FBI:	Federal Bureau of Investigation.	NIJ:	National Institute of Justice.
FLETC:	The Federal Law Enforcement Training Center. This is an interagency law enforcement training facility.	NNVSA:	National Network of Victims of Sexual Assault.
FVPSA:	The Family Violence Prevention and Services Act. It is administered by the Department of Health and Human Services.	NOVA:	National Organization of Victim's Assistance.
Grand jury:	A statutorily defined number of citizens charged with the duty of conducting their own investigation into crimes within their jurisdiction without disclosure of their activities to the public. While the role of the grand jury in criminal cases varies across those jurisdictions that employ it, typically the process is used in the charging of major felonies.	OB-GYN:	Obstetrics-Gynecology.
HIV:	Human immunodeficiency virus. A term adopted by the international health community to describe the spectrum of associated viruses—HTLV III (human T-cell lymphoma virus, type 3), LAV (lymphadenopathy-associated virus), and ARV (AIDS-related retrovirus)—that causes AIDS.	OVC:	The Office for Victims of Crime in the Office of Justice Programs, U.S. Department of Justice. It administers federally funded programs for preventing sexual assault and abuse.
<i>In camera</i> :	A hearing before a judge in the judge's private chambers or when all spectators are excluded from the courtroom.	PCAR:	Pennsylvania Coalition Against Rape.
Inoculum:	The material used in an inoculation.	PCR:	Polymerase chain reaction, a procedure commonly used in DNA typing.
ITPSA:	Intensive Treatment Program for Sexual Aggressives (Minnesota Security Hospital).	Personal recognition:	Release of a suspect or defendant without bail.
KCSARC:	King County Sexual Assault Resource Center.	<i>Prima facie</i> :	"On the face of it," "on the first appearance." In criminal cases this concept refers to the burden on the prosecution to show that there is sufficient evidence to try the defendant on the charges.
LEAA:	Law Enforcement Assistance Administration.	PTSD:	Posttraumatic Stress Disorder. A cluster of immediate, delayed, and long-term psychological symptoms, often precipitated by a violent event such as rape.
MPC:	The Model Penal Code.	RAAP:	Rape Assistance and Awareness Program (Denver).
NA:	Narcotics Anonymous.	<i>Respondeat superior</i> :	"Let the master answer." The maxim refers to the doctrine of vicarious liability of a master for the torts committed by his servant or agent in the course of his employment.
NCASA:	National Coalition Against Sexual Assault.	RFLP:	Restriction fragment length polymorphism, a procedure widely used in DNA typing.
NCAVC:	The National Center for the Analysis of Violent Crime. A program of the Federal Bureau of Investigation.	RNA:	Ribonucleic acid.
NCDA:	National College of District Attorneys.	RTS:	Rape trauma syndrome. This posttraumatic stress disorder is the acute phase and long-term reorganization process that a victim may go through as a result of a rape or attempted rape.
NCS:	National Crime Survey.	SAP:	Sexual Assault Program (Philadelphia).
NIH:	National Institutes of Health.		

SAPAC: Sexual Assault Prevention and Awareness Center.

SAU: Special Assault Unit (King County Prosecuting Attorney's Office).

Static acid phosphatase: A chemical test performed during a forensic rape exam to detect the presence of an enzyme found in semen.

SOS: Sexual Offense Services (Ramsey County).

SRR: Seattle Rape Relief.

STD: Sexually transmitted disease.

Subpoena

duces tecum: A summons issued in an action or other judicial proceeding requiring the person to whom it is directed not only to be present at a specified place and time for a specified purpose under penalty for nonattendance, but

also to bring with him or her certain documents in his or her possession specified in the subpoena.

Suspect: Person believed to have committed a crime.

TDD, TTY: Telephone devices for communicating with hearing-impaired individuals.

TWGDAM: The FBI's Working Group on DNA Analysis Methods.

UCR: Uniform Crime Reports.

VOCA: The Federal Victims of Crimes Act.

Voir dire: Method of selecting a jury in which the court and attorneys choose people from a random group of community members.

VWA: Victim Witness Advocate.

WOAR: Women Organized Against Rape (Philadelphia).

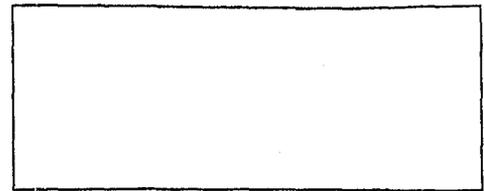
Appendix A

Materials for Hospitals Treating Rape Victims

- **Sexual Assault Form From the Denver General Hospital Developed by Andrew Ziller, MD; Kerry Ziller, LCSW; and David Magid, MD**
- **Protocol for Evidence Collection From the Minnesota Bureau of Criminal Apprehension**
- **Patient Information for Sexual Assault Survivors Adapted From the Cambridge Hospital Developed by Janet Yassen, LICSW**

DGH Sexual Assault Form

Date Exam _____ Time Exam _____



GENERAL PMH

Illnesses: _____

Medications: _____

Allergies: _____

Preassault injuries: No Yes _____

GYN PMH

Date LMP _____ NL ABN

Contraception: No Yes BCP Norplant Diaphragm IUD Condoms Tubal Hysterectomy

Last Consented Intercourse: Date _____ Time _____ If Uncertain >72 hrs <72 hrs Never

Symptoms prior to assault: None Vag bleed Vag discharge Abd pain Dysuria Rectal pain Rectal bleed

HISTORY OF ASSAULT

Date _____ Time (approx.) _____

Location: Victim's home Assailant's home Outside _____ Auto Other _____

No. of Assailants: _____ Race (if > 1 ck more than 1 box): W B H Asian Native American Unk

Assailant(s): (may ✓ > 1 box): Sig other Relative Friend Prev. acquaintance 1st time acquaintance Unk

Force used by assailant: None Blows _____ Bites _____ Choke _____ Scratch Restrain _____

Weapon(s) involved in assault: No Yes, type _____ Threats Made: No Yes

Did assailant ejaculate? Unk No Vaginal Oral Anal External, _____

Sexual Acts (check all appropriate boxes):

- Vaginal Intercourse no attempted penetration unknown
- Oral Intercourse no attempted penetration unknown
- Anal Intercourse no attempted penetration unknown
- Condom use by assailant no yes unknown
- Lick/Kiss no yes (where _____)
- Digital Penetration no yes (where _____)
- Foreign body no yes (describe _____)

Activities Since Assault (check all appropriate boxes):

no bath douche brush teeth/gargle tampon removal defecate vomit urinate wipe, _____

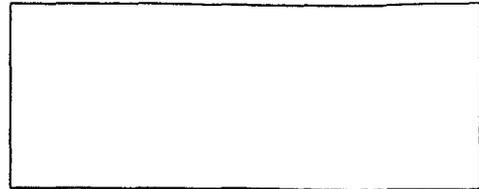
NARRATIVE: _____

Use back side for additional comments

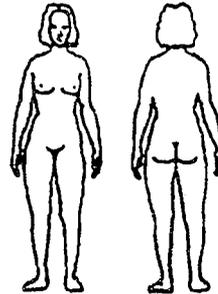
PHYSICIAN'S SIGNATURE: _____ M.D.

PHYSICAL EXAM

Trauma (Head to toe survey. Note on diagram: B= bites, A=abrasions, S=scratches, BR=bruise, L=lacs, BL=bleeding, FB=foreign body, etc.) (Please describe size of all findings.)



- Head [] NL [] ABN, _____
Neck [] NL [] ABN, _____
Chest [] NL [] ABN, _____
Abd [] NL [] ABN, _____
Back [] NL [] ABN, _____
Upper Ext [] NL [] ABN, _____
Lower Ext [] NL [] ABN, _____



Genital Trauma (check all appropriate boxes):

- External [] none [] contusion [] abrasion [] laceration [] bleeding [] discharge
Vagina [] none [] contusion [] abrasion [] laceration [] bleeding [] discharge
Hymen [] intact [] not intact [] none [] contusion [] abrasion [] laceration [] bleeding
Anus [] none [] contusion [] abrasion [] laceration [] bleeding [] discharge
Cervix [] none [] contusion [] abrasion [] laceration [] motion tenderness [] not applicable
Adnexa [] none [] tender [] mass [] not applicable

ANCILLARY DATA

- Rape Kit used: [] no [] yes [] if not, why _____ BHCg: [] pos [] neg
Wet Mount: [] not done [] vaginal [] rectal [] oral Sperm: [] no [] yes ([] motile [] nonmotile), _____
GC Culture*: [] not done [] oral [] anal [] cervical Chlamydia FA Test*: [] no [] yes
(*Culture and FA test should be done on all patients who have a pelvic exam. SA history should direct need for other cultures.)
Other Labs/cultures/procedures _____
X-Rays: _____

TREATMENT

- Rx Prevent STD: [] No [] Yes _____
Rx Prevent Preg: [] No [] Yes _____

DISPOSITION

All SA victims < 18 years must be reported at the time of exam to the Department of Social Services (DSS) in the county they reside. The 24-hour hotline of Denver DSS is 893-6111.

- 1. Discharge instructions: _____
2. a. DSS contacted: [] No [] Yes [] not applicable [] County _____ Person Contacted _____
Police involved: [] No [] Yes Date/Time _____

PHYSICIAN _____ M.D.
print name signature

- 1. We would like to contact you in a few days to see how you are doing and to tell you the results of any abnormal tests. All contact will be confidential and will be with you only. [] No [] Yes
2. Pts. phone #: Day _____ Evening _____

PATIENT'S SIGNATURE _____

SUGGESTED USE OF EVIDENCE KIT

THIS KIT IS DESIGNED TO ASSIST MEDICAL PERSONNEL IN THE COLLECTION OF EVIDENTIARY SPECIMENS FOR ANALYSIS BY THE MINNESOTA BUREAU OF CRIMINAL APPREHENSION LABORATORY.

STEP 1 **PATIENT INFORMATION AND SEXUAL ASSAULT HISTORY FORM**

Fill out all information requested on the form and return to kit.

STEP 2 **CLOTHING AND UNDERWEAR**

Place undergarments of patient and other clothing that could contain evidence from the assailant in separate clean paper bags, seal and initial. (Be sure to dry clothing before packaging, if necessary.)

STEP 3 **FOREIGN MATTER COLLECTION** (Fibers, hair, debris, etc.)

Collect all material on the patient's body which may have originated from a source other than the patient. Place material in center of paper provided, fold paper to retain material collected, return paper to envelope and identify source. Seal the envelope and fill out all information requested on the envelope.

STEP 4 **PUBIC HAIR COMBINGS**

Place towel under patient's buttocks. Using comb provided, comb pubic hair in downward strokes so that any loose hairs and/or debris will fall onto paper towel. Fold towel in manner to retain comb, hairs and debris and place in envelope. Seal the envelope and fill out all information requested on the envelope.

STEP 5 **PULLED PUBIC HAIRS** (Optional)

Note: Patient may pull own pubic hair or provide at a later date.

Pull, do not cut, 20 to 25 full-length pubic hairs from various locations and place in envelope. Seal the envelope and fill out all information requested on the envelope.

STEP 6 **VAGINAL SWABS** (4 swabs needed)

Note: Do not moisten swabs prior to sample collection.

Using four swabs simultaneously, carefully swab the vaginal walls and cervix. Allow swabs to air dry. Return swabs to envelope. Seal the envelope and fill out all information requested on the envelope.

STEP 7 **PERINEAL SWABS** (4 swabs needed)

Using four swabs simultaneously, swab the perineum region. The swabs may be moistened with a minimal amount of distilled water if needed. Allow swabs to air dry. Return swabs to envelope. Seal the envelope and fill out all information requested on the envelope.

STEP 8 **ORAL SWABS** (Only if oral assault has occurred)

Using four swabs simultaneously, carefully swab the buccal area and gum line. Allow swabs to air dry. Return swabs to envelope. Seal the envelope and fill out all information requested on the envelope.

STEP 9 **RECTAL SWABS** (Only if rectal assault has occurred)

Using four swabs simultaneously, carefully swab the rectal canal. Allow swabs to air dry. Return swabs to envelope. Seal the envelope and fill out all information requested on the envelope.

RE-1MN 1/83

STEP 10 **MISCELLANEOUS SWABS** (For possible transfer of saliva or semen on skin.)

Using two water moistened swabs simultaneously, swab any area on the patient's body which could contain semen or saliva from the assailant. Allow swabs to air dry. Place swabs in the envelope. Seal the envelope and fill out all information requested on the envelope.

Note: Swabs from different areas must be placed in separate envelopes.

STEP 11 **PULLED HEAD HAIRS** (Optional at the time of exam)

Pull, do not cut, a minimum of 25 full-length hairs, five from each of the following scalp locations: Center, front, back, left side and right side. Place hairs in the envelope. Seal the envelope and fill out all information requested on the envelope.

STEP 12 **KNOWN SALIVA SAMPLE**

Note: Never touch gauze pad with your fingers.

Have patient open packet and place gauze pad in his/her mouth and thoroughly wet with saliva. Have patient place wet gauze pad on glassine paper sheet provided and allow pad to air dry. Use glassine paper to return pad to envelope. Seal the envelope and fill out all information requested on the envelope.

STEP 13 **KNOWN BLOOD SAMPLE** (Use EDTA tube only)

Mark blood tube and protective container. Draw blood in blood tube provided. Prepare bloodstain (Step 14). Return blood tube to protective container. Fill out all information requested. Place protective container containing blood tube in leak proof specimen bag and seal.

Note: Check the expiration date on the blood tube. If expired, replace from hospital stock with same type blood tube. The blood tube included in this kit is NOT SUITABLE FOR BLOOD ALCOHOL DETERMINATIONS. Please use the separate Blood Alcohol Kit for this purpose.

STEP 14 **BLOODSTAIN PREPARATION**

Mark 3x5 card containing the absorbent paper with patient's name. With syringe, draw blood from known blood tube (Step 13) and deposit at least 10 individual separated drops of blood onto the absorbent paper. Allow bloodstains to air dry THOROUGHLY. Return absorbent paper and 3x5 card to envelope. Seal envelope and fill out all information requested on the envelope. Submit remaining liquid blood with kit.

Note: This cloth stain is needed because of DNA procedures employed at the BCA Laboratory.

FINAL INSTRUCTIONS

- 1) Make sure all information requested on all sample envelopes and bags have been filled out completely.
- 2) With the exception of sealed and labeled clothing bags, return all other evidence/envelopes, used or unused, to kit box along with sexual assault history form.
- 3) Initial and affix red police evidence seals where indicated on box top.
- 4) Fill out all information requested on kit box top under "For Hospital Personnel".
- 5) Give sealed kit and sealed bags to investigating officer.

Note: If officer is not present at this time, place sealed kit and sealed bags in secure and refrigerated area, and hold for pickup by investigating officer.

RE-1MN 1/83

STEP 1

PATIENT INFORMATION AND SEXUAL ASSAULT HISTORY FORM

1. PATIENT'S NAME: _____

2. AGE: _____

3. RACE: _____

4. DATE AND TIME OF ALLEGED ASSAULT: ____/____/19____ : ____ AM/PM

5. DATE AND TIME OF HOSPITAL EXAMINATION: ____/____/19____ : ____ AM/PM

6. WAS THERE PENETRATION OF:

		YES	NO	NOT SURE		YES	NO	NOT SURE		YES	NO	NOT SURE
VAGINA	ATTEMPTED	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SUCCESSFUL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	EJACULATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RECTUM	ATTEMPTED	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SUCCESSFUL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	EJACULATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MOUTH	ATTEMPTED	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SUCCESSFUL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	EJACULATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. DID ASSAILANT HAVE ORAL CONTACT WITH PATIENT'S GENITAL AREA? YES NO NOT SURE

8. DID ASSAILANT WEAR A CONDOM? YES NO NOT SURE

9. ARE THESE THE CLOTHES THE PATIENT WAS WEARING DURING THE ASSAULT?
 IF NOT, ARE THEY AVAILABLE? YES NO NOT SURE

10. ARE THESE THE CLOTHES THE PATIENT WAS WEARING IMMEDIATELY AFTER
 THE ASSAULT?
 IF NOT, ARE THEY AVAILABLE? YES NO NOT SURE

11. ANY INJURIES RESULTING IN BLEEDING? YES NO NOT SURE

12. WAS PATIENT MENSTRUATING AT TIME OF ASSAULT? YES NO NOT SURE

13. ANY CONSENSUAL COITUS IN THE PREVIOUS 72 HOURS?
 IF YES, HOW MANY HOURS PREVIOUS? _____ YES NO NOT SURE

14. DID ASSAILANT BLEED? YES NO NOT SURE

15. RACE OF ASSAILANT(S) IF KNOWN _____

16. PLEASE CIRCLE ANY OF THE FOLLOWING ACTIVITIES THAT THE PATIENT HAS DONE BETWEEN THE TIME
 OF THE ASSAULT AND HOSPITAL EXAMINATION.

- | | | | |
|----------|----------|-----------|----------------|
| DOUCHED | BATHED | DEFECATED | BRUSHED TEETH |
| SHOWERED | URINATED | VOMITED | USED MOUTHWASH |

PATIENT'S DESCRIPTION OF ASSAULT: _____

Patient Information for Sexual Assault Survivors

Visiting the emergency room following a sexual assault can be confusing and disorienting. You may not remember or understand the information given to you during your visit. We have compiled this information for you to review and refer to in the days and weeks ahead. Please call us for clarification and more information as you need or want it.

Medical Care

Physical Exam: You have just received a general physical examination (the physician checked you for internal and external injuries) and, in most situations, a pelvic examination (which included collecting cultures from your cervix to be sure that you do not have an infection and that your cervix is normal, a Pap smear). The physician collected physical evidence which can be used if you decide to prosecute. The physician also asked you to describe what happened to you. This assists in deciding your medical care needs and, if you are prosecuting, provides a full description of the assault.

Venereal Disease: As part of the exam, you may have received an antibiotic to prevent venereal disease. If you received shots, be aware that you may experience soreness in the area of the injection for a few days. It is recommended that you abstain from sexual intercourse for 72 hours after receiving the injection. If you received pills, it is important that you finish them all, in order for the antibiotic to work.

Pregnancy: You and your physician have discussed pregnancy, and a pregnancy test has been given to rule out an existing pregnancy. You have also discussed pregnancy prevention. If you have received estrogen pills for pregnancy prevention, it is important that you take all of the pills. Some women experience unpleasant side effects such as nausea and headaches. Additional medication may have been offered to help with these side effects.

It is recommended that you return for a follow-up check-up in 4-6 weeks, either to Cambridge Hospital or another physician of your choice. At Cambridge Hospital you can call the *OB-GYN Clinic at 498-1086* to arrange for an appointment. If you decide not to take estrogen pills, a

pregnancy test will be done if you have missed a period. You will be able to discuss the results of the test at that time.

AIDS: Some rape survivors are concerned about contracting AIDS. Since there is a 3-6 month incubation period, testing cannot be done during your initial visit. If you would like more information, it can be discussed during your follow-up care or by calling the *Fenway Community Health Center AIDS Testing Project at 267-0159*.

If you experience any physical or medical problems related to the assault, contact the *Emergency Room: 498-1430*.

The nurse you saw was _____.

The physician you saw was _____.

Your patient identification number is _____.

Legal Concerns

Reporting the sexual assault is a personal decision. Your care in the emergency room is confidential; we do not routinely notify the police. We are available to assist you in this process, either now, or if you decide at a later time. You can reach the *Sexual Assault Unit of the Cambridge Police at 349-3356*.

You have signed a release form if you want the hospital to release evidence that we have gathered. The Cambridge Police will hold the evidence if you signed the release. All personal property (clothing, for example) that may have been taken from you as evidence will be returned to you by the police. If you did not sign the release form, the Pathology Department of the Hospital holds evidence for up to 6 months should you choose at a later date to prosecute.

Making the decision to prosecute can be a difficult one. Pursuing a rape case can be a stressful experience. There are resources to assist you in your decision-making and to assist you in going to court. You can talk to a rape crisis counselor or to a victim/witness advocate in the District Attorney's Office. If you decide to prosecute, an Assistant District

Attorney will be assigned to your case and will function as your lawyer. There is no charge.

You may be eligible for Crime Victim Compensation through the State Attorney General's Office. Please ask for a brochure if you have not already received one.

For further information regarding court procedures or victim compensation, call the *Middlesex County Victim/Witness Bureau at 494-4604*.

Emotional Care

Sexual assault is a trauma that can cause a crisis in your life. As a result, you may experience a wide range of feelings and reactions. Although each person reacts differently according to her own individual personality, it is normal to experience these feelings in response to having been sexually assaulted.

During the initial crisis period you may experience some or all of the following:

Shock and Numbness

Feelings of spaciness, confusion, being easily overwhelmed, not knowing how to feel or what to do. You may react similarly as you have to other crises in your life (crying, irritable, nervous laughter, taking charge).

What you can do: First of all, be aware that these are normal reactions to trauma. Each person handles things differently, so think about what things have helped you get through crises in the past. Try to do only one thing at a time. Get help to sort out what you would like to do and how you may want to organize your thoughts, time, and decisions. Be compassionate towards yourself: you have just experienced extreme violation.

Loss of Control

Feeling like your whole life has been turned upside down and that you will never have control of your life again, feeling like your feelings are out of control.

What you can do: Get as much control over your life as you possibly can, even over small things. Ask for information that may help you sort out your thoughts and feelings. Use outside resources such as counselors and legal professionals. Ask how other people have handled similar situations. While you may want others to help you through the crisis, you will benefit most in the long run in making your own decisions about what to do.

Fear

Fear that the rapist may return, fear for your general physical safety, fear of being alone. Other people or situations may remind you of the assault.

What you can do: If you want company, do not hesitate to ask people familiar to you to be with you day and night. Do things to make your physical environment feel more safe (moving, making your home more secure, getting to know neighbors better). Let people know that you want support, not overprotectiveness. You may worry that you are relying on others too much. Gradually, you will start taking risks again. Do this at your own pace.

Guilt and Self-Blame

Feeling like you could have or should have done something to avoid or prevent the assault, doubts in your own abilities to make judgments.

What you can do: No matter what the situation was, you did not ask to be hurt or violated. Blaming yourself is sometimes another way to feel control over the situation, thinking that if you avoid similar circumstances that it will not happen to you. Remember: the violence was not your fault.

Vulnerability

Feeling that you are at the mercy of your own emotions and everyone and everything around you, difficulty in seeing the world as a safe place and wondering about the meaning of life.

What you can do: Try to talk with people whom you have found to be the most dependable in the past. Select those who have been good listeners and nonjudgmental. Let people know that it is important to you that they follow through on their commitments to you. You may develop new ways of feeling less vulnerable and begin to set new priorities in your life.

Powerlessness and Helplessness

Feeling like you have no control over your life and your body.

What you can do: Since sexual assault is the ultimate form of one person overpowering another, you may carry with you this feeling of being victimized. Try to remember, as these feelings come up, that they are probably related to the assault and not to the current situation which may remind you (sometimes unconsciously) of the rape. Again, let people you

know and trust how you are feeling. You will be able to figure out how to face these feelings.

Isolation

Feeling that this experience has set you apart from other people, not wanting to "burden" other people with your experience, wondering whether your reactions are "crazy" or "abnormal."

What you can do: Sexual assault can be a very lonely experience. However, you are also not alone in what you are feeling. You are responding normally to a horrible experience. Talking to others who have been raped or to a counselor familiar with common reactions to rape can be reassuring. Try to communicate your thoughts and feelings to those close to you, even when it is sometimes difficult.

Distrust

Not knowing who to trust or how to trust yourself, others, or what you know; feelings of suspiciousness and being very cautious.

What you can do: Trust your instincts about who you want to talk with about what has happened to you. You may undergo some re-evaluation as to what and whom you can trust. Feelings of general suspicion will subside as you begin to find people in your life you feel you can trust.

Sexual Fears

Feeling that you do not want to have sexual relations, wondering whether you will ever again want or enjoy sexual relationships, fears that being sexually intimate may remind you of the rape.

What you can do: Try to tell your sexual partner what your limits are. Let your partner know if the situation (not your partner) reminds you of the assault and may bring up painful memories. You may feel more comfortable with gentle physical affection. Let your partner know what level of intimacy feels comfortable. Communication is important. Know that in time negative feelings or fears about sexuality will change.

Anger

Feeling angry at the assailant. You may find yourself thinking about retaliation. You may also generalize to feeling angry at all men (or those who are similar to the attacker) or

at the world, since it may no longer feel safe. You may never feel angry or may feel this later.

What you can do: Be accepting of your anger. Even if you are having thoughts of committing violence toward the attacker, it does not mean that you are a violent person. You have a right to feel angry about the violation that you have experienced. Talk to people who understand this.

Disruption of Daily Activities

During the first few days or weeks after the assault you may feel preoccupied with intrusive thoughts about the event. You may also experience difficulty concentrating, nightmares, sleep disturbances, changes in appetite, startle reactions, phobias, general anxiety, or depression. You may have memories of prior crises.

What you can do: Although these are common reactions, they can be quite disrupting. Take things very slowly. If you know stress management techniques, use them. Some people find it helpful to keep a notebook at hand to write down feelings, thoughts, ideas, or details of the assault; keeping the thoughts and feelings in one place sometimes makes them feel more manageable. Try to have as much control over what kinds of activities you choose to do (for example, if you want to go to work, do that; if you don't, take the day off). If possible, allow flexibility in your schedule. It is important to incorporate nurturing activities into your daily life every day; you deserve it. Remember that the intensity of these feelings will subside.

Physical Symptoms

Because your whole system has been violated, your body, too, may develop reactions. You may be healing from physical injuries, or you may develop headaches, gastrointestinal discomforts, or general aches and pains. You may also be physically exhausted.

What you can do: It is important to take care of your body. If you can, incorporate some form of exercise, nutritious meals, planned relaxation, and plenty of sleep each day. This will assist in your recovery. Consult with your doctor if symptoms persist.

Reactions of Family and Friends

The people in your life will have their own disturbing reactions to what has happened to you. Sometimes they will be helpful, sometimes not. It is sometimes hard to witness the

pain in others caused by something that happened to you. You may want to protect them. You may fear their reactions. You may be angry at their reactions. You may want more or less from them. They may be unsure how to react.

What you can do: Remember that you can choose who you want to be close to. Try to be clear about what you need from those around you. Let them know that sometimes it may be confusing, that sometimes you may want space, and that sometimes you may want to talk or be close. You should not be expected to take care of them. Encourage them to get help from other people or a counselor. They can talk with someone that you recommend or someone from resources suggested below.

Follow-Up Counseling

You may notice that you are feeling some or all of the feelings listed above and wonder if you should get counseling. You will benefit most from counseling when you want it, either now or sometime in the future. It takes time to come to terms with what has happened to you. The main thing is that you

decide if you are getting the kind of emotional support that is right for you to help you make practical decisions and to help you recover emotionally from the sexual assault.

We would like to be in touch with you within the next few days to see how you are doing and to find out if you are interested in follow-up counseling. You will be called by a counselor from the Victims of Violence Program, part of the Department of Outpatient Psychiatry. If you have any concern, feel free to call any of the resources listed below:

Cambridge Hospital Victims of Violence Program	498-1150
Cambridge Hospital Psychiatry Emergency Service	498-1560
Boston Area Rape Crisis Center	492-RAPE

Adapted from sexual assault survivor patient information compiled by Janet Yassen, Coordinator of Crisis Services, Victims of Violence Program, Outpatient Department of Psychiatry, The Cambridge Hospital, 1987

Appendix B

Cases Cited

- Alford v. Unites States*, 282 U.S. 687 (1931).
- Allen v. Illinois*, 478 U.S. 364 (1986).
- Cobey v. State*, 559 A.2d 391 (Md. 1989).
- Commonwealth v. Amirault*, 404 Mass. 221 (1990).
- Commonwealth v. Bailey*, 370 Mass. 388 (1976).
- Commonwealth v. Baldwin*, 509 N.E.2d 4 (Mass. App. Ct. 1987); review denied, 509 N.E.2d 1202 (1987).
- Commonwealth v. Black*, 487 A.2d 396 (Pa. Super. 1985).
- Commonwealth of Pennsylvania v. Michael Kennedy*, 474 Philadelphia 1989 (Superior Ct., Penn.).
- Commonwealth v. LaFave*, 410 Mass. 927 (1990).
- Commonwealth v. Lavalley*, 410 Mass. 641 (1991).
- Commonwealth of Pennsylvania v. Lloyd, Commonwealth v. Jerome Wall*, 2493 Philadelphia 1990 (Superior Ct., Penn.).
- Commonwealth v. Majorana*, 470 A.2d 80 (Pa. 1983).
- Commonwealth v. Montanino*, 409 Mass. 500 (1991).
- Commonwealth v. Stockhammer*, 409 Mass. 867, 570 N.E.2d 992 (Mass. 1991).
- Commonwealth of Pennsylvania v. Jerry Paul Wilson, Commonwealth v. Wayne O'Brien Aultman*, J-229-1990 (Supreme Court of Pennsylvania, Eastern-Western District).
- Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).
- Daubert v. Merrell Dow Pharmaceuticals*, 61 U.S. 6W 4805 (1993).
- Helvering v. Mitchell*, 303 U.S. 391 (1938).
- Henson v. State*, 535 N.E.2d 1189 (Ind. 1989).
- In re Young, In re Cunningham*, 122 Wash. 2d 1 (August 20, 1993).
- Jakobetz v. United States*, No. 91-7921 (Cert. denied).
- Jakobetz v. United States*, 955 F.2d 786 (1991).
- People v. Kotler*, No. Cr. 2480-81 (Suffolk Co., N.Y. Sup. Ct. 1992).
- Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986).
- Merton v. State*, 500 So.2d 1301 (Ala. Cr. App. 1986).
- Michigan v. Lucas*, 500 U.S. __, 114 L. Ed.2d 205 (1991).
- Minnesota v. Murphy*, 465 U.S. 420 (1984).
- Pennsylvania v. Ritchie*, 107 S.Ct. 989 (1987).
- People v. Bledsoe*, 681 P.2d 291 (Ca. 1984).
- People v. Castro*, 545 N.Y.S.2d 985 (1989).
- People v. Cook*, 532 N.Y.S.2d 940 (App. Div. 1988).
- People v. Jansson*, 323 N.W.2d 508 (Mich. App. 1982).
- People v. Liberta*, 474 N.E.2d 567 (N.Y. 1984).
- People v. Stull*, 338 N.W.2d 403 (Mich. App. 1983).
- People v. Thomas*, 529 N.Y.S.2d 429 (Schoharie Co. 1988).
- People v. Thompson*, 324 N.W.2d 22 (Mich. App. 1982).
- People of the State of California v. Jillie*, Ca. Ct. of App., 3d Dist., No. C011236 (July 22, 1992).
- Reina v. United States*, 364 U.S. 507 (1960).
- State v. Donnelly*, 798 P.2d 89 (Mont. 1990).

State v. Gonzalez, 110 Wash.2d 738 (1988), 757 P.2d 925 (Wash. 1988).

State v. Imlay, 813 P.2d 979 (Mont. 1991).

State v. Marks, 647 P.2d 1292 (Kansas 1982).

State v. Paradee, 403 N.W.2d 640 (Minn. 1987).

State v. Saldana, 324 N.W.2d 227 (Minn. 1982).

State v. Schwartz, 447 N.W.2d 422 (Minn. 1989).

State v. Taylor, 663 S.W.2d 235 (Mo. 1984).

U.S. v. Bonds, No. 91-3608 (6th Cir. December 15, 1993).

Appendix C

Statutes Cited

- Cal. Penal Code § 1202.1. (West 1992 Supp.).
- Cal. Penal Code § 1524.1(b)(1) (West 1990 Supp.).
- Campus Sexual Assault Victims' Bill of Rights Act, H.R. 2363.
- Colo. Rev. Stat. § 18-3-415 (1989 Supp.).
- F.S.A. § 951.27 (West 1992 Supp.).
- F.S.A. § 960.003(2) (West 1992 Supp.).
- Hate Crimes Statistics Act of 1990, P.L. 101-275.
- Ill. Ann. Stat. ch. 38, para. 12-12 to 12-18 (Smith-Hurd 1992 Supp.).
- Ill. Ann. Stat. ch. 38, para. 12-13 (Smith-Hurd 1992 Supp.).
- Ill. Ann. Stat. ch. 38, para. 12-17 (Smith-Hurd 1992 Supp.).
- Massachusetts G.L., c. 233, § 20J.
- Mich. Comp. Laws Ann. § 750.520a-1 (West 1991).
- Mich. Comp. Laws Ann. § 750.520b (West 1991).
- Mich. Comp. Laws Ann. § 750.520i (West 1991).
- Mich. Comp. Laws Ann. § 750.520j(1) (West 1979).
- Mich. Comp. Laws Ann. § 750.520l (West 1991).
- Minn. Stat. § 595.02(g).
- Minn. Stat. § 609.341 et seq.
- Minn. Stat. § 609.35, Cost of Medical Exam.
- Minn. Stat. § 609.3461, DNA Analysis of Sex Offenders Required.
- Model Penal Code § 213.1 (Official Draft and Revised Comments 1980).
- Model Penal Code § 213.6, Comment 5 (Official Draft 1962).
- New York Penal Law §§ 130.00 et seq. (McKinney 1987).
- New York Penal Law §§ 130.05(1) (McKinney 1987).
- New York Penal Law §§ 130.35(1) (McKinney 1987).
- 18 PA. C.S.A. § 3128 (Purdon 1983).
- 18 PA. C.S.A. § 5945.1 (Purdon 1989).
- 18 PA. C.S.A. § 5106 (Purdon 1989).
- 42 PA. C.S.A. § 5945.1 (Purdon 1989).
- 64 PA. C.S.A. § 66.1 et seq. (Purdon 1989).
- Pornography Victims' Compensation Act of 1991, S. 1521, H.R. 2363, 102d Congress.
- Sexual Assault Prevention Act, S. 6, H.R. 688, 103d Congress.
- Student Right-to-Know and Campus Security Act of 1990, P. L. 101-542, Title I, Nov. 8, 1990, 104 Stat. 2381; P. L. 102-26 § 10(e), April 19, 1991, 105 Stat. 128.
- Tex. Crim. Proc. Code Ann. § 21.31 (Vernon 1989).
- 18 U.S.C. § 2241, Aggravated Sexual Assault (West 1992 Supp.).
- 18 U.S.C. § 2242, Sexual Assault (West 1992 Supp.).
- Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (West 1981).
- Victims of Crime Act of 1984, 42 U.S.C. § 10601 nt. (West 1993 Supp.).

42 U.S.C. § 10603(a)(2)(A) (West 1993 Supp.).

Violence Against Women Act of 1990, S. 2754, 102d
Congress.

Violence Against Women Act, S. 11, H.R. 1133, 103d
Congress.

Appendix D

Programs Visited, With Addresses and Contacts

Prosecutors' Offices

King County Prosecuting Attorney's Office

Prosecuting Attorney: Norm Maleng

Contact: Rebecca Roe, Esq.
Chief, Special Assault Unit

Address: Office of the Prosecuting
Attorney
King County Courthouse
516 Third Avenue
Seattle, WA 98104

(206) 296-9470
Fax: (206) 296-0191

Other Interviewee: Assistant King County
Prosecuting Attorney
Cathy Goater

Philadelphia District Attorney's Office

District Attorney: Lynne Abraham

Contact: Dianne Granlund, Esq.
Chief, Rape Prosecution Unit

Address: Philadelphia District
Attorney's Office
1421 Arch Street
Philadelphia, PA 19102

(215) 686-8080
Fax: (215) 563-0047

Ramsey County Attorney's Office

County Attorney: Tom Foley

Contact: Jeanne L. Schleh, Esq.
Chief, Crimes Against Persons
Division

Address: Ramsey County Attorney's Office
350 St. Peter Street, 4th Floor
St. Paul, MN 55102

(612) 298-4195

Other Interviewees: Assistant Ramsey County Attorney
Clayton M. Robinson, Jr.
Mary Biermaier, Director,
Victim/Witness Unit
Barbara Leigh, Victim/Witness
Advocate

Second Judicial District Attorney's Office (Denver)

District Attorney: Norman S. Early, Jr.

Contact: Sheila A. Rappaport, Esq.
Chief Deputy District Attorney

Address: Office of the District Attorney
Second Judicial District
303 West Colfax Avenue
Suite 1300
Denver, CO 80204

(303) 640-5822
Fax: (303) 640-3180

Other interviewees: Deputy District Attorney
Kyra Jenner
Deputy District Attorney
Karen Steinhauser
Anne Gabel, Senior
Victim/Witness Advocate
LuAnne T. Ritchie,
Coordinator, Crime Victim's
Compensation Fund

Law Enforcement Agencies

Denver Police Department

Contact: Sergeant Dennis Cribari
Sexual Assault Unit

Address: Denver Police Department
1331 Cherokee Street
Denver, CO 80204

(303) 640-1314
Fax: (303) 640-3365

Interviewee: Sergeant Tony Lombard

King County Police Department

Contact: Sergeant Sue Louie or
Sergeant Annette Flanagan
Special Assault Unit

Address: King County Police
King County Courthouse
516 Third Avenue
Seattle, WA 98104

(206) 296-7557
Fax: (206) 296-0903

Other Interviewees: Lieutenant Jay Vaughan
Sergeant Dwight Chamberlain
Sergeant John Lindner

Philadelphia Police Department

Contact: Lieutenant William Broadbent
Sex Crimes Unit

Address: Philadelphia Police Department
1700 Pattison Avenue
Philadelphia, PA 19154

(215) 685-1668
Fax: (215) 755-8605

Other Interviewee: Officer Veronica Sypherd

Seattle Police Department

Contact: Lieutenant Al Gerdes
Special Assault Unit

Address: Seattle Police Department
610 Third Avenue
Seattle, WA 98104-1886

(206) 684-5575
Fax: (206) 684-5459

Other Interviewees: Detective Sergeant Ted Jacoby
Cathy Wenderoth, Supervisor,
Victim Assistance Section,
Crime Prevention Division

St. Paul Police Department

Contact: Lieutenant Joseph Corcoran
Sex Crimes Unit

Address: City of St. Paul Department of Police
100 East 11th Street
St. Paul, MN 55101

(612) 292-3685
Fax: (612) 292-3711

Other Interviewee: Lieutenant Richard J. Gardell

Judges

Philadelphia

Judge Legrome Davis
Court of Common Pleas
1408 One East Pennsylvania Square
Philadelphia, PA 19107

(215) 686-9534

Denver

Judge Lynne Hufnagel
Denver District Court
Court Room 9
1437 Bannock Street
Denver, CO 80202

(303) 640-2681

Seattle

Judge Robert S. Lasnik
King County Courthouse
Room W739
516 Third Ave
Seattle, WA 98104

(206) 296-9113

St. Paul

Judge Bertrand Poritsky
Juvenile Court
480 St. Peter Street
St. Paul, MN 55102

(612) 298-5502

Rape Crisis Centers

Boulder County Rape Crisis Team

Contact: Leigh Allen
Executive Director

Address: Boulder County Rape Crisis Team
Mental Health Center
1333 Iris Avenue
Boulder, CO 80304

(303) 443-8500

Other interviewee: Claudia Bayliff, Assistant Director

King County Sexual Assault Resource Center (KCSARC)

Contact: Mo Corrigan Fain
Legal Advocate

Address: King County Sexual Assault
Resource Center
P.O. Box 300
Renton, WA 98057

(206) 226-5062

Fax: (206) 235-7422

Rape Assistance and Awareness Program (RAAP)

Contact: Marte McNally
Victim Service Program Director

Address: Rape Assistance and
Awareness Program
640 Broadway, Box 112
Denver, CO 80203

(303) 329-9922

Seattle Rape Relief

Contact: Audrey Haberman
Legal Advocacy Coordinator

Address: Seattle Rape Relief
1905 S. Jackson
Seattle, WA 98144

(206) 325-5531

Other Interviewee: Ellen Hurtado, Co-Director,
Intervention Services

Sexual Offense Services (SOS) of Ramsey County

Contact: Marjory Singher
Program Coordinator

Address: Sexual Offense Services (SOS)
of Ramsey County
1619 Dayton Avenue, Suite 201
St. Paul, MN 55104

(612) 298-5898

Woman Organized Against Rape (WOAR)

Contact: Vanessa Grant Jackson
Executive Director

Address: Woman Organized Against Rape
1233 Locust Street, Suite 202
Philadelphia, PA 19107

(215) 985-3320, Ext. 177

Medical Centers

Denver General Hospital

Contact: Linda Lenander
Coordinator, Clinical Social
Work Department

Address: Denver General Hospital
605 Bannock Street
MC1700
Denver, CO 80204

(303) 436-7390

Other Interviewee: Kerry Ziller

Harborview Medical Center, Sexual Assault Center

Contact: Dr. Mary Gibbons
Director of Medical Services

Address: Sexual Assault Center
Harborview Medical Center
1401 E. Jefferson
Seattle, WA 98104

(206) 223-3047

St. Paul-Ramsey County Medical Center

Contact: Scott Cruse
Director, Crisis Program

Address: St. Paul-Ramsey County
Medical Center
640 Jackson Street
St. Paul, MN 55116

(612) 221-8900

Thomas Jefferson University Hospital

Contact: Dr. Joseph Zeccardi
Chief, Emergency Medicine

Address: Department of Emergency
Medicine
Thomas Jefferson University
Hospital
Thompson Building
11th & Walnut Streets
Room 284
Philadelphia, PA 19107

(215) 955-6844

Offender Treatment

Alpha Human Services

Contact: Gerald Kaplan
Executive Director

Address: Alpha Human Services
2712 Fremont Avenue, South
Minneapolis, MN 55408-1198

(612) 872-8218

Other interviewee: Carole Nienaber
Program Coordinator

Joseph J. Peters Institute

Contact: Donna Shapiro
Clinical Director

Address: Joseph J. Peters Institute
260 S. Broad Street, 2d Floor
Philadelphia, PA 19102

(215) 893-0600

Other interviewee: Dr. James M. Pedigo

Minnesota Security Hospital

Contact: Dr. Michael Farnsworth

Address: Minnesota Security Hospital
100 Freeman Drive
St. Peter, MN 56082

(507) 931-7100

Universities

University of Colorado

Contact: Cathy Marquis

Address: Office of Student Conduct
University of Colorado
Room 223, Willard Hall
Campus Box 132
Boulder, CO 80309

(303) 492-5550

Other interviewees: Dave Evans
Jennifer Pertofsky

University of Pennsylvania

Contact: Susan Villari
Director of Health Education

Address: Box 745
Student Health HUP
University of Pennsylvania
Philadelphia, PA 19104-4283

(215) 573-3525

Other interviewees: Ruth Wells, Director, Victim
Support and Special Services
Beth Kaplan, Students Together
Against Acquaintance Rape
(STAAR)

Prevention Programs

Alternatives to Fear

Contact: Py Bateman
Director

Address: Alternatives to Fear
2811 East Madison, Suite 208
Seattle, WA 98112

(206) 328-5347

Appendix E

National Victim Advocacy Organizations

National Organization for Victim Assistance (NOVA)

Founded in 1975, the National Organization for Victims Assistance (NOVA) is a nonprofit membership organization guided by four purposes: (1) to serve as an advocate for victims of crimes and of other stark misfortunes so that they are treated with compassion and respect; (2) as needed, to be of direct assistance to victims; (3) to provide training and other services to members of the victim assistance and allied professions; and (4) to be of service to its members.

Contact: Marlene A. Young
Executive Director

Address: National Organization for Victim Assistance
757 Park Road, N.W.
Washington, D.C. 20010

(202) 232-6682
Fax: (202) 462-2255

National Coalition Against Sexual Assault (NCASA)

Contact: Cassandra Thomas
President

Address: National Coalition Against Sexual Assault
Houston Area Women's Center
3101 Richmond, Suite 150
Houston, TX 77098

(713) 528-6798

National Network for Victims of Sexual Assault

Contact: Mary Ann Largen
Executive Director

Address: National Network for Victims of Sexual Assault
955 S. Columbus Street, Room 402
Arlington, VA 22204

(703) 671-0691

National Victim Center

The National Victim Center authored the study *Rape in America*. In addition, with funding from the Office for Victims of Crime (OVC) and the Bureau of Justice Assistance (BJA), the National Victim Center recently published *Looking Back, Moving Forward: A Guidebook for Communities Responding to Sexual Assault*. This useful publication explains the development and implementation of multi-disciplinary protocol by community sexual assault interagency councils. For a copy of the guidebook (a limited supply is available) contact Anita Bowles, Project Director, at the address shown below.

Contact: Anne Seymour
Director of Communications
and Resource Development

Address: National Victim Center
2111 Wilson Boulevard, Suite 300
Arlington, VA 22201

(703) 276-2880
Fax: (703) 276-2889

*National Clearinghouse
on Marital and Date Rape*

The National Clearinghouse on Marital and Date Rape
provides information on these topics for a fee.

Contact: Laura X
Director

Address: National Clearinghouse on Marital
and Date Rape
2325 Oak Street
Berkeley, CA 94708

(510) 524-1582

Appendix F

Other Resources

AIDS Policy Center

The AIDS Policy Center publishes the *Intergovernmental AIDS Reports*, which covers proposed AIDS legislation, describes the impact of new State laws and Federal policies on the States, and analyzes AIDS policy issues.

Contact: Lisa Bowleg

Address: AIDS Policy Center
Intergovernmental Health Policy Project
George Washington University
2021 K Street, N.W., Suite 800
Washington, D.C. 20077-2685

(202) 872-1445
Fax: (202) 785-0114

Campus Violence Prevention Center

Contact: Dorothy Siegel
Executive Director

Address: Campus Violence Prevention Center
Towson State University
Towson, Maryland 21204

(410) 830-2178
Fax: (410) 830-3441

Center for Women Policy Studies (CWPS)

The Center for Women Policy Studies is an independent policy research and advocacy institution. The center's programs combine advocacy, research, policy development, and public education to advance the agenda for women's

equality and empowerment. Its programs address educational equity, economic opportunity for low-income women, work and family policies, women and AIDS, reproductive rights and health, and violence against women.

Contact: Leslie R. Wolfe
Executive Director

Address: Center for Women Policy Studies
2000 P. Street, N.W., Suite 508
Washington, D.C. 20036

(202) 872-1770
Fax: (202) 296-8962

Cardozo Women's Law Journal

The *Cardozo Women's Law Journal*, formerly known as the *Women's Annotated Legal Bibliography*, is an annual publication of the Benjamin N. Cardozo School of Law. In recent years the law journal has contained a chapter of annotations concerning rape. The law journal also presents symposiums on issues relating to women and the law.

Contact: Elise Schlackman
Editor-In-Chief

Address: Cardozo Women's Law Journal
Benjamin N. Cardozo School of Law
55 Fifth Avenue
New York, NY 10003

(212) 790-0239
Fax: (212) 790-0345

*Federal Bureau of Investigation,
National Center for the
Analysis of Violent Crime (NCAVC)*

The National Center for the Analysis of Violent Crime, a program of the Federal Bureau of Investigation, is a law-enforcement-oriented behavioral science and data processing center designed to consolidate research, training, and investigative/operational support functions for the purpose of providing expertise to any legitimate law enforcement agency confronted with unusual, bizarre, and/or repetitive violent crime. NCAVC's research activities include multidisciplinary studies in serial and violent crime such as homicide, rape, sexual sadism, child abduction, and threats. The center provides investigative support to Federal, State, county, and city law enforcement agencies through its services that include consultation on major violent crimes, profiles of unknown offenders, personality assessments, investigative strategies, interviewing techniques, search warrant affidavit assistance, prosecution strategy, and expert testimony. NCAVC is divided into three units: Behavioral Science Services, Investigative Support, and Special Operations and Research.

Contact: Cynthia J. Lent
Research Analyst

Address: National Center for the Analysis
of Violent Crime
FBI Academy
Quantico, Virginia 22135

(703) 640-1335
(800) 634-4097

*Federal Law Enforcement
Training Center (FLETC)*

The Federal Law Enforcement Training Center is an interagency law enforcement training facility with responsibility for training personnel from State and local law enforcement agencies in advanced topic areas designed to develop specialized law enforcement skills. FLETC offers a seminar entitled "Child Abuse and Exploitation Investigation Training Course." Because of the overlap between adult and child sex crimes case, the course is highly recommended for adult sex crimes prosecutors.

Contact: Steve Kernes

Address: Federal Law Enforcement Training Center
(FLETC)
Building 67
Glynco, GA 31524

(912) 267-3145
Fax: (912) 267-2894

Illusion Theater

The Illusion Theater is one of the pioneers of rape and sexual assault prevention programs for adolescents and young children. The theater runs a prevention materials clearinghouse including pamphlets, curriculums, videotapes, and resource lists. It also presents theatrical plays with prevention themes for children and workshops for adults.

Contact: Nancy Riestenberg
Director, Prevention Programs

Address: Illusion Theater
528 Hennepin Avenue, Suite 704
Minneapolis, MN 55403

(612) 339-4944

National AIDS Clearinghouse

This program of the Centers for Disease Control provides educational and informational brochures in bulk.

Address: National AIDS Clearinghouse
Centers for Disease Control
P.O. Box 6003
Rockville, MD 20850

(800) 458-5231

National HIV and AIDS Hotline

The National HIV and AIDS Hotline is a 24-hour hotline that provides information and education about HIV-related topics and referral to support groups, legal assistance, financial assistance, and counseling for HIV-positive people and their advocates.

Address: National HIV and AIDS Hotline
Centers for Disease Control
American Social Health Association
P.O. Box 13827
RTP, NC 27709

(800) 342-2437

National Center for Prosecution of Child Abuse

The National Center for Prosecution of Child Abuse is a program of the American Prosecutors Research Institute, the nonprofit research and technical assistance affiliate of the National District Attorneys' Association. The center publishes monthly updates on issues related to the prosecution of child abuse cases.

Contact: Patti Toth, Esq.

Address: National Center for Prosecution of Child Abuse
American Prosecutors Research Institute (APRI)
1033 North Fairfax Street, Suite 200
Alexandria, VA 22314

(703) 739-0321

Fax: (703) 836-3195

National College of District Attorneys

The National College of District Attorneys (NCDA) is a national prosecutors' training center. Periodically NCDA offers courses and lectures on topics of concern to the Nation's prosecuting attorneys. Recent lecture topics have included "Prosecuting Difficult Adult Sexual Assault Cases," "Profile and Treatability of the Sex Offender," and "DNA Evidence and Its Use in Criminal Prosecutions."

Contact: Roger Kane, Administrative Assistant

Address: National College of District Attorneys (NCDA)
University of Houston Law Center
Houston, TX 77204-6380

(713) 747-6232

Fax: (713) 743-1850

National Victims Resource Center

This center, sponsored by the Department of Justice, provided referral and literature searches to interested parties.

Address: National Victims Resource Center
Box 6000 AHG
Rockville, MD 20850

Outside Maryland: 800-627-6872

Inside Maryland: 301-257-5519

Santa Monica Hospital Rape Treatment Center

The Santa Monica Hospital Rape Treatment Center is a comprehensive rape and child sexual assault treatment program located in a hospital environment. The center has developed pamphlets, posters, and a video on preventing acquaintance rape, as well as general prevention materials.

Contact: Gail Abarbanel, Director

Address: Rape Treatment Center
Santa Monica Hospital Medical Center
1225 Fifteenth Street
Santa Monica, CA 90404

(213) 319-4000

Sage Publications

Sage publishes scholarly work in the social sciences, including criminology and psychology. Sage is the publisher of *The Rape Victim*, a book cited frequently in this report. Other related Sage titles include *Working With Sex Offenders* and *Treating the Sexual Offender*.

Address: Sage Publications, Inc.
P.O. Box 5084
Newbury Park, CA 91359-9924

(805) 499-0721

Fax: (805) 499-0871

Appendix G

Prevention and Education Materials

- **Prevention and Education Films**
- **State Justice Institute Judicial Education Materials on Sex Crimes**

Prevention Education Films

This list of films is reprinted from Dr. Andrea Parrot's *Acquaintance Rape and Sexual Assault Prevention Training Manual*. The entire manual can be obtained by contacting:

Andrea Parrot, Ph.D.
Department of Human Services Studies
Cornell University
Ithaca, New York 14853
(607) 255-2512

Summary of Media Resources

A QUESTION OF CONSENT - Rape

Woroner Films, Inc.
Coronet/MI
108 Wilmot Road
Deerfield, IL 60015
(312) 940-1260

AGAINST HER WILL

Coronet/MI Film and Video
108 Wilmont Road
Deerfield, IL 60015
(312) 940-1260
1989
60 minutes
Video \$495, Rental \$75

BETTER SAFE THAN SORRY - PART III

Film Fair Communications
10900 Ventura BOULEVARD
P.O. Box 1728
Studio City, CA 91604
(213) 877-3191
1985
19 minutes
\$40.00 3 day rental

CAMPUS Rape

Rape Treatment Center
Santa Monica Hospital Medical Center
1250 Sixteenth Street
Santa Monica, CA 90404
213-319-4000
1990
20 minutes
\$50 purchase

CAN A GUY SAY NO?

Coronet/MI
108 Wilmot Road
Deerfield, IL 60015
(312) 940-1260
1988

32 minutes
Video \$250, Rental \$75

CAN'T YOU SEE ME?: Rape CONSEQUENCES AND RECOVERY

World Research Incorporated
11722 Sorrento Valley Road
San Diego, CA 92121-1021
(619) 456-5278
1986

20 minutes
\$24.50 rental

DATE Rape - WHAT COULD HAPPEN?

University of Arizona Police Department
Sergeant Brian Seastone
1331 East Fifth Street
Tucson, AZ 85721
(602) 621-1484
1987

17 minutes
\$25.00 purchase

I KNOW YOU SAID NOT BUT I THOUGHT YOU SAID YES

Cornell University Audiovisual Center
8 Research Park
Ithaca, NY 14850-1247
(607) 255-2090
1989

20 minutes
Video \$225, Rental \$50

IT STILL HURTS

Campus Crime Prevention Program
Dan Keller
P.O. Box 204
Goshen, KY 40026
(502) 588-6111

NO MEANS NO!: AVOIDING DATE ABUSE

Coronet/MI
108 Wilmot Road
Deerfield, IL 60015
(312) 940-1260
1988

19 minutes
Video \$365, Rental \$75

NOT ONLY STRANGERS

Centron Films
1621 West 9th, Box 687
Lawrence, KS 66044

Rape PREVENTION: TRUST YOUR INSTINCTS

Coronet/MI
108 Wilmot Road
Deerfield, IL 60015
(312) 940-1260
1989
18 minutes
Video \$395, Rental \$75

RETHINKING Rape
Stanford University
c/o Jeanne LePage
171 Old La Honda Road
Woodside, CA 94062
(415) 723-2300

SEXUAL ASSAULT CRIMES PART I AND II

Human Relations Media
175 Tompkins Avenue
Pleasantville, NY 10570
(914) 769-7496
1987
30 minutes
purchase or 30 day free preview

SEXUAL ASSAULT - A CHANCE TO THINK

University of Maryland Police Department
Corporal Cathy Atwell
(301) 454-5993
1984
30 minutes
\$60.00 two week rental, \$150.00 purchase

SOMEONE THAT YOU KNOW

Dystar Television
Simon and Shuster

420 Academy Drive
Northbrook, IL 60062
(312) 940-1260
1986
30 minutes
\$125.00 for 3 day rental

STOP DATE Rape - PART I AND II
Cornell University Audiovisual Center
8 Research Park
Ithaca, NY 14850-1247
(607) 255-2090
1987
23 minutes
\$50.00 3 day rental; \$225.00 purchase

SUGAR AND SPICE AND ALL IS NOT NICE
Coronet/MI
108 Wilmot Road
Deerfield, IL 60015
(312) 940-1260
1984
19 minutes
Video \$250, Rental \$75
THE PARTY and THE DORM
Cigus Vanni, Assistant Dean of Students
Swarthmore College
Swarthmore, PA 19081
(215) 328-8364
1984
15 minutes (1 film in 2 parts)
\$25.00 preview, \$200.00 purchase

THE PARTY GAME
THE DATE
THE END OF THE ROAD
JUST ONE OF THE BOYS
O.D.N. Productions
76 Varrick Street
New York, NY 10013
(212) 431-8923
1978
each film about 15 minutes
\$125.00 a week rental

VOICES OF POWER

Audiovisual Center
Indiana University
Bloomington, IN 474001
(812) 335-8087
1987
47 minutes
\$35.00

WAKING UP TO Rape

Women Make Movies
225 Lafayette Street
Suite 212
New York, NY 10012
(212) 925-0606
1985
35 minutes
\$60.00

WITHOUT CONSENT

Pyramid Film and Video
2801 Colorado Avenue
Santa Monica, CA 90404
(800) 421-2304
1987
25 minutes
\$65.00 3 day rental

WORKING AGAINST Rape

10 Lyon Street, #101
San Francisco, CA 94117
60 minutes

TV Commercial for young men about acquaintance rape prevention

Gail Abarbanell
Rape Treatment Center
Santa Monica, CA 90401
\$250.00 per year to make and use as many copies as you want

Related Films of Interest

A QUESTION OF CONSENT - Rape (Woroner Films, Inc., Coronet/MI 108 Wilmot Road, Deerfield, Illinois, 60015). This film is set in a court room and deals with the legal ramifications of rape.

VOICES OF POWER (Audiovisual Center, Indiana University, Bloomington, Indiana, 47401). This video describes the healing process after rape by dramatizing the interactions of six women in a support group setting. Four are victims, two are counselors; all have been deeply affected by sexual assault. This is a 1987 production, 47 minutes.

State Justice Institute (SJI) Judicial Education Materials on Sex Crimes

The following conference proceedings, training curriculums, and audio and videotapes are available from SJI contacts (libraries and court administrative offices, also listed here) for use by judges and other interested parties.

Sex Crimes

- *Issues and Tactics in Sex-Related Cases*
60, Mar 90: Supreme Court Continuing Education; June Cicero, 612/297-7590 (MN)
- *Physical and Sexual Assaults by Men on Women in Existing Relationships*
133, May 90: Western Judicial Education Centre; Douglas Campbell, 604/922-4217
- *Sexual Offenses*
348, Aug 90: Supreme Court of Virginia; William Capers, 804/786-6455 (VA)
- *Sexual Abusers*
355, Sep 90: Colorado Judicial Department; Virginia Leavitt, 303/837-3654 (CO)
- *Sexual Assault--Myths & Realities*
400, Sep 90: Texas Center for the Judiciary, Inc.; Roy Rawls, 512/463-1530 (TX)
- *Selected Criminal Law Issues: Testing for Sexual Assaults/Crimes-Sentencing*
429, Oct 90: Administrative Office of the Courts; Richard Saks, 609/292-0622 (NJ)
- *The Pervasive Issues of Rape, Sexual Violence and Child Abuse*
632, Dec 90: Education and Training Office; Edward Borrelli, 212/417-5823 (NY)
- *Assessment and Treatment of Sex Offenders*
790, Apr 91: Executive Secretary's Office; Mary Tom Plummer, 615/741-4416 (TN)
- *Sentencing Sexual Offenders*
827, Apr 91: Western Judicial Education Centre; Douglas Campbell, 604/922-4217
- *Sentencing for Sexual Offenses*
875, Mar 91: National Judicial Institute; Sheila Redel, 613/564-9800
- *Treatment of Sex Offenders*
954, May 91: Supreme Court of Arizona; Karen Waldrop, 602/542-9431 (AZ)
- *Supervising A Sexual Assault Trial*
1049, Jul 91: Institute of Continuing Judicial Education; Kathy Mitchem, 706/542-7491 (GA)
- *Sex, Lies and Videotapes; Some Hard Core Truths About Sex Offenders*
1137, Sep 91: West Virginia Supreme Court of Appeals; Richard Rosswurm, 304/348-0145 (WV)
- *How Big is the Problem? Prevalence of Child Sexual Abuse*
- *What We Know About Child Molesters: Who, What, Where, When and How*
- *Film: A Child Molester Speaks*
- *Denial - How It Affects Sentencing and Treatment*
- *Minimizing Trauma to Children in the Courtroom*
- *What Makes a Good Sex Offender Treatment Program*
- *The Smoke and The Fire: Leading and Suggestive Questioning*
- *Evidentiary Issues in Sexual Abuse*
- *Validation of Child Sexual Abuse: What's Real and What Isn't*
- *The Plethysmograph: Method or Madness*
- *Privacy Issues*
- *Effects of Child Sexual Abuse on Children*
- *Judge's Role in Treatment*
1142, Jun 91: Legal Affairs and Education Division; Mignon Beranek, 904/922-5079 (FL)
- *Intro to Relevancy: Sections 90.401, 90.402, 90.404, 90.405, and Character Evidence in Sexual Battery Prosecution*
1618, Apr 92: Legal Affairs and Education Division; Susan Cox Leseman, 904/922-5079 (FL)
- *The Sexual Perpetrator*
1724, May 92: Institute of Continuing Judicial Education; Sherry Carson, 706/542-7491 (GA)
- *Interview with Sexual Abuser*
- *How Judges Can Assist in Control and Treatment of Sexual Abusers*
1831, Jun 92: North Dakota Supreme Court; Carla Kolling, 701/224-4216 (ND)

SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. William C. Younger
State Law Librarian
Alabama Supreme Court Building
445 Dexter Avenue
Montgomery, AL 36130
(205) 242-4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Petumenos
State Law Librarian
Alaska Court Libraries
303 K. Street
Anchorage, AK 99501
(907) 264-0583

Arizona

State Law Library

Ms. Sharon Womack
Director
Department of Library & Archives
State Capitol
1700 West Washington
Phoenix, AZ 85007
(602) 542-4035

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich
Director
Supreme Court of Arkansas
Administrative Office of the Courts
Justice Building
625 Marshall
Little Rock, AR 72201-1078
(501) 376-6655

California

Administrative Office of the Courts

Mr. William C. Vickery
State Court Administrator
Administrative Office of the Courts
303 Second Street, South Tower
San Francisco, CA 94107
(415) 396-9100

Colorado

Supreme Court Library

Ms. Frances Campbell
Supreme Court Law Librarian
Colorado State Judicial Building
2 East 14th Avenue
Denver, CO 80203
(303) 837-3720

Connecticut

State Library

Mr. Richard Akeroyd
State Librarian
231 Capital Avenue
Hartford, CT 06106
(203) 566-4301

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin
Deputy Director
Administrative Office of the Courts
Carvel State Office Building
820 North French Street
11th Floor
P.O. Box 8911
Wilmington, DE 19801
(302) 571-2480

District of Columbia

Executive Office, District of Columbia Courts

Mr. Ulysses Hammond
Executive Officer
Courts of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-1700

Florida

Administrative Office of the Courts

Mr. Kenneth Palmer
State Court Administrator
Florida State Courts System
Supreme Court Building
Tallahassee, FL 32399-1900
(904) 488-8621

Georgia

Administrative Office of the Courts

Mr. Robert L. Doss, Jr.
Director
Administrative Office of the Courts
The Judicial Council of Georgia
244 Washington Street, S.W.
Suite 550
Atlanta, GA 30334
(404) 656-5171

Hawaii

Supreme Court Library

Ms. Ann Koto
Acting Law Librarian
Supreme Court Law Library
P.O. Box 2560
Honolulu, HI 96804
(808) 548-4605

Idaho

AOC Judicial Education Library/ State Law Library in Boise

Ms. Laura Pershing
State Law Librarian
Idaho State Law Library
Supreme Court Building
451 West State Street
Boise, ID 83720
(208) 334-3316

Indiana

Supreme Court Library

Ms. Constance Matts
Supreme Court Librarian
Supreme Court Library
State House
Indianapolis, IN 46204
(317) 232-2557

Iowa

Administrative Office of the Court

Mr. Jerry K. Beatty
Executive Director, Judicial Education & Planning
Administrative Office of the Courts
State Capitol Building
Des Moines, IA 50319
(515) 281-8279

Kansas

Supreme Court Library

Mr. Fred Knecht
Law Librarian
Kansas Supreme Court Library
301 West 10th Street
Topeka, KS 66614
(913) 296-3257

Kentucky

State Law Library

Ms. Sallie Howard
State Law Librarian
State Law Library
State Capitol
Room 200-A
Frankfort, KY 40601
(502) 564-4848

Louisiana

State Law Library

Ms. Carol Billings
Director
Louisiana Law Library
301 Loyola Avenue
New Orleans, LA 70112
(504) 568-5705

Maine

State Law and Legislative

Reference Library

Ms. Lynne E. Randall
State Law Librarian
State House Station 43
Augusta, ME 04333
(207) 289-1600

Maryland

State Law Library

Mr. Michael S. Miller
Director
Maryland State Law Library
Court of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401
(301) 974-3395

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer
Librarian
Middlesex Law Library
Superior Court House
40 Thorndike Street
Cambridge, MA 02141
(617) 494-4148

Michigan

Michigan Judicial Institute

Mr. Dennis W. Catlin
Executive Director
Michigan Judicial Institute
222 Washington Square North
P.O. Box 30205
Lansing, MI 48909
(517) 334-7805

Minnesota

State Law Library

(Minnesota Judicial Center)

Mr. Marvin R. Anderson
State Law Librarian
Supreme Court of Minnesota
25 Constitution Avenue
St. Paul, MN 55155
(612) 297-2084

Mississippi

Mississippi Judicial College

Mr. Rick D. Patt
Staff Attorney
Mississippi Judicial College
6th Floor
3825 Ridgewood
Jackson, MS 39211
(601) 982-6590

Montana

State Law Library

Ms. Judith Meadows
State Law Librarian
State Law Library of Montana
Justice Building
215 North Sanders
Helena, MT 59620
(406) 444-3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele
State Court Administrator
Supreme Court of Nebraska
Administrative Office of the Courts
P.O. Box 98910
Lincoln, NE 68509-8910
(402) 471-3730

Nevada

National Judicial College

Dean V. Robert Payant
National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557
(702) 784-6747

New Jersey

New Jersey State Library

Mr. Robert L. Bland
Law Coordinator
State of New Jersey
Department of Education, State Library
185 West State Street, CN 520
Trenton, NJ 08625
(609) 292-6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar
Librarian
Supreme Court Library
Post Office Drawer L
Sante Fe, NM 87504
(505) 827-4850

New York

Supreme Court Library

Ms. Susan M. Wood
Principal Law Librarian
New York State Supreme Court Law Library
Onondaga County Court House
Syracuse, NY 13202
(315) 435-2063

North Carolina

Supreme Court Library

Ms. Louise Stafford
Librarian
North Carolina Supreme Court Library
P.O. Box 28006
(by courier) 500 Justice Building
2 East Morgan Street
Raleigh, NC 27601
(919) 733-3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer
Assistant Law Librarian
Supreme Court Law Library
600 East Boulevard Avenue
2nd Floor, Judicial Wing
Bismarck, ND 58505-0530
(701) 224-2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands
Honorable Jose S. Dela Cruz
Chief Justice
Supreme Court of the Northern Mariana Islands
P.O. Box 2165
Saipan, MP 96950
(670) 234-5275

Ohio

Supreme Court Library
Mr. Paul S. Fu
Law Librarian
Supreme Court Law Library
Supreme Court of Ohio
30 East Broad Street
Columbus, OH 43266-0419
(614) 466-2044

Oklahoma

Administrative Office of the Courts
Mr. Howard W. Conyers
Director
Administrative Office of the Courts
1915 North Stiles, Suite 305
Oklahoma City, OK 73105
(405) 521-2450

Oregon

Administrative Office of the Courts
Mr. R. William Linden, Jr.
State Court Administrator
Supreme Court of Oregon
Supreme Court Building
Salem, OR 97310
(503) 378-6046

Pennsylvania

State Library of Pennsylvania
Ms. Betty Lutz
Head, Acquisitions Section
State Library of Pennsylvania
Technical Services
G46 Forum Building
Harrisburg, PA 17105
(717) 787-4440

Puerto Rico

Office of Court Administration
Mr. Alfredo Rivera-Mendoza
Director, Area of Planning and Management
Office of Court Administration
P.O. Box 917
Hato Rey, Puerto Rico 00919

Rhode Island

State Law Library
Mr. Kendall F. Svengalis
Law Librarian
Licht Judicial Complex
250 Benefit Street
Providence, RI 02903
(401) 277-3275

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)
Mr. Bruce S. Johnson
Law Librarian, Associate Professor of Law
Coleman Karesh Law Library
U.S.C. Law Center
University of South Carolina
Columbia, SC 29208
(803) 777-5944

Tennessee

Tennessee State Law Library

Ms. Donna C. Wair
Librarian
Tennessee State Law Library
Supreme Court Building
401 Seventh Avenue N
Nashville, TN 37243-0609
(615) 741-2016

Texas

State Law Library

Ms. Kay Schleuter
Director
State Law Library
P.O. Box 12367
Austin, TX 78711
(512) 463-1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian
The Library, Territorial Court of the Virgin Islands
Post Office Box 70
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Jennifer Bullock
Librarian
Utah State Judicial Administration Library
230 South 500 East Suite 300
Salt Lake City, UT 84102
(801) 533-6371

Vermont

Supreme Court of Vermont

Mr. Thomas J. Lehner
Court Administrator
Supreme Court of Vermont
111 State Street
c/o Pavilion Office Building
Montpelier, VT 05602
(802) 828-3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin
Executive Secretary
Supreme Court of Virginia
Administrative Offices
100 North Ninth Street
Third Floor
Richmond, VA 23219
(804) 786-6455

Washington

Washington State Law Library

Ms. Deborah Norwood
State Law Librarian
Washington State Law Library
Temple of Justice
Mail Stop AV-02
Olympia, WA 98504-0502
(206) 357-2146

West Virginia

Administrative Office of the Courts

Mr. Richard H. Rosswurm
Deputy Administrative Director for
Judicial Education
West Virginia Supreme Court of Appeals
State Capitol
Capitol E-400
Charleston, WV 25305
(304) 348-0145

Wisconsin

State Law Library

Ms. Marcia Koslov
State Law Librarian
State Law Library
310E State Capitol
P.O. Box 7881
Madison, WI 53707
(608) 266-1424

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson
Law Librarian
Wyoming State Law Library
Supreme Court Building
Cheyenne, WY 82002
(307) 777-7509

American Judicature Society

Ms. Clara Wells
Assistant for Information and Library Services
25 East Washington Street
Suite 1600
Chicago, IL 60602
(312) 558-6900

National Center for State Courts

Ms. Peggy Rogers
Acquisitions/Serials Librarian
300 Newport Avenue
Williamsburg, VA 23187-8798
(804) 253-2000

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

Washington, D.C. 20531

Official Business
Penalty for Private Use \$300

BULK RATE
POSTAGE & FEES PAID
DOJ/NIJ
Permit No. G-91