



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 4, 2010

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

Dear Mr. Chairman:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Member

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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