



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

Testimony by:

Scott Berkowitz

President and Founder, RAINN

September 14, 2010

Good afternoon Chairman Specter, Ranking Member Graham, and distinguished members of the Subcommittee on Crime and Drugs. Thank you for the invitation to participate in today's hearing on the failure to report and investigate rape cases.

My name is Scott Berkowitz, and I am the founder and president of the Rape, Abuse & Incest National Network, or RAINN. RAINN, the nation's largest anti-sexual violence organization, founded and operates the National Sexual Assault Hotline. The hotline is a partnership of 1,100 local rape crisis centers across the U.S., and has provided free, confidential counseling and support to more than 1.4 million victims of sexual violence. We also run the National Sexual Assault Online Hotline, a secure web-based service that provides help to victims who are more comfortable seeking help online than via telephone. RAINN also educates more than 120 million Americans each year about sexual assault prevention and recovery, and the importance of reporting and prosecuting this violent crime.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

In America today, rape is a crime without consequence — except for the victim. The Justice Department estimates that 60% of victims never report their rape to police. And since many reports don't lead to an arrest, and many arrests don't lead to a conviction or prison time, the bottom line is that only one out of every 16 rapists will ever spend even a single day in jail. *One.*

Let me put that another way: 15 out of every 16 rapists in America will walk free. Even after all the progress we've made — and we have made significant strides in getting more victims to report and improving policing and prosecution — even after years of effort, 15 out of 16 rapists face no consequences for their actions. Not only do they escape any punishment for the crime they've just committed, they're emboldened to commit another rape, and many more after that.

Not surprisingly, rapists have figured this out. Because, perhaps contrary to perception, they're professionals. Professional criminals, that is. And like most professionals, they go about their business with planning and method. Recent research, such as that by Dr. David Lisak, shows us this. Just like, say, bank robbers, these professional rapists select their target, they observe behavior, they plan the how, the when, and the means of escape. Because they know that, unless they're caught in the act, they're almost certainly going to escape punishment.

And as long as rapists have a 94% chance of escaping punishment, they're not likely to be deterred.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

The news isn't all dire. It's important to note that sexual violence has decreased dramatically in the last 17 years — by half, in fact. That's partly due to an increase in victims reporting; this has increased by one-third in recent years, to about 41%. And policing has improved, as has prosecution. And DNA has been the best thing ever to happen to rape prosecutions — at least in those cases in which the DNA evidence is quickly analyzed and properly used.

But still: considering the fact that 94% of rapists face no punishment, it's hard to conclude anything other than that the system remains broken in too many ways. I wish the answer were as simple as just pointing a finger at a single trouble spot; it would make finding a solution infinitely easier. Unfortunately, that is not the case. The reality is that the problem is systemic. Hundreds of factors play into the end result: factors big and small, practical and psychological, well-meaning and nefarious. And, to make things worse, we don't even have enough concrete data to figure out how to diagnose and fix the problems.

But as long as rape remains a crime without consequence, it will remain a crime without end. Putting more rapists in prison is the single most effective rape-prevention program that has ever existed. To accomplish that will require a sustained and focused effort to increase both the reporting and conviction rates. We need to convince a greater percentage of sexual violence victims to report their attack to police. And we need to ensure that every reported crime is properly investigated and leads to a conviction and prison sentence.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

Reporting

Let's start at the beginning. According to the Justice Department, six out of every ten victims don't report their attack to police. A few years ago, that number was seven out of ten, so at least we are headed in the right direction. In addition, DOJ tells us that reporting of acquaintance rapes (which account for about two-thirds of sexual assaults) has increased over the past 20 years.

The reporting behavior of rape victims has important implications. Why do six out of ten victims still decline to report to police? And, how can we get more victims to report?

In general, victims will only report when they perceive that the benefits associated with reporting are greater than the costs, and the costs of reporting can be substantial. Victims tend to weigh lots of factors in this calculation: the odds of success, the risk of continued trauma, the opportunity cost of delaying other life pursuits, the satisfaction of helping to prevent future attacks by the same perpetrator, and the reward of seeing justice done are just a few of the variables.

Unfortunately, there is limited research into the reasons why so many victims choose not to report the crime, so we are left to rely on small studies and anecdotes. The only statistically significant factors that research has found that lead to higher reporting are when a weapon is used or the victim sustains external physical injuries. However, since most rapes take place without a weapon or additional injury, this information is of little use in policy-making.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

A generation ago, the reasons most often cited by victims spoke vividly of the way society viewed this crime. They feared not being believed. They feared being blamed. They feared being interrogated about their own behavior, from what they were wearing to why they gave the perpetrator the opportunity to commit the crime. In short, they feared that they would be the one on trial.

Clearly, many victims' perception of the treatment they will receive has evolved along with greater societal understanding of the crime. Now, common reasons cited for not reporting are: they don't want their friends and family and coworkers to know what happened. They're ashamed. They don't think it's serious enough to pursue. They want to put the whole thing behind them. Fear, or at least skepticism, of how they might be treated by police still exists, but it has moved down the list of reasons for not reporting.

Research shows that police officers and doctors underestimate the impact they have on rape victims and the extent to which their statements or actions following an attack affect victims. Victims have reported significantly more "post-system-contact" distress than service providers thought they were experiencing. Victims often left feeling responsible for the assault, distressed, depressed, disappointed, and reluctant to seek further help. While rape victims and law enforcement officials and medical personnel most often agree on what was discussed and the services that were offered, police officers and medical personnel were often not aware that victims were distressed by the interaction.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

This "post-system-contact" distress is noteworthy, because the quality of the initial contact that a victim has with law enforcement and medical personnel has the potential to impact whether or not that victim proceeds through the criminal justice system. In fact, according to the NYPD Academy, the role of the first response uniformed police officer is not investigative; it is primarily to provide aid to the victim. Its Recruit Training Section Student Guide explains that the first police officer on the scene of a sex crime plays an important part in simultaneously minimizing the trauma and in maximizing the chances of successful prosecution.

Ultimately, more training on how to treat victims sensitively and appropriately will lead to higher reporting rates and more successful prosecutions. In a study by the New York City Alliance Against Sexual Assault, for example, victims cited the need for more specialized training of medical and law enforcement personnel, better communication between victims and law enforcement, referrals to other support services, and more information about the process, particularly from district attorneys' offices.

Research also indicates that victims of sexual violence who receive counseling are significantly more likely to report the crime to police, and more likely to follow through with prosecution. The National Sexual Assault Hotline and Online Hotline, and more than 1,100 community rape treatment centers, answer the questions of thousands of victims each day, helping to demystify the criminal justice system and increase the victims' willingness to report their attack.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

Still, there's a great deal we do not know about victims' attitudes and perceptions, and there's a great deal of research, qualitative and quantitative, that we need to do in order to develop effective public awareness campaigns to educate victims on the benefits of reporting. We need an in-depth understanding of personal barriers to reporting — psychological, family-related, career-related, economic and other factors — so that we can create effective responses and then educate victims that the barriers are coming down. We also need to fully understand the roadblocks the justice system creates that deter more victims from reporting. And, we need to change the conversation, from helping the public understand the seriousness of the crime to creating a dynamic in which victims are honored for helping to take professional criminals off our streets.

Convicting

That covers the victim part of the equation. Next is law enforcement and prosecution. Let's start with the good news: many police agencies have dramatically improved their handling of sex crimes in recent years. Some cities have even established dedicated sex crimes units. Overall, training has expanded and improved, and the treatment of victims has evolved. It's important to note the strides law enforcement agencies have made.

But problems remain. One problem is that many agencies deal with so few sexual assault cases each year. Investigating rape cases requires specialized skills — skills that are hard to establish when dealing with just a couple such cases each year. One of the most important things Congress can do is to help local law enforcement, particularly the smallest and most geographically isolated agencies, tap into the expertise they



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

need to successfully investigate and prosecute sexual assault cases, including educating police on the best way to interview and document victims' statements.

Skilled investigators operate to a great extent on instinct and perception. Most of the time, that's a good thing. But it can cause problems when it's based on misinformation or false impressions, and a number of these false impressions seem to still be held by a critical minority of agencies. Ideas like: a large percentage of reports are false — a perception that is clearly contradicted by FBI data and can create a toxic environment and affect the initial treatment of victims. Or that being raped by an acquaintance or family member is any less devastating than being raped by a stranger.

Or — and this is a big one — that DNA doesn't matter unless the attacker was a stranger and unless you have a suspect identified. In fact, as the best district attorneys will tell you, having DNA evidence in hand is crucial for any prosecution these days. Juries expect it. It can corroborate a victim's story, and prove without a doubt that a suspect had sexual contact with the victim. And, increasingly, it helps identify patterns of serial rapists, particularly acquaintance rapists. More training and education can mitigate these problems.

Another area in need of attention is the documenting and classifying of reported rapes. According to Joanne Archambault, the former head of the sex crimes for the San Diego Police Department, we could avoid a lot of problems just by requiring all police officers to write up a full, comprehensive report about all



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

sexual assault calls; the report would then be sent for a secondary review by a supervisor. In her experience working with police agencies around the country, many cases are not documented in any way, without the knowledge of the victim, guaranteeing that those cases will not be pursued. Then there is the larger issue of properly classifying reported rapes under the Uniform Crime Reports, which several of my colleagues have discussed today.

We'd like to see Congress move more of the nation to adopt the National Incident Based Reporting System. NIBRS, created by the FBI in the 1980s, captures a much broader, and more accurate, array of sex crimes than is currently possible with UCR. Unfortunately, since its creation, only 13 states and approximately 20% of law enforcement agencies report their data using the NIBRS system.

You may have noticed a consistent theme here: the data we have is insufficient for our needs and impedes our ability to understand why so few rapists end up in prison. In addition to lacking comprehensive data on what can be done to increase reporting, we lack reliable or comprehensive disposition data — how quickly was DNA processed; exactly how many cases led to an arrest; how many convictions were there, and how many of those were pleaded down to misdemeanors? How much prison time did the rapist actually serve? That means that it is nearly impossible to understand the progression of cases, to know where, and how, the system is breaking down.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

It's difficult to piece together this data on the national level, much less state-by-state and city-by-city. Even the statistic I led with today — that 15 out of 16 rapists will never spend a day in prison — is an estimate cobbled together from a variety of DOJ reports. To identify the systemic problems, and fix them, we need much more current, reliable and thorough data. As Dr. David Lisak suggests in an upcoming paper, we would like to see DOJ conduct a nationwide study to track rape cases from the initial report through to the ultimate disposition of the case.

Based on what we do know, here is what Congress can do:

Congress can pass the SAFER Act, which would create a national registry of forensic evidence from sexual assault cases and enable victims to receive a confidential code that allows them to check on the testing status of evidence from their own case. The SAFER Act would provide crucial information to policymakers, rape victims and the media, and allow us to track the progression of evidence testing by jurisdiction. It would help us eliminate the DNA testing backlog once and for all.

Continuing with DNA policy, the upcoming reauthorization of the Justice For All Act should increase the percentage of Debbie Smith Act funds that are spent on DNA testing and analysis; incorporate the registry requirement of the SAFER Act; set best practices standards for the prompt testing of all sexual assault crime scene evidence; and set a goal of eliminating the DNA backlog within the next several years.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

The upcoming reauthorization of the Violence Against Women Act gives us a great opportunity to increase reporting and convictions. In fact, we believe VAWA must have an intense focus on increasing the rape reporting and conviction rates. In addition to extending its many important victim service programs, VAWA can have the biggest impact with a laser-like focus on preventing sexual violence. And there is no more effective prevention program than putting more rapists in prison.

Through VAWA or another vehicle, we need Congress' help to gather real, solid, in-depth data as to what is holding victims back from reporting rape and what needs to change in the criminal justice process — and society as a whole — to help victims to feel more comfortable reporting to law enforcement. Specifically, we need Congressional support to study, and address:

- Victims' reasons for non-reporting, criminal justice system obstacles, and public and juror attitudes about victims and perpetrators;
- The particular challenges of reporting and prosecuting acquaintance (non-stranger) and intimate partner rapes and intra-familial sexual violence; and
- Victim and criminal justice system barriers to reporting and prosecution.

Overall, as Congress moves forward with any crime legislation, we would like to see the overarching question be: what will this do to improve the reporting and conviction rates of rape cases? At the moment, 94% of rapists are escaping any form of punishment. This should be the main focus of policymakers as they consider how to improve the criminal justice system.



One of "America's 100 Best Charities"
— *Worth* magazine

2000 L Street NW
Suite 406
Washington, DC 20036
p. 202.544.1034
f. 202.544.3556
e. info@rainn.org

In setting policy, it is tempting to focus on longer sentences and stricter guidelines for sex offenders. While we support such efforts, we cannot let them distract us from the much bigger problem: violent criminals will sexually assault approximately 657 Americans today. If history is any guide, 616 of those criminals will wake up tomorrow morning — and every morning after — free to start all over again.