

**False Reports of Sexual Assault:
Findings on Police Practices, Laws, and Advocacy Options**

An Advocacy Paper Prepared for Women Against Rape

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DRAFT REPORT

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INTRODUCTION

This paper reflects research conducted into the practice of prosecuting individuals for making allegedly false reports of sexual assault in order to support the advocacy efforts of Women Against Rape (WAR). Much of our original research focused on the U.S. context in order to generate points of comparison with the practices observed in the U.K. We made a particular effort to identify cases where individuals who experienced sexual assault were prosecuted for filing false reports and were able to identify three confirmed and one likely case fitting this criterion. The second half of the paper provides an overview of international instruments that could be helpful as advocacy tools, including considerations for pursuing litigation through the European Court of Human Rights.

The paper proceeds in eight Sections. Section I presents the major considerations for not prosecuting individuals making allegedly false reports of sexual assault, including an overview of the underlying beliefs, practices, and statistics. Section II details the statutory provisions used by prosecutors in the U.S. in order to bring charges against individuals making such reports. Section III presents findings from our original research into instances where such charges are brought. Sections IV and V provide a detailed discussion of emerging best practices investigating sexual assault and for ensuring that victims are not wrongly prosecuted for false reports of sexual assault. Section VI details the provisions of international human rights conventions that may be helpful for advocating for better practices and contesting specific instances of unjustifiable prosecution. Section VII considers possible litigation and advocacy options through international mechanisms available to WAR and its clients. Section VIII offers some concluding observations and proposes directions for future research.

I. BELIEFS, PRACTICES, AND STATISTICS SURROUNDING FALSE REPORTS OF SEXUAL ASSAULTS

False reports of sexual assault are extremely rare.¹ Their incidence, already a small fraction of reported assaults, is dwarfed by the overwhelming prevalence of sexual violence, most of which is never brought to the attention of formal authorities. A growing body of empirical findings indicates that sexual assault is both frequent and significantly under-reported.² Further, there is consistent evidence that both police and prosecutorial services often lack appropriate training for processing allegations of sexual assault, fail to adequately investigate such allegations, are reluctant to initiate prosecutions, and correspondingly obtain few

¹ See *infra* Section I.C.

² See generally National Sexual Violence Resource Center, *False Reporting: Overview* (2012) [hereinafter NSVRC]; David Lisak, Lori Gardinier, Sarah C. Nicksa & Ashley M. Cote, *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 VIOLENCE AGAINST WOMEN 1318 (2010) [hereinafter Lisak et al.]. See also Vivien Stern, *The Stern Review*, The Home Office, 2010, available at http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf [hereinafter The Stern Review], 40; International Association of Chiefs of Police, *Investigating Sexual Assaults: Concepts and Issues Paper* (2005), 12-13 [hereinafter IACP 2005].

convictions.³ Notably, such tendencies are consistent across most jurisdictions, including in countries lauded for their high levels of development and gender equality.⁴

This Section of the paper presents the conceptual and statistical basis for the central premise of this paper: namely, that prosecutions for allegedly false reports of sexual assault are rarely justified and should be strongly disfavored by law enforcement officials. We argue that such prosecutions are related to the fact that rape, in general, is poorly investigated and prosecuted through industrialized nations.⁵ This Section proceeds in three parts. Part A explains that prosecuting rape complainants is not in the public interest and is likely related to false beliefs and stereotypes about rape victims. Part B explores the confusion surrounding police decisions for classifying reports as “false” and describes accepted best standards for accurate categorization. Part C reviews the statistical evidence surrounding false reports for sexual assaults and concludes that the best available studies suggest that false reports of rape are very rare – likely under three percent of all reported rapes.

A. Why Rape Complainants Should Not Be Targeted for Prosecution

As a general matter, prosecuting individuals for making false reports to public authorities is not unique to allegations of sexual assault. Most jurisdictions include statutory provisions criminalizing reporting crimes falsely (or more generally, obstructing justice or other similar offenses).⁶ False reports can waste public resources, preclude the investigation of other crimes, generate unnecessary public fear or concern, and result in the investigation and prosecution of innocent individuals.⁷ Criminal statutes serve to deter false reports and to punish such actions, especially where undertaken maliciously. Consequently, government authorities will sometimes have good cause to investigate and prosecute individuals for falsely reporting crimes.

However, there is reason to conclude that police and prosecutorial treatment of allegedly false reports of sexual assault deserves special scrutiny because of widespread tendencies to

³ See, e.g., *Capitol Offense: Mishandling of Sexual Assault Cases in the District of Columbia*, Jan. 3 2013, available at

<http://lawschool.westlaw.com/Files/Download/8298113/HRW%20Capital%20Offense%20Rape%20in%20DC.pdf> [hereinafter DC Report]; IACP 2005; The Stern Review, at 28-55.

⁴ See, e.g., Amnesty International, *Case Closed: Rape and Human Rights in the Nordic Countries Summary Report*, Mar. 2010, available at

<http://www.amnesty.org/en/library/asset/ACT77/001/2010/en/5ba7f635-f2c3-4b50-86ea-e6c3428cf179/act770012010eng.pdf> [hereinafter Nordic Countries Report] (detailing harmful or prejudiced law enforcement practices with respect to victims of sexual assault in four Nordic Countries – Sweden, Finland, Denmark, and the Netherlands); DC Report (detailing similar practices in Washington, DC).

⁵ See generally The Stern Review; IACP 2005; *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases: Hearing Before the Subcomm. On Crime and Drugs of the Comm. On the Judiciary*, 111th Cong. 107 (2011) [hereinafter Senate Hearings on Rape in the U.S.].

⁶ *C.f. infra* Section II; Appendix A.

⁷ See Kimberly A. Lonsway, Joanne Archambault & David Lisak, *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, *The Voice* 3(1), 2009, at 8-9 [hereinafter *The Voice*].

disbelieve individuals bringing forth such allegations. There is no evidence to suggest that sexual assault is falsely reported more frequently than other crimes.⁸ Nevertheless, there is a “powerful and pervasive myth that most sexual assault allegations are false.”⁹ This belief results in tremendous skepticism directed towards victims of sexual violence and is among the primary drivers behind low reporting rates, inadequate investigations, poor treatment of victims (and a correspondingly high rate of complaint withdrawals), and low rates of prosecutions and convictions.¹⁰ For example, excessive emphasis on false reports and a tendency to over-estimate their prevalence can introduce bias into investigations and prosecutions by reinforcing the belief that a victim of sexual violence is likely to lie.¹¹ These inaccurate beliefs especially hurt socially disadvantaged individuals.¹²

Given the surrounding culture of skepticism towards victims of sexual assault, aggressively prosecuting rape complainants is irresponsible for three reasons. First, emphasizing and publicizing such prosecutions is likely to feed unfounded misperceptions about the frequency of false reports. They also divert attention and resources away from the overwhelmingly larger problem of unreported, uninvestigated, and unprosecuted sexual violence. Given consistent findings that sexual assaults are often committed by serial offenders,¹³ the choice to allocate public resources in this manner is not only poor management, but is also a significant danger to public safety.

Second, a profound injustice occurs when victims of sexual violence are prosecuted for seeking help. Victims of sexual violence often experience severe trauma, and prosecuting them sharply compounds their trauma. In addition, prosecuting rape complainants feeds into the myth that women frequently lie about being raped, and this in turn creates a risk that future rape victims will be met with skepticism by law enforcement officials and prosecuted if they insist on their right to be protected. Section III.B describes in detail four cases where victims of sexual assault have been prosecuted for making false reports. Anecdotal evidence from conversations with organizations supporting victims of sexual assault indicates that such cases can cluster in

⁸ See The Stern Review, at 41.

⁹ See e.g., IACP 2005, at 12 (“Perhaps the most significant barrier to a successful sexual assault investigation and prosecution, and one that influences victims as well, is the powerful and pervasive myth that most sexual assault allegations are false.”).

¹⁰ See, e.g., *id.*, at 12-13. See also NSVRC; The Voice, at 2-9.

¹¹ See, e.g., The Voice, at 3.

¹² A prior criminal record and sexual behavior falling outside of accepted community norms appear to have played a role in police perceptions of individuals making reports of sexual assault in some of our empirical research. See Case of Felisha Hardison, interview with Police Chief Bumar (noting that Hardison’s criminal record contributed to a perception that she was likely lying) (interview notes on file with authors); Case of Jane Doe, interview with Doe (describing police officers questioning her sexual preferences) (interview notes on file with authors). The Human Rights Watch report on police practices with respect to investigating and prosecuting rape anecdotally notes many instances where the race or socioeconomic status of the victim appears to have influenced police perceptions of the victim’s credibility; however, the report did not have sufficient data on this issue to reach any conclusions and identifies this issue as a future research direction. See DC Report. See also The Stern Review, at 28-55; *infra*, Section III.C.

¹³ See, e.g., David Lisak, *Understanding the Predatory Nature of Sexual Violence*, 4-5 (2008), available at <http://www.middlebury.edu/media/view/240951/original/>.

particular locations, further suggesting that local biases and police practices are likely driving such prosecutions. Consequently, aggressive prosecutorial practices towards rape complainants create a significant danger to actual victims of violence at the hands of law enforcement officials.

Third, prosecutions for false allegations of sexual assault may be ill advised because they are likely to deter victims from reporting to the police in the first place, exacerbating the tremendous problem of impunity for rapists and putting communities at risk for further violence from serial rapists. Many victims of sexual violence hesitate to come forward because they fear that they will not be believed,¹⁴ a reflection of the skepticism described above. Fear of criminal prosecution further chills reporting rates. In fact, studies demonstrate that police sometimes use threats of false reporting prosecutions to intimidate victims into dropping their cases.¹⁵ Evidence from our research also suggests that where such prosecutions become public knowledge, they have a direct chilling effect on reporting by other victims.¹⁶

In short, while law enforcement authorities may sometimes have legitimate reasons for prosecuting individuals making false allegations, the unique factors surrounding sexual assault suggest that much greater restraint is needed in this context. Sexual crimes are staggeringly under-reported, in part because of a prevailing culture of disbelief towards victims of sexual violence; conversely, false reports of such attacks are exceedingly uncommon. Dedicating resources to prosecuting the rare instances of false reporting consequently carries an unjustifiably high cost of feeding prejudice and diverting resources from the real problem of impunity for sexual violence. At an extreme, police biases have resulted in prosecutions of victims who have experienced sexual assault.

Actual false reports of sexual violence, while rare, are typically characterized by factors that further caution against aggressive prosecutorial strategies. Specifically, malicious accusations are extremely rare.¹⁷ Further, individuals making false allegations often suffer from mental illness or psychological trauma (including from past sexual abuse).¹⁸ These factors weigh heavily against using scarce law enforcement resources to target individuals alleging sexual assault. Proposed best practices corresponding to these concerns are discussed in Sections IV and V below.

B. Establishing a Definition for False Reports

¹⁴ See IAPC 2005, at 2, 7; *The Voice*, at 9; Lisak et al., at 1331.

¹⁵ See, e.g., DC Report, at 121, 128.

¹⁶ Interview with Megan Jones-Williams, Program Coordinator, Carbondale Women's Crisis Center (indicating that callers to a crisis hotline expressed unwillingness to report sexual assault to the police after learning that a local woman was being prosecuted for allegedly falsely reporting a rape) (interview notes on file with authors). See *further infra*, Section III.C.

¹⁷ See *The Voice*, at 7-9 (“[M]any “real” false reports do not involve a named suspect, because the intention is not to get someone in trouble with the police. Rather, many “real” false reports involve only a vaguely described stranger, so the victim can receive the caring attention of law enforcement officials and social service providers without the fear that someone will be arrested.”).

¹⁸ See *id.*, at 8.

A number of studies have found that improper characterizations of reports as “false” account for some of the misperceptions and erroneous statistics about their prevalence.¹⁹ Police departments will sometimes characterize reports as false when a victim is unable or unwilling to cooperate, where investigating officers have credibility concerns about the victim (including due to past sexual history, race, or socio-economic status), where the victim gives inconsistent testimony, where evidence is lacking, where narcotic substances or alcohol are involved, or even where the report is filed in the wrong jurisdiction.²⁰ However, such characterizations are inconsistent with the definition of false reports.

According to the International Association of Chiefs of Police (“IACP”), best classification practices distinguish between reports that *cannot be substantiated* and therefore cannot give rise to prosecutions, and those *proven to be false*. False reports are allegations that, upon investigation, are proven to be fabricated. In contrast, reports are *unsubstantiated* – but not *false* – when an investigation (a) cannot confirm or disprove the allegations, or (b) cannot establish that the allegations, although verified, meet the legal requirements for the alleged crime. For example, the Federal Bureau of Investigations’ Uniform Crime Report makes clear that reports can only be classified as “false” where investigation shows that “no offense occurred nor was attempted.”²¹ The IACP urges police officers to use the “false report” classification strictly and sparingly:

The determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted. *This determination can be made only after a thorough investigation.* This should not be confused with an investigation that fails to prove a sexual assault occurred. In that case the investigation would be labeled unsubstantiated. *The determination that a report is false must be supported by evidence that the assault did not happen.*²²

This definition seeks to reorient officials away from biased disbelief for individuals reporting sexual assault, and towards automatic investigation of all such allegations.²³ Under this standard, a report can be labeled “false” only where overwhelming evidence suggests that the events alleged in the report never took place, but not where investigations are inconclusive, fail to establish facts sufficient to determine that a crime took place, or where the police question the credibility of the victim but have no facts to support such skepticism. Moreover, as noted in Sections IV and V on best practices below, other factors characterizing sexual assault reporting may urge further restraint in classifying reports as false, and especially in prosecuting the rare false reporters.

¹⁹ See, e.g., IACP 2005, at 12-13.

²⁰ See, e.g., Lisak et al., at 1321; IACP 2005, at 13; The Stern Review, at 33-36.

²¹ See U.S. Department of Justice, Federal Bureau of Investigations, *Uniform Crime Reporting Handbook*, 77 (2004), http://www.fbi.gov/about-us/cjis/ucr/additional-ucr-publications/ucr_handbook.pdf (last accessed May 11, 2013). See further The Voice, at 5.

²² IACP 2005, at 12-13 (emphasis in the original).

²³ The “Start by Believing” campaign described in greater detail in Section V is another example of this advocacy approach.

C. Empirical Findings on False Reporting Rates

This Section summarizes the best available data on false reporting rates for sexual assault. After conducting a literature review of empirical studies evaluating the rates of false reports for sexual crimes, it is clear that false reports of sexual assault are incredibly rare, certainly below eight percent, and likely well below three percent, of all reported cases. Further, it is important to contextualize this number by noting that the vast majority of sexual assaults are never reported²⁴ and that the infrequent occurrence of false reports is consequently dwarfed by the high incidence of sexual violence. Dedicating resources to prosecuting false reports rather than investing in better sexual assault protections is therefore both unjustifiable and statistically nonsensical.

Until recently, there was little reliable empirical data with which to contest popular misperceptions about rates of false reports in the context of sexual violence. Indeed, estimates of false reporting (as a percentage of all sexual assault reports) ranged from 0.25 to 90 percent.²⁵ The studies providing high estimates for false reports have been largely discredited, frequently for conflating “false” and “baseless” reports (or accepting police mischaracterizations to this effect) in reaching their conclusions.²⁶

The most recent and reliable studies suggest that only 2 to 8 percent of sexual assault reports are false. Experienced law enforcement officials have stated these false reporting rates are lower than for other crimes, such as property theft.²⁷ Studies conducted in the U.K. suggest that false reporting rates for sexual assault are actually closer to 2 percent. While two older reports by the Crown Prosecution Service (“CPS”) found rates as high as 8.3²⁸ and 10.9²⁹ percent, each relied on police characterizations of “false” and “unfounded” for their conclusions, without analyzing whether such categories had been properly applied.³⁰ More recent studies, which reviewed such classifications in line with the IACP standard for classifying cases as “false,” found much lower rates. Specifically, the 2005 Home Office Study – the largest and

²⁴ See, e.g., The Stern Review, at 40; IACP 2005, at 12-13.

²⁵ See IACP 2005, at 12. See also The Voice, at 1; Lisak et al., at 1319 (citing a 2006 study finding a range between 1.5 and 90 percent).

²⁶ For example, a widely cited 1994 study by Kanin finding that 41 percent of all reports of rape were false has since been discredited for using police self-reporting without evaluating the criteria for designating a case as “false” objectively. See The Voice, at 1-2; Lisak et al., at 1323-24.

²⁷ See Joanne Archambault, *Unfounded Cases and False Reports: A Complex Problem*, End Violence Against Women (EVAW) International, available at www.evawintl.org (asserting that false reporting rates are higher for property crimes than for sexual assault).

²⁸ The 1992 British Home Office Study (analyzing the evidence in all 348 rape cases reported to the police in England and Wales during the first three months of 1985 to find a false reporting rate of 8.3 percent). See S. Grace, C. Lloyd & L. J. F. Smith, L. J. F. *Rape: From recording to conviction*, Research and Planning Unit Paper 71, London: Home Office (1992).

²⁹ The 1999 British Home Office Study (analyzing the case files of 483 cases reported to the police in England and Wales in 1996). See J. Harris & S. Grace. *A Question of Evidence? Investigating and Prosecuting Rape in the 1990s*, Home Office Research Study 196, London: Home Office (1999).

³⁰ See Lisak et al., at 1325.

most comprehensive study of false reporting rates to date³¹ – found that only 2.5 percent of reported rapes constituted false allegations in comparison to the 8.2 percent classified as such by the police.³² The more recent 2013 study released by the Crown Prosecution Service³³ confirms that false reports are infrequent, suggesting that the actual rates might be well below 2 percent.³⁴ This study notes a growing awareness that prosecuting individuals for making false allegations of sexual assault may not be in the public interest.³⁵

Studies in other jurisdictions, including the United States, Canada, and Australia suggest similarly low rates of false reports, ranging from 2.1 to 8 percent.³⁶

In short, the weight of empirical evidence confirms that false reports of sexual assault are exceedingly rare. Studies that looked beyond police classifications to the underlying facts of the case have generally found false reporting rates to be lower still, hovering at less than 3 percent. These findings confirm that police officers are exceedingly unlikely to encounter cases of false reporting; skepticism towards individuals making allegations of sexual assault is consequently the product of stereotypes and prejudice, rather than any practical realities.

II. FALSE REPORTING CHARGING PRACTICES

This Section presents the various U.S. approaches for prosecuting individuals making false reports under U.S. law and provides a brief comparison to the much-harsher sentencing practices within the U.K. system. We identified the provisions used to prosecute individuals for making allegedly false reports on any type to public authorities in each state within the U.S. Our

³¹ *See id.*

³² The 2005 British Home Office Study (analyzing 2,643 cases reported to six different regions within the U.K. over a 15-year period). *See* L. Kelly, J. Lovett & L. Regan, *A Gap or Chasm? Attrition in Reported Rape Cases*, Home Office Research Study 293, London: Home Office Research, Development and Statistics Directorate (2005).

³³ The 2013 British Home Office Study (reviewing all cases involving allegations of rape and domestic violence over a 17-month period). *See* Alison Levitt, *Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Rape and Domestic Violence Allegations*, Joint Report to the Director of Public Prosecutions (2013) [hereinafter Report to Director of Prosecutions]. The Report notes that it was motivated by concern over whether prosecutions for false reports are in the public interest, after a domestic violence victim recanted an allegation against her husband and was prosecuted for her decision.

³⁴ The report does not list reporting rates, but provides only the number of total prosecutions for rape and domestic violence as well as the number of cases where charges of perverting the course of justice or wasting police time were considered. These numbers do not offer a false reporting rate that can be compared to other studies reviewed for the purposes of this paper. However, approximating calculations performed by the authors suggest that even by conservative estimates, the false reporting rate for sexual assault in the U.K. would be below 2 percent. *C.f. id.*

³⁵ *Id.*, at 8.

³⁶ *See* Lisak et al. (citing the EVAW International “MAD” Study (7.1% false), The Boston Study (Lisak et al.) (5.9% false), Australian Study (Heenan & Murray, 2006) (2.1% false), 2003 Uniform Crime Report for the U.S. (8% false reporting rate for rape; compared to an approximately 2% false reporting rate for other crimes), Clark and Lewis (1977) (6% false)). *See also* The Voice; Archambault, *supra* note 28.

findings suggest that statutory punishments in the U.K. are harsher than in the U.S. federal system, and the statutory punishments of the U.S. federal system are harsher than the sentences imposed for similar offenses in the U.S. states.

The U.K. Crown Prosecution Services has issued legal guidance for prosecuting allegedly false reports of rape and domestic violence crimes.³⁷ Under these guidelines, when prosecutors are faced with a situation where a “complainant of rape makes a false allegation, or retracts an allegation, or withdraws an allegation,” they have the option of bringing a charge of perverting the course of justice. The Guidance states that “[p]erverting the course of justice is a serious offence...and carries a maximum sentence of life imprisonment.” It then lists the various details, circumstances, and procedures that should be considered by the CPS before bringing such a charge.

The United States federal criminal system is somewhat more lenient than the CPS in relation to prosecuting false reports of crimes. The closest statutory analogue to the U.K. crime of perverting the course of justice is the offense of “making false statements” to a federal agent.³⁸ The crime covers instances of accusers who knowingly and willfully “make...any materially false, fictitious, or fraudulent statement or representation” to a government agent within the jurisdiction of the federal government of the United States.³⁹ The crime has a maximum penalty of a fine and no more than five years imprisonment, a far lower penalty than the similar U.K. law. Under the Federal Sentencing Guidelines, the base offense carries a sentence of 10-16 months imprisonment and a fine of \$3000-\$30,000. If aggravating factors are found, as where the report caused substantial interference with law enforcement, for example, then the guidelines suggest a sentence of 18-24 months of imprisonment and a fine between \$4000 and \$40,000.

U.S. states generally take an even more lenient approach than the U.S. federal government with respect to prosecuting false crime reports. Each state has a statute addressing the crime of false reporting, but none are crime-specific. For example, Arizona frames the crime as one where an accuser “knowingly makes to a law enforcement agency... a false, fraudulent or unfounded report or statement” and labels the offense “false reporting to law enforcement agencies.”⁴⁰ The same basic crime in Utah is categorized as “making a false alarm” and covers situations where a person “initiates or circulates a report or warning of any crime, knowing that the report or warning is false or baseless...and is likely to cause public inconvenience.”⁴¹ A table listing the applicable crime for each state, as well as the maximum penalty that can be levied on a party found guilty of the crime, can be found in Appendix A: U.S. State Penalties for False Reporting of a Crime.

The most striking finding in our survey of U.S. laws is the difference in lenience between U.S. states and the national laws of the U.K. and the U.S. In contrast to the CPS and U.S. federal

³⁷ See *Guidance Perverting the Course of Justice*, CROWN PROSECUTION SERVICE, cps.gov.UK/legal/p_to_r/perverting_the_course_of_justice_-_rape_and_dv_allegations/ (last visited May 11, 2013).

³⁸ 18 U.S.C. §1001 (2012).

³⁹ *Id.* at (a)(2).

⁴⁰ Ariz. Rev. Stat. §13-2907.01 (LexisNexis 2013).

⁴¹ Utah Code Ann. § 76-9-105 (LexisNexis 2013).

practices, 42 of 50 American states do not recognize the crime of making a false statement to the police as a felony offense. Instead, they limit the punishment to a misdemeanor.

Only eight states actually classify false reporting as a felony; for many of those, the crime is raised to the level of a felony only because the underlying reported offense is itself a felony. In some felony-level states, the action of filing a false report has been grouped with other more serious offenses under the same criminal statute; the assigned punishment is thus not tailored specifically to any one action.⁴² In the 42 states that classify false reporting as a misdemeanor, the median punishment is a maximum of one-year imprisonment. Fifteen of these misdemeanor-level states have *maximum* penalties of six months or less.

False Reporting – U.S. States	Felony Level Offense	Non-Felony Level Offense (Misdemeanor)
Number of States	8	42
Range of Punishment	Low: 1.5 years in jail, \$10,000 fine High: 15 years in jail, \$10,000 fine	Low: 30 days in jail, \$300 High: 1 year in jail, \$5000

An important finding from looking at the comparable laws in the U.K., the U.S. federal government, and the various U.S. states is how low the statutory punishments are in a majority of the states. In contrast, the Crown Prosecution Service in the U.K. is able to charge allegedly false accusers with the potential for a life sentence, and thus is able to threaten potential defendants with heavy punishments. The majority of state governments take a much more lenient approach to false reporting.

III. SUMMARY OF ORIGINAL RESEARCH FINDINGS

WAR requested that we identify any useful information about the nature and extent of police prosecutions of rape victims in the U.S. for making allegedly false reports of rape, especially any instances where a victim of sexual assault was wrongly prosecuted for making an allegedly false report. This Section highlights our most significant findings and proposes some directions for future research.

A. Methodology

We pursued several research directions. First, we attempted to investigate previously identified case alleging false reports of sexual assault in order to confirm whether an underlying sexual assault had, in fact, taken place. Second, we conducted a generalized search of U.S. media to identify additional cases of false report prosecutions. Third, we reached out to sexual assault centers around the U.S. in order to conduct a more systematic inquiry into the frequency of this practice, to identify additional cases, and to develop a more thorough understanding of the

⁴² See, e.g., 720 Ill. Comp. Stat. 5/26-1 (2013) (outlawing instances of false reporting of crimes, bomb threats, and fires, as well as entering the property of another for “lewd or unlawful purposes” and intimidating debtors while acting as a debt collector, among other acts).

underlying factors and considerations. We were able to call 25 centers in 25 states. Completing this undertaking in a systematic manner may be a fruitful research project in the future. Fourth, we examined the cases that had been publicly reported in the media in both the U.S. and the U.K. and compared the sentences given in both countries.

This rest of this Section proceeds in three parts. Part B will highlight cases where actual victims of rape were prosecuted for making a false report after they sought help from the authorities. Part C concerns our outreach to sexual assault centers and highlights the findings of the staff who deal with this issue and affected victims. Part D is a comparison of sentences in publicly available cases of false reporting prosecutions from the U.S. and the U.K.

B. Falsely Prosecuted Cases – Sara Reedy, D.M., “Patty,” and “Jane Doe”

To date, we have identified three American cases where actual victims of sexual assault were prosecuted for making false reports. We have also identified a fourth, very similar case where the sexual assault has not yet been independently confirmed. These cases highlight how prosecuting rape victims for allegedly making false reports can result in a tremendous miscarriage of justice. An important feature of these accounts is that police in each case made a decision to stop investigating the rape at the point when they *thought* the woman was lying. At that point, they began to consider false reporting charges against the woman. As will be discussed in Section IV below on Best Practices, guidelines issued by the International Association of Chiefs of Police (“IACP”) require a full investigation of a rape claim before any false reporting charges can be considered. In each of these cases, the police decision to pursue false reporting charges prior to fully investigating the rape complaint violates the IACP best practice guidelines.

1. Sara Reedy

Nineteen-year-old Sara Reedy was raped on July 14, 2004 while working at a convenience store.⁴³ Her assailant also robbed the store. Immediately after the assault she summoned the police, but detective Frank Evanson did not believe her account of the rape. Suspecting that Reedy herself had robbed the store and fabricated the rape to cover up her actions, Evanson brought charges against her for making a false report of sexual assault to the police.⁴⁴

On August 22, 2005, about a month before Reedy’s criminal trial was to begin, Wilbur Brown was apprehended while committing another, similar attack to the one Reedy suffered. He confessed to both rapes,⁴⁵ and the District Attorney subsequently dropped all charges against Reedy.⁴⁶ Reedy subsequently brought claims against the police for false arrest, false imprisonment, and abuse of process. After receiving a favorable ruling from the Third Circuit

⁴³ *Reedy v. Evanson*, 615 F.3d 197, 203 (3d Cir. 2010).

⁴⁴ *Id.* at 207.

⁴⁵ *Id.* at 209.

⁴⁶ *Id.*

Court of Appeals, Reedy received an out-of court settlement of \$1.5 million from detective Evanson.⁴⁷

Wilbur Brown carried out at least two subsequent attacks on women because police failed to investigate Reedy's complaint. Brown is currently serving a 33 to 66 year prison sentence for at least eleven sexual assaults.⁴⁸ The investigators' decision to focus on prosecuting Reedy instead of Brown facilitated Brown's ability to carry out additional rapes.

2. D.M. from Washington state

In 2008, an eighteen-year-old Washington state woman⁴⁹ reported being raped to the police, but the two male detectives did not believe her, citing inconsistencies in her story.⁵⁰ Once the police concluded that she was lying, they ceased investigating the rape and instead charged her with false reporting.⁵¹ After being heavily pressured to do so by the police, she "admitted" she lied about the rape and was required to pay a \$500 fine and to attend mental health counseling.⁵² She was also humiliated by being forced to attend a meeting of all the residents of the group home where she was residing and state to them that she lied about being raped, that the rape never happened, and that she had filed a false report of rape.⁵³

Subsequently, the Lynnwood police reopened the woman's rape investigation after Marc O'Leary was arrested for carrying out at least three brutal rapes and an attempted rape in Colorado, the first of which occurred in October 2009, several months *after* police failed to investigate the Washington woman's complaint. O'Leary had photos of his numerous rape victims on his cellular phone, and the Washington state woman was included among them. O'Leary is now serving a 327 year sentence for the Colorado rapes.⁵⁴ These rapes could have been prevented had police taken the Washington woman's complaint seriously.

⁴⁷ "SARA REEDY, THE RAPE VICTIM ACCUSED OF LYING AND JAILED BY US POLICE, WINS \$1.5M PAYOUT." *THE GUARDIAN*, LONDON. 12/15/2012. AVAILABLE AT [HTTP://WWW.GUARDIAN.CO.UK/WORLD/2012/DEC/15/SARA-REEDY-RAPE-VICTIM-WINS-POLICE-PAYOUT?INTCMP=SRCH](http://www.guardian.co.uk/world/2012/dec/15/sara-reedy-rape-victim-wins-police-payout?INTCMP=SRCH).

⁴⁸ Lancaster Online, 4/27/2007, available at http://lancasteronline.com/article/local/203450_Serial-rapist-gets-jail-and-chilling-lecture.html.

⁴⁹ The woman's name has never been published due to her desire for anonymity.

⁵⁰ Casey McNerthney, *Police: Lynnwood Rape Report Was a Hoax*, Seattle PI, Aug. 19, 2008, <http://blog.seattlepi.com/seattle911/2008/08/19/police-lynnwood-rape-report-was-a-hoax/>.

⁵¹ Woman Sues After Lynnwood Police Didn't Believe She Was Raped, Seattle Times, June 10, 2013, http://seattletimes.com/html/localnews/2021161550_rapelawsuitxml.html.

⁵² Casey McNerthney, *Police: Lynnwood Rape Report Was a Hoax*, Seattle PI, Aug. 19, 2008, <http://blog.seattlepi.com/seattle911/2008/08/19/police-lynnwood-rape-report-was-a-hoax/>.

⁵³ Complaint, D.M. v. O'Leary and others, Case # 2:13-cv-00971, (W.D. Wash.), June 5, 2013, para. 76.

⁵⁴ Serial Rapist Sentenced to 327 Years in Colorado Cases, Denver Post, 12/10/2011, available at http://www.denverpost.com/news/ci_19513991; Woman Pays for Reporting a Rape, Ms. Magazine Blog, 4/15/2011, available at <http://msmagazine.com/blog/2011/04/15/woman-pays-for-reporting-a-rape/>.

In contrast to Sara Reedy's case, Lynnwood police admitted their mistake and that investigators arrived at the wrong conclusion about the case.⁵⁵ The woman's record was expunged and she was awarded the fine that she had initially been forced to pay.⁵⁶ The woman filed a lawsuit in federal court in June 2013 asserting that her civil rights were violated by the police treatment of her; her lawsuit is pending.⁵⁷

3. "Patty"

"Patty" (not her real name), a visually-impaired woman, was raped in September 1997 and prosecuted shortly thereafter for allegedly making a false report after she had been raped in her own home in Madison, Wisconsin.⁵⁸ The police detectives responsible for investigating the rape viewed Patty skeptically because she did not behave the way they thought a rape victim should. In particular, they felt that a "real" victim of rape would have more injuries than Patty did, they worried about inconsistencies in her account, and they felt that she was too calm about the rape. Consequently, they did not investigate her report but rather charged her with false reporting, and they used pressure and harassment to get Patty to sign a confession.

Four years later, Patty's rapist, Joseph Bong, was caught and identified using DNA evidence, proving that Patty had been truthful all along and that the police had failed her miserably. Her rapist was convicted of rape in 2004 and sentenced to 50 years in prison.⁵⁹ In 2006 the City Council issued a formal apology to her and offered her a \$35,000 settlement, calling her ordeal "one of the most enormous, colossal failures the city has perpetrated."⁶⁰ The City Council offered the compensation only after her case had received significant publicity, by which time Patty's reputation was destroyed and she had been forced to file for bankruptcy.⁶¹

These cases demonstrate that police do make mistakes when assessing the credibility of rape victims – mistakes that can have devastating consequences for the victim. Although there is a widespread rape myth that women often lie about being raped and that men frequently have their reputations tarnished by false reports of rape, the statistics do not support these myths. In fact, false reports of rape are less common than false reports of other crimes,⁶² and in cases where an allegation of rape is in fact false, it is usually the case that the complainant names an

⁵⁵ *Id.*

⁵⁶ Eric Stevick and Diana Hefley, *Rape Wasn't a Lie, Lynnwood Police Now Say*, Herald, Apr. 13, 2011, <http://www.heraldnet.com/article/20110413/NEWS01/704139783>.

⁵⁷ Woman Sues After Lynnwood Police Didn't Believe She Was Raped, Seattle Times, June 10, 2013, http://seattletimes.com/html/localnews/2021161550_rapelawsuitxml.html.

⁵⁸ All information about Patty in this paper comes from BILL LUEDERS, *CRY RAPE: THE TRUE STORY OF ONE WOMAN'S HARROWING QUEST FOR JUSTICE* (2007).

⁵⁹ City Apologizes to Rape Victim, available at <http://www.wistv.com/story/5779521/wisconsin-city-apologizes-to-rape-victim>.

⁶⁰ City Apologizes to Rape Victim, available at <http://www.wistv.com/story/5779521/wisconsin-city-apologizes-to-rape-victim>.

⁶¹ Wisconsin City Offers Apology to Blind Rape Victim Accused of Lying, The Day, 12/7/2006.

⁶² Personal communication with Kimberly Lonsway and Joanne Archambault.

unknown attacker rather than a specific, known individual.⁶³ Cases where a false report actually names a specific person (rather than an unknown assailant) are extremely rare.

4. “Jane Doe”: Rape, Domestic Violence...or Both?

A fourth case of prosecution for false reporting involves “Jane Doe”⁶⁴ who was charged with felony disorderly conduct after reporting a brutal sexual assault. Her case was resolved in June 2013 when she entered an Alford plea in order to resolve the case and avoid the potential trauma of a jury trial. The Alford plea means that she maintained her innocence while acknowledging that the prosecutor could possibly have been able to make out a case against her.

Doe’s nightmare began in March 2012 when,⁶⁵ after fighting with her husband, she arranged to meet an acquaintance at a bar and then went to his house with him when he promised her a safe place to sleep until she resolved the issues with her husband. Doe states that once she got to his house, however, he forcibly drugged her and kept her at the remote house against her will, repeatedly raped and otherwise abused her, forced her to perform sexual acts against her will, and videotaped her live for an online sadomasochism forum. After three days of sexual violence, the perpetrator let Doe go. She then reconciled with her husband, sought counseling, and waited several days to report the assault. When she approached the police, no female officers were available. The two male officers who spoke with her separated her from her husband, exhibited consistent skepticism towards her account, and made inappropriate comments, including inquiries about her sexual preferences. Although Doe sustained injuries as a result of the attack, she did not tell the male officers about them because she was afraid that they would make her undress. In particular, Doe had severe injuries to her nipples due to the perpetrator twisting them, and she had severe bruising on her back side. According to Doe, the officers did not ask whether she had sustained any physical injuries. Doe returned to the police station several days later to complete her report with a female officer but had a similarly negative experience.

Doe’s assailant has acknowledged the episode but claims that Doe consented. In support for his position, he turned over 120 still photographs pulled from the videos taken of the encounter. We have not examined any of the photographs, but Doe claims that she is visibly crying and in pain in some of them, although her attorney disagrees. The police failed to obtain the video – Doe’s alleged assailant claims that the hard drive of his computer was reformatted subsequent to generating the still photos, and that the videos themselves were consequently lost. The police have not questioned his account. Indeed, according to Doe, the prosecution quashed her initial subpoenas seeking to discover the full video. The photographs of Doe’s bruises were initially not entered into evidence, until Doe’s defense attorney ensured that they were located.

Local sexual assault coalitions have rallied to support Doe and find her allegations credible. Further, it is worth noting that the local prosecutor has filed charges for falsely reporting a sexual assault against at least one other person in the area, a man who went to the

⁶³ *Id.*

⁶⁴ The paper uses a pseudonym to protect Doe’s anonymity, as she may still be at risk of domestic violence.

⁶⁵ All statements concerning Doe’s experience are taken from our telephone interview with Doe.

Women's Center for help after a sexual assault. We were unable to obtain significant information about the case because the man has chosen to accept a plea agreement that drops the charges to a misdemeanor and has refused to give interviews. However, according to the local sexual assault coalition, the man maintains that his report was true and that he merely wishes to avoid further difficulties with law enforcement.

All of these cases of victim prosecution were initiated because the victim's testimony following a brutal sexual assault did not satisfy the police, even though, in the first three cases, it was later confirmed that the victim was telling the truth. These cases will be further analyzed in Section IV – Best Practices for Investigating Sexual Assault.

C. Sexual Assault Center Outreach

In addition to our case-specific research, we contacted sexual assault centers in states across the country, utilizing the database provided by the National Sexual Violence Resource Center, in an attempt to identify more cases of false prosecutions and gain a more comprehensive overview of related practices and concerns. In our interviews with the centers, we gained both information about the experience of the staff at that center, as well as the opportunity to survey local centers in an attempt to aggregate their information. When requested, we complied with demands for confidentiality and anonymity.

We were able to interact with 25 centers in 25 states. From these conversations, we have identified several common and recurring threads. In a few states, the centers reported that they had either never heard of false reporting prosecutions, or were not overly concerned with such cases due to a lack of information or prevalence of them within the state. There were no apparent connections that would unite these results (for example, there was no geographic harmony), but the problem of prosecutions directed at individuals alleging sexual assault appears to be uncommon.

In those centers where there had been reports or information about applicable cases, several motifs emerged. For instance, in one center in the eastern United States, the legal director reported that she was aware of numerous cases where aggressors in positions of power had coerced victims into not reporting by holding threats of prosecution over them if they dared to go to the police. In these situations, the ability for the police and prosecutors to bring the full force of the state to pressure a victim was being used to silence their voices. Another center in the northwestern United States reported a similar occurrence, where police had allegedly raped a victim and then attempted to investigate and prosecute the victim when she attempted to tell her story. This correlates with findings reported by Human Rights Watch, where police used the pressure of a false reporting prosecution to prevent cases from progressing.⁶⁶

Another common factor was the effect of minority or otherwise marginalized status. The corresponding lack of power led individuals belonging to such groups to choose not to report, mainly due to the fear of a potential reprisal or prosecution for being an alleged false reporter.

⁶⁶ See, e.g., DC Report, at 121, 128; *infra*, note 16 and associated text.

This was the case even though the aggressor was not someone they knew or otherwise had power.

In the future, sexual assault centers could provide even more useful information. By reaching out and fostering communication with these centers, it would be possible to develop a network of information and to aggregate data that can help to identify past and future cases of victims who have been wrongly prosecuted for allegedly making a false report of rape. It would also be beneficial to reach out to centers that are locally focused, as these centers are more likely to have direct experience with assisting victims.

D. Comparison of Sentences in Publicly Available Cases

We also compared outcomes of false reporting cases in both the U.K. and the U.S. to determine if there was a difference in how the countries punished such cases. To find relevant cases, we utilized data from “Register Her” and an opinion piece in the U.K. written by Alexander Baron,⁶⁷ which contained a timeline of news reports about cases concerning wasting police time and perverting the course of justice.

While these assembled cases do not represent a complete picture of the actual prevalence of prosecutions of allegedly false reporting of rape⁶⁸, they are useful in how they embody public perception of prosecutions for making false reports. Data on the names, sentences, and source articles for the cases used in this paper can be found in Appendix B: U.K. False Reporting Cases with Sentences, and Appendix C: U.S. False Reporting Cases with Sentences.

	United States	United Kingdom
Number of Cases Reviewed	18	30
Jail Sentences Given	7 Minimum: Eight days Maximum: Three years	28 Minimum: Three months Maximum: Nine years

The sentencing differences between the U.K. and the U.S. are significant. The contrast in our findings suggests that those prosecuted and charged with making a false report in the U.K. court system are more likely to face harsher punishments than those prosecuted in the U.S. Specifically, in more than half of the U.S. cases we looked at, those prosecuted for making a false report received no jail sentence or probation. When prison sentences were levied, five out of seven of the sentences were for less than six months of jail time. In contrast, in the U.K., more than 90 percent of the cases we examined ended with the imposition of a jail sentence.⁶⁹ The median sentence length given was two years, and all but one exceeded three months.

⁶⁷ Alexander Baron, Op-Ed., *A Timeline of Recent False Rape Cases*, Digital Journal, Mar. 15, 2013, <http://digitaljournal.com/article/345396>.

⁶⁸ See Report to Director of Prosecutions (finding that 35 such cases were brought in an 18 month period).

⁶⁹ Such a result seems to be an intended and desired outcome for some U.K. senior judges. See Tom Whitehead, *Prison 'Inevitable' for False Rape Claims*, Telegraph (UK), Oct. 30, 2009,

This Section demonstrates that the theories and practical concerns discussed elsewhere in this paper have a direct application in the real world. The cases of actual victims of rape being falsely prosecuted demonstrate the need for better police practices in investigating sexual assault. As our comparison between U.K. and U.S. sentences in cases of prosecutions for false reporting shows, the situation in the U.S. appears to be less harsh than in the U.K., but the research we have begun here should be seen as the first step in a path to addressing the worst aspects of prosecutions in both countries.

IV. BEST PRACTICES FOR INVESTIGATING SEXUAL ASSAULT: GUIDANCE FROM THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

This is the first of two Sections of the paper setting out best practices in sexual assault investigation. Since the prosecution of rape *victims* is one part of a larger problem – the failure to prosecute *rape* effectively – the best way to avoid the prosecution of rape victims for false reports is to greatly improve the prosecution of sexual assault overall. Part (A) summarizes the key shortcomings of rape prosecutions, Part (B) then describes best practices for investigating sexual assault as recommended by the IACP, and Part (C) explains the IACP Guidelines for handling potential false reports of sexual assault. Part (D) then gives an in-depth analysis of the investigatory practices used in the cases of Sara Reedy, D.M., Patty, and Jane Doe in light of the IACP Guidelines, and (E) concludes this Section with recommendations for the Crown Prosecution Service to implement the IACP Guidelines.

A. False Reporting in Context: The Systemic Failure of Rape Prosecution

As this paper has demonstrated, the problem of rape complainants being charged with false allegations occurs in a larger context in which western countries generally do a very poor job of prosecuting rape. In particular, the following key facts shape the landscape of rape prosecution today:

- The most reliable studies indicate that only about 2 – 3% of rape complaints are false, and that rate is lower than the rate of false reports for other crimes;
- The vast majority of rapes are not reported to the police;
- Many, if not most, rapes are committed by serial rapists. They represent a severe threat to public safety because, like Wilbur Brown, Marc O’Leary, and Joseph Bong, they typically go on to rape additional victims if complaints against them are not taken seriously and properly investigated by the police.

<http://www.telegraph.co.uk/news/uknews/law-and-order/6468036/Prison-inevitable-for-false-rape-claims.html>.

- Very few rapes result in the conviction of the perpetrator - about 6% of *all* rapes committed in the UK, whether reported or not, and 3% of *all* rapes committed in the U.S.; and
- Police and prosecutors, like society generally, are affected by victim-blaming myths about rape and may regard a rape complainant with skepticism, disbelief, or with a victim-blaming attitude.

The practice of prosecuting rape complainants for lying about rape is one feature of this larger failure to prosecute rape. Much of the failure to prosecute rape stems from poor investigatory practices which have been the subject of several reports on the issue,⁷⁰ including major reports by Human Rights Watch on the failure to investigate rape in Washington D.C. and by Amnesty International on the failure to prosecute rape in the Scandinavian countries. In addition, in 2010 the U.S. Senate conducted hearings into the chronic failure to investigate and prosecute rape in the United States, and Baroness Stern led a similar effort in the UK.⁷¹

The most comprehensive and promising guidance for improving the police and prosecutorial handling of rape cases comes from the International Association of Chiefs of Police (“IACP”), which has issued a robust and detailed Concepts and Issues Paper on Investigating Sexual Assaults (the “IACP Guidelines”)⁷² as well as a Model Policy on Investigating Sexual Assaults, suitable for adoption by police departments worldwide. Together, these documents set out best practices designed to ensure that all rape complaints are properly investigated.⁷³

B. IACP Best Practice Guidelines and Model Policy

The purpose of the IACP Model Policy is to provide officers and investigators with guidelines for responding to reports of sexual assault. The policy interest shaping the policy is that “Officers and investigators play a significant role in both the victim’s willingness to cooperate in the investigation and ability to cope with the emotional and psychological after effects of the crime. Therefore, *it is especially important that these cases be handled from a*

⁷⁰ See, e.g., *Capitol Offense: Mishandling of Sexual Assault Cases in the District of Columbia*, Jan. 3 2013, available at <http://lawschool.westlaw.com/Files/Download/8298113/HRW%20Capital%20Offense%20Rape%20in%20DC.pdf>; Amnesty International, *Case Closed: Rape and Human Rights in the Nordic Countries Summary Report*, Mar. 2010, available at <http://www.amnesty.org/en/library/asset/ACT77/001/2010/en/5ba7f635-f2c3-4b50-86ea-e6c3428cf179/act770012010eng.pdf> (detailing harmful or prejudiced law enforcement practices with respect to victims of sexual assault in four Nordic Countries – Sweden, Finland, Denmark, and the Netherlands);

⁷¹ *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases: Hearing Before the Subcomm. On Crime and Drugs of the Comm. On the Judiciary*, 111th Cong. 107 (2011); *The Stern Review*.

⁷² IACP, *Investigating Sexual Assaults: Concepts and Issues Paper*, Nov. 1999; revised July 2005 (the “IACP Guidelines”).

⁷³ IACP National Law Enforcement Policy Center, *Investigating Sexual Assaults, Concepts and Issues Paper*, originally published 1999, revised July 2005.; IACP, *Investigating Sexual Assaults Model Policy*.

nonjudgmental perspective so as not to communicate in any way to a victim that the victim is to blame for the crime” [emphasis added].⁷⁴

When initially responding to a sexual assault, the Policy states that responding officers should, among other things, “[s]how understanding, patience, and respect for the victim’s dignity and attempt to establish trust and rapport,” and “[i]nform the victim that **an officer of the same sex** will be provided if desired and available.”⁷⁵ Officers should also make every effort to contact a victim advocate as soon as possible. The victim should have the option of having the victim advocate or other support person present during both the preliminary and the follow-up interviews.⁷⁶

The Model Policy⁷⁷ highlights the following points, placing a good deal of emphasis on the importance of correct officer behavior:

- **Officers must be sensitive to the victim’s state of mind after experiencing intense trauma.** “The victim may be in crisis and experiencing posttraumatic stress disorder or rape trauma syndrome and exhibiting a range of behaviors that will likely change over time.”⁷⁸

Officers should avoid:

- **Making credibility determinations on the basis of the victim’s post-assault behavior.** “The victim’s response to the trauma of a sexual assault shall not be used in any way to measure credibility. When drugs or alcohol are involved, the victim may have limited recollection or be unable to give a complete account of the crime. Not knowing the details of what happened may exacerbate the trauma experienced by the victim.”⁷⁹
- **Responding to the victim with skepticism.** “Investigators should remain patient and maintain an open mind while listening to the victim’s account,” remembering that “victims may struggle with gaps in memory.”⁸⁰
- **Demeaning the victim.** “Express sympathy to the victim and an interest in the victim’s well-being.”⁸¹
- **Pressuring the victim into saying what the officer wants to hear.** “Avoid leading questions during the interview.”⁸²

⁷⁴ IACP Model Policy, part II.

⁷⁵ IACP Model Policy, part IV, B.

⁷⁶ IACP Guidelines, p. 6.

⁷⁷ IACP Model Policy, part IV, C.

⁷⁸ IACP Model Policy, part IV, C.

⁷⁹ IACP Model Policy, part IV, C.

⁸⁰ IACP Model Policy, part IV, C.

⁸¹ IACP Model Policy, part IV, C.

⁸² IACP Model Policy, part IV, C.

The Policy's Follow-Up Interview Protocol further states that officers should:

- **Show respect toward the victim throughout the investigation.** “Clarify any inconsistencies with earlier accounts of the sexual assault in a nonthreatening manner,”⁸³
- **Fully document the attack from the victim’s standpoint.** “Document the victim’s actions in response to the attack, the victim’s state of mind during the attack, specific statements made by the perpetrator, and the nature of any relationship with the suspect and explain the importance of these questions from a prosecutorial standpoint.”⁸⁴

A thorough follow-up investigation of each case should be completed and cases, complete with forensic results, should be presented as soon as possible to the prosecuting attorney for review.⁸⁵ Note that the Model Policy makes no provisions for abandoning or failing to complete a thorough investigation in any case of sexual assault.

The Model Policy also highlights the role of supervisors. They must “demonstrate a detailed understanding of victim issues and proper response by subordinates.”⁸⁶ The Policy highlights the following actions expected of supervisors:

- **Ensure that officers exhibit appropriate victim-sensitive behavior.** “Exhibit sensitivity to victims and ensure that victims are dealt with properly by clarifying their expectations of line officers.”⁸⁷
- **Ensure victim-centered cooperation between the police and victim advocacy organizations.** “Encourage problem-solving partnerships to enhance cooperation between the department and community organizations such as rape crisis centers and forensic examination programs using a victim-centered approach.”⁸⁸
- **Include victim response practices in officers’ performance evaluations.** “Incorporate victim services issues into the evaluations of officers and detectives.... Recognize and reward officers for rendering effective victim services.”⁸⁹

C. IACP Guidelines on False Complaints of Sexual Assault

The IACP Guidelines state that the most significant barrier to a successful sexual assault investigation and prosecution is “the powerful and pervasive myth that most sexual assault

⁸³ IACP Model Policy, part IV, E.

⁸⁴ IACP Model Policy, part IV, E.

⁸⁵ IACP Model Policy, part IV, E.

⁸⁶ IACP Model Policy, part IV, H.

⁸⁷ IACP Model Policy, part IV, H.

⁸⁸ IACP Model Policy, part IV, H.

⁸⁹ IACP Model Policy, part IV, H.

allegations are false.”⁹⁰ The Model Policy’s strong emphasis on appropriate officer behavior is one measure designed to address this myth. By instructing officers to maintain a standpoint of believing victims, and ensuring that supervisors enforce this practice, the Policy creates the opportunity for victims’ allegations to be heard and properly investigated rather than treated with skepticism and dismissed at an early stage.

The IACP Guidelines give further guidance on how to handle sexual assault complaints in such a way as to minimize the chances that police will dismiss such complaints as false.

- **Label a report as false only if evidence establishes that the assault did not happen.** A report of sexual assault can only be categorized as false “if the evidence establishes that no crime was committed or attempted.” This determination can be made “only after a thorough investigation.”⁹¹ In short, unless the police have *actual evidence* that the assault *did not happen*, they must not label a report as false. An investigation that simply *fails to prove* that a sexual assault occurred *cannot* conclude that a report is false but rather results in an *unsubstantiated* report.⁹²
- **Do not conclude that a report is false based on the victim’s behavior.** Some cases are improperly labeled as false because officers base their assessment on particular reactions of the victim rather than in investigative facts. In particular, there are a number of post-assault behaviors and reactions on the part of victims which, research has demonstrated, are realistic, common reactions to sexual assault.⁹³ These behaviors include, among others, the victim’s delayed report, lack of corroborating evidence, lack of cooperation by the victim or witnesses, filing the report in the wrong jurisdiction, discrepancies in the victim’s story, victim’s uncertainty of events, and recantation by the victim.⁹⁴

When officers do not understand the dynamics of sexual assault and post-assault trauma, or are simply skeptical of the victim, they are likely to improperly use these behaviors to conclude that a report is false. Accordingly, the Guidelines state that the characteristics listed above “should not be seen as a basis for labeling a sexual assault report as false (or baseless) and, therefore, as never having happened...Even if aspects of the victim’s account...are missing, exaggerated, or false, this does not automatically imply that the sexual assault did not occur.”⁹⁵

- **Do not subject victims to polygraph tests.** Some jurisdictions use polygraph tests of the victim during the investigation stage. This is poor practice and results from the misperception that a significant percentage of sexual assault reports are false.⁹⁶ The IACP condemns this practice, noting that it is ineffective and traumatic to some sexual

⁹⁰ IACP, Investigating Sexual Assaults: Concepts and Issues Paper, Nov. 1999; revised July 2005 (the “IACP Guidelines), p. 12.

⁹¹ IACP Guidelines, p. 13.

⁹² IACP Guidelines, p. 13.

⁹³ IACP Guidelines, p. 13.

⁹⁴ IACP Guidelines, p. 13.

⁹⁵ IACP Guidelines, p. 13.

⁹⁶ IACP Guidelines, p. 13.

assault victims and that some states have enacted laws prohibiting the practice.⁹⁷ The Guidelines state that “[l]aw enforcement agencies should establish policies to clearly state that officers should not require, offer, or suggest” that a sexual assault complainant take a polygraph exam as part of a sexual assault investigation.⁹⁸

D. Four Case Studies: Sexual Assault Investigations That Do Not Follow the IACP Guidelines

In this section we review the three confirmed cases of rape victim prosecution in light of the IACP Guidelines to show that the police investigators involved deviated from these guidelines in important respects. Had the guidelines been followed, prosecution of rape victims could have been avoided, and the police may have actually apprehended the rapists. We also review a fourth case of victim prosecution where the rape has not been confirmed but where the investigation had the same shortcomings as in the other three cases. This fourth case provides evidence that many other cases of rape victim prosecution could very likely be based on poor and inadequate investigatory procedures.

The IACP Guidelines state that police should be open-minded and sympathetic when interviewing the victim, that they should not judge the victim’s credibility by her reaction to the rape, and that they can only decide that a report is false *after* they have done a full investigation of the rape allegations. Police in these three cases did not follow this guidance. Instead, they were skeptical of the victim from an early point in the investigation, they judged the victim based on her behavior, they stopped the rape investigation prematurely, and they ultimately brought charges against the victim for lying about being raped.

1. Sara Reedy

Detective Frank Evanson’s approach to investigating Reedy’s case did not conform to the IACP Guidelines in any respect. The Guidelines instruct officers to determine if the victim prefers a female officer and/or to have a victim advocate present, but the record offers no evidence that the investigating officers did this for Reedy. The Guidelines also instruct officers to show respect for the victim and establish trust and rapport, but Evanson approached Reedy with hostility and skepticism from the beginning of his contact with her. In fact, Detective Evanson’s skepticism of her account was apparent from the time of her initial report and it resulted in *no* investigation of her rape allegations.

The Appellate Court opinion notes “Evanson’s undisguised suspicion of Reedy from practically the moment she reported the attack”⁹⁹ and that “Evanson’s investigation into the reported rape and robbery appears to have focused exclusively on the theory that Reedy was a liar and a thief. The police report – and, for that matter, the entire record – indicates that, after a brief search of the woods on the night of the incident, Evanson and the other officers made no

⁹⁷ IACP Guidelines, p. 13.

⁹⁸ IACP Guidelines, p. 13.

⁹⁹ *Reedy v. Evanson*, 615 F.3d 197, 203 (3d Cir. 2010).

effort to locate Reedy's assailant."¹⁰⁰ It also notes that "[a]s Reedy tells it, the night she was attacked, while she was still in the hospital...and before Evanson had done any further investigation, he called her a liar and repeatedly accused her of stealing money from the store."¹⁰¹ When Reedy began to cry as a result of Evanson's hostile questioning at the hospital, he told her not to bother crying because "[your] tears aren't going to save [you] now."¹⁰²

Because Detective Evanson did not investigate Reedy's rape allegations, there was never any opportunity to conduct a *full* investigation prior to determining that her report was false, as the guidelines require. Although Reedy went to the hospital and a rape kit was collected, it was never processed, despite the fact that it contained a fingernail that could have yielded DNA from the rapist.¹⁰³ Instead of investigating the rape, Evanson immediately began investigating Reedy and preparing to bring charges against her for robbing the gas station and for filing a false rape report. His actions clearly go directly against the IACP Guidelines.

According to Reedy's attorney, Evanson may have been motivated by the fact that Reedy's boyfriend at the time had had prior contact with law enforcement as a suspect, and Evanson thought that the boyfriend and Reedy had a motive for robbing the gas station – they needed money to put a deposit on a trailer that they wanted to rent.¹⁰⁴ The IACP Guidelines, if properly followed, would ensure that rape victims receive fair and unbiased treatment even in situations such as this where an officer may have a pre-existing bias against a victim.

As a direct result of Evanson's failure to investigate the crime that Reedy reported, rapist Wilbur Brown was free to continue raping. He was caught only after raping another victim on October 13, 2004, three months after attacking Reedy. He was ultimately convicted of raping at least ten women and is now serving life in prison.¹⁰⁵

2. D.M. – Washington state case

While the officers in D.M.'s case did not initially approach D.M. with the strong bias that Evanson exhibited toward Reedy, their behavior went against the IACP Guidelines in the following respects:

- They did not offer a female officer or victim advocate to the victim;
- They were skeptical of the victim and did not show understanding or empathy;
- They did not conduct a full investigation of the rape; once they concluded that the victim was lying, they just stopped investigating;

¹⁰⁰ *Id.* at 217.

¹⁰¹ *Id.* at 217.

¹⁰² *Id.* at 204.

¹⁰³ Walters, Joanna, "Sara Reedy, the Rape Victim Accused of Lying and Jailed by US Police, Wins \$1.5m Payout." *The Observer*, Dec. 15, 2012.

¹⁰⁴ Personal communication with David Weicht, spring 2013.

¹⁰⁵ Walters, Joanna, "Sara Reedy, the Rape Victim Accused of Lying and Jailed by US Police, Wins \$1.5m Payout." *The Observer*, Dec. 15, 2012.

- They concluded that victim was lying based on behaviors that are normal reactions after rape rather than on any evidence that the rape did not occur;
- They pressured the victim to recant and then used her recantation to support their conclusion that she was lying;
- They used the prospect of a polygraph test to threaten the victim.

(a) Officers did not offer a female officer or victim advocate to the victim.

Like in Reedy’s case, there is no record of the officers determining whether D.M. preferred to speak with a female officer or to have a victim advocate present.¹⁰⁶ This is a particularly serious omission in light of D.M.’s age and disadvantaged background. She was eighteen years old at the time of the rape, was living in a residential program for troubled youth, had a history of childhood sexual abuse and had grown up in foster homes.¹⁰⁷ In short, she was someone with few social supports and little social status. When the older, male police officers began expressing skepticism at her account of the attack and pushing her to admit that she was lying, she did not have any social support to draw on.

Reedy was actually similarly situated. She was nineteen years old at the time of the attack, living out of a car with her boyfriend, and working at a dangerous job – the late night shift as the only clerk on duty at a gas station/convenience store.¹⁰⁸ In both cases, the women’s youth and few social supports made them more vulnerable to rape while also making it easier for the police to not take them seriously.

(b) Officers were skeptical of the victim and did not show understanding or empathy.

D.M. was raped on the morning of August 11, 2008 and reported the rape to the police immediately afterwards. Sergeant Mason and Detective Rittgarn, two male officers, investigated her case.

After taking D.M.’s initial report and collecting evidence from the crime scene and from the hospital, the police became skeptical of D.M.’s account of the rape after they spoke with three people who stated that they were doubtful that the rape had occurred. The first person was an anonymous caller who told Sergeant Mason that D.M. had a past history of trying to get attention and that the caller doubted that D.M. had been raped. Mason noted this call in his report.¹⁰⁹ On August 14, Mason spoke with a friend of D.M.’s who also expressed doubts that D.M. was telling the truth.¹¹⁰ D.M.’s foster mother, who had recently been arguing with D.M., apparently also expressed doubts that the rape had occurred.¹¹¹ None of these three individuals

¹⁰⁶ Complaint, D.M. v. O’Leary and others, Case # 2:13-cv-00971, (W.D. Wash.), June 5, 2013, (the “**Complaint**”), Exhibit 2 and Exhibit 10.

¹⁰⁷ Complaint, para. 76.

¹⁰⁸ Personal communication with David Weicht, spring 2013.

¹⁰⁹ Complaint, Exhibit 2.

¹¹⁰ Complaint, Exhibit 2.

¹¹¹ Complaint. The record does not clarify whether the foster mother and the friend volunteered information questioning D.M.’s credibility or whether they made these statements in response to leading questions asked by the officers.

were with D.M. at the time of the rape, and none of them had first-hand knowledge of the rape, but their statements emboldened Mason and Rittgarn to regard D.M. with skepticism.

On August 14, Mason and Rittgarn brought D.M. to the police station to “clarify some of her statement.”¹¹² She spoke with the two detectives in their conference room, and there was no female officer, victim advocate or other support person present for D.M.¹¹³ Mason told D.M. that “there were some inconsistencies in the information that she had provided compared to statements made by other witnesses.”¹¹⁴ It is difficult to see why the officers thought there were “inconsistencies” given that the statements offered by the three witnesses to whom they referred were based on nothing more than speculation and conjecture.¹¹⁵ Despite this fact, the police decided to believe these speculative opinions over D.M.’s allegations. In doing so the investigators did not show empathy or respect for the victim or try to develop a rapport with her, as IACP Guidelines require; rather, once they spoke to these individuals, they became skeptical and began to push D.M. to admit that she was lying.¹¹⁶ This occurred just three days after D.M. was raped and well before any investigation into the collected evidence had been completed.

(c) Officers did not conduct a full investigation of the rape; once they concluded that the victim was lying, they just stopped investigating.

The Lynnwood police charged D.M. with false reporting without fully investigating her case. This is particularly disturbing in light of a hospital report documenting D.M.’s injuries immediately after the rape. The report states that D.M. reported sexual assault “by an armed invader to her apartment with trauma noted to wrists bilaterally and abrasions to inner aspect of labia minora.”¹¹⁷ Mason’s and Rittgarn’s reports make no mention of this medical evidence.

In addition, the Crime Scene Technician Report written by Detective Miles documents other physical evidence collected for examination which was also ignored by Mason and Rittgarn. Detective Miles particularly noted that when she checked the back porch for evidence, she noticed that the surrounding wooden enclosure was covered with dirt and debris but that “there was an area about 3 feet wide that did not have any dirt or debris. It looked as if someone had wiped the dirt/debris off by climbing over the top of the enclosure.” Detective Miles took into evidence a number of other items that corroborated D.M.’s account of the rape, including a shoestring tied to a pair of underwear which had been used to gag D.M., a large kitchen knife laying next to the bed that matched other knives in the kitchen and that the rapist had used to threaten D.M., and a pair of scissors that D.M. had used to cut the shoestring binding her wrists.¹¹⁸

¹¹² Complaint, Exhibit 2.

¹¹³ Complaint, Exhibit 2 and Exhibit 10.

¹¹⁴ Complaint, Exhibit 2.

¹¹⁵ Complaint.

¹¹⁶ Complaint.

¹¹⁷ Complaint, Exhibit 7.

¹¹⁸ Complaint, Exhibit 1.

The reports written by Mason and Rittgarn make no mention of any of these pieces of evidence, nor do they give any record of these officers questioning D.M. about these items or about any of the specific details of the rape or of D.M.'s state of mind during the rape. Instead, the purpose of the August 14 meeting seemed to be solely to collect statements from D.M. that would justify the officers' conclusion that she was lying.

(d) Officers concluded that victim was lying based on behaviors that are normal reactions after rape rather than on any evidence that the rape did not occur.

The IACP Guidelines instruct officers to be sensitive to the victim's state of mind after experiencing intense trauma. Officers should (a) avoid making credibility determinations on the basis of the victim's post-assault behavior, (b) avoid responding to the victim with skepticism, and (c) avoid pressuring the victim with leading questions.

In contrast to the above IACP Guidelines, Mason's and Rittgarn's reports of the August 14 meeting show the officers apparently oblivious to the possibility that D.M. was experiencing trauma after being raped and that she might feel extremely uncomfortable discussing such a traumatic experience with two male officers. Instead, they used her post-rape behavior to discredit her, which is exactly what the IACP Guidelines are designed to prevent. The two male officers seized upon every minor inconsistency they could find in D.M.'s account in order to justify their conclusion that she was lying. For instance, Mason's report demonstrates that he questioned D.M.'s credibility because she did not behave in the way that he seemed to think a rape victim *should* behave:

“[D.M.] made statements that she had believed the rape happened instead of stating the rape absolutely happened.”¹¹⁹

“Detective Rittgarn told [D.M.] there were certain evidentiary issues that did not support her story. [D.M.] did not question what Detective Rittgarn had said and she did not adamantly say the incident had occurred. [D.M.] instead sat quietly and looked at the table not making eye contact with myself or Detective Rittgarn.”¹²⁰

The first statement has Mason splitting hairs between whether a rape “happened” or whether it “absolutely happened,” while the second reveals an expectation that a real rape victim would respond in just one way to a challenged from a skeptical officer – with a confident and assertive declaration. Detective Rittgarn's report also criticized D.M. for not being more assertive:

“Sgt. Mason explained to her that there were some inconsistencies with her statement and the evidence to support her story. Rather than take a stand and demand that she had been raped, [D.M.] told us that she didn't know why [the officers thought there were inconsistencies].”¹²¹

¹¹⁹ Complaint, Exhibit 2.

¹²⁰ Complaint, Exhibit 2.

¹²¹ Complaint, Exhibit 10.

It appears not to have crossed the officers' minds that rape victims may respond to police questioning in many different ways. They did not have the empathy to see that D.M. may have been worried about what it would mean if the police did not believe her. She may have also found it extremely painful and humiliating to discuss a sexual assault with two male officers who did not believe her, particularly with no support person present.

The IACP Guidelines note the type of investigatory error that the officers made: "some cases may be improperly labeled as false because they are not grounded in investigative facts, but rather in the particular reactions of the victim."¹²² Rittgarn's and Mason's conclusion that D.M. was lying was directly tied to how they judged her behavior, and not to any facts that proved that the rape did not occur, as these excerpts from Rittgarn's report show:

- "Based on her answers and body language it was apparent that [D.M.] was lying about the rape."
- "Based on numerous interviews with other victims, to include rape victims, it was apparent that [D.M.] was continuously lying about this event."
- "Based on our interview with [D.M.] and the inconsistencies found by Sgt. Mason in some of the statements we were confident that [D.M.] was now telling us the truth that she had not been raped."¹²³

The IACP Guidelines state that an allegation can be determined to be false only when the police obtain evidence that no crime occurred. But Mason and Rittgarn acted without this proof. Just three days after D.M. was raped, the investigators abandoned any effort to complete the rape investigation and instead focused their effort on building a case that D.M. was lying.

(e) Officers pressured the victim to recant and then used her recantation to support their conclusion that she was lying.

Ultimately, the two officers transformed the August 14 meeting from a meeting seeking clarification from a crime victim into an interrogation session at which they regard the victim as the suspect.¹²⁴ At this point, D.M. was not free to leave the police station, and the police placed her under pressure to write a statement admitting that she had fabricated the rape.¹²⁵ The officers failed to give D.M. her Miranda warnings informing her that she had the rights to remain silent, to avoid self-incrimination, and to have the assistance of counsel.¹²⁶ They also put words into her mouth. Rittgarn admitted that when the first written statement that D.M. produced was not satisfactory to him because it stated that the rape really happened, he insisted that she rewrite it:

¹²² IACP Guidelines.

¹²³ Complaint, Exhibit 10.

¹²⁴ Complaint.

¹²⁵ Complaint.

¹²⁶ Complaint.

“We went over the statement and I noticed that she hadn’t mentioned that she made up the story...I asked her why she didn’t write that she made up the story and she began crying and said that she believed her other story actually happened.”¹²⁷

He pressured her to rewrite the statement to admit she lied.¹²⁸ She eventually produced one saying that she made up a story, but never explicitly saying that she lied about being raped.¹²⁹ Rittgarn’s conduct went against the IACP Guidelines because he treated the victim as a suspect and put words in her mouth.¹³⁰ He did not approach her with an open mind but rather with a mind that had already decided that she was lying, and he pressured D.M. until she agreed with him.

(f) Officers used the prospect of a polygraph test to threaten the victim.

Four days later, on August 18, D.M. returned to the police station to recant her forced written statement of August 14 and again assert that she had been raped.¹³¹ Again she was met with skeptical, dismissive treatment. Rittgarn noted in his report of the August 18 meeting that D.M. offered to take a polygraph test, but he threatened her: “I told her that if she failed she would definitely be booked into jail” and that she would lose her housing assistance.¹³² Rittgarn also claimed that D.M. stated that she “had been hypnotized into thinking that she was raped.”¹³³ His response to this demonstrates his skepticism of and disrespect toward the victim: “This is the fourth ridiculous story that [D.M.] came up with.”¹³⁴

(g) Conclusion from D.M.’s experience.

D.M. was clearly very distraught that she had gone to the police for help and they did not believe her, and she attempted multiple times to explain that she was raped and obtain their assistance. Her accounts of having a dream that she had been raped, or being hypnotized into thinking she was raped, were all attempts at the same thing – to find another way to explain that she was raped to police officers who refused to believe her. When all of her attempts to discuss the rape failed, D.M. found herself charged with false reporting on the basis of her forced confession.¹³⁵ She paid a \$500 fine and complied with a year-long court supervision agreement. She completed compliance with the agreement in April of 2010 and her case was then closed.¹³⁶

¹²⁷ Complaint, Exhibit 10.

¹²⁸ Complaint.

¹²⁹ Complaint, Exhibit 12.

¹³⁰ Complaint.

¹³¹ Complaint.

¹³² Complaint, Exhibit 14.

¹³³ Complaint, Exhibit 14.

¹³⁴ Complaint, Exhibit 14.

¹³⁵ Complaint.

¹³⁶ Complaint.

In February 2011, Marc O’Leary was arrested in Colorado for raping at least four women there between October 2009 and January 2011.¹³⁷ He was sentenced to 327 years in prison for those rapes.¹³⁸ Had the Lynnwood police actually investigated D.M.’s rape rather than prosecuting her, they might have been able to catch O’Leary before he committed additional rapes in Colorado. D.M.’s case shows the terrible consequences that can result when police do not follow the IACP best practice guidelines – consequences that can be horrific and tragic not just for the immediate victim but also for public at large. One cannot help but think of Jimmy Savile, who was never prosecuted despite the hundreds of people he victimized, many of whom went to the police and had their complaints disregarded. It is indisputable that when police refuse to believe victims, they facilitate the crimes of rapists.

3. “Patty”

The investigation into Patty’s case¹³⁹ was marked by a set of missteps very similar to those in D.M.’s case, with the investigation deviating from the IACP Guidelines in the following respects:

- Officers were skeptical of the victim and did not show understanding or empathy, and they concluded that the victim was lying based on behaviors that are normal reactions after rape rather than on any evidence that the rape did not occur;
- They did not conduct a full investigation of the rape; once they concluded that the victim was lying, they just stopped investigating; and
- They pressured the victim to recant and then used her recantation to support their conclusion that she was lying.

(a) Officers were skeptical of the victim and did not show understanding or empathy. Officers concluded that victim was lying based on behaviors that are normal reactions after rape rather than on any evidence that the rape did not occur.

The officers investigating Patty’s case heavily relied Patty’s post-rape reactions in deciding that they believed she was lying. The officers believed she was too calm after the attack; for instance, she sounded very calm on the telephone when she called 911 to report the rape. In their view, a “real” rape victim would have been much more distraught than Patty appeared to be, whereas the reality is that different people respond to rape in different ways. The officers were also concerned at apparent inconsistencies in her account and the fact that Patty remembered different details of the attack at different times. For instance, at some point after first reporting the rape, Patty was brushing her hair and several large clumps fell out. When that occurred, she remembered that the suspect had grabbed her hair and pulled her head down

¹³⁷ Burnett, Sara, “Serial Rapist Sentenced to 327 Years in Prison for Colorado Rapes.” *The Denver Post*, Dec. 10, 2011.

¹³⁸ Burnett, Sara, “Serial Rapist Sentenced to 327 Years in Prison for Colorado Rapes.” *The Denver Post*, Dec. 10, 2011.

¹³⁹ All information about Patty in this paper comes from BILL LUEDERS, *CRY RAPE: THE TRUE STORY OF ONE WOMAN’S HARROWING QUEST FOR JUSTICE* (2007).

towards his crotch. When she later mentioned this detail to the police, they were suspicious because they felt that she should have remembered this earlier.

Police were also concerned that some aspects of Patty's story made it sound like she had cooperated with the suspect more than a "real" rape victim would have. But Patty may have had several reasons for cooperating rather than resisting. She was at a disadvantage because she was visually impaired, and she expressed fear that the suspect would use a knife and stab her from behind. In addition, her pregnant, 18-year-old daughter was asleep in another room at the time of the rape, and Patty feared for her daughter's safety. Patty also stated that she was hoping that if the suspect ejaculated the assault would end, so she may have tried to help bring this about. The police reaction to Patty was not victim-centered and empathetic, but skeptical. They did not attempt to see events from her viewpoint but rather looked for reasons to prove she was lying.

(b) Officers did not conduct a full investigation of the rape; once they concluded that the victim was lying, they just stopped investigating.

As in Sara Reedy's case, the officers in Patty's case decided fairly early in the investigation to focus on Patty as a suspect rather than to fully investigate her account of the rape. Although a great deal of evidence was collected from the crime scene and Patty had physical injuries from the attack, not all of the evidence was tested, and officers focused on the theory that her wounds were self-inflicted. Charges were filed against Patty in February 1998, and at that point there was still material that had not been tested, including bedding that contained DNA from the rapist's semen.

(c) Officers pressured the victim to recant and then used her recantation to support their conclusion that she was lying.

In addition to not fully testing the evidence, the officers lied to Patty outright, telling her that the state crime lab had found no evidence of sexual assault, when the truth was that tests had not been run. Patty was also told that all of the other detectives believed she was lying and that her injuries were consistent with self-infliction. These lies were a ruse used to pressure Patty to confess to false reporting. After this bullying, Patty believed that the message the police were sending was that if she didn't recant, she could never again expect the police to come to her assistance in a time of need. Consequently, she caved in to their pressure and gave a detailed confession which they elicited by asking a series of leading questions. Patty simply agreed with everything that the officers wanted her to say so that she could end her painful experience with the police as quickly as possible. Under these circumstances, her confession cannot be considered voluntary.

(d) Conclusion in Patty's case

Patty tried to clear her name for many years, but in the process she lost her business and faced bankruptcy. There was not a break in her case until 2001, when the Wisconsin state crime

lab found a match between DNA collected in Patty's case and convicted sex offender Joseph Bong. The DNA from Bong had been collected way back in 1996, but it was not analyzed until 2001, thus delaying a resolution Patty's case. Bong was a serial rapist who, at the time of the DNA match, was serving an eighteen year prison sentence for a crime of armed robbery and false imprisonment that he committed eight days after Patty's rape. He was convicted of raping Patty and is now serving life in prison. As in the Sara Reedy and D.M. cases, the perpetrator attempted another sexual assault and committed other crimes while the police focused on prosecuting the victim.

4. "Jane Doe"

The case of Jane Doe¹⁴⁰ is different from the other three cases profiled here in that her rape has not been confirmed. However, as in the other three cases, there is ample evidence demonstrating that the police investigating Doe's case did not follow the IACP Guidelines. In particular, as in the cases of Reedy and D.M., the officers did not complete a full investigation of the rape claim before charging Doe with false reporting. Doe should not have been charged because without a full investigation, there was no way to prove that a rape did not happen. As the IACP Guidelines state, "[t]he determination that a report is false must be supported by evidence that the assault did not happen."¹⁴¹ Compliance with the IACP Guidelines protects rape complainants by ensuring that a complainant is not prosecuted for false reporting unless conclusive proof exists that no rape occurred. In Doe's case, the officers' failure to follow the guidelines left her vulnerable to prosecution in a situation where the police did not fully investigate her rape claim.

Doe's case is also different from the others in that she was acquainted with the alleged perpetrator, which typically makes a case more challenging to investigate. An additional factor that should have cautioned against prosecuting Doe is the fact that she may be a victim of domestic violence. There is evidence to suggest that *if* she lied about being raped, she did so to avoid being beaten again by her husband, who questioned her whereabouts after she was absent for three days.

(a) Facts of Jane Doe's Case

In addition to the brief summary of Doe's case given earlier, there are other aspects of the case that complicate the investigation and heighten the need for thorough police work. A rape investigation expert called by Doe's attorney examined all of the police evidence and shared the following observations:

¹⁴⁰Jane Doe's name has been changed and her location not revealed in order to protect her anonymity. Information about her case was obtained through interviews with Doe herself, her attorney, a counselor at the local sexual assault organization, and a rape investigation expert who examined all of the evidence from the police investigation. None of these names are reported in order to ensure Doe's anonymity. Contact Lisa Avalos for further details.

¹⁴¹ IACP Guidelines, p. 13.

- There is some evidence of a consensual sexual relationship between Doe and the alleged perpetrator (whom we will refer to as “John Smith” for convenience). For instance, Doe had a lengthy history of sending and receiving text messages with Smith which showed a mutual interest in sadomasochism (“S&M”).
- There are also a large number of photos of a sexual encounter between Doe and Smith on the first night that they were together. Some of these photos appear to show Doe smiling, laughing and instigating, although Doe claims she only appears to be enjoying herself because she was forcibly drugged and threatened at knifepoint. The expert, in contrast, felt strongly that Doe was not drugged in the photos, saying that she appears awake and lucid.
- Doe has declared that she was kept at Smith’s house for an entire weekend and that she was held against her will. It could be possible that at some point a consensual encounter occurred but that an assault also occurred that is not shown in the photographs. The expert acknowledged that photos and text messages appearing to show consent cannot rule out the possibility that rape occurred later.
- The expert stated that a rape case involving acquaintances with an interest in S&M, where activities got out of hand and resulted in rape, would require an extremely thorough investigation. Such an investigation was not done in this case.
- Doe has declared that there was a video documenting other aspects of her treatment by Smith, but that this video was destroyed by Smith and could not be entered into evidence. Smith also admits to destroying evidence by erasing his hard drive, so there is a strong chance that evidence that supports Doe’s account of rape did exist at one time but has since been destroyed.
- The expert felt that the police did have concrete evidence that Doe lied to them about certain things. It appears, though, that the police used these lies to simply dismiss everything Doe had to say. Instead, they should have fully investigated Doe’s allegations, attempted to build rapport, and tried to determine her motive for not being completely truthful.

What is most disturbing about this case is that there is evidence to support the theory that Doe was a victim of domestic violence perpetrated by her husband, and that the police were aware of this evidence and made the choice to charge Doe with disorderly conduct (a felony carrying a prison sentence in her state) rather than fully investigating whether she was a victim of rape and/or domestic violence. For instance, the expert viewed a text message between Doe and Smith in which Doe states that her husband had beaten her after an argument and asked whether Smith could protect her from her husband. Doe apparently denied ever sending this message, and its existence is one of the facts that caused the police to conclude that she was not fully truthful.

In keeping with the theory that Doe is a victim of domestic violence, Doe’s attorney, the state’s attorney, and the rape investigation expert all agree that some of the photographs of Doe

and Smith do show some older bruises on Doe's arms. Both Doe's attorney and the expert feel strongly that the bruises were inflicted by Doe's husband and not by Smith, although when questioned by police, Doe denied being beaten by her husband. The expert explained that her belief stems from the fact that the bruises are not fresh in the photos, but rather appear a few days old – they were yellowish rather than purple, red, or inflamed – and the timing of the bruises corresponds to a time when Doe was with her husband rather than with Smith. In telephone interviews with me,¹⁴² Doe's attorney and a counselor at the local sexual assault organization both stated that they were very familiar with Doe's husband and viewed him as controlling, domineering, and capable of violence. The sexual assault advocate stated that their concern about his capacity for violence was so great that their policy is not to allow any of their staff to be alone with him.

In addition, the sexual assault advocate stated that the state's attorney who made the decision to prosecute Doe for false reporting said to her that "he was certain [Doe's] husband inflicted the bruises." He further stated to her that Doe's decision to adamantly stand by her husband made him want to bring the case against her. Apparently his view was that Doe had had every opportunity to tell the state's attorney or a police officer if she felt unsafe at home, and she declined to do so.

The one thing that clearly emerges from these statements is that the state's attorney, Doe's attorney, and a sexual assault counselor all agree that Doe was bruised and it is very likely that her husband was the source of that violence. Of course, it is possible that Doe is both a victim of domestic violence (and possibly rape) perpetrated by her husband *and* a victim of rape perpetrated by Smith; one does not exclude the other, and in fact sexual victimization is higher among certain populations, including those who are more vulnerable and those who have been sexually victimized before.¹⁴³ Predators prey on those who are vulnerable,¹⁴⁴ so it is not possible to rule out that Doe was raped by multiple perpetrators.

Given the dynamics of violent relationships, if Doe has in fact lied about any of the circumstances surrounding the rape, a thorough and victim-centered investigation would consider all the possible circumstances – including, specifically, that she may be trying to survive in a violent and abusive relationship, and that for whatever reason she may not have been comfortable disclosing that to the police assigned to her case. If Doe is in fact a victim of domestic violence, but *not* a victim of rape perpetrated by Smith, it is quite possible that she claimed she was raped as a way of explaining her whereabouts to her husband, from whom she may have feared further violence if he thought she had been away having consensual sex with another man. This theory, and Doe's fear of her husband, would also explain the apparent inconsistencies in her account, such as why the photos appear to show her enjoying herself while she maintains that she was being drugged and forced to perform.

¹⁴² Lisa Avalos.

¹⁴³ "IACP Sexual Assault Incident Reports: Investigative Strategies." *International Association of Chiefs of Police*, approximate date 2008.

¹⁴⁴ "IACP Sexual Assault Incident Reports: Investigative Strategies." *International Association of Chiefs of Police*, approximate date 2008.

Although this case is complex, what is clear is that the IACP Guidelines were not followed in the investigation of Doe's case. Instead, the investigation followed the same pattern seen in the previous three cases of prosecution of confirmed rape victims. The police approached Doe with skepticism from an early point in the investigation, and once they became skeptical, they looked for a way to build a case against her rather than fully investigating her rape allegations.

(b) Officers did not offer a female officer or victim advocate to the victim. They appeared skeptical of the victim and did not show understanding or empathy.

According to Doe, when she arrived at the police station she was separated from her husband, who was her sole support person, and she was taken to a room and interviewed by two male officers. They did not offer a female police officer or rape crisis counselor to the victim, as IACP Guidelines require. These officers appeared skeptical of her account, and this added to the extreme discomfort that she already felt in being asked to explain a horrifying and traumatic sexual assault to two male officers. As a result, Doe was unable to give a full account of her experience. For instance, she did not reveal that she had sustained serious injuries to her body – namely her nipples and her buttocks – because she would have found it too traumatic to show these injuries to the male officers. As a direct result of how she was treated, the police lost a crucial opportunity to obtain key evidence while it was still fresh.

(c) Officers did not conduct a full investigation of the rape; once they concluded that the victim was lying, they just stopped investigating.

Like in the previous three cases, the officers investigating Doe's case followed the same pattern of becoming skeptical of the victim during the interview, and then dropping the rape investigation and focusing on Doe as a suspect. Doe's case differs from the others in that there is no doubt that a sexual encounter occurred between her and the suspect, so the applicable issue in the rape investigation should have been to establish whether or not Doe consented to the sex. When establishing the presence or absence of consent, the IACP Guidelines list the following factors which should be addressed in a complete investigation:¹⁴⁵

- Did the investigation collect a detailed account of the victim's thoughts and feelings during the assault?
- Did the investigation collect evidence of physical and verbal resistance on the part of the victim?
- Did the investigation collect evidence of genital or nongenital injury?
- Did the investigation collect information regarding the environment in which the assault took place?

¹⁴⁵ IACP Guidelines, p. 13.

- Did the investigation collect information regarding the victim’s post-assault behavior, including post-traumatic stress?

As indicated previously, Doe was so uncomfortable being interviewed by two male officers that she was not able to share all the relevant details of the sexual assault. Subsequently, she wrote a statement about the assault that she gave to her attorney. This statement provides information that addresses each of the above points. For instance, it describes extensive injuries, including bite marks and severe bruising to her nipples from the perpetrator twisting them; it conveys a great deal of emotional distress, both during the assault and afterwards; and it provides evidence of post-traumatic stress. The police did not elicit any of this information when they questioned Doe, nor did they see the statement prior to deciding that they would stop investigating the rape and press felony disorderly conduct charges against Doe.

Accordingly, since the police did not fully obtain relevant information from the victim, they never should have pressed charges against Doe. The rape investigation expert stated her opinion that the police investigation was poor and sloppy in this case. She further stated that in similar circumstances, she would have required her team to first fully document the rape investigation and provide a showing of evidence that the assault did not happen. Only after that would it have been appropriate to consider bringing charges against Doe.

Doe’s case also demonstrates the problem with bringing false reporting charges against a victim of domestic violence. There is, at the very least, a strong probability that Doe is either a rape victim, a domestic violence victim, or both. It is not in the public interest to pursue false reporting charges against such an individual while the perpetrators are not brought to justice for harming the victim.

E. Conclusion & Recommendations: Adopt the IACP Guidelines

1. CPS should adopt the IACP Guidelines and Model Sexual Assault Policy.
2. CPS should set up a procedure to document that a full and thorough investigation is carried out in each rape case. The policy should state and ensure that no charges of any kind may be brought against a rape complainant without first documenting that a full investigation of the complaint was conducted and that evidence proved that the assault did not happen.
3. CPS should ensure that the above investigatory procedures are transparent and are open to the scrutiny of an independent organization. The collaboration between the Philadelphia, Pennsylvania police department and the National Women’s Law Project in Philadelphia is one example of a transparent procedure that allows for independent oversight.

Prosecution of women for allegedly false rape reports is not in the public interest. The CPS has acknowledged that only 2% of all rape complaints are false, and that this rate is lower than the false reporting rate for other crimes.¹⁴⁶ Accordingly, most prosecutions of women for false rape reporting are very likely prosecutions of actual rape victims. That such prosecutions have occurred, and that they have devastating effects on public safety, is clear from the cases of Sara Reedy, D.M., and Patty. In all three cases, a serial rapist went on to commit additional crimes while the police treated the victim as a criminal instead of investigating the rape.

There is an urgent public safety need to greatly improve investigation and prosecution of rapists. IACP figures indicate that approximately 97% of rapists never serve time for their crimes. While the CPS has improved conviction rates for rapes that actually reach the prosecution stage, it must be kept in mind that the attrition rate for rape cases remains high, such that the majority of rapes are *still* not prosecuted. The IACP points to a particularly urgent need to ensure that rapes involving a rapist who knows his victim (as well as rapes involving intoxicated or incapacitated victims) are prosecuted just as vigorously as cases involving stranger rape. Rape is never acceptable, but existing police practice certainly sends the message to rapists that they can get away with rape in many circumstances.

Police departments can work towards more vigorous and successful investigation and prosecution of rape cases by following the IACP Guidelines and best practices for sexual assault investigation. The pattern of errors seen in the cases discussed here are strong evidence that the IACP Guidelines can ensure better rape investigation in future cases. In each of the cases profiled here, the police failed to conduct a full investigation. Instead, they were skeptical towards the victim and looked for reasons to discredit her account. Once they found such reasons, they simply stopped investigating the rape, pressured the victim to recant, and filed charges against her.

IACP Guidelines, in contrast, require police to approach victims with empathy and an open mind, require police to express understanding and make an effort to develop trust and rapport, and require police to complete a thorough investigation of the allegations. In addition, the guidelines make clear that sexual assault survivors respond to the trauma of assault in many different ways, and that it is not acceptable practice for police to conclude a victim is lying based on inconsistencies in her account, difficulty remembering events, delays in reporting, or any other post-assault behavior. Rather, any determination that a rape did not happen must be based on actual evidence that no crime occurred. Under no circumstances should police simply stop investigating a rape and focus their suspicions on the victim.

In addition, the cases of Patty and D.M. demonstrate that actual rape victims can be pressured to recant when they face harsh treatment and skepticism by the police. The tragedy of police reliance on such recantations cannot be overstated. While the police pressured D.M. and Patty to recant, their rapists were committing additional crimes – crimes which could have been stopped if the police had focused on prosecuting the rapist rather than the victim. Reedy and Jane Doe were also pressured to recant, although they stood by their accounts. However, the fact that all four of these cases featured police pressuring victims to recant suggest that this technique

¹⁴⁶ http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/societal_myths/#a7

is common among police officers, to the detriment of public safety. Under the IACP Guidelines, a recantation by the victim is never a reason for determining that a rape did not happen.

Although the CPS has recently focused on prosecuting women for allegedly making false allegations of rape, poor police practice in investigating rape is a far larger problem than the small number of false allegations that are made. The public interest demands that the focus stay squarely on investigating rapes and prosecuting rapists rather than focusing investigations and prosecutions on rape complainants, particularly when there is so much evidence demonstrating that the police frequently do not investigate rape properly.

V. BEST PRACTICES FOR INVESTIGATING SEXUAL ASSAULT: ADDITIONAL GUIDANCE FROM OTHER AGENTS OF CHANGE

This Section of the paper provides additional best practices and recommendations for reducing prosecutions of false reporting, many of which complement the IACP Guidelines. Part A highlights the findings and recommendations from Human Rights Watch's (HRW) analysis of sexual violence investigations in Washington, D.C. We believe these findings to be particularly helpful based on HRW's intensive analysis of the failings of the Metropolitan Police Department. Part B highlights key recommendations from the Oregon Attorney General's Sexual Assault Task Force while Part C describes the "Start by Believing" Campaign which encourages all people to be supportive when approached by a victim of sexual assault. Part D describes best practices in use in Philadelphia, Pennsylvania, where there has been very significant improvement in the police response to sexual violence cases. In particular, the Philadelphia Police Department has seen an increase in the number of aggressively investigated sexual assault and rape reports.¹⁴⁷ We believe that this kind of increased attention, centered around a victim-friendly approach, should be advocated in order to help reduce the likelihood that victims are prosecuted for allegedly making false reports.

A. Human Rights Watch's Findings and Recommendations

The findings and recommendations of HRW are helpful as a model for how investigations of sexual assault should be handled. We believe that improving the way investigations are handled should reduce the likelihood that victims are prosecuted for making alleged false reports. To conduct adequate and fair investigations requires officers to treat victims with respect, take their claims seriously, and follow up on cases. If officers are doing those things, we believe it is less likely that they will treat victims skeptically or accuse them of making false reports. Thus, the recommendations below can be helpful points of advocacy in an effort to encourage better investigations, thereby decreasing the rising trend of disbelieving victims and prosecuting victims for making alleged false reports.

In 2013, HRW published a report documenting police mishandling of sexual assault cases in the District of Columbia. According to the report, the Metropolitan Police Department,

¹⁴⁷ See Senate Hearings on Rape in the U.S.

(“MPD”), had policies set in place to prevent the mishandling of sexual assault cases.¹⁴⁸ Still, between October 2008 and September 2011, the MPD failed to document or investigate complaints of sexual assault and re-victimized survivors by treating them “callously or skeptically,” in many instances discouraging survivors from reporting their assaults and in some instances threatening to charge survivors with false reporting.¹⁴⁹ In analyzing the problem, HRW developed recommendations for effective approaches and recommended changes for the MPD.

1. Start With a Victim-Centered Approach

Much like the IACP, HRW suggests a victim-centered approach to investigating sexual assault. Such an approach includes requiring officers to be aware of the fact that sexual assault victims may be experiencing trauma during victim interviews. Accordingly, officers must help to create a non-judgmental environment, they should make arrangements for victims to be accompanied by an advocate during police interviews, and they need to be aware that victims may need one or two sleep cycles before an interview.¹⁵⁰ As Jane Doe’s case demonstrates, victims who encounter disrespectful treatment will not be comfortable discussing their experience, and when this happens, a thorough rape investigation cannot occur. Ensuring that victims feel comfortable discussing their experience is essential in working to combat the stigma of false reporting. Additionally, HRW recommends proper training and respectful collaboration with victim services providers in the community.¹⁵¹

2. Hold Police Officers Accountable for How They Treat Victims

HRW identifies the importance of holding officers accountable to the Department’s official policies. The reality is that in some jurisdictions, there are deeply rooted prejudices regarding sexual violence that cause officers to not act in accordance with set policies. Thus, in jurisdictions similar to the MPD facing problems of failed documentation and re-victimization of survivors, adopting new policies alone will likely not provide meaningful results. Instead, HRW recommends that departments (1) hold officers accountable if they do not document or investigate cases; (2) create an effective complaint procedure so that victims or observers of improper treatment can make a complaint; (3) respond seriously to complaints; and (4) be transparent about responding to complaints.¹⁵² HRW also recommends that jurisdictions employ an independent oversight body to conduct external reviews of sexual assault investigations to ensure that cases are not falling through the cracks.¹⁵³ Demanding that all cases be thoroughly investigated will help ensure that legitimate reports are not dismissed as unfounded or false. Moreover, it will help reduce the chances that a victim is disbelieved or accused of lying.

¹⁴⁸ See DC Report.

¹⁴⁹ See DC Report.

¹⁵⁰ See *id.*

¹⁵¹ See *id.*

¹⁵² See DC Report at 3.

¹⁵³ See *id.*

3. *Hold Officers Accountable for Following Up on Sexual Assault Cases*

In its report, HRW also provides recommendations in order to improve accountability for follow-up activities concerning sexual assault cases. HRW suggests that police stations should include treatment of victims as a factor in evaluating detectives; require responding officers to document all reports of sexual assault, and require supervisors to compare call log sheets for sexual assault cases to ensure reports are documented; require supervisors to ensure that forensic evidence kits are collected; assign all allegations to detectives for follow-up investigation; establish a tracking system allowing supervisors to monitor reporting, clearing, and closing of all cases; establish regular multidisciplinary review of closed cases to discuss ways to improve investigation; develop a system allowing victims to complete and submit victim satisfaction surveys; and require prosecutors to review all cases in which the perpetrator has been identified before such cases are closed.¹⁵⁴ Implementing such mechanisms for officer accountability will help to ensure that officers are not discriminating against victims, whether intentionally or unintentionally. Holding officers accountable for their actions makes them less likely to dismiss reports of sexual assault or accuse victims of lying without legitimate evidence.

B. Oregon Attorney General’s Sexual Assault Task Force Recommendations

The Oregon Attorney General’s Sexual Assault Task Force has published a best practices guide that identifies many of the misconceptions about sexual assault reports. The guide provides four considerations that should be used by authorities when considering whether or not to pursue a complainant for filing a false report of sexual assault.

Consideration	Analysis
1. Was the reporter compelled to make the report?	If the reporter was compelled or confused, do not refer for prosecution.
2. Did the reporter initiate making the report (or was the report made by a family or friend?)	If the report was made by a third party and not at the request of the victim, do not refer for prosecution.
3. Did the report and/or investigation result in harm to another person (e.g. arrest, public shame, etc.)?	If the report/investigation was not public and/or no arrest was made, do not refer for prosecution.
4. Did the investigation result in the use of significant agency resources?	If the report/investigation did not use significant resources, do not refer for prosecution.

False Reports and Case Unfounding, Recommendations for Law Enforcement Response, Oregon Attorney General’s Sexual Assault Task Force.

If these practices were followed in all jurisdictions, women now serving time for making false allegations would never have been charged. For instance, in the cases of Layla Ibrahim and Sara Reedy, the complaints did not result in harm to another person because the rapist was unknown. Under principle #3, no prosecution should have taken place.

¹⁵⁴ *Id.*

C. Start By Believing Campaign

“Start by Believing” is a public awareness initiative of End Violence Against Women International. It raises awareness of the fact that victims of sexual assault are very often disbelieved by those closest to them. The campaign emphasizes the importance of being prepared to offer a supportive response to those who describe being sexually assaulted, since more often than not a victim first confides in a friend or family member.¹⁵⁵ Because of this, it is essential that the public react to allegations of assault from a place of receptivity to empower victims to come forward. The “Start by Believing” campaign is relevant to help combat the widespread misconception that false reports are common. Implementing this campaign in the U.K. could be an effective tool for generating public awareness in order to quash the idea that false reporting is common. This could be extremely helpful for both victims considering coming forward regarding an assault, and also for officers who will be handling sexual violence investigations.

D. Best Practices from Philadelphia, Pennsylvania

Considering the best practices of departments that are effectively investigating sexual violence reports may be helpful in any efforts to advocate for change regarding sexual violence investigations. In particular, in efforts to reduce the prosecution of victims for allegedly making false reports, it seems relevant to consider how some police departments are effectively holding authorities accountable for how they approach investigations and treat victims of sexual crimes.

In the 1990s, thanks to investigative work by the Philadelphia Inquirer, it became clear that there was a widespread problem throughout the Philadelphia Police Department regarding the reporting and investigation of rape. There was a deliberate downgrading of rape cases, which resulted in a large number of legitimate rape complaints never being investigated and many victims being ignored. As a result, the Philadelphia Police Department underwent a dramatic change that has been helpful in re-establishing trust and promoting a culture that treats victims of rape with dignity and respect.¹⁵⁶

The Department made corrective actions by training, report writing, interviewing, coding and follow-up investigations, changing leadership, adjusting staff levels, accepting oversight, and establishing partnerships with advocacy groups.¹⁵⁷ According to the police commissioner, **the most crucial change has been the improved collaboration with advocacy groups.**¹⁵⁸ Once a year, the Philadelphia Police Department gives the Women’s Law Project complete access to their files and personnel and the Women’s Law Project reviews between 300 and 400 cases on sexual assault and rape to ensure that there have been no oversights. In addition to the review, the Department has maintained a close professional relationship with the Women’s Law Project.

¹⁵⁵ See Start by Believing, Joanne Archambault, at <http://www.startbybelieving.org/AboutTheCampaign.aspx>.

¹⁵⁶ See Senate Hearings on Rape in the U.S.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

Based on Philadelphia’s success, it is clear that fostering collaboration among governmental organizations, police departments, courts, and advocacy or prevention groups is critical to ensuring success in investigating crimes of sexual violence.¹⁵⁹ We believe such collaboration can help ensure that victims are not ignored and that women are not prosecuted for making false reports. This could be a helpful model to promote in the U.K.

VI. INTERNATIONAL LAW APPLICABLE TO PERSONS FALSELY ACCUSED OF FILING FALSE REPORTS

There are several core international human rights treaties, six of which are directly relevant to breaches of human rights that may occur when a rape victim is wrongfully prosecuted. The relevant treaties include the following:

- International Covenant on Civil and Political Rights;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- International Covenant on Economic, Social, and Cultural Rights;
- Convention on the Rights of the Child;
- Convention Against Torture; and the
- European Convention on Human Rights.

These treaties contain provisions that can be interpreted to provide protection and support to victims of sexual violence. In addition to articles that protect against victims being subjected to sexual assault and rape, there are also a number of articles that could be applicable to victims of sexual violence facing prosecution for an alleged false report. Because the U.K. is a signatory to all the treaties presented in this Section, it is legally bound to comply with their requirements. Consequently, the provisions of these treaties can be used to advocate against harmful practices in the U.K. that are contrary to U.K. obligations under international law. This Section identifies the provisions of international human rights treaties that might be used for this purpose.

A. The International Covenant on Civil and Political Rights (“ICCPR”)

In Articles 2-5, the International Covenant on Civil and Political Rights requires that all rights be recognized “without distinction of any kind.”¹⁶⁰ In particular, the ICCPR seeks to ensure that rights are enjoyed “equally by women.”¹⁶¹ Women are disproportionately victims of

¹⁵⁹ *See id.*

¹⁶⁰ *See* International Covenant on Civil and Political Rights, Article 2, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

¹⁶¹ *See* ICCPR, Article 26.

sexual violence. All of the cases we have researched have been about a woman's alleged sexual assault or rape. Sexual violence is an issue of discrimination and should be treated as such. The ICCPR also protects a person's liberty and security, in the form of freedom from arbitrary arrest and detention in Articles 9-11.¹⁶² Arresting, prosecuting, and imprisoning victims for allegedly make a false report violates the victim's personal liberty and security. Similarly, arresting, prosecuting, and imprisoning victims violates Articles 12 and 17-24, which protect individual liberty in the form of freedoms of movement, thought, conscience and religion, speech, the right to a family, and the right to privacy.¹⁶³

B. The International Covenant on Economic, Social and Cultural Rights ("ICESCR")

The International Covenant on Economic, Social and Cultural Rights could be invoked for its Article 12 right to health.¹⁶⁴ As mentioned above, many victims of sexual violence experience mental incapacity or severe psychological or emotional disturbance. Prosecuting alleged victims instead of helping to provide support and services is a violation of their right to health and therefore a violation of Article 12 of the ICESCR.

C. The Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW")

Article 5(a) of CEDAW provides that States shall take all appropriate measures to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."¹⁶⁵ Many times, the way that alleged victims of rape and sexual assault are treated, particularly those being prosecuted for making false allegations, is based on a number of stereotypes dominant within our society. These stereotypes, like a woman's socio-economic status or choice of clothing, can lead to her mistreatment and ultimately a disbelief in her report. Additionally, because the victims being prosecuted are usually women, the disparate impact of such prosecutions could also constitute discrimination.

D. The Convention on the Rights of the Child ("CRC")

¹⁶² See ICCPR, Articles 9-11.

¹⁶³ See ICCPR, Articles 12, 17-24 (Article 12 guarantees freedom of movement, Article 17 mandates the right to privacy, Article 18 mandates freedom of religion, Article 19 mandates freedom of expression, Article 21 and 22 mandate freedom of association, Article 23 mandates the right of marriage, Article 24 mandates the right to a nationality).

¹⁶⁴ See International Covenant on Economic, Social and Cultural Rights, Article 12, December 16, 1996, 999. U.N.T.S. 3 (entered into force Jan. 3, 1976), [hereinafter ICESCR].

¹⁶⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1978, 1249 U.N.T.S. 13, U.N. Doc. A/34/180, [hereinafter CEDAW].

The Convention on the Rights of the Child speaks directly to the issue of rape and sexual abuse of children. In Article 12, the CRC states that children must have “the opportunity to be heard in any judicial and administrative proceedings affecting the child,” thereby allowing child victims of rape access to the court to pursue justice.¹⁶⁶ Article 19 also addresses the issue of protecting children from sexual abuse and states that parties “shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”¹⁶⁷ Any mistreatment of an alleged sexual assault or rape victim, like charging them with making a false report, would be a violation of Article 19.

E. The Convention Against Torture (“CAT”)

The Convention Against Torture is applicable to acts of sexual violence as well as unjust punishment for victims wrongly accused of making false reports. CAT protects against torture and cruel, inhuman, and degrading treatment.¹⁶⁸ Even if an argument was made that sexual assault or prosecution and imprisonment of rape victims did not constitute torture, an argument can be made that such conduct meets the bar for cruel, inhuman, and degrading treatment and could be considered a violation of CAT.

F. The European Convention on Human Rights (“ECHR”)

The ECHR is an international treaty that protects human rights in Europe. Unlike the other international treaties discussed above, the ECHR is a regional treaty, covering the geographic region of Europe, and there is a court, the European Court of Human Rights, that hears cases complaining of rights violations under the ECHR. The existence of the European Court gives individuals the ability to take an active role in the enforcement of human rights protections. Some of the ECHR articles that are relevant to wrongfully prosecuted rape victims include the right to be free from torture (Article 3), the right to a fair trial (Article 6), the right to an effective remedy (Article 13), and the right to be free from discrimination (Article 14). In particular, WAR could make the argument that the fact that prosecutors and police have a history of bringing charges of “perverting the course of justice” against rape complainants has the effect of intimidating future rape victims and denying them an effective remedy. Since most rape complainants are female, the same actions also violate victims’ Article 14 right to be free of discrimination.

Individuals can take a case to the European Court after exhausting all domestic remedies. Although not discussed here, the British Human Rights Act of 1998 makes available in UK courts a remedy for breach of a right under the ECHR without the need to go to the European Court.

¹⁶⁶ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc 1/44/736 (1989), [hereinafter CRC].

¹⁶⁷ *Id.*

¹⁶⁸ See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. G.A. Res. 39/46 Annex, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/708, Annex (1984).

VII. OPTIONS FOR ADVOCACY USING INTERNATIONAL INSTRUMENTS

This Section describes some possible approaches for using international instruments to protect victims of sexual violence from the threat of prosecution. It is not intended to serve as a comprehensive litigation or advocacy plan, but instead sketches out the landscape of options available to WAR and its clients once domestic remedies have been exhausted. Please note that this Section also does not discuss the domestic remedies, including the British Human Rights Act of 1998, that might be available to WAR's clients.

Part A of this Section provides a general explanation of international mechanisms that could be used for advocacy purposes. Part B presents two options for pursuing direct review of specific cases – through the European Court of Human Rights (ECHR) or the individual complaint mechanism established under the Optional Protocol to CEDAW. Part C highlights generalized advocacy opportunities within the UN system, a potentially effective strategy for encouraging policy change in the treatment of rape complainants.

A. Overview of Available International Advocacy Tools

As Section V above makes clear, several treaties that the UK has signed are relevant to situations where prosecutors wrongly target women who have been raped. Consequently, if domestic remedies and political tools are insufficient, international mechanisms may be used to bring additional pressure on the U.K. government to change its policies.

Two general advocacy approaches are available. The first is to take individual cases from the U.K. legal system to an international body. This approach is a possibility when an individual case has been inadequately resolved in the U.K. and the complainant wants to try to obtain justice from the international community. The second approach involves promoting policy change through advocacy more generally rather than by focusing on a particular case. Parts B and C discuss these options in more detail and provide some considerations for choosing among them.

B. Individual Case Advocacy

Although all of the treaties discussed in Section V can be drawn on during victim advocacy, only two of the six has a mechanism for hearing a complaint about human rights violations in the UK. Each international treaty (excluding the ECHR) has a treaty body of experts that is responsible for monitoring the implementation of the treaty by the states that are party to the treaty, and the activities of each treaty body include investigating violations of human rights protected by that treaty. There are various ways that a treaty body can receive and investigate complaints of human rights violations. The treaty body can: (1) initiate inquiries, (2) receive complaints from one state party regarding human rights violations occurring within the territory of another state party, and in some cases, (3) receive communications from individuals who have experienced human rights violations. Not all treaty bodies currently have a procedure

for accepting individual complaints. When such a procedure exists, it is usually implemented through an optional protocol that states ratify separately from the treaty. Consequently, the treaty body can only accept complaints from individuals within those states.

As the chart below indicates, U.K. individuals who have exhausted domestic remedies have just two options: litigation through the European Court of Human Rights or the individual complaint mechanism available under the Optional Protocol to CEDAW.

Treaty	Treaty Body	Individual Complaints Received from persons in the UK?	Explanation
CEDAW	Committee on Elimination of Discrimination against Women	Yes	
ICCPR	Human Rights Committee	No	The Human Rights Committee can receive individual complaints but the UK has neither signed nor ratified the relevant optional protocol.
ICESCR	Committee on Economic, Social and Cultural Rights	No	The individual complaints mechanism just entered into force on May 5, 2013 but the UK has neither signed nor ratified the relevant optional protocol.
CRC	Committee on the Rights of the Child	No	The individual complaints mechanism has not yet entered into force. The UK has neither signed nor ratified the relevant optional protocol.
CAT	Committee Against Torture	No	CAT has an individual complaints mechanism but the UK has not made the necessary declaration

			under Article 22 of CAT.
ECHR	European Court of Human Rights	Yes	Individuals may take their cases to the ECHR after exhausting domestic remedies.

It should be noted that both the ECHR and the CEDAW committee require complainants to exhaust domestic remedies for contesting violations of rights their underlying treaties establish before they will consider an application.¹⁶⁹ For the ECHR, exhaustion of domestic remedies generally requires litigation under the U.K. Human Rights Act of 1998, which was enacted in order to incorporate the laws of the European Convention into U.K. domestic jurisprudence. However, because the European Convention does not mandate the use of parallel remedies (i.e. complainants are not required to pursue all possible options for remedies – only one reasonable one),¹⁷⁰ other avenues of domestic litigation may also be appropriate. Please note that any such litigation or other remedy mechanism must allege a violation of a right established under the European Convention. The British Human Rights Act is a natural choice for such litigation because it fully reflects the Convention’s provisions. However, other British statutes might establish privileges or standards that can be framed in terms of Convention rights, and should be used if they offer better domestic outcomes for WAR’s clients (for example, better remedies). It is likely that the CEDAW committee for hearing individual complaints would follow similar reasoning since its domestic exhaustion requirements mirrors those for the ECHR. However, there is no current precedent to either confirm or deny this expectation.

The ECHR and CEDAW are mutually exclusive remedies. Therefore, the choice between them must be made with care. Both the European Convention and CEDAW provide that an individual may lodge a complaint only where she has not already filed the same complaint before another international body.¹⁷¹ The rest of this subsection presents the advantages and disadvantages of choosing one of these approaches over the other. WAR may wish to note the various considerations for proceeding under the ECHR and CEDAW in order to evaluate whether any of its current or future clients have claims that satisfy these requirements.

¹⁶⁹ See Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, Art. 35 [hereinafter European Convention]; Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 4, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/RES/54/4 (1999), Art. 4 [hereinafter CEDAW Optional Protocol].

¹⁷⁰ See COUNCIL OF EUROPE, BRINGING A CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS: A PRACTICAL GUIDE ON ADMISSIBILITY CRITERIA at ¶ 50 (2011) [hereinafter, Practical Guide].

¹⁷¹ See European Convention, Art. 35 §2(b) (“Court shall not deal with any application submitted under Article 34 that (...) (b) is substantially the same as a matter that ... has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.”); CEDAW Optional Protocol, Art. 4 (“Before a complaint is considered, the Committee must determine that ... the complaint ... has [not] been or is being examined under another procedure of international investigation or settlement.”).

1. European Court of Human Rights

To appear before the ECHR, WAR will need to identify a client who has a non-trivial claim that her European Convention rights have been denied by the U.K., and that she has exhausted domestic remedies for seeking justice. WAR's client must then file her claim with the ECHR within six months from the date of the final judgment that exhausted her domestic remedies (such as a final ruling by the highest relevant court).¹⁷² The procedural requirements for filing a claim before the ECHR may be found on the Applicants portal of the Court.¹⁷³

The major advantages of pursuing litigation through the ECHR over the CEDAW Committee complaint mechanism is that its decisions are automatically binding on U.K. courts.¹⁷⁴ It may even create new legal remedies where it finds structural or general defects in domestic law or practice.¹⁷⁵

The disadvantages of proceeding before the ECHR include the six-month limitation on filing,¹⁷⁶ a tremendous backlog of cases, and an increasingly hostile attitude towards the Court among Britain's conservative politicians.¹⁷⁷ Consequently, proceeding through the ECHR may generate unnecessary resistance and a conservative backlash. This consideration should be weighed when making the tactical decision about the means of advocacy WAR might pursue.

The substantive laws of the Convention (or the implementing British Human Rights Act) that could support a case challenging the prosecution of a sexual assault victim include the Article 3 prohibition on torture; the Article 5 right to liberty and security of person; the Article 6 right to a fair trial; the Article 13 right to an effective remedy; and the Article 14 prohibition on discrimination with respect to rights included elsewhere in the Convention. The Court's liberal interpretation of State obligations in cases like *Opuz v. Turkey* suggests that it may be receptive to broad interpretations of individual rights and State obligations to protect them.¹⁷⁸ However,

¹⁷² See European Convention, Art. 35 §1.

¹⁷³ See ECHR Website, *Questions and Answers for Applicants*, available at <http://www.echr.coe.int/echr/en/header/applicants/information+for+applicants/frequently+asked+question/s/>.

¹⁷⁴ See European Convention, Art. 46.

¹⁷⁵ The ECHR may ask the responding State to examine the situation, and may, *inter alia*, conclude that the State should either amend existing remedies or add new ones so as to secure genuinely effective redress for violations of Convention rights. Practical Guide, at ¶65. Special attention is given to ensure effective domestic remedies. *See id.*

¹⁷⁶ See European Convention, Art. 35 §1.

¹⁷⁷ See, e.g., Rajeev Syal, *Tory Ministers Plot Human Rights Act Repeal*, The Guardian, Mar. 3, 2013, available at <http://www.guardian.co.U.K./politics/2013/mar/03/tory-ministers-human-rights-act>; Simon Walters, *A Great Day for British Justice: Theresa May Vows to Take UK Out of the European Court of Human Rights*, Daily Mail, available at <http://www.dailymail.co.U.K./news/article-2287183/A-great-day-British-justice-Theresa-May-vows-U.K.-European-Court-Human-Rights.html>.

¹⁷⁸ *C.f. Opuz v. Turkey*, European Court of Human Rights, (Application No. 33401/02), 6/9/2009 (affirming that State obligations with respect to individual rights to freedom from torture and the right to life can include due diligence to protect individuals, "to ensure accountability and [to] guard against impunity."). *See id.* at ¶¶ 125-26, 158-59.

none of the listed provisions contain language that directly concerns investigative or prosecutorial prejudice – merely procedural rights of individuals already charged. The U.K. is not party to Protocol 12 of the ECHR, which prohibits all discrimination, including on the basis of gender,¹⁷⁹ and consequently has accepted no general duty to avoid discrimination outside of rights otherwise granted by the convention. If proceeding under the ECHR is an appropriate strategy for some of WAR’s clients, more research and creative legal thinking will be necessary to craft a justiciable claim. Please note that the initial domestic claim must also be formulated in a manner that articulates a violation of a European Convention right.

2. CEDAW Committee

The CEDAW Committee is a relatively new body that became active in 2000 and has handed down only twenty-four decisions as of November 2012 (almost half of them finding the considered complaints to be inadmissible).¹⁸⁰ The CEDAW Committee has found violations in twelve of the thirteen cases that have proceeded to the adjudication stage. The website of the Office of the High Commissioner on Human Rights contains detailed information about procedures and specific requirements for filing a claim before the CEDAW Committee.¹⁸¹

A key advantage of filing a complaint with the CEDAW Committee is that the Committee’s mandate focuses squarely on women’s rights and is consequently directly relevant to WAR’s clients. Indeed, the Committee has previously determined that violence against women is a form of discrimination that is prohibited under CEDAW.¹⁸² Further, the Committee is constituted of experts on gender issues¹⁸³ and may consequently be more receptive to WAR’s arguments than ECHR judges who have legal competence but are not necessarily specialists in gendered violence and discrimination. Finally, CEDAW does not have any timing requirements for filing and may consequently be a good option for a WAR client who wishes to file a CEDAW complaint more than six months after receiving a final domestic judgment in her case.

The main disadvantage of proceeding under CEDAW is that the Committee’s findings are not binding on member states. Articles 8 and 9 of the CEDAW Optional Protocol provide for confidential proceedings that generate nonbinding recommendations. States are urged to adopt these recommendations but are under no obligation to do so. Article 9 provides for follow-up

¹⁷⁹ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 2000, Europ. T.S. 177, Art. 12. *Compare with* European Convention, Art. 14 (prohibiting discrimination in guaranteeing rights contained elsewhere in the European Convention).

¹⁸⁰ Out of the 24 decisions handed down by the CEDAW Committee as of November 5, 2012, only 13 had been adjudicated on their merits. *See* Bayefsky, *The United Nations Human Rights Treaties*, available at <http://www.bayefsky.com/docs.php/area/jurisprudence/treaty/cedaw/opt/0/node/5/type/all>.

¹⁸¹ *See* Website of the OHCHR, *Human Rights Treaty Bodies – Individual Communications*, available at <http://www2.ohchr.org/english/bodies/petitions/individual.htm#cedaw>.

¹⁸² *See* Committee on Elimination of Discrimination against Women, Gen. Recommendation 19, Sess. 11, U.N. Doc. A/47/38 (1992).

¹⁸³ CEDAW Art. 17.

inquiries, but does not include any coercive measures.¹⁸⁴ Pending its final decision, the Committee can request that the state party take interim measures necessary to avoid possible irreparable damage to the claimant,¹⁸⁵ but such a request would not be binding. Consequently, the CEDAW Committee has little ability to compel state action beyond exerting political pressure. More research would be needed into CEDAW's substantive legal provisions and decisions to date in order to determine whether a particular client has a claim that might succeed before the CEDAW Committee.

C. Generalized Advocacy Approaches

The UN system also offers a number of non-case specific advocacy strategies that could help raise awareness of the practice of prosecutors bringing charges against rape complainants. Such advocacy could help to build a consensus for promoting better practices and to bring political pressure on the U.K. government to implement corresponding reforms. General advocacy approaches do not conflict with proceeding under either the European Convention or CEDAW. Consequently they can – and should – be used in conjunction with the options presented above. Moreover, because general advocacy does not require identifying a client whose claim can meet the narrow procedural requirements of the European Convention and CEDAW, such strategies can be pursued at any time.

Several UN entities offer avenues for such advocacy, including the UN Human Rights Council, treaty bodies for individual human rights treaties with relevant provisions, and UN-appointed special rapporteurs with mandates relevant to WAR. Section (1) below presents some general observations about the advocacy opportunities that these entities may offer. Section (2) then briefly describes three types of UN human rights entities that WAR might approach with their advocacy efforts. Information for submitting documents or otherwise engaging with these entities is readily available to the general public.

1. General advocacy approaches

Each of the entities contemplated by this Section carries out review and reporting tasks that are open to outside input, often at multiple stages of the process. Specifically, most of these bodies require states to file regular reports about their record and often hold oral hearings with state representatives about their written submissions. Advocacy organizations can usually file “shadow reports” that parallel national submissions but highlight any omissions in the state reports or harmful practices conducted or tolerated by the state. WAR could submit reports that document the harmful nature of Britain's approach to prosecuting rape complainants in an effort to (1) inform committee members about such practices; (2) shape the oral hearings with Britain's representatives to include related discussions; and (3) influence the committee's final findings

¹⁸⁴ Art. 9 (“The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.”).

¹⁸⁵ CEDAW Optional Protocol, Art. 5.

and recommendations. While nonbinding in nature, such “name and shame” approaches have played a key role in successful advocacy efforts to amend national policies in the past.

One example of this strategy in action is the successful campaign orchestrated by the Midwest Coalition for Human Rights (the “Coalition”) to stem police abuses in Chicago. The Coalition had exhausted its domestic efforts to draw attention to and prevent police abuses perpetrated under the direction of former Chicago Police Commander for Area 2, Jon Burge, who authorized the torture of 135 African-American males. Despite the Coalition’s intensive advocacy, no criminal charges were brought against Burge, and he faced minimal discipline. Having exhausted domestic remedies, the Coalition included concerns about the situation in a shadow report submitted to the United Nations Committee Against Torture in April 2006, and [to the Inter-American Commission on Human Rights in 2005.]

The Coalition’s actions helped to generate significant media coverage of the issue. Both Committees specifically questioned U.S. representatives regarding Burge’s continued impunity. The Committees’ response ultimately changed domestic rhetoric surrounding the issue, shifting the terms of the discourse from “police misconduct” to “torture.” Although the United States did not treat the Committees’ concluding remarks and recommendations as binding, advocates were able to use the Committees’ findings to apply pressure domestically, highlighting U.S. obligations under the Convention Against Torture and successfully compelling investigations into the alleged violations. Ultimately, these efforts led to Burge’s arrest in October 2008, revision of Chicago police practices, and reversals of some of the convictions obtained using torture.

In addition to submitting shadow reports, WAR can advocate with UN human rights instruments by shaping their policy pronouncements. Treaty bodies, in particular, are tasked with interpreting the substantive requirements of treaty obligations (the CEDAW Committee’s determination that violence against women was a form of discrimination discussed above is one such example). They also sometimes highlight or announce evolving norms, clarify ambiguities in associated standards, and propose standards for best practices, for example, by publishing “general comments” on thematic issues related to their umbrella treaty. Advocates have previously sought to shape such decisions by providing committee members with information and proposed solutions. Such activities are helpful for creating or clarifying international standards or providing a convenient focal point around which to rally public support for action and change.

In addition to their reporting procedures and formal comments, some Committees also provide regular forums for public discussion. These offer similar advocacy opportunities but may be an easier way to shape the discussion for smaller organizations like WAR, which do not always have the resources to reach out to Committee members during meetings in Geneva, where most of the committees are located.

It is also worth noting that treaty body Committee members are selected for their expertise in the specific subject area of the relevant treaty. Consequently, they may be particularly receptive to input from advocacy groups and are somewhat insulated from political pressure by state actors. By contrast, members of the UN Human Rights Council are selected by

State governments and are consequently less likely to make politically disfavored pronouncements.

2. Key advocacy instruments in the UN system

There are three human rights instrumentalities within the UN system that offer advocacy opportunities described above.

- **The UN Human Rights Council** | The UN Human Rights Council is a body comprised of states party to the ICCPR. The Council conducts a Universal Periodic Review of each of its member states. Each state is required to submit a report detailing its human rights practices every four years. The Council then holds oral hearings to discuss points of concern. Advocates from nongovernmental organizations such as WAR often submit “shadow reports” in parallel with state submissions in order to highlight omissions or harmful practices. Other points of entry into Human Rights Council activities include the interpretive activities of the Advisory Committee and the Council’s limited Complaint Procedure mechanisms, which permit individuals to bring “consistent patterns of gross and reliably attested of all human rights” to the attention of the Council.¹⁸⁶ Please note that the UN Human Rights Council has no binding enforcement mechanisms.
- **Treaty Body Mechanisms** | Each of the human rights treaties discussed in Section V above has a specially constituted treaty body that oversees state compliance with treaty provisions. Each treaty is slightly different, but most provide for reporting requirements like the Human Rights Council’s Universal Periodic Review. Treaty bodies can also make authoritative pronouncements on requirements and standards relating to the substantive provisions of the treaties and sometimes have competence to hear individual complaints. Committee members of the treaty bodies are generally selected for their subject matter expertise and are consequently generally considered to be more receptive to advocacy efforts than the political appointees to the UN Human Rights Council. However, please note that there are no binding enforcement mechanisms for requiring compliance with their pronouncements.
- **Special Rapporteurs** | The UN Secretary-General sometimes appoints special rapporteurs on a particular issue of special concern. The rapporteur is then tasked with researching the extent of the problem or issue within each affected state and delineating possible approaches and interventions to address the issue. The UN Special Rapporteur on Violence Against Women, its causes and consequences, is most relevant to WAR’s efforts. Special Rapporteurs may be particularly receptive to information highlighting concerning trends that organizations such as WAR become aware of through their work providing services to affected individuals. Although Special Rapporteurs cannot compel state compliance or require any response, they can generate increased awareness of an issue and possibly promote and facilitate a UN response.

¹⁸⁶ Human Rights Council resolution 5/1, UNHRC, available at <http://www.google.com/search?client=safari&rls=en&q=human+rights+Council+resolution+5/1&ie=UTF-8&oe=UTF-8>.

While none of these instruments are binding on national governments, they offer creative advocacy options that may strengthen and legitimize WAR's other domestic efforts. Significantly, they do not preclude any litigation at the domestic or international level. Instead, they may offer a helpful complement to any such endeavors, especially where domestic efforts fail to produce a response.

VIII. CONCLUSIONS AND DIRECTIONS FOR FUTURE RESEARCH

Prosecuting persons alleging sexual assault is often a harmful practice that is rarely justified. At its worst, it has subjected victims struggling to cope with the trauma of sexual assault to increased scrutiny, police harassment, and even jail time or fines. Further, because such reports are exceedingly rare, their incidence is dwarfed by the high rates of sexual violence, most of which is never investigated, prosecuted, or punished. Consequently, resources invested in this practice seem to be a poor allocation of public funds, promote harmful stereotypes about victims of sexual violence, and may place communities at risk where the police correspondingly fail to conduct adequate investigations.

This paper has sought to support WAR's efforts to confront false reporting prosecutions in the U.K. by providing a conceptual and statistical framework for opposing such practices; identifying cases where victims of sexual assault were wrongfully prosecuted for making false reports; presenting additional research findings about the incidence and surrounding factors for false reporting prosecutions in the U.S., which may serve as a helpful point of comparison in WAR's efforts; exploring available best practices that may mitigate any harm from false reporting prosecutions; and examining international human rights mechanisms that may provide helpful avenues for related advocacy or direct challenges to U.K. practices. We identified opportunities for further research throughout the document. We hope that our findings will serve to support WAR's efforts to protect victims of sexual assault and to promote a more just and responsive law enforcement mechanisms.

APPENDIX A: U.S. STATE PENALTIES FOR FALSE REPORTING OF A CRIME

(States where the false report of a crime is a felony appear in **bold**)

State	Offense	Penalty
Alabama	False reporting to law enforcement authorities (ALA. CODE § 13A-10-9)	No more than 1 year in the county jail or of hard labor in the county; No more than a \$2,000 fine
Alaska	False information or reporting (ALASKA STAT. § 11.56.800)	No more than 1 year imprisonment; No more than a \$200,000 fine
Arizona	False reporting to law enforcement agencies (ARIZ. REV. STAT. § 13-2907.01)	No more than 6 months' imprisonment; No more than a \$2,500 fine
Arkansas	Filing false report with law enforcement agency (ARK. CODE ANN. §5-54-122)	Felony No more than 6 year sentence; No more than a \$10,000 fine
California	False report of felony or misdemeanor (CAL. PENAL CODE § 148.5)	No more than 6 months in county jail; No more than a \$1,000 fine
Colorado	False reporting to authorities (COLO. REV. STAT. § 18-8-111)	Maximum of 6 months imprisonment; \$750 fine
Connecticut	Falsely reporting an incident in the second degree (CONN. GEN. STAT. § 53a-180c)	No more than 1 year imprisonment; No more than a \$2,000 fine
Delaware	Falsely reporting an incident (DEL. CODE ANN. tit. 11, § 1245)	Up to 1 year incarceration; No less than \$500, nor more than a \$2,300 fine; 100 hours service
District of Columbia	False or fictitious reports to Metropolitan Police (D.C. CODE ANN. § 5-117.05)	No more than 30 days' imprisonment; No more than a \$300 fine
Florida	False reports of commission of crimes (FLA. STAT. § 817.49)	No more than 1 year imprisonment; No more than a \$1,000 fine
Georgia	False report of a crime (GA. CODE ANN. § 16-10-26)	No more than 12 months' confinement; No more than a \$1,000 fine

State	Offense	Penalty
Hawaii	False reporting to law-enforcement authorities (HAW. REV. STAT. § 710-1015)	No more than 1 year imprisonment; No more than a \$2,000 fine
Idaho	Providing false information to law enforcement officers (IDAHO CODE § 18-5413)	No more than 6 months in county jail; No more than a \$300 fine
Illinois	Disorderly conduct (720 ILL. COMP. STAT. 5/26-1)	Felony No less than 1 year, nor more than 5 years' imprisonment; No more than a \$25,000 fine
Indiana	False informing (IND. CODE ANN. § 35-44-2-2)	Felony 1 ½ years' imprisonment; No more than a \$10,000 fine
Iowa	False reports to or communications with public safety entities (IOWA CODE § 718.6)	No more than 1 year imprisonment; No less than \$250, nor more than a \$1500 fine
Kansas	Falsely reporting a crime (KAN. STAT. ANN. § 21-3818)	No more than 1 year in county jail; No more than a \$2,500 fine
Kentucky	Falsely reporting an incident (KY. REV. STAT. ANN. § 519.040)	No more than 12 months' imprisonment; No more than a \$500 fine
Louisiana	False reports or communications (LA. REV. STAT. ANN. § 14:403.3)	No more than 6 months' imprisonment; No more than a \$500 fine
Maine	False public alarm or report (ME. REV. STAT. ANN. tit. 17-A, § 509)	No more than 5 years' imprisonment; No more than a \$5,000 fine
Maryland	False statement to law enforcement officer (MD. CODE ANN., Crim. Law § 9-501)	No more than 6 months' imprisonment; No more than a \$500 fine
Massachusetts	Intentional or knowing false report of a crime (MASS. GEN. LAWS ch. 269, § 13A)	No more than 1 year imprisonment; No less than \$100, nor more than a \$500 fine
Michigan	False report of crime (MICH. COMP. LAWS § 750.411a)	Felony

State	Offense	Penalty
		No more than 4 years' imprisonment; No more than a \$2,000 fine
Minnesota	Falsely reporting crime (MINN. STAT. § 609.505)	No more than 1 year imprisonment; No more than a \$1,000 fine
Mississippi	False reporting of crime (MISS. CODE ANN. § 97-35-47)	No more than 1 year in county jail; No more than a \$1,000 fine; Restitution to law enforcement agency
Missouri	False reports (MO. REV. STAT. § 575.080)	No more than 6 months' imprisonment; No more than a \$500 fine
Montana	False reports to law enforcement authorities (MONT. CODE ANN. § 45-7-205)	No more than 6 months in county jail; No more than a \$500 fine
Nebraska	False reporting (NEB. REV. STAT. § 28-907)	No more than 1 year imprisonment; No more than a \$1,000 fine
Nevada	False reporting of crimes (NEV. REV. STAT. ANN. 207.280)	No more than 6 months in county jail; No more than a \$1,000 fine
New Hampshire	False reports to law enforcement (N.H. REV. STAT. ANN. § 641:4)	No more than 1 year imprisonment; No more than a \$2,000 fine
New Jersey	False reports to law enforcement authorities (N.J. STAT. ANN. § 2C:28-4)	No more than 18 months' imprisonment; No more than a \$10,000 fine
New Mexico	False report (N.M. STAT. ANN. § 30-39-1)	Less than 1 year in county jail; No more than a \$1,000 fine
New York	Falsely reporting an incident in the third degree (N.Y. PENAL LAW § 240.50)	No more than 1 year imprisonment; No more than a \$1,000 fine
North Carolina	False reports to law enforcement agencies or officers (N.C. GEN. STAT. § 14-225)	No less than 30 days, no more than 6 months' imprisonment
Ohio	Making false alarms	Felony

State	Offense	Penalty
	(OHIO REV. CODE ANN. § 2917.32)	No less than 6 months, nor more than 5 years' imprisonment; No less than \$2,500, nor more than a \$10,000 fine
Oklahoma	False reporting of a crime (OKLA. STAT. tit. 21, § 589)	No more than 90 days in county jail; No more than a \$500 fine
Oregon	Initiating a false report (OR. REV. STAT. § 162.375)	No more than 30 days' imprisonment; No more than a \$1,250 fine
Pennsylvania	False reports to law enforcement authorities (18 PA. CONST. STAT. § 4906)	Felony No more than 2 years' imprisonment; No more than a \$5,000 fine
Rhode Island	False report of crime (R.I. GEN. LAWS § 11-32-2)	No more than 1 year imprisonment; No more than a \$500 fine
South Carolina	Giving false information to law enforcement officer (S.C. CODE ANN. § 16-17-725)	No more than 30 days' imprisonment; No more than a \$200 fine
South Dakota	False reporting to authorities (S.D. CODIFIED LAWS § 22-11-9)	No more than 1 year imprisonment; No more than a \$1,000 fine
Tennessee	False reports (TENN. CODE ANN. § 39-16-502)	Felony No less than 2 years, nor more than 15 year's imprisonment; No less than \$5,000, nor more than a \$10,000 fine
Texas	False report to peace officer or law enforcement employee (TEX. PENAL CODE ANN. § 37.08)	No more than 180 days in jail; No more than a \$2,000 fine
Utah	Making a false alarm (UTAH CODE ANN. § 76-9-105)	No more than 6 months' imprisonment; No more than a \$1,000 fine
Vermont	False reports to law enforcement authorities (VT. STAT. ANN. tit. 13, § 1754)	No more than 1 year imprisonment; No more than a \$1,000 fine
Virginia	Falsely summoning or giving false reports to law-enforcement officials	No more than 12 months in jail; No more than a \$2,500 fine

State	Offense	Penalty
	(VA. CODE ANN. § 18.2-461)	
Washington	False reporting (WASH. REV. CODE § 9A.84.040)	No more than 1 year in county jail; No more than a \$5,000 fine
West Virginia	Falsely reporting an emergency incident (W. VA. CODE § 61-6-20)	No more than 6 months in county jail; No more than a \$500 fine
Wisconsin	Resisting or obstructing officer (WIS. STAT. § 946.41)	No more than 9 months' imprisonment; No more than a \$10,000 fine
Wyoming	False reporting to authorities (WYO. STAT. ANN. § 6-5-210)	Felony No more than 5 years' imprisonment; No more than a \$5,000 fine

APPENDIX B: U.K. FALSE REPORTING CASES WITH SENTENCES

Name	Sentence	Source
Wendy McClung	Nine month probation	http://www.highbeam.com/doc/1G1-109643980.html
Natalie Knighting	Six months	http://www.telegraph.co.uk/news/uknews/1356999/Jail-for-mother-who-said-she-was-raped-by-tramp.html
Julie Renouf	Six months	http://www.telegraph.co.uk/news/uknews/1382008/Prison-for-chatroom-woman-who-lied-about-rape.html
Nadine Milroy-Sloan	Three years	http://news.bbc.co.uk/2/hi/uk_news/2988208.stm
Jacqueline Barkley	Nine Months	http://www.telegraph.co.uk/news/uknews/1437802/Woman-in-false-rape-claim-gets-9-months.html
Louise Brazil	Six months	http://www.theargus.co.uk/archive/2006/04/28/The+Argus+Archive/6811939.Plotters_jailed_for_rape_lie/
Sally Henderson	12 month sentence	http://news.bbc.co.uk/2/hi/uk_news/england/gloucestershire/6113490.stm
Abigail Gibson	Two years	http://www.dailymail.co.uk/femail/article-433819/Girl-cried-rape-times.html
Maria Marchese	Nine years	http://www.telegraph.co.uk/news/uknews/1540019/Stalker-who-cried-rape-is-jailed-for-nine-years.html
Tracey Taylor	Six months / Two years probation	http://www.liverpooldailynews.co.uk/liverpool-news/regional-news/2007/02/13/woman-lied-about-rape-after-drunken-sex-party-99623-18613142/2/
Emma Saxon	Eight months	http://www.dailymail.co.uk/news/article-2188112/Mother-jailed-making-TWO-false-rape-claims-men-dating-didnt-liaison.html?ITO=1490
Shirley Prince	Three months	http://www.thenorthernecho.co.uk/news/crime/3661284.Woman_jailed_for_false_rape_claims/
Kerry Saunders	One year	http://www.dailymail.co.uk/news/article-1046530/Woman-jailed-making-false-rape-claim-family-row-night-out.html
Erin Casson	12 months	http://www.dailymail.co.uk/news/article-1050583/Jail-Wren-cried-rape-seducing-lover.html
Jennifer Day	Two years	http://www.telegraph.co.uk/news/uknews/law-and-order/6468036/Prison-inevitable-for-false-rape-claims.html
Chloe Dalton	Two years	http://www.mirror.co.uk/news/uk-news/woman-who-lied-over-two-430094
Gail Sherwood	Two years	http://www.guardian.co.uk/society/2010/mar/04/rape-claims-gail-sherwood
Temitope Adenugba	18 months	http://www.oxfordmail.co.uk/news/8252946.Student_jailed_over_rape_lies/
Leyla Ibrahim	Three years	http://www.dailymail.co.uk/news/article-1294947/Leyla-Ibrahim-jailed-crying-rape-despite-7-months-pregnant.html?ITO=1490

Name	Sentence	Source
Emma Watson	Two years	http://www.sthelenstar.co.uk/news/8409605.Newlywed_jailed_for_false_rape_claim/
Kate Woodhead	Three years	http://www.bbc.co.uk/news/uk-england-surrey-11665198
Emma Blunden	Two years	http://www.getreading.co.uk/news/s/2085811_woman_jailed_for_false_rape_claim
Chloe Fox	Four month probation	http://www.bbc.co.uk/news/uk-england-cumbria-17818072
Rosie Dodd	Two years	http://www.thisisnottingham.co.uk/Jail-Nottingham-woman-rape-claim/story-16922220-detail/story.html#axzz2Sf61zQdV
Karen Cosford	Three years	http://www.wakefieldexpress.co.uk/news/local/more-wakefield-news/prison-nurse-guilty-of-having-sex-with-convicted-rapist-at-hmp-wakefield-1-5004474
Tina Greenland	Two years	http://www.telegraph.co.uk/news/uknews/crime/9692984/Nanny-jailed-for-crying-rape-after-one-night-stand.html
Jodie Simpson	21 months	http://www.thetelegraphandargus.co.uk/news/10080405.Young_mother_jailed_over_false_rape_allegations/
Gaynor Cooke	Two years	http://www.thisisnottingham.co.uk/Woman-jailed-making-rape-claim-Nottingham-taxi/story-17880393-detail/story.html#axzz2Sf61zQdV
Elizabeth Jones	16 months	http://www.telegraph.co.uk/news/uknews/crime/9894588/Compulsive-liar-jailed-after-11-false-rape-claims-in-decade.html
Sherilea Warburton	15 months	http://www.yourlocalguardian.co.uk/news/10265752.Lying_mother_jailed_for_false_rape_claim/

APPENDIX C: U.S. FALSE REPORTING CASES WITH SENTENCES

Name	Sentence	Source
Cariann Backus	90 days, \$5500	http://answers.yahoo.com/question/index?qid=20080216091405AAEVmXR
Vanna Chief Eagle	2 years probation, \$100	http://www.fbi.gov/minneapolis/press-releases/2009/mp090809.htm
Katherine Clifton	8 days in jail, \$250	http://seattletimes.nwsourc.com/html/localnews/2004291649_false19e.html
Jessica De La Vega	18 month probation, 200 hours community service	http://articles.wsbt.com/2http://goshennews.com/local/x449492690/Prosecutor-says-Goshen-College-rape-report-was-false
Danielle Deichman	60 days in jail and three years of informal probation	http://losangeles.cbslocal.com/2011/02/10/woman-charged-for-fabricating-attack-in-laguna-niguel/
Melinda Denham	6 months prison	http://www.wcpo.com/dpp/news/region_central_cincinnati/downtown/Prosecutors-charge-woman-for-false-rape-accusations
Felisha Hardison	Two years probation	http://triblive.com/x/pittsburghtrib/news/westmoreland/s_679363.html#axzz2LsFz4mQj
Heidi Jones	3 Years Probation, 350 hrs community service	http://www.cbsnews.com/8301-504083_162-20106221-504083.html
Tamara Moonier	More than 12 months in jail	http://articles.latimes.com/2006/jul/25/local/me-false25
Danmell Ndonye	Probation	http://www.huffingtonpost.com/2009/09/17/danmell-ndonye-hofstra-ra_n_290484.html
Biurny Peguero-Gonzalez	1 to 3 years prison	http://www.huffingtonpost.com/2010/02/24/biurny-peguero-fake-rape_n_473890.htm
Deanna Taulbee	58 days in jail	http://www.ongo.com/preview_article.php?a=717196
Regina Birindelli	None – never charged	http://seattletimes.com/html/localnews/2003567852_wrongfulconvictions12.html
Tracy West	None – never charged	http://articles.latimes.com/2011/jun/27/local/la-me-accused-20110628
Annie Hylton	None – never charged	http://www.cbsnews.com/stories/2006/11/02/earlyshow/contributors/tracysmith/main2144397.shtml
Janelle Martinez	Five years probation	http://www.myrtlebeachonline.com/2011/06/24/2239799/myrtle-beach-woman-guilty-of-false.html
Soroyal Washington	Charged, not sentenced	http://www.nj.com/mercerc/index.ssf/2007/10/college_rape_victim_recants_st.html
Crystal Mangum	None – never charged	http://www.cbsnews.com/8301-504083_162-6219739-504083.html

