

VIOLENCE AGAINST WOMEN: VICTIMS OF THE SYSTEM

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

S. 15

A BILL TO COMBAT VIOLENCE AND CRIMES AGAINST WOMEN ON THE
STREETS AND IN HOMES

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CONTENTS

OPENING STATEMENTS OF SENATORS

	Page
Biden, Chairman Joseph R., Jr	1
Grassley, Hon. Charles E.....	3
DeConcini, Hon. Dennis.....	4
Thurmond, Hon. Strom.....	5
Specter, Hon. Arlen.....	21
Dole, Hon. Bob.....	22
Metzenbaum, Hon. Howard M.....	48

LEGISLATION

Text of S. 15—A bill to combat violence and crimes against women on the streets and in homes.....	321
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CHRONOLOGICAL LIST OF WITNESSES

Hon. Bonnie J. Campbell, attorney general, State of Iowa.....	24
Hon. Roland W. Burris, attorney general, State of Illinois	61
Panel consisting of: Professor Burt Neuborne, New York University School of Law, New York, NY; and Professor Cass R. Sunstein, University of Chicago School of Law, Chicago, IL	84
Panel consisting of: Amy Kaylor, sexual assault victim, Toledo, OH; and Gill Freeman, chair, Florida Supreme Court Gender Bias Study Implementation Commission, Miami, FL.....	131

ALPHABETICAL LIST AND SUBMITTED MATERIAL

Burris, Hon. Roland:	
Testimony	61
Prepared statement	65
Campbell, Hon. Bonnie J.:	
Testimony	24
Prepared statement	28
Resolution adopted by the National Association of Attorneys General	37
Prepared statement of the Iowa Coalition Against Domestic Violence.....	41
Prepared statement of the Iowa Coalition Against Sexual Assault	43
Response to question asked during committee hearing.....	50
Freeman, Gill:	
Testimony	134
Prepared statement	139
Several newspaper articles.....	163
Kaylor, Amy:	
Testimony	131
Neuborne, Burt:	
Testimony	84
Prepared statement	90
Sunstein, Cass R.:	
Testimony	103
Prepared statement	106
Thurmond, Hon. Strom:	
Judicial impact statement on S. 15, prepared by the Administrative Office of the U.S. Courts, entitled "Violence Against Women Act of 1991"	8

IV

APPENDIX

	Page
"Violence Against Women: The Increase of Rape in America 1990," a majority staff report prepared by the Senate Committee on the Judiciary, March 21, 1991.....	180
Prepared statements and other correspondence by:	
Dr. Alan H. Levy, associate professor of history, George Mason University.....	225
Elizabeth Athanasakos, national president, National Federation of Business and Professional Women, Inc.....	235
Joan Lima, Yonkers, NY, with a statement from a victim of rape and violence.....	246
Dr. Leslie R. Wolfe, executive director, Center for Women Policy Studies..	250
Gary L. Bauer, president, Family Research Council.....	282
Ms. Dawn Bosshard, statement of a victim of rape and violence.....	292
Article by John A. Franklin, a Dover, DE resident.....	294
The Women's Circle, Sisseton, SD.....	295
Peg Rogers, attorney, Native American Rights Fund.....	298
Lois Galgay Reckitt, member, Maine Commission on Domestic Abuse.....	305
Susan J. Brison, assistant professor of philosophy, Dartmouth College.....	311
Hon. Vincent L. McKusick, president, Conference of Chief Justices.....	314
Rus Ervin Funk, coordinator, Men's Anti-Rape Resource Center, National Organization for Men Against Sexism	318
Text of S. 15.....	321
Section-by-section analysis of the Women's Equal Opportunity Act of 1991	415

VIOLENCE AGAINST WOMEN: VICTIMS OF THE SYSTEM

TUESDAY, APRIL 9, 1991

**U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.***

The committee met, pursuant to notice, at 11 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee), presiding.

Present: Senators Biden, Metzenbaum, DeConcini, Thurmond, Grassley, and Specter.

OPENING STATEMENT OF CHAIRMAN BIDEN

The CHAIRMAN. The hearing will come to order.

Today we begin our fourth hearing on the Violence Against Women Act. Today's hearing finishes a picture that we have been attempting to paint over the last year by focusing on how America's criminal justice system has failed to do its part to stem the rising tide of violence against women.

Two weeks ago, this committee released a report showing that women in this country are facing a rape epidemic. In 1990, more women were raped than ever before. The rape rate increased faster than it had at any time during the last decade. And now, the United States leads the world in the number and the rate of rapes.

Simply put, violence against women is out of control, and rape is only one aspect of the picture. The Federal Government must take a stand, and I believe, must take a stand now. It must devote resources, enact reforms, and provide every available weapon in its arsenal, including the civil rights laws, to stem this tide of violence.

For too long, our society has looked the other way at this nightmare. For too long, our criminal justice system has shown women only distrust, disbelief, and discrimination.

One hundred years ago, courts would not intervene to stop a husband from beating his wife if the stick he used was no bigger than the circumference of his thumb.

Twenty years ago, rapists went free if the victim could not prove that she had risked her very life in fighting back with utmost resistance.

Two years ago, jurors in one case refused to convict a rapist because of the clothing the victim was wearing.

Last year, according to one study, an abusive spouse was arrested in less than 15 percent of the cases where his victim was bleeding from an open wound.

And right now, there are still States where rape victims are routinely subjected to polygraph examinations, as if they—and not the rapist—are the ones who are on trial.

The reasons for these failures are many—historical, cultural, and legal. But whatever the reasons, one thing is absolutely clear: We will never stop violence against women unless we change attitudes about these crimes—attitudes both inside and outside the criminal justice system.

We must realize that rape is a crime of hate, not of sexual desire. We must realize that battering is a crime of force, not of domestic discord.

We must all take responsibility for these crimes, men and women alike. Survivors' plights are not only individual tragedies; they are society's tragedies. These are crimes of terror. They instill fear not only in the actual survivors but in every woman in America.

Take, for example, a simple pleasure like going to the movies. A recent study showed that 75 percent, fully three-quarters, of the women surveyed never go out alone at night to see a movie because they fear rape and other violent crimes.

But that is just one example. Women are nine times more likely than men to refuse to walk in their own neighborhoods after dark. About half of the women surveyed said they never use public transportation after dark.

To combat this climate of fear, I wrote the Violence Against Women Act. I have no illusions that if passed it will solve all the problems or end all violence against women. But I believe it is very important.

Our bill is an ambitious undertaking. It is the first attempt to comprehensively address violent crimes against women. I won't go through all of the bill's significant provisions, but I'd like to highlight how this bill attempts to deal with our focus for today's hearing—current difficulties in the Federal and State judicial systems.

First, this bill creates new penalties for rapists and new legal protections for battered women.

Second, it provides desperately needed help to crime survivors by extending courtroom protections and providing victim services.

Third, it makes violent crimes against women a major law enforcement priority, adding police, lighting, and prosecutors.

Fourth, and most significantly—and I suspect most controversial of all, the provisions in my bill—this bill declares that gender-motivated crimes are a violation of a woman's civil rights.

We must treat gender-based assaults as violations of women's civil rights just the way we condemn racial attacks on blacks or violent prejudice against Jews or any other minority in this country.

In this country we already prohibit much subtler forms of discrimination against women—discrimination that prevents promotion or a pay raise. If we do that, as we should, why do we leave unattended the far more violent discrimination of gender-based attacks?

None of these provisions either alone or together, as indicated before, will solve the crisis that confronts us. However, they are a start.

The very distinguished witnesses we have here today will help us explore these measures and more, beyond what has been proposed in the law, must be done to arrest this epidemic of abuse. Hopefully, they will provide constructive suggestions as to how we should change the legislation to make it more effective and to make it stronger.

So in closing, even before we begin, I want to thank all of our witnesses for appearing here today. I look forward to all the help you can give us in understanding this growing and disturbing problem we face, and hopefully, making the law that we have proposed better than it otherwise would be but for their input.

I yield to my colleague from Iowa if he has an opening statement and then to my friend from Arizona, and then we'll begin with our witnesses.

Senator Grassley.

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. Thank you, Mr. Chairman.

The first thing I want to do is welcome Iowa's newly elected attorney general, Bonnie Campbell, who is going to be testifying today and thank her for taking time out of her busy schedule to add her insight on this important issue.

Mr. Chairman, I supported this bill at the end of the last Congress, and I am encouraged by this opportunity to further study a new version of the legislation. I notice that the bill has some new provisions, so this hearing should be very helpful in educating this committee about the latest version of the bill. And of course, Mr. Chairman, I am also pleased that this hearing is being held while Congress is in session so that we can all participate in the hearing.

Crime continues to be among the most important domestic problems that we face. Crimes of violence, whether committed against an elderly pensioner or a child abused by a drug-addicted parent, or against women, the subject of this hearing, are happening in every corner of the country—in the inner city, on Main Street, in the heartland, and even in some of the country's most affluent and exclusive areas.

The first obligation of any government is to protect its people by making their homes, streets, neighborhoods, and communities safe from the fear of crime. We must impose swift, sure, and strict punishment for criminals at least as tough as the crime itself, and we must not forget to provide for the victims so that they don't feel victimized anew by our judicial system. Only then will we be able to have meaningful anticrime sanctions as opposed to window-dressing.

There is much that we can do. I support instructing the Sentencing Commission to increase the penalties for violent sexual offenses. I support providing for mandatory restitution for every victim of a violent criminal act. I also support allowing sexual assault victims to have a right to communicate directly with the court when a convicted defendant is sentenced.

We desperately need to restore balance to the scales of justice by truly empowering all victims of crime, including women victims. I welcome this opportunity to explore some ideas that I have regarding this subject on this very important day.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.
Senator DeConcini.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DeConcini. Mr. Chairman, I'd like to commend you for your leadership once again in a very, very important way. The extraordinary work that you have put forth in this area of violence against women and the hearings that you have held on this issue have turned the focus of this committee and the public to the threat of physical violence that women face every day. With violent crimes being such a pervasive part of our society, I'm afraid that we have come to accept it as part of our daily lives and have grown numb to their devastating impact.

It is only when we hear some of the more heinous cases, like the atrocities of Ted Bundy or the mutilization of the college coeds at the University of Florida, that we are shaken from our stupor. These cases are so hideous, we cling to the hope that these acts of violence against women are rare, but indeed they are not.

These hearings have taught us that the physical abuse and violation of women, is unfortunately, a very common occurrence with a conservative estimate indicating that there will be 12 rapes every hour in this country. And according to Dr. Mary Koss; from the University of Arizona Medical School, one woman out of five will be raped at some point during her life.

I agree with the chairman's assessment, articulated in his recent report, that rape is a national epidemic. The numbers are indeed staggering. This committee's report documents a national increase in reported rape of 6.3 percent in 1990, and I regret to say that in my State of Arizona the increase was 15 percent—well above the national average.

While these numbers are indeed alarming, the consequences of these acts of violence are an equally distressing aspect of this whole sordid story. The women who have testified before this committee have spoken of the devastating physical abuse that is difficult to contemplate.

Today, with the increased risk of contracting very serious, if not deadly, sexually transmitted diseases, rape victims are placed in a position of continuing physical jeopardy that lingers well beyond the assault itself. Moreover, the emotional damage that they sustain will affect them for the rest of their lives.

While the nightmare of an assault may dissipate with time, the loss of control over one's bodily integrity is something that will color the way they look at the world and the way they function in society forever. The traumatization that rape victims sustain often requires costly medical attention, in addition to time away from work and perhaps the family; yet once again, women are victimized because they are left with little recourse and little resources of compensation for the economic losses that they have sustained.

Our system of justice has yet to recognize the type and extent of damage that is done to victims of rape. Aside from inadequate remedies to provide economic compensation, our system also seems ill-equipped to provide justice to those women. Women who report rape are often met with skepticism by law enforcement and are subjected to demeaning interrogation. Those who are given any credence by the authorities are at best disenfranchised from any decisionmaking by the prosecutor, and at the very worst, are dragged through the mud during the trial.

One of the witnesses, a college student, who was raped by another student on campus testified that in response to her reporting the rape to the college officials, the officials suggested that the victim's best course of action was to transfer to another college to avoid her embarrassment. Somehow, that doesn't set well. When I was a prosecuting attorney, rape cases were a high priority with us, but it was very difficult to educate both assistant prosecutors as well as the investigators in the county attorney's office and the line officer of the significance of the emotional impact of such an incident.

Somehow in our country in the case of rape, we have managed to transform the victim into the villain, and consequently it is no wonder that rape is so grossly underreported. Again, citing Dr. Koss from the University of Arizona Medical Center, only an estimated 7 percent of rape cases are actually reported. Therefore, most rape victims are left to suffer in quiet desperation.

It is inconceivable to me that a country like ours, that has a high tradition of fostering human and civil rights, has turned a blind eye to victims of rape. However, one thing is clear. This cycle of victimizing the victim must stop, and it must stop now.

I commend Chairman Biden once again and his able staff for taking the first step of putting together a comprehensive bill. This bill, the Violence Against Women Act, which I strongly support, will have a significant and lasting impact in correcting this gross injustice.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thurmond.

OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

Today we are holding the fourth hearing in recent months on an extremely important matter—violence against women. Our Nation is facing a violent crime epidemic. The National Crime Survey indicates that there were almost 6 million violent crime victimizations in 1989. Increasingly, women account for a large percentage of these victimizations.

While the overall crime rate has remained somewhat stable, violent crimes against women continue to rise at an alarming rate. According to the FBI's Uniform Crime Reporting Program, rapes and aggravated assaults increased 10 percent during the first 6 months of 1990 when compared to the same period in 1989.

In 1989, women accounted for 4,400 of our Nation's murder victims. These statistics are disturbing. This hearing will focus on

whether the criminal justice system has adequately focused upon violent crimes against women and whether current remedies available to these victims are adequate.

It is unfortunate when any law-abiding citizen falls prey to violent crime. Unfortunately, the needs of those who suffer at the hands of the criminal element often fall victim to the criminal justice system as well. All too often, restitution to victims is not ordered by the courts. Furthermore, the interests of crime victims are oftentimes given inadequate attention at sentencing, and as a result, less severe sentences are imposed.

For example, Department of Justice figures indicate that the average time served for rape in State prisons is less than 6 years. This is inappropriate. According to the Department of Justice, there were over 94,500 forcible rapes reported in 1989. That translates into one rape every 6 minutes—did you catch that figure—one rape every 6 minutes. If this hearing this morning goes 2 hours, that means there will be 20 rapes committed on women before we finish this 2-hour hearing. Without the fear of punishment, there is little to deter those who would seek out and harm women.

Clearly, justice demands that these vicious acts against women be stopped. Congress must take steps to address crimes against women, as well as the overall problem of violent crime. Senator Biden has introduced S. 15, the Violence Against Women Act of 1991, and I want to commend him for this. This bill would go a long way toward fighting the growing plague of violence against women.

Senator Dole has also introduced a strong measure, S. 472, which embodies numerous proposals aimed at securing the right of women to be free from violent crime. I strongly support any measure which will protect women against violent offenders and severely punish those who commit crimes against them.

However, while it is appropriate that we focus on crimes against women, Congress must also take steps to fight all violent crime. In furtherance of that effort, I recently introduced the President's crime bill, S. 635, which will do just that. It is a tough, comprehensive, criminal justice reform measure, aimed squarely at eliminating violent crime. In addition to strengthening the Federal rules of evidence and enhancing the criminal penalties for sex offenses, S. 635 includes a comprehensive Federal death penalty provision which will establish constitutional procedures for its implementation. S. 635 will also reform habeas corpus procedures to eliminate the unnecessary delay and abuse in death penalty cases. I look forward to working with my colleagues, especially the chairman of this committee, on each of these important criminal law reform bills.

Mr. Chairman, despite the desperately needed steps the President's crime bill will take, this committee has recognized that greater attention should be given to the growing rate of violence against women. Any legislation which seeks to make our streets and homes safer for women certainly merits thorough, serious consideration by this committee. The witnesses we will hear from today will provide us with testimony which should prove valuable in our efforts to solve this growing problem.

For these reasons, I look forward to today's testimony. Further, I ask unanimous consent that a copy of a judicial impact statement on S. 15, prepared by the Administrative Office of U.S. Courts, be made a part of this record.

Mr. Chairman, I have several committee meetings going on, and if I have to leave before the hearing is over, I will certainly read the record. I thank you for holding this hearing.

The CHAIRMAN. Thank you very much.

[Judicial impact statement on S. 15 follows:]

Judicial Impact Statement

**Violence Against Women
Act of 1991**

S. 15

Prepared by:

The Office of Judicial Impact Assessment

The Administrative Office of the U.S. Courts

April 8, 1991

**JUDICIAL IMPACT STATEMENT
VIOLENCE AGAINST WOMEN ACT OF 1991, S. 15**

The Violence Against Women Act of 1991 (S. 15) will significantly affect the courts and their administration, as well as affecting the Administrative Office of the U.S. Courts, and the Federal Judicial Center. Some of the bill's major provisions address: (1) increased sentences and fines for repeat offenders; (2) mandatory sentences for certain types of abusive sexual conduct; (3) mandatory restitution for several sex crimes; (4) creation of new evidentiary rules; (5) establishing new record keeping procedures and reports on domestic violence; (6) creation of new Federal criminal offenses for interstate travel to commit spousal abuse, and interstate travel to violate protection orders; (7) permitting civil rights remedies for crimes of sexual violence motivated by the victim's gender; and (8) education and training for judicial officers and other court personnel.

The Judicial Conference has not taken a position on S. 15.

Summary of Impact

This bill has five titles. The impact on the Judiciary is summarized as follows:

Title I - Safe Streets for Women. This title creates additional litigation, filings, mandatory restitution, presentence reports, and collection efforts that could be expected to expand the courts' workload. While few cases involving crimes covered under this title currently reach the Federal courts because of limited Federal jurisdiction (e.g., Federal parks, military bases, airplanes and ships), this title also creates two new evidentiary rules (412A and 412B) that will result in more court hearings and associated administrative time. Also, Rule 412 is amended to provide for interlocutory appeals of evidentiary rulings. This will have minimal impact on appellate court hearings, because of the small number of Federal cases covered by Rule 412.

Title II - Safe Homes for Women. This title creates new Federal criminal offenses pertaining to spousal abuse in connection with travel in interstate commerce and interstate violation of protection orders. The Judiciary would be authorized to issue temporary orders of protection, and there would be mandatory restitution. These actions would create additional criminal cases in the Federal courts by expanding Federal jurisdiction into an area currently confined to State courts.

Title III - Civil Rights. This comprehensive title creates a new Federal civil cause of action and permits civil rights remedies for crimes of sexual violence motivated by the victim's gender. This title could greatly increase civil caseloads.

Title IV - Safe Campuses for Women. This title would not have a significant impact on the Judiciary.

Title V - Equal Justice for Women in the Courts Act of 1991. This title requires the Federal Judicial Center (FJC) to conduct a study of the nature and extent of gender bias in Federal courts. In addition, the FJC is required to develop, test, present and disseminate model programs to be used in training Federal judges and court personnel on the laws of rape, sexual assault, domestic violence, and other crimes of gender violence. This title also requires a small amount of time for training.

Cost Summary

The annual cost to the Judiciary (not including the Supreme Court and the U.S. Sentencing Commission) would exceed \$62.5 million and 691 work years. The resource impact represents the annual cost once a provision is fully implemented. Details are shown below:

Recurring Annual Resource Costs

<u>Titles</u>	<u>Costs</u> <u>\$ in M</u>	<u>Work Years</u>
Safe Streets for Women.....	6.1	109
Safe Homes for Women.....	11.9	118
Civil Rights.....	43.6	450
Safe Campuses for Women.....	1/	1/
Equal Justice for Women in the Courts.	2/	2/
Automation and AO Support.....	.9	14
Total	\$62.5	691

1/ No costs to the Judiciary anticipated.

2/ \$0.68M may be required as a one time cost associated with this title.

The table below shows the estimated full year budgetary cost impact if S. 15 were fully implemented. The difference between the budgetary and the resource cost estimates are the costs of judicial officers, their staffs and support. Because the analysis assumes that no new judgeships would be authorized, nor

current judges' staff limits changed, additional money would not be budgeted to cover their time, which would be diverted from other work. The Annual Resource Cost table (above) includes the resources for 91 judicial officers and 361 associated support staff. These costs are not included in the Summary of Annual Budgetary Costs table. The annual budgetary cost to the Judiciary is anticipated to exceed \$20.9 million and 239 staff years, once the bill is fully implemented.

Summary of Annual Recurring Budgetary Costs

<u>Appropriation</u>	<u>Costs \$ in M</u>	<u>Staff Years</u>
Courts of Appeals, District Courts, and Other Judicial Services		
Salaries and Expenses.....	7.3	215
Fees of Jurors & Commissioners	10.3	---
Defender Services	<u>2.8</u>	<u>17</u>
Subtotal	<u>\$20.4</u>	<u>232</u>
Administrative Office.....	<u>0.5</u>	<u>7</u>
Subtotal	<u>\$ 0.5</u>	<u>7</u>
 Total	 <u>\$20.9</u> 1/	 <u>239</u>

1/ Does not include a one time cost of \$280,000 for the Federal Judicial Center.

DETAILED IMPACT OF S.15

The following details the impact of S. 15 on court workload and jurisdiction, as well as the significant reoccurring annual costs:

Provision: Title I - Safe Streets for Women

Title I Subtitle A (Federal Penalties for Sex Crimes).

This will affect both court administration and probation. It requires the U.S. Attorney to file a proof of claim with the court on behalf of the victim in order to justify restitution to victims of crimes under Chapter 109A of Title 18, of the U.S. Code, thus increasing court filings.

It also requires mandatory restitution for certain crimes. For the year ended June 30, 1990, 125 defendants were convicted of an offense under Chapter 109A, including 11 that were ordered to make restitution. The new provisions for mandatory restitution could generate an additional 114 restitution orders.

This would increase the variety and number of restitution payments to be made and, probably, the number of defaults that would occur. Furthermore, the mandatory restitution provisions also would cause more work in monitoring the payment of all restitution for defendants on probation and supervised release.

The impact of the increase in mandatory minimum sentences and fines contained in the bill could not be precisely estimated, since there is limited statistical data available on repeat offenders. However, the proposed changes to the sentencing guidelines will require retraining of pretrial services officers preparing presentence investigation reports.

Most of the actions listed above will require extra docketing, calendaring, noticing and court personnel time, but the resource impact is anticipated to be minimal because of the small number of cases. Similarly, although an estimate of judicial officer time and associated support was not developed, judges are expected to spend more time at revocation hearings due to the increased number of restitution orders.

Title I Subtitle E (New Evidentiary Rules).

There are two additions to the Federal Rules of Evidence (Rules 412A and 412B) that may have a significant impact on the Judiciary. Rule 412A states that opinion or reputation evidence of a victim's past sexual behavior is not admissible in a criminal case not governed by Rule 412, which governs offenses under 18 U.S.C. 109A (rape shield law). Evidence, other than opinion or reputation, may be admissible if the defendant files a motion for an order, a hearing is held, and the court considers certain criteria. Rule 412B concerns the admission of evidence of a victim's past sexual behavior for use in a civil case in which a defendant is accused of actionable sexual misconduct.

In addition, Rule 412 is amended to provide for interlocutory appeals of evidentiary rulings made under this rule regarding the victim's past sexual behavior. The appeals may be filed by the government or the victim.

Rules 412A and 412B will result in additional district court judge and staff resources to provide for the following activities: (1) docketing and scheduling; and (2) reviewing pleadings and holding hearings associated with these rules. Read in connection with other parts of the bill, which create new criminal and civil causes of action arising out of domestic situations and gender based crimes, it can be anticipated that (1) cases involving this kind of evidence will be numerous; and (2) the kind of evidence to which reference is made (victim's past sexual behavior) will be offered frequently in these kinds of cases.

It is difficult to estimate the total number of cases to which Rule 412A would be applied, since it governs all criminal cases except for the few covered by Rule 412. In 1990, there were almost 48,000 criminal cases filed in the Federal district courts. Most of these involved crimes such as fraud, robbery, drugs, theft, and traffic violations. Only 562 involved assault, 433 involved sex offenses, 357 involved extortion, racketeering, and threats, and 65 involved kidnapping. Based on these figures, a victim's past sexual behavior might be an issue in an estimated 200 criminal cases that would be affected by Rule 412A. In the other cases, there may not be an identifiable victim or the victim's behavior, particularly for a male, may not be at issue.

However, Title II of S. 15 creates a new Federal criminal action for crossing state lines to commit or intending to commit spousal abuse. It is estimated that an additional 1,550 cases could enter the Federal courts as a result of this proposed legislation (see analysis of Title II in next section for derivation of the caseload estimate). The total cost to the courts of applying Rule 412A to 1,750 (200 + 1,550) cases is \$0.9 and 16.7 staff years.

Rule 412B applies to cases involving a claim of actionable sexual misconduct, including, but not limited to, sex harassment or discrimination claims brought pursuant to Title VII of the Civil Rights Act of 1964 and gender bias claims brought pursuant to Title III of S. 15. An average of 8,700 employment discrimination cases under Title VII were commenced annually in Federal court during 1988-1990. An estimated one third of these, or 2,700 cases involved sexual discrimination and could be covered by Rule 412B. Another 13,450 would arise from claims brought under Title III of S. 15 (see section on analytical assumptions for the derivation of this caseload estimate). The total cost to the courts of applying Rule 412B to 9,700 cases is \$5.2 million and 92.3 staff years.

The table below details the resource costs associated with Rules 412A and 412B:

	Costs \$ in M	Work Years
Courts		
District Court Judges.....	1.5	11
Support Staff.....	2.4	55
Magistrate Judges.....	.7	6
Support Staff.....	.8	18
Clerks Office.....	<u>.7</u>	<u>19</u>
Total	\$6.1	109

Amending Rule 412 to permit interlocutory appeals from evidentiary rulings in cases involving offenses under 18 U.S.C. 109A will result in additional appellate court time for hearings and ruling on appeals and additional administrative time in docketing and handling appeals. Although there is existing caselaw which permits a victim to appeal an adverse ruling under Rule 412, there is not a substantial body of caselaw on this issue. Such appeals also could result in multiple appeals in the same case. This could increase the cost and delay in the litigation process in these kinds of cases, and could have a significant effect on each case. However, because there were only 125 defendants convicted for an offense under Chapter 109A in 1990, the costs to the Judiciary are anticipated to be relatively small.

Provision: Title II - Safe Homes for Women

Section 211 creates a new Federal offense for intent to injure and injury to a "spouse or intimate partner" during interstate travel "or thereafter", and for interstate violation of protection orders. It empowers the court to issue temporary orders of protection. By expanding Federal jurisdiction to an area that has been exclusively confined to State courts, the Federal courts potentially could be flooded by a vast amount of litigation arising from domestic disputes. Such litigation would be stimulated by the provisions for payment of attorney fees required in orders of restitution.

Estimates suggest that, at a minimum, 1,800 cases will be brought into the courts associated with these new Federal offenses. This is based on an estimated 53,800 potential Federal cases from violent crimes against women (See section on analytical assumptions for detailed explanation). Of these cases, about 3 percent (1,550) are projected to involve interstate travel. In addition, another 250 cases are projected to involve protection orders. This is a minimal estimate representing about 16 percent of interstate cases. The costs below reflect this minimum increase in cases. Because approximately 75 percent of the defendants in these cases will be eligible for appointment of counsel under the Criminal Justice Act, the cost to the Judiciary for the services of public defender organizations, community defender organizations and panel attorneys is estimated to be about \$2.8 million and 17 FTEs annually.

The bill provides for mandatory restitution to a victim of an offense under this chapter. The increase in court workload resulting from this provision is similar to the effects discussed in the previous section on Title I with respect to restitution in sex offense cases. The new provisions also require additional judicial officer and associated clerical support time in the creation and issuance of restitution orders.

Some of the specific wording of this title may also increase the workload of the courts, although this has not been quantified in the analysis. For example, the use of the words "or thereafter" after the reference to interstate travel has two effects. First, it could make actionable almost any act that caused injury by a spouse or intimate partner, because many couples are involved in interstate travel at some time in their lives together, and there is no limit in the legislation to "thereafter". Second, because this wording is so vague, questions could arise as to its constitutional validity.

Also, because there is no definition in this section of the term "injury" the term could be interpreted to include not only bodily injury, but also emotional or psychological injury. The definition of "victim" in this section includes "any person who has suffered direct physical, emotional, or pecuniary harm as a result of commission of a crime under this chapter." Such an interpretation would increase the scope of the statute and its impact.

The estimated least effect on the Judiciary results in an annual resource cost of about \$11.9 million and 118 FTEs. The distribution of these recurring resource requirements is presented below. The recurring budget cost would not include judicial officers and support staff.

	<u>Costs</u> <u>\$ in M</u>	<u>Work Years</u>
Courts		
District Court Judges.....	1.7	13
Support Staff.....	2.9	65
Magistrate Judges.....	.1	1
Support Staff.....	.1	3
Clerks Office.....	<u>.7</u>	<u>19</u>
Subtotal	<u>\$5.5</u>	<u>101</u>
Juror Fees.....	3.6	--
Defender Organizations.....	<u>2.8</u>	<u>17</u>
Subtotal	<u>\$6.4</u>	<u>17</u>
TOTAL	<u>\$11.9</u>	<u>118</u>

Provision: Title III - Civil Rights

This title creates a Federal civil rights cause of action for any citizen whose right to be free of gender related crimes of violence has been abridged.

Under Section 301, victims of "crimes of violence motivated by the victim's gender" (rape, aggravated assault, or abusive sexual contact) may generate as many as 53,800 civil tort cases

annually. However, only 13,450 of these cases are anticipated to reach the Federal courts (see analytical assumptions section for more detail). The average cost per civil tort case to the Judiciary is about \$3,240. This could yield a cost to the Judiciary of \$43.6 million and 450 staff years annually. Many of these crimes will involve attackers with limited assets (75 to 80 percent of current criminal cases require appointment of public defenders), which could discourage civil tort actions. However, this section could bring many domestic disputes into Federal court, since jurisdiction of these types of cases would no longer be confined to state courts. The estimated distribution of the recurring resource costs and staff years are presented below. The budget cost would not include judicial officers and support staff costs.

	<u>Costs</u> <u>\$ in M</u>	<u>Work Years</u>
Courts		
District Court Judges.....	7.0	40
Support Staff.....	16.1	161
Magistrate Judges.....	3.3	20
Support Staff.....	5.0	59
Clerks Office.....	4.8	170
Fees of Jurors.....	6.7	--
Court Automation Support.....	.7	--
Total	<u>\$43.6</u>	<u>450</u>

Although this analysis does not include costs associated with defender services, probation, and court security, these costs could occur if the civil tort involves a person who has already been convicted on a felony charge or is awaiting trial on a felony charge. Depending on the frequency of such occurrences, the costs could be significant.

Provision: Title V - Equal Justice for Women in the Courts

Subtitle B (Education and Training for Judges and Court Personnel in Federal Courts). This requires the Federal Judicial Center to complete a study on the nature and extent of gender bias in Federal courts, to issue a report with findings and recommendations, and to develop, test, and disseminate model programs to be used in training Federal judges and court personnel on laws relating to gender violence. The study and model programs must involve law enforcement officials, public and private nonprofit victim advocates, and lawyers. This training will involve the equivalent of 3 judicial officer staff years, costing \$400,000. The cost to the Federal Judicial Center to complete its study and provide the training to judges and support staff is estimated at \$280,000. Both costs should be a one year cost. Other training may be required for Probation and Pretrial

Services staffs, but a resource estimate was not made for these employees.

The study was assumed to be performed by private contractors, rather than diverting FJC staff from their current training and research functions. FJC staff would be required to supervise the contract, but the demand on the time of FJC employees would depend on the scope of the study. The bill directs the FJC to study "the nature and extent of gender bias in the Federal courts", and its not clear whether this is limited to gender bias in certain proceedings, or also includes gender bias by federal judges and court personnel to jurors, the public, etc. and bias in the internal operations of the court. The resource estimate assumes the narrowest interpretation and represents a minimum cost. The cost would increase if the scope of the study were broadened.

	<u>Costs</u> <u>\$ in M</u>	<u>Work Years</u>
Federal Judicial Center.....	0.3	--
Judicial Officers.....	<u>0.4</u>	<u>3</u>
Total	\$0.7	3

Additional Support by the Administrative Office to Implement S. 15

The annual recurring cost for Administrative Office support is \$.5 million and 7 FTEs. These FTEs are for administration (e.g., personnel, space alterations) and program support (e.g., court administration, probation, and related activities).

	<u>Costs</u> <u>\$ in M</u>	<u>Staff Years</u>
Administrative Office.....	<u>0.5</u>	<u>7</u>
Total	\$0.5	7

Automation and Support

Because the bill would require the hiring of approximately 239 staff, this requires the purchase of approximately the same number of PCs and the associated software, material, supplies, training and maintenance support, for an initial cost \$1.3 million. Subsequent maintenance cost of \$.1 million will be required annually. In addition, \$.3 million for 7 staff years of PC support personnel (court staff) is required. The annual

recurring costs for automation and support for S. 15 are estimated to be as follows:

	<u>Costs</u> <u>\$ in M</u>	<u>Staff Years</u>
Automation and Support		
PC Support.....	0.3	7
Maintenance of PCs.....	<u>0.1</u>	<u>--</u>
Total	\$0.4	7

Analytical Assumptions

There is limited statistical information available on the number of rapes, sexual assaults, or abusive sexual contacts occurring in the U.S. annually. According to the report of the Senate Judiciary Committee, there were over 100,000 attempted and completed rapes reported to police in 1990. The U.S. Bureau of Justice Statistics conducts a confidential annual survey of households to estimate the actual number and types of crimes committed. About 50 percent of these crimes are not reported to Federal, State or local authorities. Based on its most recent surveys, there are approximately 2.6 million violent victimizations of women annually, which includes 155,000 attempted and completed rapes (102,000 attempted and 53,000 completed). The rape estimates and a portion of other violent victimizations of women as reported by the Bureau of Justice Statistics are used in this analysis to identify the number of persons who may elect to seek recovery of compensatory and punitive damages under Title III of this bill and to estimate numbers of domestic cases that would become Federal crimes under Title II of the bill.

Not all of the women involved in the 2.6 million violent victimizations will file a civil tort action. The analysis used the number of:

1. Reported rapes which were completed and the attacker was known. This reduces the number of potential rape cases from 155,000 a year to 15,100 per year.
2. Reported other violent crimes against women that were aggravated assaults and reported to the authorities, the attacker was known, and there was a desire by the victim to "punish" the offender. This reduces the number of potential other cases from 2.45 million a year to 38,700.

Potential Federal cases from both rapes (15,100) and other violent crimes against women (38,700) is estimated to be about 53,800 annually. However, this analysis assumed that most of these cases will be resolved at the State level, and no more than 25 percent of the above cases (13,450) will reach the Federal courts.

The actual case loads may be substantially lower or higher than this estimate. It could be lower because many of the offenders will have limited assets, thus discouraging tort cases. On the other hand, spouses with marital problems may use these provisions to seek recourse for marital relations issues, thus increasing the caseload.

The analysis assumes that 4 percent of the civil tort cases will go to trial with the remainder being settled out of court. Even with this relatively high out of court settlement rate, the average cost of a civil tort case is about \$3,240, assuming that Court Security, Defender Services and Probation activities will not play a significant role. However, there is a potential for their involvement, since some of the defendants also would have been convicted on other felony charges (drugs, robbery, criminal assault) or may be awaiting trial. An estimate of these occurrences could not be made at this time and is not included in this analysis. However, they could significantly increase the cost of this bill.

The estimates represent current workload measurement formulas. The analysis assumes that no new judges or magistrate judges would be authorized, appointed or hired. The resource cost table includes the value of the time required to implement the bill, because both judges and magistrate judges are now working at full capacity, and their time would necessarily be diverted from other work, which would be deferred, in order to handle the additional workload. If new judgeships were established to handle the increased workload created by the bill, the costs would increase.

The salary estimates used for both judges and magistrate judges are based on the levels that became effective on January 1, 1991. Staff costs for all other personnel are also based on FY 1991 salary rate estimates.

For certain provisions, the first year cost will be lower than the recurring annual cost, because the workload will phase in over time. However, the lower first year costs are offset by one time costs such as purchasing personal computers for new employees and the cost of provisions that could not be quantified due to lack of sufficient data.

There is a one time cost of \$1.3 million for providing automation hardware and support to new staff that would be required to implement the bill. This cost is not included in the

annual recurring cost table. Also, existing capacity for court automated systems may need to be increased beyond what is already planned if a substantial number of cases materialize. Due to the uncertainties associated with this bill, a firm estimate could not be developed.

The CHAIRMAN. Senator Specter, do you have any comment you'd like to make at this point?

OPENING STATEMENT OF SENATOR SPECTER

Senator SPECTER. Thank you, Mr. Chairman. I have just a very brief statement.

I commend you for your continuing diligence on this subject. It is a matter that I have worked on for many years since my days as district attorney in Philadelphia. There has been some improvement in law enforcement procedures in the protection of women, but there is a tremendous amount more which needs to be done, and I think these hearings are very significant, and while law enforcement is essentially a matter for local authorities, I believe there is a great deal that the Federal Government can do in quite a number of important respects, and I am delighted to work with you on it, Mr. Chairman.

The CHAIRMAN. Before I call the first panel, I wish to place a prepared statement by Senator Dole in the record.

[Prepared statement follows:]

News from Senator

BOB DOLE

(R - Kansas)

SH 141 Hart Building, Washington, D.C. 20510

FOR IMMEDIATE RELEASE
APRIL 9, 1999CONTACT: WALT RIKER
(202) 224-5358TESTIMONY OF SENATOR BOB DOLE
VIOLENCE AGAINST WOMEN
SENATE JUDICIARY COMMITTEE

MR. CHAIRMAN, SENATOR THURMOND, I WANT TO THANK YOU FOR GIVING ME THIS OPPORTUNITY TO TESTIFY TODAY BEFORE THE COMMITTEE.

I ALSO WANT TO COMMEND YOU, MR. CHAIRMAN, FOR HOLDING THIS HEARING, AND FOR HOLDING HEARINGS ON THIS IMPORTANT ISSUE LAST FALL.

WITHOUT A DOUBT, THESE HEARINGS HAVE HELPED RAISE AMERICA'S AWARENESS ABOUT AN ASPECT OF VIOLENCE AGAINST WOMEN THAT -- FOR TOO LONG -- HAS BEEN SWEEPED UNDER THE NATIONAL RUG.

VIOLENCE AGAINST WOMEN: A NATIONAL DISGRACE

WITH MORE THAN 2.5 MILLION VIOLENT CRIMES BEING COMMITTED AGAINST WOMEN EACH YEAR, WE'RE NOT TALKING ABOUT A FEW ISOLATED INCIDENTS OR A RANDOM ACT OF VIOLENCE THAT HAPPENS TO GRAB THE FRONT-PAGE HEADLINES.

WHEN WE TALK ABOUT VIOLENCE AGAINST WOMEN, WE'RE REALLY TALKING ABOUT A NATIONAL EPIDEMIC -- AN EPIDEMIC AFFECTING EVERY COMMUNITY, EVERY CITY, AND EVERY STATE IN THIS COUNTRY. MR. CHAIRMAN, IF ANYONE HAS ANY DOUBTS THAT VIOLENCE AGAINST WOMEN IS A SERIOUS NATIONAL PROBLEM, HE SHOULD READ THE STORY OF AILEEN HEFFERREN, WHO -- AS A JOGGER IN WASHINGTON'S ROCK CREEK PARK LAST AUGUST -- WAS KNOCKED TO THE GROUND BY A 12-YEAR OLD ASSAILANT, TAUNTED, AND THEN LEFT SHAKING, BLEEDING, FALLING IN-AND-OUT OF CONSCIOUSNESS, ONLY TO BE PICKED UP ALMOST AN HOUR LATER BY AN EMERGENCY ROOM HOSPITAL.

A MINOR EVENT IN A BUSY CITY. PERHAPS.

AN EVENT THAT IS REPEATED HUNDREDS OF TIMES EACH DAY THROUGHOUT THIS COUNTRY. YES.

BUT AN EVENT THAT THIS NATION SHOULD COUNTENANCE AS ROUTINE, AS THE PRICE WE PAY FOR LIVING IN A FREE SOCIETY? ABSOLUTELY NOT.

THE WOMEN'S EQUAL OPPORTUNITY ACT

MR. CHAIRMAN, EARLIER THIS YEAR, I JOINED WITH 14 OF MY SENATE REPUBLICAN COLLEAGUES IN INTRODUCING S. 472, "THE WOMEN'S EQUAL OPPORTUNITY ACT OF 1991."

THIS BILL WAS AN AMBITIOUS PROJECT, COVERING EVERYTHING FROM SEXUAL HARASSMENT IN THE WORKPLACE TO THE SO-CALLED "GLASS CEILING" THAT IMPEDES THE ADVANCEMENT OF WOMEN UP THE CORPORATE LADDER.

LET'S NOT FORGET THAT SEXUAL HARASSMENT AND WORKPLACE DISCRIMINATION -- IN ALL OF ITS FORMS -- OVERT AND COVERT -- SUBTLE AND NOT-SO-SUBTLE -- ARE ALSO ELEMENTS OF THE "VIOLENCE- AGAINST-WOMEN" PROBLEM.

BUT I'LL LEAVE THOSE TOPICS FOR ANOTHER DAY.

FOR PURPOSES OF THIS HEARING, I WOULD LIKE TO TAKE JUST A FEW MOMENTS TO HIGHLIGHT SOME OF S. 472'S CRIME-FIGHTING PROVISIONS.

FIRST OF ALL, S. 472 ADDRESSES THE ISSUE OF SAFETY ON OUR UNIVERSITY CAMPUSES.

LAST YEAR, CONGRESS PASSED LEGISLATION REQUIRING UNIVERSITIES TO INFORM STUDENTS OF CAMPUS CRIME STATISTICS. S. 472 BUILDS ON THIS APPROACH BY REQUIRING THE DISCLOSURE OF THESE STATISTICS TO THE PARENTS OF STUDENTS AND TO LOCAL POLICE AUTHORITIES.

IT GOES WITHOUT SAYING THAT MORE DISCLOSURE, MORE INFORMATION, LEADS TO BETTER EDUCATION AND MORE SAFETY.

S. 472 ALSO IMPOSES TOUGHER PENALTIES FOR FEDERAL SEX OFFENDERS -- CAPITAL PUNISHMENT FOR MURDERS COMMITTED IN THE COURSE OF SEXUAL ASSAULTS AND CHILD MOLESTATIONS, INCREASED PENALTIES FOR RECIDIVIST SEX OFFENDERS, AND A DOUBLING OF THE PENALTY FOR DISTRIBUTING ILLEGAL DRUGS TO PREGNANT WOMEN.

S. 472 REFORMS THE FEDERAL RULES OF EVIDENCE TO MAKE ABSOLUTELY CLEAR THAT EVIDENCE OF PAST ACTS OF SEXUAL ABUSE AND CHILD MOLESTATION ARE ADMISSIBLE IN COURT.

SOME OF YOU MAY BE AWARE OF A RECENT DELAWARE SUPREME COURT DECISION OVERTURNING A DEFENDANT'S CONVICTION FOR RAPING HIS 11-YEAR OLD DAUGHTER BECAUSE EVIDENCE OF PAST MOLESTATIONS WAS IMPROPERLY ADMITTED.

(MORE)

IN MY VIEW, THIS DECISION -- A DECISION BASED ON LEGAL TECHNICALITIES -- IS AN OUTRAGE THAT SHOULD NEVER BE REPEATED IN ANY COURT, ANYWHERE.

IN A PROVISION THAT IS SURE TO CAUSE DISMAY AMONG SOME MEMBERS OF THE AMERICAN BAR ASSOCIATION, S. 472 OUTLINES SEVERAL MODEL RULES FOR PROFESSIONAL CONDUCT BY LAWYERS.

THESE RULES MAKE ABSOLUTELY CLEAR THAT LAWYERS SHOULD NEVER ENGAGE IN ANY TRIAL TACTIC DESIGNED SOLELY TO -- HARASS, EMBARRASS, OR HUMILIATE -- A SEX CRIME VICTIM.

LAWYERS HAVE A LOT OF TRICKS IN THEIR LITIGATION BAGS, BUT THE HARASSING TECHNIQUE IS ONE TRICK THAT SHOULD BE BAGGED.

THE MODEL RULES WOULD ALSO REQUIRE -- NOT JUST ALLOW -- LAWYERS TO DISCLOSE NORMALLY CONFIDENTIAL INFORMATION IF DISCLOSURE IS NECESSARY TO PREVENT THE COMMISSION OF A SEXUAL ASSAULT OR CHILD MOLESTATION.

IN MY VIEW, THIS DISCLOSURE REQUIREMENT IS NOTHING MORE THAN SIMPLE COMMON SENSE.

ON ANOTHER FRONT, THE WOMEN'S EQUAL OPPORTUNITY ACT AUTHORIZES \$25 MILLION EACH YEAR -- OVER THE NEXT THREE YEARS -- FOR RAPE PREVENTION AND EDUCATION GRANTS UNDER THE VICTIMS OF CRIME ACT OF 1984.

THESE GRANTS WILL PROVIDE SORELY-NEEDED FUNDS FOR RAPE CRISIS CENTERS, HOTLINES, AND OTHER ESSENTIAL SERVICES FOR THE VICTIMS OF SEXUAL ASSAULTS.

AND FINALLY, MR. CHAIRMAN, S. 472 ADDRESSES THE HIDDEN SIDE OF VIOLENCE AGAINST WOMEN -- DOMESTIC VIOLENCE -- THE VIOLENCE THAT OCCURS IN THE FAMILY HOME.

ONCE AGAIN, THE STATISTICS ARE FRIGHTENING -- AN ESTIMATED 3 MILLION ARE BATTERED EACH YEAR BY THEIR HUSBANDS OR BOYFRIENDS AND MORE THAN 1 MILLION WOMEN SEEK MEDICAL ASSISTANCE ANNUALLY FOR INJURIES CAUSED BY BATTERING.

TO ASSIST THOSE WHO ARE ON THE FRONTLINES AGAINST DOMESTIC VIOLENCE -- THE SHELTERS AND LOCAL COMMUNITY GROUPS THAT PROVIDE CARE TO THE VICTIMS -- S. 472 ADOPTS MANY OF THE PROVISIONS CONTAINED IN THE DOMESTIC VIOLENCE PREVENTION ACT OF 1990, WHICH WAS ORIGINALLY INTRODUCED LAST YEAR BY SENATOR DAN COATS AND INCORPORATED INTO YOUR BILL, S. 15.

THE WOMEN'S EQUAL OPPORTUNITY ACT ALSO AUTHORIZES \$60 MILLION EACH YEAR -- OVER THE NEXT THREE FISCAL YEARS -- FOR THE FAMILY VIOLENCE SERVICES AND PREVENTION ACT.

AS YOU WELL KNOW, THIS ACT HAS BEEN THE LIFE-BLOOD FOR HUNDREDS OF SHELTERS THROUGHOUT THE COUNTRY, AND ADDITIONAL FUNDING IS WELL-DESERVED. NEED FOR BIPARTISANSHIP

NOW, MR. CHAIRMAN, I UNDERSTAND THAT S. 15 AUTHORIZES MORE THAN \$500 MILLION IN FUNDING FOR VARIOUS PROGRAMS, INCLUDING SOME OF THE PROGRAMS THAT I HAVE JUST MENTIONED.

I'LL ADMIT -- RIGHT-OFF-THE BAT -- THAT THE WOMEN'S EQUAL OPPORTUNITY ACT CANNOT COMPETE WITH S. 15 WHEN IT COMES TO THE FUNDING GAME.

PERHAPS THIS IS YET ANOTHER EXAMPLE OF THE PHILOSOPHICAL DIFFERENCES DIVIDING THE TWO PARTIES.

BUT I DO WANT TO EMPHASIZE THAT THOSE WHO ENGAGE IN VIOLENT CRIME -- AND PARTICULARLY CRIME AGAINST WOMEN -- DO NOT CHECK VOTER REGISTRATIONS OR PARTY LABELS BEFORE COMMITTING THE MISDEED.

THIS IS NOT A REPUBLICAN ISSUE. AND IT'S NOT A DEMOCRATIC ISSUE.

IT'S AN ISSUE THAT -- UNFORTUNATELY -- AFFECTS MILLIONS OF AMERICAN WOMEN -- DEMOCRAT AND REPUBLICAN -- IN EVERY REGION OF THE COUNTRY AND FROM EVERY SOCIAL AND ECONOMIC CLASS.

SO, IN THE DAYS AND WEEKS AHEAD, I LOOK FORWARD TO WORKING WITH YOU, MR. CHAIRMAN, AND WITH MY REPUBLICAN COLLEAGUES TO DEVELOP A BIPARTISAN PACKAGE THAT WE CAN PASS THIS YEAR, AND ONE THAT -- ULTIMATELY -- WILL BE SIGNED BY THE PRESIDENT.

THAT'S MY COMMITMENT TO YOU TODAY.

AND THAT'S THE LEAST WE CAN DO FOR THE MILLIONS OF AMERICAN WOMEN WHO HAVE HAD TO CONFRONT THE UGLY REALITIES OF STREET CRIME AND DOMESTIC VIOLENCE.

THANK YOU, MR. CHAIRMAN AND SENATOR THURMOND, FOR YOUR TIME THIS MORNING.

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The CHAIRMAN. Thank you very much.

Our first panel will consist of one person because the other person who was to be on the panel is circling somewhere above—he was held up getting off the ground in Chicago because of weather. The Honorable Roland Burris, attorney general from the State of Illinois, will be late.

But Attorney General Campbell of Iowa is here. She is a very tough prosecutor, a prominent advocate of victims' rights, and has fought hard to improve the system for survivors of rape and domestic violence. She has a 12:30 commitment, so we're going to ask her to come up alone if she would not mind.

While she is coming up, let me just state for my other friend from Iowa, the Senator from Iowa, that there were some changes made in the law from the law as introduced last year, but they were minor in scope. We added youth domestic violence education, and we deleted provisions with regard to HIV testing because we passed that provision last year in the crime bill, so it would be redundant. And last, we revised the campus title to expand grants to \$20 million and require schools to prohibit sexual assault. Other than that, the bill is essentially what it was last year.

Welcome, Attorney General Campbell. It is good to see you and nice of you to come back. Please proceed at your leisure.

**STATEMENT OF HON. BONNIE J. CAMPBELL, ATTORNEY
GENERAL, STATE OF IOWA**

Ms. CAMPBELL. Thank you, Mr. Chairman. I am happy to be a panel of one.

Mr. Chairman, a special greeting to Senator Grassley, and distinguished committee members. I frankly was stunned by a figure I learned from your committee hearings last June—that three out of every four women will be the victims of at least one violent crime in their lifetime. Stunned, but I do understand the figure. I see it in the statistics, and I have seen it in the countless human tragedies of rape and domestic violence.

Even my home State, which has relatively low crime rates, thankfully, has been rocked by a whole string of domestic homicides, including one as recent as last Saturday night in Des Moines.

I want to share today some of the things we in Iowa are doing to fight the terrible problem of violence against women, and then I wish to add my voice in strong support of S. 15, a superb effort to galvanize the Federal Government to do its part.

First, let me address rape, and then domestic violence. Why do I even talk about rape when Iowa has the second lowest incidence of reported rape in the Nation? I do so because every single rape is a tragedy, as we hear so dramatically from rape victims.

Iowa has close to 500 reported rapes each year, but we all know that perhaps 12 out of 13 rapes never are reported. So we in Iowa have a true human catastrophe to contend with, just like everyone else. A woman is raped in this country, as Senator Thurmond said, every 6 minutes, and surely the women of Iowa are among those victims.

The consequences of rape are often devastating, as evidenced by the fact that almost a third of the victims contemplate suicide. The

need for prevention and care for victims is enormous, and we are not meeting that need today.

I support the many strong measures you are considering in S. 15—extending the rape shield law, devoting funds to rape prevention, making campuses safe from rape, and establishing the National Commission on Violent Crime against women.

I can report that many in Iowa are tackling the problem of rape head on. Our rape crisis centers are doing more emergency care, advocacy and public education than ever before. Our campuses are, too. We have seen more college forums and training sessions for new students than ever before.

But we need help from the Federal Government such as you are considering in the Violence Against Women Act. I want to especially support title III, civil rights for women, because I think it can have such a strong impact on rape cases, including acquaintance rape. My written testimony spells out why the civil rights remedy can be so important. In my remarks here, let me just say that I believe the civil rights remedy ultimately recognizes the huge gender gap when it comes to violence.

The rate of assaults against women is rising twice as fast as the rate for assaults against men. Violent attack is the No. 1 threat to the health of America's women, and 97 percent of all sexual assaults in the United States are against women.

Most of all, the civil rights remedy recognizes the truth—that rape and sexual assault truly are not sexual at all. They are hate crimes. I strongly support this revolutionary new approach, and I harbor hopes that it can mark a watershed in resisting violence against women.

Now let me turn to domestic violence. Today Iowa is more mobilized than ever before to combat this scourge. Unfortunately, one reason for all the activity is that we have suffered a string of brutal domestic violence murders in Iowa over the last year. Fortunately, much of the outrage is being channeled into strong new efforts to solve the problem.

The legislature is galvanized. It appears very likely to provide much higher funding for our domestic abuse shelters even in a time of severe budget constraints. It is likely to increase penalties, require jail time for violations of no-contact orders, establish treatment programs for batterers, and require school instruction on domestic violence, to name just a few of the legislative initiatives with much momentum.

There are many efforts at other levels, too. The media and the public are learning the grisly facts of domestic violence. Not only has Iowa had some 14 deaths in a year—a very high percentage of our homicides—we have some 6,000 reported cases of abuse and probably another 6,000 unreported cases.

We have learned that domestic violence is the No. 1 cause of injury to women, ahead of automobile accidents, muggings, and rapes combined.

I am glad to announce another initiative in Iowa. Leaders in our advertising community, incensed at the series of domestic violence murders, have banded together with my office to mount a new public education program centering on the message that battering women is a crime. Billboards are going up next week, like the one I

would like to show you if I may, stating very simply: "Battering Women is a Crime." Television and radio public service announcements will soon be running, too. The advertising will tout the State's 800 number for help in domestic abuse.

Every bit of this project is being contributed by an ad agency, teleproduction companies, outdoor sign companies, and broadcasters, at no charge at all to taxpayers.

My appeal today is rather simple. Please make stopping violence against women a very high Federal priority, just as it has become an urgent project for citizens and State government in Iowa and other States. We are doing all we can at the State level, but we do need Federal action, too.

Title II of S. 14, "Safe Homes for Women," will make an excellent contribution to prevent domestic violence and protect women.

My written testimony strongly backs S. 15's measures to punish spouse abusers who cross State lines, to make stay-away or no-contact orders enforceable between States, and to mount a national media campaign against domestic violence.

Every one of these measures is something only the Federal Government can do. Please don't let anyone tell you that the problem of violence against women is strictly a State problem because we in the States badly need some measures that only you can provide from Washington.

Now let me give a special word of appeal for you to find more funding for domestic abuse shelters. Shelters are absolutely essential. They are the primary emergency response to help women and children, and sometimes men, escape from a violent home. The problem is that there simply are not enough shelters. In Iowa, and I suspect everywhere, there are gaping holes in this crucial safety net. Part of it is geographical. Many smaller communities and rural areas are completely without shelters. But the shelter system is stretched even thinner than it looks at first blush, because some shelters are simply the homes of a volunteer, which means that the host family can be in grave danger from a violent abuser, too.

Let me assure you that the State of Iowa and the communities of Iowa are working very hard to strengthen this shelter system. We have learned how crucial it is. The State is quadrupling shelter support funding over a couple years, even though State dollars are very tight. And our local communities are working tremendously hard, with the cooperation of the business communities and generous citizens. Still, the need far outstrips the resources. S. 15 will help, but I hope you soon can go much further even than that.

I must tell you that the funds you provide are exceedingly well-spent. Last Friday, I had the privilege of opening a new shelter in Marshalltown, IA. I learned that the project has only 4 full-time staff, but it has 40 volunteers who contributed over 13,000 hours last year. And that is typical for the shelters in Iowa.

I really think that perhaps we should label this a national security expenditure, because that is exactly what it is. Then the Federal Government should increase the funding dramatically to meet the urgent security needs of women and children who are the victims of violence.

Let me conclude with just two thoughts. First, the opinions I have voiced are shared widely among the Nation's State attorneys

general. Indeed, the National Association of Attorneys General voted unanimously in December to encourage your enactment of the Violence Against Women Act.

Second, I pledge that Iowa is doing and will do every single thing we can to combat the scourge of violence against women, and I know that is also the commitment of my colleague attorneys general. We only ask that the Federal Government in turn do all it can to provide our citizens with a life safe from the plague of violence against women.

I believe S. 15, the Violence Against Women Act, will be viewed for years to come as a landmark on the road to that goal, and I urge you to enact it swiftly this year.

Thank you very much, Senator Biden, and all members of the committee, for this opportunity to join you in this very important mission.

[The prepared statements of Ms. Campbell and two Iowa coalitions follow:]

**Statement of Bonnie J. Campbell,
Attorney General of Iowa**

**In support of S. 15,
The Violence Against Women Act**

**Committee on the Judiciary
United States Senate**

April 9, 1991

- 1 -

Introduction

Why am I here talking about rape when Iowa has the second lowest incidence of reported rape in the nation, after North Dakota? Because -- as testimony from women like Amy Kaylof illustrates so dramatically -- even one rape is a tragedy.

Almost one-third of rape survivors contemplate suicide. The experience can be devastating -- including the aftermath if the case is reported and enters the criminal justice system, as Nancy Ziegenmeyer of Grinnell, Iowa, testified to this Committee last summer. Nancy decried the delays, indignities and indifference she experienced -- and hers was a rare case where the rape was reported and the assailant was apprehended and convicted.

The work of this Committee has been especially important in telling the truth about rape -- that a woman confronts a rapist in this country every four minutes, and a woman is raped every six minutes. This kind of terror and violence is intolerable.

The Committee and witnesses also have cast a searing light on the problem of acquaintance rape: that 84% of all rapes are perpetrated by men who are known to the victim. And you are helping uncover the epidemic of campus rape: that one in seven women now in college has been raped and one in four has been attacked by a rapist.

I am here to support your efforts to fight against the problem of rape, and to endorse wholeheartedly the solutions you are advancing in S. 15, the Violence Against Women Act.

The same goes for domestic violence: it's an enormous problem, and S.15 can be a critical step in solving it.

Unfortunately, in Iowa, it seemed to take several brutal murders of women this winter by their husbands or so-called "lovers" to galvanize public outrage in Iowa over the wave of domestic violence that is washing over the country.

Fortunately, much of the outrage is being channeled into creating much stronger efforts in our state to understand and tackle the problem of violence against women. This is a very high priority of many Iowans today -- of many lawmakers, local

lected officials and all kinds of volunteers and organizations.

The state legislature, for example, has placed domestic violence high on its agenda. It appears likely to provide much stronger funding of domestic abuse shelters (even in a time of fiscal austerity), increase penalties for domestic violence, require jail time for violations of no-contact orders, establish treatment programs for batterers, and require school instruction on domestic violence -- to name a few of the legislative initiatives that have momentum.

I believe public awareness of the problem also has soared in Iowa. It is sinking-in to people that we have six thousand reported cases of domestic abuse in Iowa each year, and probably another six thousand cases that are not reported. Thirteen Iowa women died in domestic situations in just over a year, a high percentage of our homicides.

People are startled by the fact that a third of all women murder victims are killed by men they knew in relationships. People have heard that domestic violence is the number one cause of injury to women, ahead of auto accidents, muggings and rapes combined. A woman is battered every 18 seconds in the U.S.

I fully believe that citizens are incensed and alarmed by such facts. At least I know they are in Iowa. Quite frankly, these have long been concerns of mine and I said as much when I sought office last fall. I am convinced that Iowans are eager to have their elected officials and Members of Congress struggle to tackle the problem of violence against women.

My appeal today is rather simple: Please make stopping violence against women a very high Federal priority, just as it has become an urgent project in Iowa and other states. We are doing all we can at the state level, but we need federal action.

The Congress can accomplish that by speedily enacting the Violence Against Women Act.

Before I offer my own thoughts on various sections of the bill, I want to note that the National Association of Attorneys General unanimously adopted a resolution at its winter meeting last December in Williamsburg encouraging Congress to enact the Violence Against Women Act. (A copy of the resolution is attached.) State attorneys general are acutely aware that federal measures and resources are needed to address this problem effectively.

funding, as well as more federal support in general. In Iowa, for example, we have twenty rape centers, but only six of them

- 4 -

are able to provide comprehensive services -- from 24-hour emergency availability to criminal justice advocacy, counseling, and education for professionals and the public. What our rape center workers accomplish on a shoe-string budget is phenomenal -- including education programs for tens of thousands of students, teachers and general audiences. More funds for their education work certainly will be money well-spent.

Comments on Title II -- Safe Homes for Women

Title II contains several measures to combat domestic violence that simply cannot be done on the state level. It complements the very strong efforts we are making in Iowa and around the country.

Title II would create federal penalties for spouse abusers who cross state lines to continue their abuse. Iowa borders on six states -- more than any other state -- and many of our largest cities are on the borders. This proposal has more than symbolic effect for us, and for many metropolitan areas across the nation. Indeed, it reflects a reality understood by domestic abuse victims but not everyone else: abusers usually are highly controlling and will doggedly pursue a woman who tries to flee the situation.

For the same reason, it makes solid sense that Title II would also require all states to enforce any "stay-away" or "no-contact" order, regardless of which state issues it. I would add that it would be especially helpful if you would provide that no-contact orders must be put on the National Crime Information Computer, so they can be enforced effectively between states.

Title II also authorizes a national media campaign against domestic violence, another activity that cannot be done universally except at the national level, of course. We in Iowa are pleased to be ready to launch our own educational media effort -- using billboards and radio and TV psa's to encourage battered women to contact a statewide hot-line for help. This campaign in Iowa is testimony to the generous contributions by our advertising community (they are donating all the creative work, production, and placement of the psa's.) But to get at the root causes of violence against women, we will need similar, strong efforts on the national level.

- 5 -

Funding for Shelters (Title II)

Let me focus on the subject of shelters and urge you to make the strongest possible commitment to providing them with more funding.

Shelters are absolutely essential. The primary emergency response to domestic abuse is to provide shelter for women and children (and men) who must flee a violent home. The primary problem is that shelters simply aren't always available. On the national level it is estimated that four of ten women seeking immediate shelter are turned away for lack of space. In Iowa, we have 27 local shelters or safe-house projects doing an outstanding job, but that necessarily means there are many, many communities without shelters. If domestic violence shelters provide a crucial safety net, there are huge holes in the net in Iowa and almost everywhere.

The gaps are especially severe in rural areas, even though abuse certainly is a problem there, too. Many victims must travel forty to sixty miles or more to reach safety. (See attached map of Iowa showing availability of domestic violence shelters. Rape crisis centers are even more scarce, by the way.)

In truth, the shelter system is stretched even thinner than it looks at first blush:

Some shelters are simply the home of a volunteer, rather than a permanent shelter, which means the host family, too, can be in danger from a violent abuser.

Many shelters can only offer refuge for a few days. That simply isn't enough time -- for a woman who literally has fled her own home -- to make critical life decisions such as jobs, housing, schooling and even marital status.

Finally, the dedicated people who staff these facilities often are grossly under-compensated for their difficult and even dangerous work.

Iowa's local shelters do an outstanding job of building local community support, but they also depend on state and federal funding. We are dramatically increasing state support in Iowa -- at least quadrupling it over just a few years, even in a time of severe budget constraints. Local support also is growing. New shelter facilities opened recently in two of our largest counties, thanks to a strong partnership of local government, business people and organizations.

Still, the need far outstrips the resources, so I must turn to you and ask the federal government to make this a priority, as

- 6 -

we have in Iowa and other states. S. 15 will increase funds, but I hope you soon can go much farther.

This ought to be a national priority. Experts believe half of the homeless women and children in the U.S. are people fleeing domestic violence!

I also want to say that funds you provide are exceedingly well-spent. Last Friday, for example, I had the privilege of cutting the ribbon to open a brand-new shelter in Central Iowa. I learned that the local project, which has only four paid staff, has over 40 volunteers who contributed over 13,000 volunteer hours last year! I know that is typical for the shelters in Iowa. Federal funds you direct to local shelters go a very long way to meeting urgent human needs in a cost-effective manner.

Perhaps we should label this a "national security" expenditure, because that is exactly what it is. Then we should increase it dramatically to meet the urgent security needs of women and children who are the victims of violence.

I would like to mention also that I believe the \$150,000 cap per entity for Family Violence Prevention and Services grants (administered by Health and Human Services) should be lifted. None of our local shelters is anywhere near the cap, but our statewide Coalition Against Domestic Violence (ICADV) is. ICADV is doing very important work on behalf of Iowa's network of domestic violence projects, and removing the cap will help sustain this work.

Title III -- Civil Rights for Women

The expansion of civil remedies for victims is another crucial element of this legislative package. During the last decade, we have seen a revolution of thought about violence against women. The findings in section 301 recognize that most violence against women is indeed "hate crime" fundamentally based on gender.

The legislation will be especially important in reaching cases of "date rape," which often go unprosecuted criminally. Acquaintance rape is certainly one of the most difficult types of sexual assault cases to prove in a criminal trial. In fact, that topic will be a primary focus for one day of our Prosecuting Attorneys Council spring training session for county attorneys in Iowa.

The advantages of empowering victims to bring civil rights suits are four-fold:

- 7 -

First, the burden of proof is easier. Only proof by a preponderance of the evidence, rather than beyond a reasonable doubt, is required.

Second, higher-income perpetrators will be reached more effectively. Often, rape cases come down to a fight about the victim's character. Those perpetrators with greater resources can orchestrate far more effective character assassinations of victims. Often, victims of high-income perpetrators give in to this type of intimidation, and effective prosecution is very difficult.

In addition, even when the victim does not cave in to pressure, jurors are reluctant to believe that high-income perpetrators could be guilty of a violent crime.

Third, attorney fees can be recovered in a civil action. Thus, all victims are put on the same level, regardless of their income.

Finally, civil rights actions can generate public interest in the civil rights violation. A case that is tried publicly and reported by the news media effectively informs other potential perpetrators of the costs that must accompany violence against women. Civil rights litigation is an important education tool in telling the public that violence against women simply cannot be tolerated.

The civil rights remedy ultimately recognizes the huge "gender gap" when it comes to violence: The rate of assault against women is rising twice as fast as the rate for assault against men, violent attack by others is the number one threat to the health of America's women, and 97% of all sexual assaults in the U.S. are against women.

Most of all, the civil rights remedy recognizes the truth that rape and sexual assault truly are not "sexual" at all -- they are a hate crime.

Title IV -- Safe Campuses for Women

On the basis of our experience in Iowa, the efforts to provide safe campuses are right on target. This problem is just coming into the open, and it is shockingly severe. I already mentioned that one in seven college women has been raped. Almost as shocking is that only one in twenty of the victims reports the rape to police -- and half tell no one! Here, indeed, is a problem that begs for open discussion and the solutions embodied in S.15.

- 8 -

Many of Iowa's colleges and universities already are taking significant steps to provide education, information, and protection, but all of this should be available to all students.

Title V -- Judicial Education on Violence Against Women

Funding for judicial education and training is also a laudable goal of this legislation. If we will be increasing the emphasis on violence against women by providing additional tools for law enforcement and prosecution, it will have a significant impact on our courts as well. Judges will be seeing these additional prosecutions, and will be working with changes in evidentiary rules and substantive law that are part of this legislative package.

In times of tight budgets, it is often tempting to reduce funds for training and education. The result is that education is accomplished piecemeal. It is far more efficient to provide education in advance of problems, so that judges have a better basis for their decision-making.

Thus, judges who can receive general training need not expend their own time or court time in learning about new legislation or general principles regarding violence against women.

Funding for training on gender bias would provide needed assistance in Iowa, which recently embarked on a two-year study on gender and racial bias in the state court system. The Equality in the Courts Task Force will make recommendations at the end of a two-year study, and federal funding for training will be a valuable addition to the on-going efforts of that task force.

Conclusion

Thank you, Sen. Biden, and all the members of the Committee for your impressive efforts to solve this grave problem of violence against women.

I assure you that we are stepping up our efforts in the states as well.

We have a long way to go, to be sure, but I certainly perceive progress. I take some encouragement when I recall that the time has long past when English law permitted wife-beating with a stick -- so long as the stick was no thicker than one's thumb. Thank goodness that "rule of thumb" has disappeared.

- 9 -

Attitudes have changed substantially even during our lifetimes, thanks especially to the crime-victim movement, but we have a very long way to go still.

I have every hope that the Violence Against Women Act will move us to yet another level of progress.

Thank you.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted

(unanimous)

Winter Meeting
December 4-7, 1990
Williamsburg, Virginia

III**RESOLUTION****IN SUPPORT OF S. 2754 AND H.R. 5468 -- VIOLENCE AGAINST WOMEN ACT OF 1990**

WHEREAS, Congressional interest has been expressed in the Violence Against Women Act of 1990 (S. 2754 and H.R. 5468); and

WHEREAS, each year violent crimes against women occur in increasing numbers:

A. Each year more than 1,000 women, about four every day, die as a result of domestic violence.

B. An estimated three to four million women are beaten each year by their husbands or partners.

C. An estimated minimum of 3.3 million children witness domestic violence each year.

D. Twenty-five percent of battered women are pregnant and 50 percent of the men who abuse their female partners also abuse their children; and

WHEREAS, the Attorneys General of this nation believe that it is necessary to provide new remedies and sanctions in regard to violent crimes against women; and,

WHEREAS, the Violence Against Women Act of 1990 contains relevant sections dealing with escalating violence as follows:

TITLE I -- SAFE STREETS FOR WOMEN

Creates new penalties for sex crimes
Targets places most dangerous for women
Provides more lights and cameras for public transit
Establishes the "National Commission on Violent Crime Against Women"

(11)

TITLE II -- SAFE HOMES FOR WOMEN

Protects women from abusive spouses
Promotes arrests of abusive spouses
Provides money for shelters and prosecution

TITLE III-- CIVIL RIGHTS FOR WOMEN

Labels sex crimes as "bias" or "hate" crimes
Extends "civil rights" protection to sex crimes; and,

WHEREAS, the National Association of Attorneys General desires to support legislation affecting violent crimes against women;

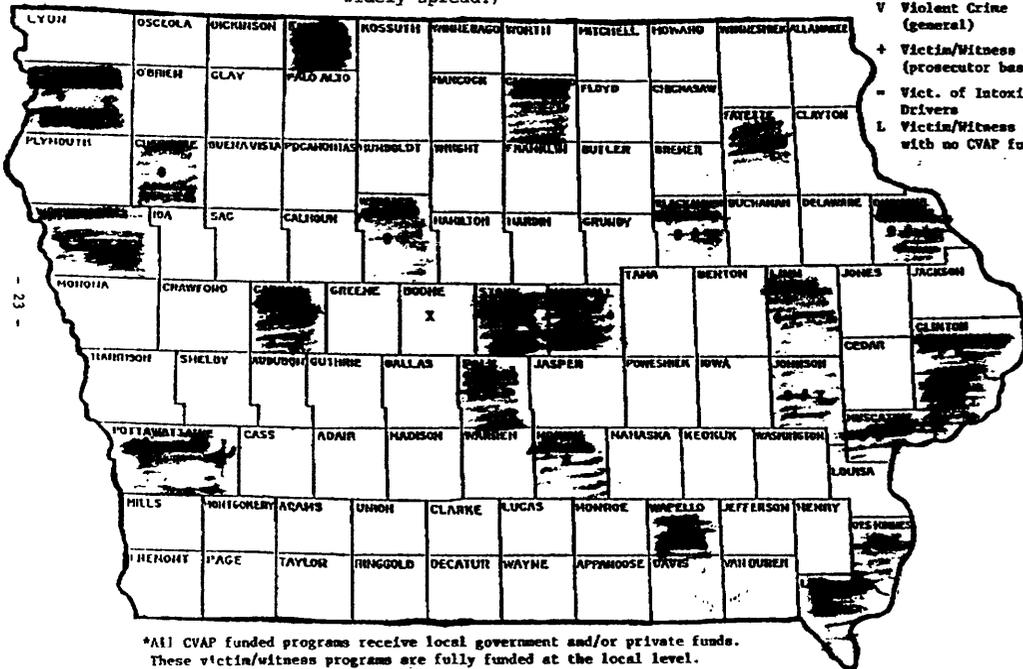
NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

- 1) encourages the Congress to adopt legislation such as S. 2754 and H.R. 5468 -- Violence Against Women Act of 1990; and,
- 2) authorizes the Executive Director and General Counsel to make these views known to the Administration, key members of Congress and other interested organizations and individuals.

"HOLES IN THE SAFETY NET" -- Gaps in the network of domestic abuse shelters in Iowa. (Rape crisis centers are even more widely spread.)

SYMBOL KEY

- Domestic Abuse
- # Rape Crisis
- X Child Abuse
- V Violent Crime (general)
- + Victim/Witness Coord. (prosecutor based)
- Vict. of Intoxicated Drivers
- L Victim/Witness program with no CVAP funding*



*All CVAP funded programs receive local government and/or private funds. These victim/witness programs are fully funded at the local level.

**Most programs will serve surrounding counties as they are able.

(P. 12)

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Department of Justice

BONNIE J. CAMPBELL
ATTORNEY GENERAL

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Memorandum via FAX

To: Victoria Hourse, Counsel, Committee on the Judiciary,
United States Senate

From: Bob Brammer, Iowa Attorney General's Office

Date: April 8, 1991

Re: Statements from the Iowa Coalition Against Domestic
Violence and the Iowa Coalition Against Sexual Assault

We respectfully request that the Committee staff attach statements from the two Iowa coalitions to testimony submitted Monday by Attorney General Bonnie J. Campbell, or otherwise make them available to Committee members and staff.

I recognize that this is likely to be impossible for the hearing April 9. We would appreciate any way you can find to make the views of these coalitions available during subsequent consideration of the Violence Against Women Act. We believe the two coalitions are doing exceedingly important work to prevent violence and help victims, and that their views will be helpful to the Committee.

Thank you very much.

IOWA COALITION AGAINST
DOMESTIC VIOLENCE
Lucas Bldg., First Floor
Des Moines, Iowa 50319

Statement of Dianne Fagner

In Support of S15 Violence Against Women Act
Senate Judiciary Committee

April 9, 1991

The Iowa Coalition Against Domestic Violence (ICADV) is a coalition of the 27 domestic violence projects in Iowa. ICADV is a member of the National Coalition Against Domestic Violence (NCADV) and appreciates the work being done on the national level to address the struggles/needs of battered women and their children.

The development of the ICADV office in 1986 has offered a stronger and more coordinated voice for battered women and victim advocates in this state. Project staff and volunteers can do the work of direct services and be confident that work on the state level issues and coordination with national efforts are taking place. They consequently also feel less isolated--it is easy to feel so in rural as well as in not so sensitive and supportive urban communities.

The Family Violence Prevention and Services Act has provided funding for technical assistance which Iowa domestic violence projects decided to use to organize the coalition office in 1986. The cap on these funds is \$150,000 which ICADV will reach in 1992. We have been able to organize monthly coalition meetings, offer many trainings on such topics as child advocacy and grant writing. We also worked with Iowa's Prosecuting Attorneys Training Council and developed the Prosecution of Domestic Violence Cases in Iowa manual. We have also worked with prosecutors, the Iowa Law Enforcement Academy and local projects to offer regional trainings to criminal justice personnel. This is only a sampling of the ways in which these funds have been used to assist/train those who respond to the needs of battered women and their children.

The most recent death from domestic violence in Iowa took place on April 6, 1991. A mother of 5 children was beaten to death by her husband in Des Moines. For several years, funding has been our number one priority. We must be able to offer safe shelter to all battered women and their children. We must be able to reach out to them in their churches, homes, jobs, doctor offices, etc. Only then will we be able to be convincing that we take the problem of domestic violence seriously.

I worked in the shelter for battered women in Des Moines for seven years prior to my four years with ICADV. I have also co-facilitated a group for men who batter for four years. I do not see domestic violence being challenged consistently nor often enough. I believe women are being killed in more torturous and brutal ways. And it is happening more frequently.

Sorting out what to do in a troubled relationship is difficult enough when there is no abuse. Yet we expect battered women to make major, life impacting decisions quickly, non-ambivalently, and purposefully. And then to follow through with her decisions quickly, non-ambivalently, and purposefully. If battered women could stop/control the violence against themselves, there would be no violence.

We must offer much support and resources. The Biden Bill offers many possibilities. These possibilities must be adequately funded. Battered women need to see these services in their communities, not 100 miles down the road. She needs to hear that this country, each state, each community supports her innate desire to be safe and free from violence.

I appreciate the opportunity to share these thoughts with you through Iowa's Attorney General Bonnie Campbell.

I look forward to hearing of your support of battered women and victim advocates.

Respectfully submitted,



Dianne Fagner, L.S.W.
Executive Director, ICADV
(515) 281-7284

IowaCASA

IOWA
COALITION
AGAINST
SEXUAL
ASSAULT

Testimony of Elizabeth Bernhill
In Support of S15 - Violence Against Women Act

Senate Judiciary Committee
April 9, 1991

The Iowa Coalition Against Sexual Assault comprises the 20 rape crisis centers in Iowa, and is an active member of the National Coalition Against Sexual Assault.

Our centers, located in only 20 of our 99 counties, had 1,152 recent* rapes reported to them in 1989, while only 459 were reported to all law enforcement agencies in Iowa. Because we worked with a total of 3,078 victims that year, we know that many survivors wait months, years, or decades to seek help. Our centers located in college communities report that the incidence of acquaintance rape and gang rape seems to be increasing, and that they believe the age of (primarily) women targeted for such attacks is decreasing.

Rapes in our small towns, or on small college campuses, have forced young women to move, or leave college, in order to escape harassment and a criminal justice system that is too often unresponsive to victims. Prosecutors have commented that young victims of gang rape decided to "take on" the assailants; police have described an acquaintance rape as a "bad date." Non-prosecution of acquaintance rape is the norm. You are now well aware that the vast majority of rapes are committed by someone known to the victim, but these victims are still the least likely to be believed, or to report; when they do report, charges are seldom filed and convictions infrequently obtained.

We would join with the many other voices urging you to help stop the incredible levels of violence against women. Nearly 20 years after women began speaking out in large numbers, about the violence directed at us is still very dangerous, even life-threatening, to simply exist as a woman in this country. We have spent millions and millions of dollars fighting for the right of others to live free of oppression; we need to direct resources to the safety of women in our own country.

* Occuring in calendar year 1989

We would strongly support the efforts to authorize \$85 million for rape prevention and education. Currently, our state receives only about \$35,000 of these funds, which have supported our coalition's prevention/education work with our rape crisis centers. Because most of our programs are so rural and isolated, it is critical that the coalition be able to continue to assist these programs, and provide assistance to new rural programs. Our ability to do so has been jeopardized as these funds have decreased. Our centers, which may be simply 1-2 staff people, 20 volunteers and a hotline, serving 4 counties, already do prevention/education work with thousands of children and young people. Because VOCA funds are limited to direct service activity, expansion of these crucial efforts is nearly impossible. We are critically concerned about the areas of our state in which there are simply no services, either crisis intervention, or prevention/education. We hope you will support increased funding for services, via VOCA, as well as the prevention/education effort.

We believe the expansion of civil rights remedies to victims is essential. The reality is that violence against women is a hate crime - that the numbers of these crimes are staggering is indicative of how tolerant of that violence our society has become. Women are the only oppressed group not currently granted civil rights protection. The Supreme Court has already determined that sex discrimination in the workplace is a civil rights violation - we need to extend protection to the streets.

We support the efforts to provide safe campuses for women; we frequently receive requests from small colleges for assistance, all too often in the aftermath of a publicized rape. Small colleges in rural areas are often without resources needed to effectively address the violence directed at women on their campuses. We currently have several innovative efforts in Iowa: a campus sexual assault coalition bringing together a number of entities at the University of Iowa in Iowa City; a men's speaker's bureau, where young men are being trained, by the Ames center, to address fraternities on the Iowa State University campus; and a partnership between a very small college - Cornell College in Mt. Vernon - and the center in Cedar Rapids, to train peer advocates and campus speakers as part of the S.A.F.E. (Students for an Assault-Free Environment) program. It is critical to develop campuses in which young peoples' entry into adulthood is not in an atmosphere of consequence-free, rampant, assaults on women.

Training for judges, by victim advocates and survivors themselves, is critical if we are to really impact the criminal justice system. Iowa has recently begun a study of gender and racial/ethnic bias in the courts, and we already

have women ready to testify about their experiences of bias. With appropriate training, judges can play a key role in influencing this situation.

Thank you for your efforts in putting together this comprehensive approach to violence against women. It is easy to feel discouraged in this struggle, and to believe that we are leaving our children a world in which women's lives are not valued, and in which women cannot really trust men. Your efforts will assist us as we work for a different future.



Elizabeth Barnhill
Executive Director
Iowa Coalition Against Sexual Assault
(515) 242-5086

The CHAIRMAN. Thank you very much for your testimony and for your efforts and for making the trip. I compliment you, by the way, on your ability to mobilize the private sector in your State to participate in doing the thing that I quite frankly think is the most important aspect of all that we are doing here: Highlighting the problem so people can no longer pretend they don't know it exists.

I think the failure to acknowledge how bad things are—or to put things in the category of “domestic” as if that is tame, as if that is a private matter—is one of the things we must deal with as a Nation. So your efforts obviously are already bearing fruit in that you've gotten the private sector to participate and to fund.

I have a couple questions. One of the criticisms of the legislation when I initially drafted it—and it continues, although it has abated somewhat—is that we are attempting to interfere in matters that are the exclusive province of the States. The Attorney General of the United States makes a case that it may be unconstitutional because the Federal Government does not have the constitutional authority to deal with this issue. I will not go into that now, although we will have two very distinguished professors who will testify on that matter at the close of this hearing.

But interestingly enough, when I spoke to your organization, the attorneys general—local, mostly elected officials all—they welcomed this so-called intrusion. And you are here today testifying that the help is needed, and that there is a responsibility on the part of the Federal Government.

I was struck by one of the examples you used in your written testimony, which you were kind enough to condense in your oral testimony. You referred in your written testimony to a case where defense counsel in your State asked a rape survivor about her sex life, her birth control practices, and other irrelevant matters. That doesn't surprise me that defense counsel would ask that, but what surprised me was that the questioning was ruled to be admissible and appropriate by the judge. The fact that the judge believed that evidence was relevant seems to me to show the intractable nature of the problem that we are facing; as long as people believe that this material is relevant, I think victims are going to be revictimized by the system.

My question—and I doubt whether you'd have specific statistics, but I'd like you to give me your professional judgment—is how often your office get complaints by sexual assault victims or victims of domestic violence about their treatment in court by defense lawyers or by judges. Is this just an aberration that you have cited in your written testimony?

Ms. CAMPBELL. I'd like to tell you that it is just an aberration, but we hear regular complaints. I might elucidate a little bit on that case. All those questions about the victim's sex life and use of birth control were asked relative to her life after the rape happened, so most of us would say they had no relevance whatsoever. That case is on appeal, and of course I don't know its outcome.

That argues for the civil remedy that you propose, and it is exactly why I am supporting it. It is one thing to find someone guilty beyond a reasonable doubt. It is another thing to find someone having wronged you by a preponderance of the evidence, which is the difference in a civil and a criminal remedy. It is also a way to

get at particularly well-to-do perpetrators who have the money to hire good counsel and to go out and do whatever they need to do to assassinate, if you will, the character of the victim. That is less likely in a civil case, where evidence is more readily admitted.

Also, you can recover attorney fees, which means that it is a level playing field then for all victims. Assuming they have a legitimate case, they can pursue it because they can be offered contingency fee arrangements.

More importantly, I think it goes to your initial comment that we really need to educate the public. One thing will get their attention. Lawsuits, civil suits for damages that are played out in a highly public fashion will help to get the word out. First of all, it is a crime to batter, it is a crime to rape. But you also may pay another price, a very real price—notoriety and maybe even money. So I think it is a terribly, terribly important remedy, and I applaud you for the creativity in coming up with it.

The CHAIRMAN. Well, I can claim creativity in this only in the sense that we are the first to formally propose it. It has been debated as you know, among people who have had an interest in this area and concern about the plight of women in our society for some time now. So I do not claim any originality. It is the case of first instance with me only because we put it in legislative form—at least the first case that I am aware of. It may have occurred before, but I am unaware of it.

One last question and then I will yield to my colleague from South Carolina. I became apprised of a situation that I did not think was as widely abused as I now believe. In my home State, a small State, bordered by several other States—it doesn't take you very long to get to any one of them. We have found that protective orders issued against an abusive husband, saying that the husband could not come within literally so many hundred yards or miles of his former wife or former companion or acquaintance, were being enforced in my home State. But when the woman moved out of the State, across the State line into Pennsylvania, New Jersey, or Maryland, that order had no effect.

How much of a problem is it in your State—how often do you see women with protective orders moving into the State of Iowa having to go into court again to seek another protective order in order to accomplish the same thing she thought she had already accomplished in another State? Is that an aberration, or is it a real problem and a real concern?

Ms. CAMPBELL. It is very real. Iowa borders more States than any other State, and many of our large cities are on those borders. It is a very real problem. And, of course, it offers the perpetrator a wonderful opportunity to get around this, and follow somebody from Davenport into Rock Island, and there you have it.

And I might make this point that is so very real. It is easy to think of this as just legal mumbo-jumbo about crossing State lines. But when a woman leaves a domestic situation that is violent, she is at greater risk at that time than at any other time. If there is no way legally to keep a potentially volatile perpetrator—one you know is violent—from getting at you, then there is very little we can do to help people. Of course, that is another very big benefit to this legislation.

The CHAIRMAN. I have many more questions, but my time has expired. I yield to my colleague from Iowa, Senator Grassley.

Senator GRASSLEY. Do we have 5 minutes or 10 minutes?

The CHAIRMAN. You have as much time as you want, Senator. Senator METZENBAUM. Mr. Chairman.

The CHAIRMAN. Senator Grassley, would you be willing to yield for a second for Senator Metzenbaum to make a comment?

Senator GRASSLEY. Yes.

The CHAIRMAN. Senator Metzenbaum.

STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. Thank you, Mr. Chairman, and thank you, Senator Grassley, for yielding.

I cannot stay because of another committee hearing going on at this time.

I want to just extend a welcome to Amy Kaylor, the witness from Ohio whom you will be hearing from later, and I want to indicate to you that my not being present is not due to lack of interest but from the inability to be in two places at the same time.

Thank you very much.

The CHAIRMAN. Thank you, Senator Metzenbaum. I know of your great interest in this subject, and I appreciate your support in this effort.

The Senator from Iowa.

Senator GRASSLEY. Thank you very much.

General Campbell, recent U.S. Department of Justice statistics indicate that it is virtually open season for criminals to commit violent acts against the elderly. The elderly, especially those 75 years of age or older, are twice as likely to be victims of crime near their own homes. Almost half of the elderly who are victims of crimes are actually physically attacked, and almost 30 percent of these victims are seriously injured; and again those 75 or older who are attacked are more likely to be seriously injured and are more likely to require medical attention.

Our elderly are some of the least able in our society to defend themselves. Consequently, they make inviting targets to the criminal elements of our society.

So my first question to you is what is your opinion of having sentencing judges consider the fact that the victim was an elderly person—in other words, do you think that criminals should serve a longer sentence if they commit a violent crime against an elderly individual, or do you think sentences should depend on the crime committed?

Ms. CAMPBELL. I think I share your sentiment. I introduced a legislative package to enhance penalties in certain instances for the perpetrators of crime against the elderly in Iowa in the Iowa legislature.

I think it is appropriate because of their more vulnerable circumstances. I have to confess I am not a constitutional scholar, and I am not altogether familiar with all the issues that are raised, but I think it would be important, unless someone can convince me otherwise.

Senator GRASSLEY. Sure. The elderly, then, should have a special status as well?

Ms. CAMPBELL. Absolutely.

Senator GRASSLEY. And there wouldn't be any reason to make a distinction between women and the elderly when things like this happen?

Ms. CAMPBELL. That's right.

Senator GRASSLEY. This next question you may not be able to answer, but I'd be glad to have you supply it for the record. Do you have any statistics on violent crimes committed against elderly in Iowa?

Ms. CAMPBELL. I don't on the tip of my tongue, but I surely could get you some.

Senator GRASSLEY. If you would do that, I'd appreciate it very much. I'd like to have those statistics.

Ms. CAMPBELL. Yes.

[Information follows:]



Department of Justice

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ATTORNEY GENERAL

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May 28, 1991

Ms. Tammy Fine
United States Senate
Committee on the Judiciary
Washington, D.C.

Dear Ms. Fine:

Senator Biden asked Attorney General Bonnie Campbell to respond to one additional question in connection with her testimony regarding the Violence Against Women Act: "Do you have any statistics on violent crimes committed against elderly Iowans?"

Unfortunately, we have not kept statistics on that question in the past. Enclosed is the only statistical information we have been able to obtain, and it is limited to reported acts of domestic violence in 1989. This is the most current information we have.

Iowa has adopted a new reporting system this year, which should provide many more details about the victims of crime in Iowa. Of course, those statistics will not be available for some time, nor do we have any prior statistics to which they could be compared.

I am checking to see what types of statistics would be available through our dependent adult abuse registry, but am not confident that any statistics would be very valuable in answering your question, because it would include mere neglect and mishandling of finances. I'm sorry that we could not be of greater assistance. Please contact me if you have other questions.

Sincerely,

ROXANN M. RYAN
Deputy Attorney General

IOWA DEPARTMENT OF PUBLIC SAFETY
RESEARCH AND DEVELOPMENT BUREAU

IOWA DOMESTIC ABUSE REPORTS

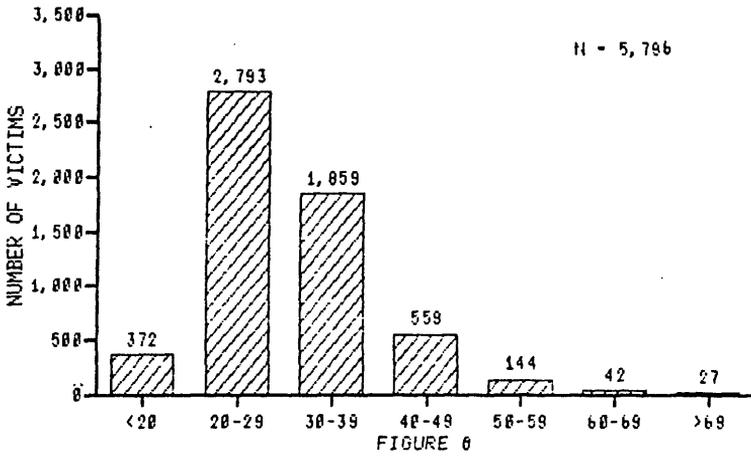
1989

The age distributions of reported victims and offenders are shown in Tables 6 and 7, respectively, for 1986 through 1989. The 1989 percentages of age distributions of both victims and offenders were similar to those for 1986, 1987, and 1988. Forty-five percent of the offenders in 1989 were between the ages of 20 and 29 and 36 percent were between the ages of 30 and 39. Offenders older than 60 years of age were reported in sixty-three cases. Persons under age 20 accounted for 222 cases, although a few cases involved teens abusing parents as well as abuse between married or cohabiting teenagers. The age distribution of victims is similar to that of offenders, with victims tending to be slightly younger. Less than half (48%) of the victims in 1989 were between the ages of 20 and 29 compared to forty-nine percent in 1988, fifty percent in 1987, and fifty-two percent in 1986. Thirty-two percent of the victims in 1989 were 30 to 39 years old (similar figures were recorded in 1986, 1987, and 1988. In 1989, sixty-nine cases were reported of abuse of persons 60 years of age or older. Figures 8 and 9 show the age distributions graphically for 1989.

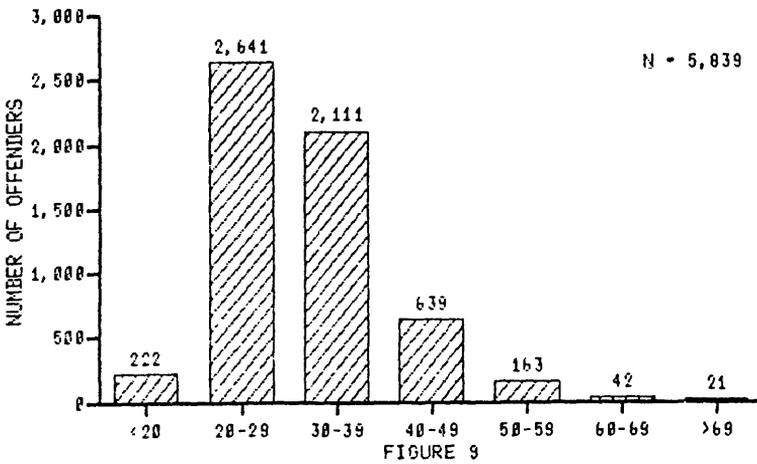
Table 6. Ages of Victims for 1986, 1987, 1988, and 1989.

Age	1986		1987		1988		1989	
	Victims #	%	Victims #	%	Victims #	%	Victims #	%
19 and under	164	(5%)	282	(7%)	331	(7%)	372	(6%)
20-29	1709	(52%)	2177	(50%)	2652	(49%)	2793	(48%)
30-39	987	(30%)	1257	(29%)	1656	(31%)	1859	(32%)
40-49	289	(9%)	405	(9%)	480	(9%)	559	(10%)
50-59	106	(3%)	158	(4%)	168	(3%)	144	(2%)
60-69	35	(1%)	45	(1%)	51	(1%)	42	(1%)
70 and over	15	(<1%)	11	(<1%)	24	(<1%)	27	(<1%)
Total	3305	(100%)	4335	(100%)	5362	(100%)	5796	(100%)

DOMESTIC ABUSE
AGES OF VICTIMS
1989



DOMESTIC ABUSE
AGES OF OFFENDERS
1989



Senator GRASSLEY. Now I'd like to ask about victim impact evidence.

We always hear a lot about the rights of criminals and criminal defendants; we hear virtually nothing about the rights of victims. Certainly, those accused of crimes should receive every protection to which they are entitled. However, I also believe that victims have rights, and I know that you care about the rights of victims of crime as well; we all do.

During one of our hearings on this bill last year, we had the opportunity to hear a very brave and forthright Iowan, Nancy Ziegenmeyer. And I know you know her story. Her personal tragedy brings home the horrors of being a sexual assault victim. As she testified, she explained that she had an opportunity to give a written statement at the trial of the individual charged with assaulting her. And when I asked her reaction to being able to make such a statement, she said, and I quote: "I felt it gave me back power over my life."

I think this is very powerful stuff.

Let me ask you about giving power back to victims. What do you think about allowing a victim to make an oral presentation in open court at the time of a convicted criminal's sentencing? Don't you think that such an opportunity would be something that we would owe the victims of crime?

Ms. CAMPBELL. I do. We have long paid great attention to the rights of the accused, which I support and I think most people do. But as has been stated here already, very often the victim isn't a part of the legal proceeding. I certainly think we have to assure a fair trial for the accused, but I don't think that precludes the opportunity for the victim to say what this has done to them, or survivors in those circumstances.

Senator GRASSLEY. OK. Now I want to turn to pornography and crime victims.

General Campbell, we have had quite a number of hearings on crime since I have been a member of this committee, and in 11 years I have heard a heck of a lot of testimony about root causes of crime. I have had the opportunity to review some of these root causes of crime myself, and as an example, one of the more interesting findings from a 1986 study conducted by two university professors on how pornography changes attitudes, found that the subjects of the study took a more lenient view of rape in proportion to the amount of pornography that they had seen.

There are many other studies that report similar findings that I won't go into; I can make reference to them if you are interested.

But let me ask you as the chief law enforcement officer of our State, do you agree that hardcore pornography promotes the victimization of women because it leads to a predisposition toward violent and abusive sexual acts?

Ms. CAMPBELL. I certainly think it is possible. I am not an expert, again. We have in Iowa a new obscenity/pornography law which we are attempting to enforce with some success. There is just no question at all that hardcore pornography debases women, and where it goes from there one can only speculate, but it can't be a positive impact.

Senator GRASSLEY. Well, I think your statement that there is no doubt that it debases women is very important and would indicate that you surely agree that pornography is not a victimless enterprise.

Ms. CAMPBELL. I do agree with that statement.

Senator GRASSLEY. What is your opinion of allowing a victim to sue the producers of pornography for harm caused if that person can prove that the pornography in question was a proximate cause of their harm?

Ms. CAMPBELL. I am a big believer in letting people get to the courthouse door. If they've got a case to make, the courthouse is the place to do it, and they have the opportunity that the Constitution guarantees to a trial by jury if necessary.

Senator GRASSLEY. My last question is in reference to a law recently passed by the Iowa House of Representatives, House File 615, which allows rape victims to protect their identity. This bill gives rape victims, at the preindictment stage, to remain anonymous until they choose to release their names. Do you support that bill and that concept?

Ms. CAMPBELL. I haven't supported it or opposed it, for this reason. In Iowa, the media seem to abide by the voluntary restraint and not reveal those names. However, I have said repeatedly that if that circumstance arose and the names of victims are regularly or even infrequently being released, then I will reassess my position.

Senator GRASSLEY. Well, it seems to me to be a very important bill because it empowers victims with the right to choose whether they want to have their names exposed; it gives victims the right to choose privacy during an extraordinarily difficult time.

I thank you very much for your participation, and thank you, Mr. Chairman.

Ms. CAMPBELL. Thank you, Senator Grassley.

The CHAIRMAN. Thank you, Senator.

Senator DeConcini.

Senator DeCONCINI. Mr. Chairman, thank you.

General Campbell, what is the sentence or the penalty in your State for someone who is convicted of aggravated rape?

Ms. CAMPBELL. Twenty-five years; in some circumstances, life, in the case of a kidnapping.

Senator DeCONCINI. How does that penalty for rape compare with penalties imposed for defendants convicted of aggravated assault, or armed robbery, or some other violent crime? Is it comparable?

Ms. CAMPBELL. Roughly comparable. There is a glitch in our State as in any State in that a 25-year sentence doesn't mean 25 years, of course.

Senator DeCONCINI. I presume it is discretionary with the judge up to 25 years.

Ms. CAMPBELL. Right, correct.

Senator DeCONCINI. And how does it balance out in comparison to other violent crimes as to the length of the sentence versus aggravated sexual assault or rape?

Ms. CAMPBELL. Well, if I might just make this point. In all of my reading, I have seen that not only in Iowa but nationwide, fewer

than 5 percent of those accused of rape actually get convicted. So you are already dealing with a small number. On average in Iowa if you get convicted of rape and are sentenced to a 25-year sentence, you will serve roughly 4 years and a few months—and it would be the same for any other 25-year sentence, with this caveat. Rapists and child abusers in a prison setting tend to be model inmates. So when they come up for review by the parole board, they tend to get out earlier.

Senator DECONCINI. They are given favorable consideration. You don't have figures, then, comparing, say, armed robbery or aggravated assault to aggravated sexual assault or aggravated rape?

Ms. CAMPBELL. I do not, but again I'll be happy to provide those.

Senator DECONCINI. Well, no, that's all right. I just wondered if you think there is a discrepancy. In other words, are courts tougher on armed robbers than rapists in your State, would you guess?

Ms. CAMPBELL. I would be guessing, and I would guess that they may be.

Senator DECONCINI. They may be. It would be interesting to know, although I don't want to ask you to burden yourself to do that. Maybe we can find that someplace else.

Last, let me ask you in your State do you or the local prosecutors have victim/witness programs under your jurisdiction and authority, and how do they work, and can you tell us a little bit about them?

Ms. CAMPBELL. Yes. We have in our larger counties in the county attorneys' offices usually victim/witness coordinators, and they are inclusive of advocates who actually go to court with the witness. In one place, we even have a separate room for the family to sit while waiting for court proceedings and so forth.

Now, the reality is that only the larger counties can afford those.

Senator DECONCINI. Is that paid for by the State or the county budget?

Ms. CAMPBELL. It is paid by the county. We have a system of county attorneys in Iowa. In my office we have a crime victim assistance program, and I have asked the legislature this year for funding for a victim/witness coordinator to work with those smaller counties that don't have the resources to provide the same services to victims in those counties.

Senator DECONCINI. In your large counties, do you know if they are able to handle the rape victims with professionalism and provide the necessary support, in your opinion?

Ms. CAMPBELL. In my opinion, yes. I really cannot understate how important I think it is because a well-prepared victim, particularly if you are talking about the crime of rape or even domestic violence, where that victim is probably going to be the only witness in some circumstances, a well-prepared, well-supported victim/witness is a very powerful tool in the hands of a prosecutor, very helpful.

Senator DECONCINI. And it goes without saying that one who is not well prepared or prepared at all is really sometimes putty in the hands of the defense.

Ms. CAMPBELL. Right, which is why that conviction statistic is as low as it is.

Senator DECONCINI. Thank you very much, General Campbell.

Ms. CAMPBELL. Thank you.

Senator DeCONCINI. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Attorney General Campbell, it has been suggested that restitution be made mandatory for certain violent offenses, specifically sex crimes. Please discuss whether you support the concept of mandatory restitution and whether it should be applied to all violent crimes.

Ms. CAMPBELL. Yes and yes; I do. I think that for some certain types of perpetrators, restitution is very critical. It is just another way of getting at them.

Senator THURMOND. In expressing your support for the civil rights provision of S. 15, you state that the most violent acts against women are hate crimes, fundamentally based upon gender. Please discuss how you differentiate between crimes which are fundamentally based on gender and those which are not. In addition, please discuss whether most crimes of violence committed against women will permit a Federal civil rights cause of action under title III of S. 15.

Ms. CAMPBELL. I would think that we could proceed in the civil actions very much as we do in other civil rights cases, specifically, racial bias; gather evidence from parties who are familiar with the circumstances; is the rapist, for example, known for being hostile to women. You go about gathering information to determine gender bias just as you do racial bias or ethnic bias in other civil rights cases.

And I'm sorry—the second part of your question?

Senator THURMOND. Discuss whether most crimes of violence committed against women would permit a Federal civil rights cause of action under title III of S. 15.

Ms. CAMPBELL. Probably most really violent sexual assault rape cases would be likely candidates, but your average mugging out here on the way to the parking lot probably would not be.

Senator THURMOND. Most of the State of Iowa is rural country. Please discuss whether current Federal programs aimed at fighting violence against women adequately assist rural America.

Ms. CAMPBELL. My feeling is that they do not. There is a perception that in those beautiful pastoral towns of Iowa that perhaps nothing goes wrong. Unfortunately that is not true. We do need more money and more services in our rural communities.

Senator THURMOND. Thank you very much. We are glad to have you with us.

Ms. CAMPBELL. Thank you, Senator.

The CHAIRMAN. Thank you very much.

The Senator from Pennsylvania, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Attorney General Campbell, I was interested in the sign that you held up for many reasons—if you would hold it up again—"Battering Women is a Crime." It is surprising to me that we need a sign to tell people that battering women is a crime.

Ms. CAMPBELL. I know what you mean.

Senator SPECTER. It is very fundamental that striking another person is an assault and battery, and that is a crime; and striking someone with a weapon and with disparate sizes of fist can be a weapon—a professional fighter's fist is a weapon—it can be an aggravated assault and battery. Assault and battery and aggravated assault and battery carry substantial sentences.

Why do you think it is necessary—and I don't for 1 minute question the necessity for telling people that battering women is a crime—but why do you think it is in our society that something so fundamental has to be articulated?

Ms. CAMPBELL. Well, I think it is cultural. In many ways, for literally centuries and perhaps many centuries, we have believed that what happens inside a family is just a family affair and that while people know that a stranger-to-stranger assault is a crime, well, we just don't want to talk about what happens behind a closed door. It is an educational function.

I have read data consistently that show that once a man has been arrested for beating his wife, the likelihood that he will do it again is greatly reduced. We theorize—not me, but other experts—that that is because the man honestly—I would give him the benefit of this doubt—didn't know that it is a crime to batter women. It is very fundamental, and it seems almost trite, but that educational function cannot be dismissed as unimportant. It is very important.

Senator SPECTER. Well, as you say that, maybe it is equally important to tell women that battering women is a crime as well as to tell men that battering women is a crime.

Ms. CAMPBELL. Yes.

Senator SPECTER. But it is so fundamental, it is a little hard to see why it has to be stated.

Of course, there are a lot of repeaters. I can remember my days as an assistant district attorney, seeing the same men come into the police districts repeatedly from assaulting their wives, but that is something so very fundamental.

I have one other question. The film, "Sleeping With the Enemy" has caused quite a stir in America. My wife asked me a question this past weekend as to what I thought of the movie even though she knew that I thought it was a very gripping movie because we saw it together several weeks ago—a lot of drama and a lot of impact. She called to my attention that it had received a very low rating from a group of experts. It got a D-plus on a combined rating sheet. Then she pointed out to me that all of the raters were men, and she asked me a question as to whether I thought that there might be some hidden resentment or reservation that men would have in evaluating a movie like "Sleeping With the Enemy" low because of some male predisposition or male prejudice against acknowledging the offense of battering a woman, striking a woman, striking a wife.

I told her that I would think not, but had a question as to why that movie was rated so low, because it seemed to me that it was so engrossing just as a movie. I would be interested in your response as to whether you think that there is some blatant or patent animus that we men—perhaps you're not the best person to ask; perhaps I ought to ask Attorney General Burris that question,

knowing more about the subject perhaps than you do—but what do you think? Is there some blatant prejudice that men have in being willing to acknowledge this problem on battering women, especially wives?

Ms. CAMPBELL. I guess I wouldn't want to be quite that harsh and say that it is a blatant prejudice. It is probably a patent prejudice, however, having been inculturated in the same culture. It has to do with power in a relationship. When I say it is cultural, I guess I really mean that. I grew up in rural America, where a man controlled everything he could see—his family, his house, his land—and whatever means he needed to exercise that control was by and large legitimate. And now we have a new day, and in this day we are saying you can't beat your wife, you can't beat your children.

I certainly don't want to be an amateur psychiatrist here, but I don't think that most men are running around seething with hate; I think it is a form of relating that we as a culture have decided is not appropriate anymore.

Senator SPECTER. Just one final comment before yielding because I know we have a lot of witnesses. I grew up in rural America, too, in a small town of 5,000 people in Kansas, and if I had to venture a judgment, I would say that there was less wife beating in Russell, KS than in big city America because there is more accountability in a small town; people tend to know more about what other people are doing in a small town—the bruises show and the screams are heard—contrasted with the lesser line of accountability in a big city. But I do think it is a major problem, one we have to address, and I very much appreciate your testimony.

Ms. CAMPBELL. Thank you.

Senator SPECTER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator, as you know because you have participated in all these hearings, we had some psychiatrists and psychologists testify, and there doesn't seem to be any clear consensus answer to your question, except that, as General Campbell just said, it has to do with power.

I want to make it clear that the purpose of this legislation is not merely to stop beating; it is to stop what you hear and what you see in public—a man who wants to go one direction, and his wife or companion wants to go in the other direction, will grab and twist an arm or squeeze. That has to be taken out of our culture. It has to do with what I think many men think is the only response they have to what they view as weapons women use in disputes. When it falls short of beating, an awful lot of people, an awful lot of good people, don't quite understand and ask why is it so wrong to grab and shake and pull. That is what this bill is intended to deal with as well, from rape to that.

And I might suggest that one of the things that I have decided not to do, and I have been talked out of doing it by my staff—quite frankly we are fearful it would complicate matters too much—I wanted to hold a whole series of hearings with leading experts in the Nation to determine why this violence occurs. And it was pointed out to me, that if we shifted the focus to that, we would take the focus off what we know is happening. We know certain things are

happening and must deal with those now. That is why we are doing what we are doing now.

And the last point I'll make—because I think it is relevant to this and not merely anecdotal—is that Senator Specter and I are good friends as well as being colleagues, and we both have spouses who are deeply involved in their own careers. I was very proud of the fact that I spent a lot of time preparing and drafting this legislation. I discussed the legislation with my wife after it had been drafted, and to my great surprise she was very lukewarm about it. I couldn't understand why. The part she was most lukewarm about was the civil rights part. Until we had discussed it she was worried that she didn't want me to inadvertently reinforce the notion that women were helpless, reinforcing that they needed special care. That's how she originally viewed it, until she spent more time focusing on it.

But it is an interesting proposition that her concern was so much broader than, it is helpful, and it would be great to have, but she also wanted to make sure that no one allowed this bill to be used to reinforce or underpin other things that debilitate women today in terms of their independence and power. "We are not children," she said. That was, to me, an interesting view. I say it for the record as a reservation that some women have expressed because I want to be as candid as I can about this legislation.

I will yield to my colleague from Illinois, who would like to introduce a friend of all of ours, the attorney general from Illinois.

Senator SIMON. Before I do that, let me just comment briefly and ask one question of attorney general Campbell, who you and I knew in another leadership position—

The CHAIRMAN. To be more precise, who you and I did everything in our power to try to get to endorse either one of us when we were running for President and she was the Iowa State chairman—just to make the record clear.

Senator SIMON. And she showed the good judgment of not endorsing either one of us. [Laughter.]

The CHAIRMAN. That's exactly right.

Senator SIMON. The cultural aspect of this is very, very real, and I think this is one of the things that is important. When our colleague Senator Specter said he didn't understand why you had to have that sign made, I think of a conversation I had with a lawyer in Illinois who told me as we were talking about domestic problems that, "You know, you have to beat up your wife every once in a while if you are going to have a good domestic situation." This was a lawyer in the State of Illinois.

Our culture needs to be modified, and this isn't going to be the answer, but it is one small part of the answer.

The second thing that members of the committee might be interested in is a bill of mine that you all voted for that calls for an exemption from the antitrust laws for the television industry to deal with the problem of violence; and a great deal of that violence on television is against women. I am pleased to say that that finally got through the House after getting through the Senate several times, thanks to your assistance, Mr. Chairman, and the President signed it. And now, both the networks and the cable industry are at least talking about the problem; whether we are going to get

anything done, I am not sure, but I think there is at least the possibility that one of the causes of violence against women is going to be dealt with a little.

If I may ask this question of you, General Campbell, one of the intriguing aspects of this bill that I am pleased to cosponsor is an education program for judges. My own impression is that a lot of judges are not hostile, but simply insensitive. We have a nominee for the Federal court we are dealing with right now who I think is basically a fine person, but has shown some real insensitivity—not in this area, but in the area of dealing with minorities.

Do you think from your observation that some kind of special training for judges is a desirable thing?

Ms. CAMPBELL. Absolutely. The Supreme Court of Iowa has just created a task force to study equality in the courts. I happen to think that Iowa's judges are very sophisticated and very talented, and yet I know they don't understand this any more than Senator Specter or you or I do. They don't understand why women won't leave. Like law enforcement officers, they are very frustrated. They sign temporary restraining orders and no-contact orders, and the next thing they are back together.

People really need to know the dynamic that occurs within a victim—the fear. Women know when they leave that they may be killed. That is a powerful, powerful thing. And then if you have the courage to leave, somebody needs to understand the turmoil within you. We don't understand it if we haven't been victims. Judges don't have any special knowledge, as you know. They have knowledge about the law, but no special personal insights, and they need to know what they are dealing with. They need to know it can be a life and death matter and often is.

I think it is really one of the best parts of the bill. It will go a very long way to educating the judiciary about the seriousness. It isn't just a family matter anymore. It is a very real life and death issue.

So I think it is perfect. In my written statement, I discuss it at some length.

Senator SIMON. I thank you very, very much.

Mr. Chairman, I am pleased to introduce to my colleagues the attorney general of Illinois. I have known him since he lived in the small town of Centralia, IL, grew up there, became an attorney—I won't go through the litany, but he was a leader in the Jaycees, moved to the Chicago area, and became involved in one of the banks there, became comptroller of the State of Illinois and now is the attorney general of Illinois.

We use the term "public servant" too loosely, I'm afraid, from time to time. Roland Burriss is a public servant in the finest sense of the tradition of that word, and we are pleased to have you here and will be happy to have your statement at this point.

**STATEMENT OF HON. ROLAND W. BURRIS, ATTORNEY GENERAL,
STATE OF ILLINOIS**

Mr. BURRIS. Thank you very much, Senator Simon, Mr. Chairman, members of the committee.

I do apologize for my late arrival. I have been on the runway in an airplane on the Chicago runway for 2½ hours because of the weather out East, they tell me. So I do apologize, and I am very pleased to be able to make a brief statement. We do have a more comprehensive statement that has been submitted for the record.

Senator SIMON. That will be entered in the record.

Mr. BURRIS. I would ask that it be entered in the record, and I'd like to then proceed with my very brief statement at this time.

I am honored to have the opportunity to appear before you this morning, for the legislation about which I am speaking is important not only to women, but to our Nation as a whole, for it is the manner in which we view violence against women that will, in large part, be the measure by which our progress toward full and equal rights for women will be judged.

Consider this, for example: Three of every four women in Illinois can expect to be the victims of at least one violent act during their lifetimes. In fact, at the present time in Illinois, more than one-third of all women who seek emergency treatment in local hospitals are there because they have been severely beaten by their husbands or by some other person with whom they live in a domestic arrangement.

But what is equally as disturbing as these terrifying statistics is the knowledge that some men—those who do the beating, those who wear a shield and are called upon to stop the beating, those who wear a robe and are called upon to judge the beating—too often do not view this kind of violent activity as a crime. We just discussed that. It is just not viewed as a crime. But it is—a brutal and dehumanizing crime—and it deserves to be called by no other name.

This is why I am responding to your invitation today. I am here to support the passage of S. 15, the Violence Against Women Act of 1991. I believe this legislation responds eloquently and appropriately to women everywhere who say: "Take violence against us seriously. Take us seriously."

S. 15, perhaps more than any other legislation before, does just that. It acknowledges that the violence women fear—and too often experience—must be viewed and reckoned with as a serious matter. The old adage, "A man's home is his castle," must not be interpreted to mean that a man is sanctioned to subject his wife or intimate partner to abusive acts.

Isn't home supposed to be the place where you feel safe and loved and protected? It should be for women, but in too many cases it isn't, and that is the abomination that S. 15 says must stop.

I would like to first comment on the sections of title I that create tougher penalties for sex crimes. I applaud this approach. I believe it sends a strong message to offenders that sexual assault is an abhorrent crime that will not be tolerated. Experience in Illinois underscores this point.

In 1984, Illinois revised its sex crimes statutes. The new laws that were adopted reflected the reality of the crime, focused on the conduct of the offender and on the severity of the penalties—the same principles inherent in S. 15. The impact of the new laws was dramatic.

Felony conviction rates almost doubled during the first 6 months after the legislation's effective date, from 36 percent to 63 percent. Similarly, aggravated criminal sex assault convictions rose from 52 percent to 92 percent, and felony prosecutions more than doubled.

Experience in Illinois also underscores the need, as does the language in S. 15, to educate law enforcement agents and court personnel concerning the motivation for and devastation of violence against women.

I was pleased to learn that my good friend, Senator Paul Simon, whose roots are deep in the soil of southern Illinois, as are mine, is the author of the section in S. 15 that deals with education programs directed at the judiciary. I suspect he has studied, as I have, hearings held in Illinois in 1987 where it became clear to many in attendance that rather than a lack of awareness of the technical aspects of the law, it was misinformation about the nature of violent crimes directed at women and erroneous personal beliefs about the victims that were major obstacles to achieving equal treatment under the law for women victims.

One Chicago judge dismissed a rape charge because the woman victim said that the attack took place at 10 a.m. The judge reasoned that no one would break into an apartment in the daylight, with the shades up, and risk being seen by neighbors. Thus he assumed that the victim was lying. I think a little education, Senator Simon, could have gone a long way in that case.

The emphasis S. 15 places on education is praiseworthy and welcome, and I would be remiss if I did not mention and support in this context those provisions in S. 15 that extend efforts to include education that will increase public awareness about violence directed at women and efforts aimed at preventing occurrences whenever possible, including efforts directed at children.

What I would like to comment on in the short time remaining is the recognition in S. 15 that many acts of violence against women are motivated by hatred of women as a class. This is important. This recognition is of utmost importance.

Too often, a man will beat a woman and punctuate his attack with hate-filled exclamations demeaning her gender. In the City of Montreal a gunman walked into a university classroom screaming that feminists had ruined his life and proceeded to kill 14 of the young women who were present.

In Berkeley, CA, a gunman walked into a campus bar, segregated the men from the women, and after abusing the women, shot and killed one of them.

As violent as these crimes are in and of themselves, the underlying hatred made them even more onerous. It represents a mind frame that is and should be abhorrent to every citizen in this Nation. Until women as a class have the same protection offered others who are the object of irrational, hate-motivated abuse and assault, we as a society should feel humiliated and ashamed.

Thus I fully support and respectfully commend the inclusion of the provisions as stated in title III of S. 15. The extension of civil rights protection to gender-motivated crimes creates a meaningful and necessary new remedy—one which I have worked for and will continue to work for in Illinois.

In closing, as an old bean-counter—I am sure some of you are aware, as Senator Simon mentioned, that I was the Illinois State comptroller for 12 years—I feel that I must urge the committee to recognize that appropriate and consistent Federal funding of all provisions of S. 15 is critical, and that Federal funding under the various provisions of this bill must be used to supplement already existing Federal, State, and local allocations, and not replace the already insufficient resources. I urge the committee to support and achieve this goal.

Thank you very much for your consideration. I wish you God-speed in your deliberations, and I trust that you will grant the women of this land the freedom that they want and so desperately need—the freedom from fear. They ask for nothing more and, gentlemen, they deserve nothing less.

Thank you very much.

[The prepared statement of Mr. Burris follows:]

TESTIMONY OF ROLAND W. BURRIS, ATTORNEY GENERAL, STATE OF ILLINOIS
SENATE JUDICIARY COMMITTEE, WASHINGTON, D.C. APRIL 9, 1991

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM DEEPLY APPRECIATIVE OF YOUR KIND INVITATION TO APPEAR BEFORE YOU THIS MORNING. YOU HAVE HONORED ME, FOR THE LEGISLATION ABOUT WHICH YOU HAVE ASKED ME TO SPEAK IS IMPORTANT NOT ONLY TO WOMEN, BUT TO THE NATION AS A WHOLE. FOR IT IS THE MANNER IN WHICH WE VIEW VIOLENCE AGAINST WOMEN THAT WILL IN LARGE PART BE THE MEASURE BY WHICH OUR PROGRESS TOWARD FULL AND EQUAL RIGHTS FOR WOMEN WILL BE JUDGED.

CONSIDER: THREE OF EVERY FOUR WOMEN IN ILLINOIS CAN EXPECT TO BE THE VICTIM OF AT LEAST ONE VIOLENT ACT DURING THEIR LIFETIMES.

IN FACT, AT THE PRESENT TIME IN ILLINOIS, MORE THAN 1/3 OF ALL THE WOMEN WHO SEEK EMERGENCY TREATMENT IN LOCAL HOSPITALS ARE THERE BECAUSE THEY HAVE BEEN SEVERELY BEATEN BY THEIR HUSBANDS OR BY SOME OTHER PERSON WITH WHOM THEY LIVE IN A DOMESTIC ARRANGEMENT.

BUT WHAT IS EQUALLY AS DISTURBING AS THESE TERRIFYING STATISTICS IS THE KNOWLEDGE THAT SOME MEN--THOSE WHO DO THE BEATING; THOSE WHO WEAR A SHIELD AND ARE CALLED UPON TO STOP THE BEATING; THOSE WHO WEAR A ROBE AND ARE CALLED UPON TO JUDGE THE BEATING--TOO OFTEN DO NOT VIEW THIS KIND OF VIOLENT ACTIVITY AS A CRIME.

BUT IT IS--A BRUTAL AND DEHUMANIZING CRIME, AND IT DESERVES TO BE CALLED ^hNO OTHER NAME.

AND THIS IS WHY I HAVE RESPONDED TO YOUR INVITATION.

I AM HERE IN SUPPORT OF THE PASSAGE OF S.15--THE VIOLENCE AGAINST WOMEN ACT OF 1991. I BELIEVE THIS LEGISLATION RESPONDS ELOQUENTLY AND APPROPRIATELY TO WOMEN EVERYWHERE WHO SAY: "TAKE VIOLENCE AGAINST US SERIOUSLY. TAKE US SERIOUSLY."

S.15, PERHAPS MORE THAN ANY LEGISLATION BEFORE, DOES JUST THAT. IT ACKNOWLEDGES THAT THE VIOLENCE WOMEN FEAR--AND TOO OFTEN EXPERIENCE--MUST BE VIEWED AND RECKONED WITH AS A SERIOUS MATTER. THE OLD ADAGE, "A MAN'S HOME IS HIS CASTLE," MUST NOT BE INTERPRETED TO MEAN THAT THE MAN IS SANCTIONED TO SUBJECT HIS WIFE OR INTIMATE PARTNER TO ABUSIVE ACTS. ISN'T HOME SUPPOSED TO BE THE PLACE WHERE YOU FEEL SAFE...AND LOVED...AND PROTECTED? IT SHOULD BE FOR WOMEN, BUT IN TOO MANY CASES IT ISN'T--AND THAT IS THE ABOMINATION THAT S.15 SAYS MUST BE STOPPED.

I WOULD LIKE TO FIRST COMMENT ON THE SECTIONS OF TITLE I THAT CREATE TOUGHER PENALTIES FOR SEX CRIMES. I APPLAUD THIS APPROACH. I BELIEVE IT SENDS A STRONG MESSAGE TO OFFENDERS THAT SEXUAL ASSAULT IS AN ABHORRENT CRIME THAT WILL NOT BE TOLERATED. EXPERIENCE IN ILLINOIS UNDERSCORES THIS POINT.

IN 1984, ILLINOIS REVISED ITS SEX CRIMES STATUTES. THE NEW LAWS THAT WERE ADOPTED REFLECTED THE REALITY OF THE CRIME, FOCUSED ON THE CONDUCT OF THE OFFENDER AND ON THE SEVERITY OF THE PENALTIES--THE SAME PRINCIPALS INHERENT IN S.15. THE IMPACT OF THE NEW LAWS WAS DRAMATIC.

FELONY CONVICTION RATES ALMOST DOUBLED DURING THE FIRST SIX MONTHS AFTER THE LEGISLATION'S EFFECTIVE DATE, FROM 36 PERCENT TO 63 PERCENT. SIMILARLY, AGGRAVATED CRIMINAL SEX ASSAULT CONVICTIONS ROSE FROM 52 PERCENT TO 92 PERCENT, AND FELONY PROSECUTIONS MORE THAN DOUBLED.

EXPERIENCE IN ILLINOIS ALSO UNDERSCORES THE NEED, AS DOES THE LANGUAGE IN S.15, TO EDUCATE LAW ENFORCEMENT AGENTS AND COURT PERSONNEL CONCERNING THE MOTIVATIONS FOR, AND DEVASTATION OF, VIOLENCE AGAINST WOMEN. I WAS PLEASED TO LEARN THAT MY GOOD FRIEND, SENATOR SIMON, WHOSE ROOTS ARE DEEP IN THE SOIL OF SOUTHERN ILLINOIS, AS ARE MINE, IS THE AUTHOR OF THE SECTION IN S.15 THAT DEALS WITH EDUCATION PROGRAMS DIRECTED AT THE JUDICIARY. I SUSPECT HE HAS STUDIED, AS I HAVE, HEARINGS HELD IN ILLINOIS IN 1987, WHERE IT BECAME CLEAR TO MANY IN ATTENDANCE THAT RATHER THAN A LACK OF AWARENESS OF THE TECHNICAL ASPECTS OF THE LAW, IT WAS MISINFORMATION ABOUT THE NATURE OF VICLENT CRIMES DIRECTED AT WOMEN AND ERRONEOUS PERSONAL BELIEFS ABOUT THE VICTIMS THAT WERE THE MAJOR OBSTACLES TO ACHIEVING EQUAL TREATMENT UNDER THE LAW FOR

WOMEN VICTIMS.

ONE CHICAGO JUDGE DISMISSED A RAPE CHARGE BECAUSE THE WOMAN VICTIM SAID THAT THE ATTACK TOOK

PLACE AT 10 A.M. THE JUDGE REASONED THAT NO ONE WOULD BREAK INTO AN APARTMENT IN THE DAYLIGHT WITH THE SHADES UP AND RISK BEING SEEN BY NEIGHBORS. THUS, HE ASSUMED THE VICTIM WAS LYING.

I THINK A LITTLE EDUCATION COULD HAVE GONE A LONG WAY IN THAT CASE.

THE EMPHASES S.15 PLACES ON EDUCATION IS PRAISEWORTHY AND WELCOME. AND I WOULD BE REMISS IF I DID NOT MENTION AND SUPPORT IN THIS CONTEXT THOSE PROVISIONS IN S.15 THAT EXTEND EFFORTS TO INCLUDE EDUCATION THAT WILL INCREASE PUBLIC AWARENESS ABOUT VIOLENCE DIRECTED AT WOMEN, AND EFFORTS AIMED AT PREVENTING OCCURRENCES WHEREVER POSSIBLE--INCLUDING EFFORTS DIRECTED AT CHILDREN.

THE TIME ALLOTTED TO ME FOR THESE REMARKS IS DRAWING TO A CLOSE, AND UNFORTUNATELY I WILL NOT BE ABLE TO ADDRESS ALL THE PROVISIONS OF THE BILL THAT ARE OF SPECIAL INTEREST TO ME. HOWEVER, I AM SUBMITTING AN EXPANDED VERSION OF THESE REMARKS FOR THAT PURPOSE AND FOR THE RECORD.

WHAT I WOULD LIKE TO COMMENT ON IN THE SHORT TIME REMAINING

IS THE RECOGNITION IN S.15 THAT MANY ACTS OF VIOLENCE AGAINST WOMEN ARE MOTIVATED BY HATRED OF WOMEN AS A CLASS

THIS RECOGNITION IS OF UTMOST IMPORTANCE.

TOO OFTEN A MAN WILL BEAT A WOMAN AND PUNCTUATE HIS ATTACK WITH HATE-FILLED EXCLAMATIONS DEMEANING HER GENDER. IN THE CITY OF MONTREAL, A GUNMAN WALKED INTO A UNIVERSITY CLASSROOM SCREAMING THAT FEMINISTS HAD RUINED HIS LIFE--AND PROCEEDED TO KILL FOURTEEN OF THE YOUNG WOMEN WHO WERE PRESENT.

IN BERKELEY, CALIFORNIA, A GUNMAN WALKED INTO A CAMPUS BAR, SEGREGATED THE MEN FROM THE WOMEN AND, AFTER ABUSING THE WOMEN, SHOT AND KILLED ONE OF THEM.

AS VIOLENT AS THESE CRIMES ARE, IN AND OF THEMSELVES, THE UNDERLYING HATRED MAKES THEM EVEN MORE ONEROUS. IT REPRESENTS A MIND-FRAME THAT IS, AND SHOULD BE, ABHORRENT TO EVERY CITIZEN OF THIS NATION.

UNTIL WOMEN, AS A CLASS, HAVE THE SAME PROTECTION OFFERED OTHERS WHO ARE THE OBJECT OF IRRATIONAL, HATE-MOTIVATED ABUSE AND ASSAULT, WE AS A SOCIETY SHOULD FEEL HUMILIATED AND ASHAMED.

THUS, I FULLY SUPPORT AND RESPECTFULLY COMMEND THE INCLUSION OF THE PROVISIONS AS STATED IN TITLE III OF S.15. THE EXTENSION

OF CIVIL RIGHTS PROTECTION TO GENDER-MOTIVATED CRIMES CREATES A MEANINGFUL AND NECESSARY NEW REMEDY--ONE WHICH I HAVE WORKED FOR AND WILL CONTINUE TO WORK FOR IN ILLINOIS.

IN CLOSING, AS AN OLD BEAN-COUNTER--I AM SURE SOME OF YOU KNOW THAT I WAS ILLINOIS' STATE COMPTROLLER FOR TWELVE YEARS--I FEEL THAT I MUST URGE THE COMMITTEE TO RECOGNIZE THAT APPROPRIATE AND CONSISTENT FEDERAL FUNDING OF ALL PROVISIONS OF S.15 IS CRITICAL, AND THAT FEDERAL FUNDING UNDER THE VARIOUS PROVISIONS OF THIS BILL MUST BE USED TO SUPPLEMENT ALREADY EXISTING FEDERAL, STATE AND LOCAL ALLOCATIONS, AND NOT REPLACE THE ALREADY INSUFFICIENT RESOURCES. I URGE THE COMMITTEE TO SUPPORT AND ACHIEVE THIS GOAL.

THANK YOU FOR YOUR CONSIDERATION. I WISH YOU GOD-SPEED IN YOUR DELIBERATIONS; I TRUST THAT YOU WILL GRANT THE WOMEN OF THIS LAND THE FREEDOM THEY WANT AND SO DESPERATELY NEED: THE FREEDOM FROM FEAR. THEY ASK FOR NOTHING MORE; THEY DESERVE NOTHING LESS.

AGAIN, THANK YOU.

EXTENDED VERSION OF TESTIMONY BY ROLAND W. BURRIS BEFORE
THE SENATE JUDICIARY COMMITTEE, APRIL 9, 1991

I wish to add my voice in support of the passage of S.15, the Violence Against Women Act of 1991. The importance of this landmark legislation cannot be undervalued, and the intent - to recognize violence against women as the serious crime it is - deserves all of our attention.

During my career I have visited almost every part of Illinois, and during these visits I have met with many women's organizations--organizations representing a cross-section of Illinois women. I have listened carefully to what the women of Illinois tell me --especially on the issue of violence against women. Invariably, what they say takes the form of a plea: "Take this issue seriously. Take US seriously." Senator, women in Illinois and throughout the country are rightfully urging us to realize that the violence they fear, and too often experience, must be viewed and responded to as a devastating crime.

I have spoken out repeatedly against the violence that women suffer. As candidate for Illinois Attorney General I pledged that I would do all in my power to ensure the safety of the women of my state--through new laws where needed, and through the strict application of existing laws. Now, as Attorney General, I am pleased to honor that pledge, in part, by committing my support to

S.15.

I would like to first comment on the sections of Title I that address criminal statutes directly impacting on crimes against women.

The provisions of S.15, creating new federal penalties and doubling existing federal penalties for sex crimes, send a strong message to sex offenders that rape is an abhorrent crime that will not be tolerated. I applaud these provisions. The increased severity of penalties also aims to correct insensitive attitudes displayed by some law enforcement officials that currently exacerbate the pain and anguish suffered by sexual assault victims, and often act to discourage women from reporting these crimes. I believe this is an appropriate approach, and I strongly favor it.

Experience in Illinois underscores the effectiveness of creating new penalties and strengthening existing ones. In 1984, the state's sex crime statutes underwent their first major revision since Illinois became a state. The new Act was designed to reflect the reality of the crime, focus on the conduct of the offender and increase the number of convictions--the same principals inherent in S.15's provisions. The impact of the 1984 Act was dramatic. According to an article that appeared in the Chicago Tribune the following year, felony conviction rates almost doubled during the first six months after the effective date, from 36 percent to 63

percent. Similarly, aggravated criminal sex assault convictions rose from 52 percent to 92 percent. Felony prosecutions more than doubled. Overall, prosecutions increased by 16 percent.

Experience in Illinois also underscores the need, as does the language in S.15, to educate law enforcement agents and court personnel concerning the motivations for, and devastation of, violence against women. Examples of this were eloquently and graphically shared in hearings held throughout Illinois in 1987. Representatives from the Chicago Sexual Assault Services Network, the Illinois Coalition Against Sexual Assault and individual sexual assault programs asserted that continued training of criminal justice personnel - law enforcement officers, states attorneys and judges - is essential for complete and consistent implementation of laws protecting women from violent acts. Rather than a lack of awareness of the technical aspects of the law, testifiers contended that misinformation about the nature of violent crimes directed at women and erroneous personal beliefs about the victims were major obstacles to achieving equal treatment under the law for women victims.

Examples cited at Illinois' hearings emphasized the importance of establishing and funding educational efforts directed at the full range of law enforcement agents and court personnel. The testimony indicated that sometimes the personal beliefs of law enforcement agents colored and downgraded the extent and damage

inflicted by violent crimes against women. The testimony included statistics, studies and personal experiences which, among other things, indicated that: 1) line officers sometimes misapply the law in such a manner that crimes with fact patterns consistent with the charge of criminal sexual abuse or aggravated criminal sexual abuse are incorrectly classified as batteries; 2) state's attorneys' sometimes reject sexual assault cases in which the woman victim was drunk, used drugs, homeless, mentally disabled, or acquainted with the attacker; and 3) judges sometimes dismiss cases involving rapists for reasons which touch more upon their attitudes rather than understanding of the nature of the crime. One Chicago judge dismissed an accused rapist because the woman victim alleged that the attack took place at 10 a.m.--the judge reasoning that no one would break into an apartment in the daylight with the shades up and risk being seen by the neighbors. Thus, he assumed the victim was lying.

S.15's provision for stiffer penalties for offenders, new legal protection for women--including a national recognition of states' orders of protection--and the potential to receive restitution for losses incurred, will also encourage women to report and assist in the complete prosecution of offenders. I fully support these inclusions.

I also support the broad-based, integrated approach of S.15. I believe it is the proper approach. It will assist in creating

a safer environment for women by helping in the establishment of special "violence against women" police units and in promoting the use of prosecutors specially trained in dealing with crimes against women; it will help in developing a judicial system knowledgeable and sensitive to the multifaceted dynamics of crimes directed at women, and will provide impetus to programs that will physically improve areas that are known to be highly dangerous to women.

It is particularly gratifying, and of utmost importance, that S.15 recognizes that many of the acts of violence against women are motivated by hatred of women as a class. Last year I appeared before the members of the City Council of Chicago urging the passage of hate crimes legislation. At that time I specifically endorsed the inclusion of "gender" as a protected category. I am pleased to report that "gender" was included when the legislation was passed.

The inclusion of "gender" as a "protected" category in S.15 is of particular importance to me. Too often a man will beat a woman and punctuate his attack with hate-filled exclamations demeaning her gender. In the city of Montreal, a gunman walked into a university classroom screaming that feminists had ruined his life and proceeded to kill fourteen of the young women who were present. In Berkeley, California, a gunman walked into a campus bar, segregated the women from the men and, after abusing the women, shot and killed one of them. Violent as these crimes are,

in and of themselves, the underlying hatred makes them even more onerous. They represent a mind-frame that is, and should be, abhorrent to every citizen of this nation. Until women, as a class, have the same protection offered others who are the object of irrational hate-motivated abuse and assault, we as a society should be humiliated and ashamed. Thus, I fully support, and respectfully commend, the inclusion of the provisions as stated in Title III of S.15. The extension of civil rights protection to gender-motivated crimes creates a meaningful and necessary new remedy for women, and for law enforcement officials as well. This protection can be utilized when a particularly grievous crime is directed at a woman just because she is a woman.

While the forgoing has focused primarily on legal remedies and the need to educate the legal community, I would like to specifically address another immensely important component of this bill, found in Title II, Subtitle E: Youth Education about Domestic Violence. With full recognition of the need to interrupt and decrease abusive behavior experienced or observed by Junior High and High School students, and to offer assistance to those who are the victims of abusive relationship, it is also appropriate and necessary to prevent patterns of abusive behavior before they take hold.

To illustrate my interest and concern, I want to share with you an enlightening experience that I recently had during my

campaign for Attorney General. I had the pleasure of meeting and talking with the director of a Chicago women's shelter who, recognizing the need to educate children about domestic abuse, had instituted programs within the local school system. Her experience strongly indicates that in order to effectively change abusive behavior patterns, educational efforts need to start when children are about three years old. As an example: at first the educational programs initiated by her center were directed at students about 16 years old. The program found that many of these teenagers were already involved in abusive relationships. Looking to intervene before abusive patterns of behavior had developed, her agency implemented school programs directed at nine-year-olds. Again, they found that the girls were already aware of domestic violence, and that the boys and girls exhibited violent behavior towards each other. They then began a program in Head Start schools [children age 3 on average]. Dealing with children at this age, the program was able to make headway in teaching boys and girls a proper approach to human relationships.

This is an example of prevention in its finest form, and I believe that focusing on prevention should be a key in ultimately eradicating violence and abuse. Frankly it is less costly in the long term, ultimately more effective, and certainly more humane than trying to ameliorate this type of crime once it has happened.

I applaud the emphasis throughout this bill on education,

including those measures that provide educational efforts directed at increasing public awareness about violence directed at women, and those that are aimed at preventing occurrences wherever possible. And I enthusiastically favor S.15's call for the study of legal remedies at the state level to assure that the full weight of the law will fall on those who commit violent acts against women.

Now, if I may, I would like to share with you a concern voiced by many women's groups and law enforcement personnel in Illinois, relating to mandatory arrest provisions in domestic abuse cases.

Women in Illinois have regularly voiced their preference that law enforcement officers not be mandated to make an arrest in response to domestic violence calls but, rather, receive training in appropriate response mechanisms, with the authority to arrest when probable cause exists. Many Illinois women fear that mandatory arrest could exacerbate a situation which might be better handled by the threat of future arrest if, and when, the abuse occurs again. Many minority women are particularly concerned about this issue. They have told me that mandatory arrest, in some circumstances, could result in a loss of income that could injure the woman and/or family more severely and for a longer period of time.

Also, Illinois' women's groups and law enforcement officials

are genuinely and rightfully concerned about an already-clogged court system being even further bogged down with the large number of cases that would be added to the court's docket if arrests were mandated. The experience of Milwaukee, Wisconsin when, for two years, a mandatory arrest policy was in effect, underscores the problems. Milwaukee ended this policy when it was determined that it resulted in seriously overloading the court system--without increasing the percentage of guilty verdicts.

Nevertheless, S.15's call for the "study" of different forms of intervention in domestic violence cases is important, and I support this position. Since taking office in January, I have been in receipt of information from the National Institute of Justice referring to a controlled study of three approaches in responding to domestic violence calls conducted by the Police Foundation of Minneapolis. The documentation is impressive, and clearly indicates that further consideration must be given to this issue.

In closing, I feel that I must urge the Committee to recognize that appropriate and consistent federal funding of all provisions of S.15 is critical. Therefore, I am certain that you will agree with me that federal funding under the various provisions of this bill must be used to supplement already existing federal, state and local allocations, and not replace the already insufficient resource allocated to law enforcement efforts. I urge you and the Committee to support and achieve this goal.

I have not spoken to each and every point raised in S.15. But I trust I have made it abundantly clear that I firmly believe in the need for its passage. I will send a copy of this letter to every member of the Illinois congressional delegation and urge that they support this legislation. Women in Illinois--and every part of the nation--deserve the weight of law to be on their side in this most serious matter.

Thank you for your consideration. I wish you God-speed in your deliberations; passage of S.15 will go a long way in assuring that violence against women will receive the attention that it deserves.

The CHAIRMAN. Thank you very much, General Burris. It is good to see you here as attorney general of Illinois. We've known each other for a long time, and I am an admirer.

Let me begin my questioning where you left off. You said that we should make sure we follow through with resources at the Federal level—follow the mandates to the extent there are any—and you said we should not allow new funding to replace the meager efforts now going on nationwide.

Let me ask you this. One of the things I found when I drafted legislation on the drug issue was that a number of States including my own became somewhat imaginative. They have a governors' council that decides how to deal with Federal funding that comes into the State for drug efforts. I found that they were using the Federal drug moneys to hire public defenders—we need them—prosecutors—we need them—and judges—we need them. And they were deleting—deleting—the State dollars that they were using for those very functions.

Would you support, in this legislation, an absolute prohibition for any reduction by States in any effort they had underway for education programs, shelters, and so forth?

Mr. BURRIS. Senator, I certainly would support that because there are just not enough dollars now. And I know what you are saying. States are strapped during these tough times, and if they could see some Federal dollars coming in, what will happen is they will shift the expenditures from the State payroll over to that Federal grant. Certainly that has occurred, and I won't tell you it won't happen in the future. I will say to you that we will do everything we can to avoid that, and if you put that restriction in the bill, then of course, that would prevent it.

The CHAIRMAN. I understand you are on a very tight schedule, and your schedule has been—

Mr. BURRIS. It just got wrecked, Senator, so whatever you have for me, I will try to respond.

The CHAIRMAN. I am told you're supposed to be back in Springfield. You just left Springfield, I suspect, and I'm sorry you had some difficulty.

Mr. BURRIS. We have the attorney general from South Carolina coming in; my grand jury bill is coming up in the morning before the Springfield legislature. We are trying to get grand jury authority to go after their drugs—and Senator Simon, if you've got some friends back home, call them and tell them we need to pass that bill out of the judiciary committee.

The CHAIRMAN. Well, with that, I'll yield to the Senator from back home.

Senator SIMON. First of all, I just want to commend Roland Burris for his leadership and for coming here today. It is very interesting you used a phrase that I think is part of this when you said "A man's home is his castle." It is in and of itself kind of an indication that you can do almost anything in that home. And while originally in that phrase, the term "man" meant human being generically, I'm not sure that it hasn't had some connotations that have not been good.

One thing struck me in your testimony—and correct me if I'm wrong—one-third of the woman who are admitted to hospitals in Illinois are admitted—

Mr. BURRIS. As the result of a beating by their husband or their live-in companion.

Senator SIMON. That certainly indicates that we have a job to do, all of us, at this level, at the State level, and everywhere.

Mr. BURRIS. Senator, I think every family can think back to some time or another when there has been violence against women that they have personally experienced or been aware of. I know I can, because I have a sister, and I remember when she first got married what happened to her. And in those days, the mentality was that the man does rule, and that if the woman gets out of line, you just whack her upside the head. That mentality, we must remove from our society. It is no longer tolerated, it is no longer permissible, and this legislation will certainly move in that direction, and I support it 100 percent.

Senator SIMON. And I thank you. Thank you for your testimony and your leadership.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, and I would say to the Senator from Illinois, that unfortunately when they said, "a man's home is his castle," that's exactly what it meant. It meant "man"; it didn't mean "woman." It didn't have anything to do with woman. It specifically meant man. There were days when a woman was viewed as a chattel. Centuries ago, under English jurisprudential law, a woman was a piece of personal property. I mean, you were able to take your cattle with you and your wife with you under certain circumstances. That is part of what is changing, I hope, or at least that is my intention here—to change the vestiges of those attitudes. There are an awful lot of women living in their own "castles" by themselves, raising their own children, on their own, so that "castle" is not much of a castle anymore, but it is two ways.

The Senator from South Carolina.

Senator THURMOND. Thank you very much, Mr. Chairman.

Attorney General Burris, as the State of Illinois' attorney general, you are extremely familiar with the problem of violence against women, I am sure. From your experience, what steps do you believe Congress can take to assist your State in its ability to respond to crimes of violence against women?

Mr. BURRIS. Senator, we run a program out of the attorney general's office called the criminal victims' assistance program, violent crimes assistance program. In that total program, a part of it goes after the violence and sexual assault against women and violence against women. We have organizations that we fund through a fee that is added on to the court fees. We have spent, for example, since this bill was enacted in 1985, over \$11 million in this area. There are just not enough funds available to do all the work that is needed in an urban and rural State like Illinois. There is a need for the assistance; we could certainly use the assistance. I think we have one of the best programs going in the Nation in Illinois today where we work with some 49 different groups on criminal sexual assault against women and some 20 different groups for other lesser crimes against women. So we fund these groups today with

grants that we receive from our courts. We could certainly use additional dollars in that regard, and this bill, S. 15, provides money in that area, and it is essential that we get those dollars.

Senator THURMOND. As you know, Illinois is one of a majority of States with capital punishment statutes. In fact, I understand there are 133 convicted killers on Illinois' death row—is that about right?

Mr. BURRIS. That's about right, sir.

Senator THURMOND. In your opinion, when an individual commits a brutal rape or other sex crime and subsequently murders his victim, is it your opinion that a jury should be able to consider the imposition of the death penalty?

Mr. BURRIS. Well, Senator Thurmond, we have to apply the death penalty based on the criteria in our statute. It is spelled out where you get the aggravating circumstances that would cause a death penalty to occur. If in the minds of the jury, the homicide did occur, and then there were aggravating circumstances, then the jury has the decision as to whether or not the death penalty will apply.

Senator THURMOND. Well, if a man rapes a woman and then kills her, that is pretty brutal, isn't it?

Mr. BURRIS. Well, certainly, that is certainly a heinous crime—

Senator THURMOND. And shouldn't a jury have the option to consider that as to whether to apply capital punishment?

Mr. BURRIS. Senator, it is based on the testimony, it is based on the trial, and it is based on the circumstances whether or not that jury believes—

Senator THURMOND. But does your law allow that? Suppose a man rapes a woman and then kills her—under the law of Illinois, could the jury find him guilty and sentence him to capital punishment?

Mr. BURRIS. If the aggravating circumstances are there, the answer is that is correct; they could.

Senator THURMOND. Well, wouldn't you consider that aggravating circumstances?

Mr. BURRIS. I can't make that decision. That is in the eyes of the jury.

Senator THURMOND. That's all, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much.

General again, thank you for your Herculean effort in getting here. We truly do appreciate it. We know how busy you are. Thank you very, very much.

Mr. BURRIS. Thank you very much.

The CHAIRMAN. I might add, while you are packing up, that 50 percent of all homeless women and children on the street are there because of violence in the home. That is why they are homeless; that is why they are out in the street. And as you point out, 30 percent nationwide—30 percent of all the women who show up in an emergency room—are there because of domestic violence. Thirty percent in this country.

Mr. BURRIS. That's correct.

The CHAIRMAN. And I might add that I think—well, I should stop saying what I think. This is a hearing, not to hear what I think.

Thank you very, very much. I appreciate it.

Mr. BURRIS. Mr. Chairman, Senator Simon, and members of the committee, thank you very much.

The CHAIRMAN. I apologize to the witnesses and my colleagues for my enthusiasm relating to this issue. I get a little wrapped up in it, and I apologize.

Mr. BURRIS. Well, I am withholding my enthusiasm, too, Senator, so I am glad to see it.

The CHAIRMAN. Let me now call our next panel. We have two very distinguished constitutional scholars. Prof. Burt Neuborne is one of the Nation's most prominent civil rights lawyers and a constitutional law expert. He has written definitive works on equal rights under the law and constitutional law. He is presently a professor of law at New York University School of Law and is not unknown to this committee. We welcome you, Professor, and thanks for making the trip down.

Prof. Cass Sunstein is also a leading constitutional law scholar. He teaches now at the University of Chicago School of Law. He is a prominent author in the field of constitutional law and has done extensive work studying gender bias and equal protection. I had the pleasure of being at your law school, Professor Sunstein, and was able to spend three or four hours lecturing and then being lectured to by a group of students who I found to be extremely informative. I was very impressed; I hope they were equally impressed, although I doubt it.

It is a pleasure to have you both here, and before you begin I want to set the stage a little bit for this. The Justice Department says that one of their reasons for being reluctant to support this legislation, particularly title III, relates to whether or not the Congress has the constitutional authority to enact such a prohibition and other aspects of the law, but particularly that one. That is why we are so delighted to have people of your acknowledged competence and reputation here to speak to that and any other subject you wish to speak to.

So why don't we begin with you, Professor Neuborne, and then you, Professor Sunstein, and then we'll have questions.

Excuse me just a moment, Professor Neuborne. Staff has called to my attention that I have skipped a panel. I want to make it clear that we are not going to skip the panel. The panel that I was supposed to take next is Amy Kaylor and Gill Freeman, both of whom we are anxiously waiting to hear from. I just went out of order because I picked up the sheet out of order, so I apologize to both of you.

Professor Neuborne, please.

STATEMENTS OF A PANEL CONSISTING OF PROFESSOR BURT NEUBORNE, NEW YORK UNIVERSITY SCHOOL OF LAW, NEW YORK, NY; AND PROFESSOR CASS R. SUNSTEIN, UNIVERSITY OF CHICAGO SCHOOL OF LAW, CHICAGO, IL

Mr. NEUBORNE. Thank you, Senator Biden.

I have a written statement which I will offer for the record.

The CHAIRMAN. It will be accepted as if read.

Mr. NEUBORNE. Thank you.

I am delighted to be able to discuss with you today title III of S. 15, which creates a civil rights cause of action for victims of gender-motivated violence. I don't think any of us can have any illusions that the passage of title III will end gender-motivated violence, but I think it will have at least four very important positive impacts in the area, and then I will go on to discuss what I believe to be Congress' power to pass it.

The first thing that title III will do is it will reinforce, as you mentioned this morning, Senator, the effectiveness of the existing orders of protection structure that exist inside our family courts. The only real protection that a woman facing violence in the context of a domestic dispute has now is an order of protection issued by a local family court.

In an interstate context, those orders of protection are not even formally valid when the spouse crosses State lines—and you mentioned that this morning. Unfortunately, in an intrastate context, even when the orders of protection are formally binding, the resource scarcity and lack of seriousness with which many localities take these orders often render them totally illusory protections, and the newspapers and records are absolutely full of women who were murdered or brutally assaulted after receiving an order of protection from a local court. And many women I think quite accurately view those orders of protection as absolutely worthless—indeed, worse than worthless—invitations to an angered spouse to come after them and impose violence upon them.

One of the things that title III will do is to provide a woman in that situation with an effective Federal remedy against that type of violence—and if it did nothing else, it would be an enormous improvement on the existing status quo.

The second thing it would do is something that General Campbell mentioned this morning and I think very importantly. It would empower the victims of gender-motivated violence to fight back in an effective way; to take a portion of their fate into their own hands by the imposition of a civil cause of action against the individual who perpetrated the violence and by placing into court in a context in which there would be a level playing field the facts and circumstances surrounding the event, to allow a victim both to get compensation and to get the tremendously important psychic benefit of taking back an aspect of their lives.

Third and perhaps most important, as you stressed this morning, Senator, placing this violence in the context of the civil rights laws recognizes it for what it is—a hate crime—and it is an enormously important educational vehicle. By shifting our attention from sex-related and gender-related violence, by making us understand that it is not just another symptom of violence in America—it is a special kind of violence; it is a violence motivated by hatred and disdain for the victim—and by labelling it for what it is, a civil rights violation, it goes a long way toward reinforcing and educating us about how we have to deal with it so we can finally end it.

And finally, by recognizing the relationship between gender-motivated violence and the ability of women in this country to live truly equal lives—not just formally equal, not just to get the formal protection of the laws—but a realistically equal opportunity

to enjoy the benefits of a civilized society, title III is an enormous step forward.

I have spent much of my career as an official with the American Civil Liberties Union, and now as a member of the New York City Human Rights Commission, attempting to enforce the laws underlying equality and liberty in this country, and in an ironic way I have often described myself as a law enforcement official—I just enforce different kinds of laws than the laws that law enforcement officials usually enforce.

This would be, in my perspective as an equality law enforcement official, one of the most important steps toward arming the victims of sustained violence against women based on gender. One of the most important tools that could be put into their hands is a self-help tool. It is a civil self-help cause of action that doesn't require the cooperation of the Government, that doesn't cost any resources except for the very important resource, of course, of court time. But it does not require an enormous law enforcement apparatus. It does not require a self-sustaining bureaucracy. It places into the hands of the victims a serious tool to fight back, and it seems to me that on that basis we ought to enthusiastically support it.

Just three examples of the corrosive effect that violence against women, hate-generated violence against women, has in the United States. In 1964, Congress took an enormous step forward by recognizing that gender bias in the workplace was a drain on our productive capacity; that we could never compete in the 21st century if half of our work force was forced to labor under the corrosive effects of gender discrimination. They outlawed it, and it was a wonderful step forward. And yet the benefits of title VII are not fully available to women in this country for three fundamental reasons.

Many women are afraid to enter the labor force, or once they do enter the labor force are forced to leave the labor force because they are subjected daily to the risks and reality of gender-motivated violence—gender-motivated violence while they commute to work, gender-motivated violence while they are at work, gender-motivated violence while they are on their way home from work—and the dislocating effect on entering the work force is enormous.

Even those women who do enter the work force tend to choose their jobs with one eye looking over their shoulder about their safety. They can't work late like men can work; they can't work overtime; they can't take jobs in localities that are considered to be dangerous. Their employment opportunities have a ceiling placed upon them that you don't read in title VII. If you look in title VII, it looks as though everybody operates on the same level playing field, but if you look at the reality of life in America today, women can compete for far fewer jobs than men can precisely because they have a reasonable fear that they will be the subject of violent assault in certain contexts, and they can't fight back the way things are structured today.

The public accommodation statutes—we invested so much effort, so much of our moral structure in this country was invested in making public accommodations open to everybody. And local public accommodation statutes now routinely protect women against exclusion from places of public accommodation. But as you mentioned

this morning, what good is it to have a law that promises you that you can go to the movies, or a law that promises you that you can join some sort of club downtown, if you don't dare go out after dark? If you can't take advantage of those laws, are what meaning are those laws to the lives of millions of American women?

And finally, the 14th amendment guarantees women the same right to go out into the parks and the streets and the other public spaces of this Nation that every other group of people have, but they can't exercise that right. I fancy myself something of a runner, and I work out a good deal in Prospect Park, which is the park near my house in Brooklyn. But if I run after 5 p.m. at night, I don't see any women running in the park. I see men working out at night in the park, but I don't see women. And you know what—they are right. I wouldn't run in a park after dark if I were a woman. And having to live with that kind of pervasive secondary fear is a kind of static in your life, is a reality of life for millions of American women that this bill does something about.

Now, of course, as Senator Thurmond mentioned this morning and as a number of people have said, it is the principal responsibility of State and local government to provide for the security of the person, and this bill does nothing about altering that principal responsibility. What this bill does do, though, is continue in the tradition of congressional reinforcement of the responsibilities of State and local government whenever it becomes apparent that a vulnerable segment of the society is being subjected to violence from both State and private quarters which make it impossible for that segment of society to find true equality. That is the common denominator that underlies all of our civil rights statutes, and specifically the five civil rights statutes aimed at violence: 42 U.S.C. 1983; 42 U.S.C. 1985(3); title XVIII 241, title XVIII 242, and title XVIII 245. The common denominator that underlies all five of them is a recognition that there are vulnerable people living at the State and local level, that State and local government have been unable to protect, and that Congress steps in with a backstop, with a reinforcement, with an exercise in cooperative federalism to try to help State and local government carry out their primary responsibility. That is what the civil rights cause of action in S. 15 is. It is an exercise in cooperative federalism. It doesn't oust State and local government; it provides people with a second line of defense in contexts in which State and local government have been unable to carry out their primary responsibilities. And that is exactly the kind of cooperative federalism that operates and should operate under the civil rights laws.

Now let me very briefly suggest to you four sources of power that I think underlie title III of S. 15 and that provide Congress with, in my opinion at any rate, clear constitutional authority to enact it.

First is your authority under the Commerce Clause. The Commerce Clause, at least as it has been interpreted in the modern era, authorizes Congress to regulate any act that has a significant economic impact on interstate commerce. But the courts have been very careful to say that you measure that significant economic impact not by every isolated transaction, but by the aggregate over all of the regulated transactions. So if the regulated transaction is the type of transaction which taken in the aggregate significantly

affects interstate commerce, Congress has the power to step in and regulate.

The two most dramatic instances of relevance to the civil rights world would be the two Supreme Court decisions in 1964 upholding title II, the public accommodation statutes of the Civil Rights Act of 1964. In both of those cases, intrastate activities—in the one case, an intrastate traveler at a motel; in the other case, someone who was buying lunch at a local lunch counter—in both of those situations, purely intrastate activity was held to fall within the Commerce Clause power because it was the type of activity which, taken in the aggregate, affected interstate commerce.

Well, you have only to take a look at the way violence against women, or gender-motivated violence, distorts the operation of the Nation's labor force. The whole purpose of title VII was to give us an efficient labor force from which bias would have been extracted. Well, to the extent that gender-motivated violence prevents women from operating inside that labor force, the free market in goods and services that we hoped would come about is being frustrated by the existence of this external threat of violence. And Congress, in my opinion, has the clear power under the Commerce Clause to help remove that external source of violence, the external factors that are distorting the operation of the current labor market in this country.

The most dramatic example, I think, would be in the extortion area. There was a case in 1971, the *Perez* case, in which loan sharking was held to be within the power of Congress to regulate even though it was intrastate loan sharking and had nothing to do with going across State lines, because loan sharking as an activity caused significant distortions to interstate commerce.

Well, my suggestion is that the Commerce Clause impact of violence against women is exactly the same thing.

There are three others, and I'll just quickly touch on them, because I think the Commerce Clause makes it so clearly within your authority that the other three are simply backstops. But there are three other significant sources of authority.

The second would be section 5 of the 14th amendment. The 14th amendment bans gender discrimination, it bans bias. It bans bias, of course, in its self-executing form only by State action. But section 5 of the 14th amendment gives Congress the power to enforce the 14th amendment through appropriate legislation. And the Supreme Court has construed Congress' power as going beyond the self-executing aspects of section 1 in two ways. Congress can identify things that are substantively thought by Congress to violate section 1 even if the courts haven't yet found them to violate section 1.

For example, Congress has outlawed literacy tests in voting because Congress believes, quite correctly, that literacy tests discriminate in a dreadful way, in a way that prevents people from enjoying their 14th amendment rights. But the Supreme Court has never said that literacy tests violate section 1 and indeed has suggested that they don't. But the Supreme Court has said that if Congress wants to go beyond where the courts have gone under section 1, that is perfectly all right.

Second, in *United States v. Guest* back in 1966, six members of the Court in two separate opinions said that if Congress wanted to enforce the values of the 14th amendment against individuals, even though section 1 by its self-executing aspects applied only to States, that Congress could go beyond the State action aspect and enforce the values of the 14th amendment against private individuals. So to the extent that private individuals were preventing people from enjoying the fruits of the 14th amendment, Congress could step in and attempt to provide remedies. That is exactly what title III does.

Senator SIMON. Mr. Chairman, could I interrupt the witness just for one moment. Unfortunately, I'm going to have to leave. I appreciate your being here and Professor Sunstein from my State being here also.

Professor Sunstein suggests that title III should be amended to clarify the connection between its provisions and the sources of constitutional authority, and you outline roughly what you would like to see. If I may give an assignment to a professor here, I would like to see a specific draft that you might suggest, and I think the chairman would be interested in that, too.

I apologize for interrupting and having to leave.

Mr. NEUBORNE. Not at all, Senator. I was looking forward to seeing the same draft, so I think it would be very helpful.

I'll just say one other thing, and that is that the Privileges and Immunities Clause also provides, I think, clear authority. The closest case would be a case called *United States v. Johnson*. If women can't really take advantage of their existing rights under law because they are afraid of being beaten, Congress it seems to me has the power to help remove that threat so that they can take advantage of their equal rights to enjoy existing law. Now, they have rights under local public accommodation statutes; they have rights under title VII; they have rights under the 14th amendment. To the extent those rights are being denied because of their gender, Congress has the power to step in and help them have equal privileges and immunities of citizenship.

And finally, of course, there is the 13th amendment. As Senator Biden quite accurately pointed out, the history of women is the history of slavery, it is the history of chattel slavery in Western civilization. It is only in the last 150 years that we have emerged from the notion of treating women as chattels, treating women as slaves.

One of the carryover aspects of that is the sense that women are fair game for violence. And just as we recognize that there are badges and incidents of Afro-American slavery, I think we should recognize that there are badges and incidents of the chattel slavery that women were subjected to and that under article II of the 13th amendment, if Congress wished, it could act.

So under all four of those provisions, I think that title III is clearly constitutional.

[Prepared statement of Burt Neuborne follows.]

Statement of Burt Neuborne
in Support of the Civil
Rights Provisions of the
Violence Against Women Act
of 1991

April 9, 1991

Mr. Chairman and members of the Subcommittee:

My name is Burt Neuborne. I have been a Professor of Law at New York University since 1974. From 1982-1986, I served as National Legal Director of the American Civil Liberties Union. Since 1988, I have been a member of the New York City Commission on Human Rights, the body vested with responsibility for implementing New York City's Human Rights Law. I have spent much of my career seeking to enforce the promises of liberty and equality that are enshrined in our laws, but all too often are absent from our lives.

I am grateful for this opportunity to discuss Section 301 of the Violence Against Women Act of 1991, which establishes a federal civil cause of action for damages and injunctive relief on behalf of victims of violent gender-based assaults. The obvious intent of the provision is to provide victims with a federal remedy against gender-motivated violence that is analogous to, but less cumbersome than, the remedies against invidiously motivated violence provided by existing federal law. Eg. 18 U.S.C. §§241, 242, 245; 42 U.S.C. §§1983, 1985(3).

Section 301 differs from analogous federal statutes that have traditionally been invoked against racially motivated violent assaults in two significant ways. First, Section 301 provides relief against violent gender motivated assaults carried out by private individuals. Federal statutes like 18 U.S.C. §§241 and 242 and §§1983 and 1985(3), dating from the post-Civil War Reconstruction period, provide relief against certain private "conspiracies" and unlawful actions by government officials, but do not provide relief against individual actors. Section 301 builds on the model of 18 U.S.C. §245, enacted in 1975, to provide relief against individuals. Since the bulk of violent gender based assaults are perpetrated by individuals, the expanded reach of Section 301 is critical.

Second, unlike existing federal statutes that have been invoked against class based violence, Section 301 is not merely a means to enforce rights established by other provisions of law. The relationship between conduit remedial statutes, such as §1985(3), and the rights-generating provisions they are intended to enforce has generated enormous confusion. Section 301 avoids that confusion by itself creating a federal right to be free from gender motivated violent assault.

While I believe that Section 301 should have a criminal counterpart that would make possible a federal law enforcement response to gender-motivated violence and while I believe that existing overly technical federal protections against racially motivated violence should be similarly simplified, I fully

support the effort to provide victims of gender-motivated violence with an efficient and effective federal judicial remedy.

It is a shameful fact that millions of women in the United States cannot fully enjoy the promise of equality contained in the Equal Protection clause of the 14th Amendment and codified in Title VII of the Civil Rights Act of 1964 because they are forced to share their lives with the pervasive reality of gender-motivated violence. In the hour that we speak with you this morning, ten women will be raped and hundreds more assaulted or threatened because of their gender. Current estimates are that between one in three to one in ten women will be raped during their lives. Women have been subject to gender-based violence for so long and on such a scale in our society that we have difficulty perceiving the enormity of its impact. Worse, because gender-based violence has been a part of our society for so long, it appears to many to be an inescapable aspect of life in a complex society. It is long past time to recognize that gender-motivated violence is devastating to a woman's attempt to enjoy the equal privileges and immunities of citizenship and to deploy the full power of Congress against it.

Congress, in enacting Title VII, sought to guaranty women an equal opportunity to compete in the job market. But the reality of pervasive gender based violence forces millions of women to forego employment opportunities because of the dangers associated with working at certain hours or certain locations. When women do enter the workforce, their experience is often a nightmare of

fear, especially when they are asked to work late or to travel alone. Finally, victims of violent gender-based assault must carry their pain into the workplace, where it creates unique gender-based obstacles to maximum performance.

Similarly, the Constitution guarantees women equal access to our public sidewalks, means of transportation and parks. But the reality of pervasive gender-based violence excludes millions of American women from our parks and our streets, especially after dark. The freedom of movement and sense of physical security that any member of a civilized society should take for granted is denied to millions of women in this country solely on the basis of their gender.

It is, of course, the principal responsibility of state and local government to protect victims against gender-based violent assault. Unfortunately, a combination of resource scarcity and enduring insensitivity to the scope of the problem have rendered state and local responses to the problem of gender-motivated violence hopelessly inadequate. One has only to count the number of women murdered in the past year by subjects of outstanding orders of "protection" issued by local courts to realize the toothless quality of much state and local "protection".

In the past, when Congress has been confronted with settings in which vulnerable segments of the population have been denied the ability to enjoy equal access to the privileges and immunities of life in a civilized society, Congress has provided state and local governments with valuable reinforcement by

forbidding invidiously motivated violence directed at the vulnerable group. Given our past, racially motivated violence has been the the principal target of Congress' remedial legislation. It is now time to add victims of gender-based violence to the category of federally protected persons.

At least four sources of Congressional power exist to extend federal protection to the victims of gender-motivated violent assaults. First, the destructive impact of pervasive gender-based violence on the nation's labor market and on the performance of fifty per cent of its workforce provides Congress with ample authority to legislate under the Commerce Clause. Second, the devastating effect of gender-based violence on the ability of women to enjoy the values protected by Section 1 of the 14th Amendment provides Congress with ample authority to legislate under Section 5 of the 14th Amendment to prohibit private interference with the enjoyment of Section 1 values. Third, the destructive impact of gender-based violence on the ability of women to enjoy the privileges and immunities of national citizenship, including the right to enjoy the benefits of federal and state statutory rights, provides Congress with ample authority to outlaw gender motivated violent assaults. Finally, the physical subordination enforced by pervasive gender-based violence is as much a badge and incident of slavery within the meaning of the 13th Amendment as are despicable attempts to consign racial minorities to inferior status. Both are subject to a Congressional response.

A. Gender-Based Violent Assault and the Commerce Clause

Women constitute 50% of the nation's labor force and 36% of its business executives. As employers like Du Pont Corporation have recognized, employees who have been the victims of gender-based violent assaults suffer adverse physical and psychological effects on the job. In pure economic terms, the sheer loss of productivity attributable to violent gender-based assault is staggering, to say nothing of the victim's personal pain. Moreover, the economic loss caused by gender-based violence does not stop with the actual victims. The dislocation of the nation's labor force that is caused by fear of violent gender-based assault is enormous: women who do not enter or who leave the labor force because of fear; women whose choice of job is dictated by fear; women whose performance on the job is affected by fear.

Congress, in 1964, recognized that gender bias in the workplace is a massive drain on the nation's productive capacity. Accordingly, Congress, relying in part on its Commerce Clause power, enacted Title VII, forbidding private employers to discriminate on the basis of gender. Section 301 is equally supported by a need to eradicate the destructive effects of gender bias from our economic system.

The modern conception of Congress' power under the Commerce Clause begins in NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1

(1937), when the Supreme Court upheld Congress' power to regulate any activity exerting a "substantial economic effect" on interstate commerce. In United States v. Darby, 312 U.S. 100 (1941), United States v. Wrightwood Dairy Co., 315 U.S. 110 (1942) and Wickard v. Filburn, 317 U.S. 111 (1942), the Court made clear that "economic effect" as used in Jones & Laughlin means the aggregate economic effect of the entire class of regulated behavior, as opposed to the effect of the single transaction before the Court.

In Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964), the Supreme Court accepted Congress' finding that racial discrimination in access to public accommodations affected interstate commerce in the aggregate and upheld the application of Title II to intra-state, as well as inter-state, travellers. Similarly, in Katzenbach v. McClung, 379 U.S. 294 (1964), the Court upheld the application of Title II to a local lunch stand because the aggregate economic impact of the class of regulated transactions affected interstate commerce. In Maryland v. Wirtz, 392 U.S. 183 (1968), the Court applied the aggregate economic effects test once again to uphold the application of minimum wage standards to local governments. Finally, in Perez v. United States, 402 U.S. 146 (1971), the Court upheld the application of federal racketeering laws to intra-state loan sharking because the aggregate economic effect of loan sharking affected interstate commerce.

Since it is clear that the aggregate economic effect of

gender-based violent assault exacts a terrible toll on our economic lives, with incalculable effects on the flow of interstate commerce, Congress is empowered to legislate against the practice without a showing that each assault itself affects commerce.

B. Section 5 of the 14th Amendment
and Gender-Based Violence

Section 1 of the 14th Amendment forbids gender bias. Read v. Read, 404 U.S. 71 (1971). Section 5 of the 14th Amendment empowers Congress "to enforce, by appropriate legislation, the provisions of this Article."

Since the self-executing provisions of Section 1 of the 14th Amendment apply only against "state action", controversy has arisen over whether Congress may legislate under Section 5 against private conduct that interferes with the enjoyment of values protected against state interference by Section 1.

Despite 19th century support for the proposition that Congress' power under Section 5 is restricted to settings already reached by the self-executing provisions of Section 1, the modern Supreme Court has explicitly ruled that Congress' power under Section 5 exceeds the self-executing reach of Section 1 in two significant ways.

First, the Supreme Court has ruled that Congress may outlaw substantive practices that it deems violative of Section 1 regardless of whether the courts have reached a similar conclusion. Thus, in Katzenbach v. Morgan, 384 U.S. 641 (1966),

the Court upheld a Congressional ban on literacy tests for voting as a valid exercise of Section 5 power despite a Supreme Court decision upholding the use of literacy tests under Section 1. Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959). See also Oregon v. Mitchell, 400 U.S. 112 (1970); EROG v. Wyoming, 460 U.S. 226 (1983). In South Carolina v. Katzenbach, 383 U.S. 301 (1966), the Court took a similarly broad view of Congress' power under the enforcement clause of the 15th Amendment, upholding the Voting Rights Act of 1965 despite the absence of a judicially recognized violation of Section 1 of the 15th Amendment. Compare City of Mobile v. Bolden, 446 U.S. 55 (1980) with Thornburg v. Gingles, 478 U.S. 30 (1986).

Even more importantly in the context of Section 301, six members of the Supreme Court have explicitly approved the use of Section 5 of the 14th Amendment to enact legislation outlawing private interference with the enjoyment of equality values protected by Section 1. United States v. Guest, 383 U.S. 745 (1966). See also Griffin v. Brackenkridge, 403 U.S. 88 (1971); District of Columbia v. Carter, 409 U.S. 418 (1973).

Guest and Brackenkridge upheld federal criminal and civil statutes based on Section 5 of the 14th Amendment aimed at racially motivated violent assaults on Afro-Americans. Similar power exists to outlaw gender-motivated violent assaults that make it impossible for women to enjoy values protected against state interference by Section 1.

In United Brotherhood of Carpenters & Joiners v. Scott, 463

U.S. 825 (1983), the Court ruled that 42 U.S.C. §1985(3) does not provide a remedy for purely private conspiracies to deprive individuals of First Amendment rights because the First Amendment does not protect individuals against private action. Section 301, however, differs fundamentally from §1985(3). Unlike §1985(3), which was intended to operate solely as a conduit for substantive rights created elsewhere, Great American Savings & Loan Ass'n. v. Novotny, 442 U.S. 366 (1979), §301(b) is carefully designed to itself create a federal statutory right to be free from gender-motivated assault. As the Court noted in Scott, if §1985(3) had itself created the rights in question, either pursuant to the Commerce Clause or Section 5 of the 14th Amendment, instead of operating as a mere conduit for rights created elsewhere, Congress would have been clearly empowered to act against private violence. Thus, the Scott Court was careful to reaffirm cases like Griffin v. Breckenridge recognizing a §1985(3) claim against private action in derogation of rights protected by the 13th Amendment and the privileges and immunities clause. Since Section 301(b) explicitly creates rights against private persons, it is unaffected by Scott.

C. The Privileges and Immunities
Clause and Gender-Based Violence

Congress possesses unquestioned power to provide remedies for private interference with rights protected by the privileges and immunities clause. E.g. Ex parte Yarbrough, 110 U.S. 651

(1884); Logan v. United States, 144 U.S. 263 (1892). Although the full scope of the privileges and immunities clause remains undeveloped, at a minimum, it protects the right to travel and the equal right to enjoy the benefits of federal and state statutory law.

When racially motivated violence threatened to deny victims the ability to travel freely or the equal ability to enjoy statutory rights based in state or federal law, the Supreme Court upheld Congressional sanctions - both civil and criminal - against the racially motivated violence. Similar power exists to enact Congressional sanctions against gender-motivated violence that prevents women from travelling freely and from enjoying statutory rights under both federal and state law.

In United States v. Johnson, 390 U.S. 563 (1968), for example, the Court upheld the federal criminal conviction of private persons for a violent assault aimed at depriving racial minorities of the enjoyment of equal access to places of public accommodation under Title II. In United States v. Guest, 383 U.S. 745 (1966), the Court upheld a federal criminal sanction against violent private conduct aimed at depriving racial minorities of the ability to travel freely. In Griffin v. Breckenridge, 403 U.S. 88 (1971), the Court upheld a federal civil remedy for violent private conduct aimed at depriving racial minorities of the right to travel and the right to vote under state law.

Gender-motivated violence deprives women of the ability to travel freely; the ability to enjoy the benefit of federal

statutory rights conferred by Title VII and the ability to enjoy the benefit of numerous rights conferred by state law. Since Johnson, Guest and Griffin establish clear Congressional power to protect victims from racially motivated violence aimed at interfering with the right to travel, the right to enjoy federal statutory benefits under Title II and the right to enjoy benefits based in state law, similar power exists to protect the identical rights against destruction by gender-motivated violence.

D. The 13th Amendment and Gender-Based Violence

Gender-motivated violence is a crude form of physical subordination that tracks the badges and incidents of slavery and involuntary servitude. The Supreme Court has recognized that Congress has the power under Section 2 of the 13th Amendment to identify the badges and incidents of involuntary servitude and to outlaw them. Eg. Jones v. Alfred H. Mayer, 392 U.S. 409 (1968) (racial discrimination in sale of housing); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) (racial discrimination in access to amusement park); Tillman v. Wheaton-Haven Recreation Ass'n, 410 U.S. 431 (1973) (racial discrimination in access to community swimming pool); Runyon v. McCrary, 427 U.S. 160 (1976) (racial discrimination in admission to private school); Griffin v. Breckenridge, 403 U.S. 88 (1971) (racially motivated assault a badge or incident of slavery).

Although the core of 13th Amendment protection is the liberation of Afro-American slaves from bondage, the Court has recognized that 13th Amendment based legislation protects whites as well as blacks from racial discrimination. McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273 (1976). Since the Court has recognized Congress' power to legislate on behalf of whites under Section 2 of the 13th Amendment, no principled basis exists to deny Congress a similar power on behalf of women. To the extent pervasive gender-based violence is denying women an equal status in society, it is precisely analogous to the badges and incidents of Afro-American slavery swept away by Congress and the courts in the cases following Jones v. Mayer.

Whether it is viewed as an attempt to eliminate the extraordinary economic costs of gender-based violence; an attempt to reinforce the values of equality protected by the 14th Amendment; an attempt to assure respect for the privileges and immunities of national citizenship; or an effort to apply the moral imperative of the 13th Amendment to the victims of gender-based violence, Section 301 of the Violence Against Women Act of 1991 is, in my opinion, within the power of Congress.

The CHAIRMAN. Thank you.

Before we go to you, Cass, I want to recess just for 1 minute. I have a long-distance phone call I must take, and since there is no other Senator here, we'll recess for just a moment.

[Short recess.]

The CHAIRMAN. Thank you. I apologize for the interruption.

STATEMENT OF CASS R. SUNSTEIN

Mr. SUNSTEIN. Thank you, Mr. Chairman.

I am grateful to be here to discuss the constitutional questions. I won't say anything about the issues of policy that are raised by S. 15. I'll discuss only the question of constitutional authority, especially because the Justice Department has cast doubt on the constitutionality of the civil rights provision.

The constitutional provisions here fortunately are pretty straightforward, and I'll try to keep the analysis simple and common sensical rather than technical.

The first head of congressional authority is the Commerce Clause, and the congressional power under the Commerce Clause is very broad. There are two guiding principles that emerge from the post-1980 cases. The first is Congress need only have a rational basis for its decision. So the court is very deferential to Congress here. The court doesn't revisit the legislative judgment anew; it just makes sure that it is rational.

The CHAIRMAN. You and I both know what that means, but I think it is useful for you to explain "rational basis."

Mr. SUNSTEIN. I can give you a little explanation from a comment made by the Chief Justice during an oral argument when a litigant was arguing that there was no rational basis for congressional enactment. Justice Rehnquist asked, "Are you saying, Counsel, that the Senators who voted for that bill belong in the loony bin?"

The CHAIRMAN. I'm afraid the public right answer overwhelmingly that that is true. Maybe you could give us another example. [Laughter.]

Mr. SUNSTEIN. What the rational basis test means is that if someone who is basically sound of mind could support the view in question, then the court will defer. So the rational basis test means it has to be minimally reasonable. It doesn't have to be even close to being correct. And the rational basis test is the appropriate test under the Commerce Clause.

The second principle is the so-called cumulative effect principle, which says Congress can reach a class of examples even though lots of things in that class don't themselves affect interstate commerce. So even if there are a lot of acts of sexual violence each individual aspect of which doesn't affect interstate commerce, if the class of sexual violence does affect interstate commerce then there is a cumulative effect, which is sufficient under the Commerce Clause.

Now let's take together the rational basis test with this cumulative effect principle and see how it works here. I think there are two ways in which Congress could rationally find an effect on interstate commerce. The first has to do with your comments initially, Senator Biden, when the hearing began, which is the deter-

rent effect of sexual violence on women's participation in interstate commerce. This is precisely the rationale on which the Supreme Court upheld the antidiscrimination law of 1964, and the basic idea is that women's participation in the workplace and other commercial enterprises affecting interstate business is adversely affected by sexual violence. And there is no doubt that that is a reasonable finding.

The second principle would be that there are losses to interstate commerce not by virtue of the deterrent effect but by virtue of sexual violence when it occurs. Sexual violence takes a toll on interstate commerce, and there is a lot of evidence to that effect.

So these two basic, simple ideas—there is the deterrent effect on entering interstate commerce, and there are losses to interstate commerce—amply support congressional authority here.

Now, I do suggest that S. 15 should be amended to make this clear. There is nothing in title III that refers to commerce at all, which I believe is a mistake, because the court likes to see findings both in the statute and the history. So I suggest a reference to the deterrent effect on entering into interstate commerce and the losses to interstate commerce. It wouldn't be a substantive change; it would be a very simple amendment which would tighten the link to congressional power.

The second source of congressional authority here is section 5 of the 14th amendment, and here it is important to recognize that the only really new thing in the Constitution, the only really new thing that came in the 14th amendment, were the words "equal protection of the laws".

The core meaning of "equal protection of the laws" in its historical understanding was that black people get to be protected by the law just like white people. There should be equal protection of black people just like white people. That is the only new right, fundamentally new right, in the 14th amendment. Now, Congress has the power to enforce the 14th amendment, including the equal protection principle.

At a minimum, every Supreme Court Justice seems to think Congress has the power under section 5 to provide remedies for violations of the equal protection principle. Now, in your statement, Senator Biden, and in many of the statements of the other members of the committee, there is a suggestion of discrimination and bias in our existing criminal justice system which violates the equal protection of the laws by ensuring that women aren't provided with the sorts of remedies because of biases and discrimination. Now, I think under the Supreme Court's current conception of what equal protection requires, that form of bias is impermissible, and Congress can provide remedies for it.

The basic idea is exceedingly simple. It is that the criminal justice system is not providing equal protection of the laws to women, in the classic sense, because there is discrimination against women in the form of biases. Now, that suggests that what the law is providing a remedy for is existing violations of equal protection of the laws.

I think the advantage of this approach to title III is that under this approach we need not ask the hard question raised by the Justice Department, whether Congress can reach purely private

action. The real remedy is against biases in the existing criminal justice system, which of course is State action—indeed, much more State action than the Supreme Court's analogous cases.

Also, one could say that to provide a Federal remedy against people who commit acts of gender violence responds very well to the existing bias in the existing criminal justice system.

Now, the problem with this is that it would also require a very slight amendment which would suggest that here we are not talking only or fundamentally about violations of the rights and privileges of citizens of the United States—a very complicated question—but we are talking fundamentally about discrimination in the criminal justice system, denial of equal protection of the laws, something which isn't referred to explicitly in title III and could be very simply.

So my suggestion is two minor amendments to specify the source of congressional power and the target of this bill.

All of this makes me suggest—and this is the summary—that with very minor amendments, the constitutional objections to the bill are quite weak; that we are talking here about something that is in the core of the Equal Protection Clause as it was originally understood, and that the Justice Department's concerns about federalism are misplaced because the 14th amendment is designed to create Federal power to respond to this form of inequality and because the post-World War II allocation of authority between the Federal Government and the States is perfectly in line with S. 15.

Thank you.

[The prepared statement of Mr. Sunstein follows:]

STATEMENT OF CASS R. SUNSTEIN

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BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

APRIL 9, 1991

Statement of Professor Cass R. Sunstein
University of Chicago

Mr. Chairman and Members of the Subcommittee:

I am grateful to have the opportunity to appear before you today to discuss the constitutional issues associated with S. 15, the "Violence Against Women Act of 1991." I will deal only with the questions of congressional power that are raised by S. 15. In brief, I believe that S. 15 is constitutional, but that certain amendments to Title III would be desirable to connect its provisions more closely to the relevant sources of congressional power. I will not discuss issues of policy.

I. In General

My conclusions are as follows. The key constitutional provisions grant Congress the authority to "provide for the . . . general Welfare of the United States," U.S. Const., Art. 1, section 8, cl. 1; to "regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes," Art. I, section 8, cl. 3; "to enforce, by appropriate legislation, the provisions of" the fourteenth amendment, Amendment XIV, section 5; and to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the

United States, or in any Department or Officer thereof," Article I, section 8, cl. 18.

Under these provisions, Congress unquestionably has the power to spend money, as S. 15 provides, for various federal purposes; to provide grants, as S. 15 does, to state and local governments for the purpose of reducing violence against women; to protect, against the effects of a multistate system, orders issued by courts of one state to protect women against violence; and to set out rules of evidence designed to ensure fairness in the administration of the criminal justice system. For this reason, Titles I, II, IV, and V raise no serious legal question.

If Congress has made the appropriate findings and heard the appropriate evidence, Title III -- which creates a federal cause of action for those subject to "crimes of violence motivated by the victim's gender" -- is also, in all probability, constitutional under both the commerce clause and section 5 of the fourteenth amendment. I do suggest, however, that Title III should be amended to clarify the connection between its provisions and the sources of constitutional authority.

In particular, Title III might include provisions that (a) make clear the effects of gender crimes on interstate commerce and (b) emphasize the existence of current bias or discrimination in the criminal justice system -- bias or discrimination that, Congress believes, in many cases deprives women subject to violent crime of the equal protection of the laws. The legislative history, including the committee report, should also reveal attention to these considerations. With the appropriate

findings, and with the appropriate factual record, Title III should raise no serious constitutional objection.

II. Titles I, II, IV, and V

Titles I, II, IV, and V are plainly authorized by the Constitution. I offer a brief discussion.

A. Federal expenditures for federal purposes are plainly within congressional power. Many provisions of S. 15 simply create programs and authorize expenditures for federal purposes. Subtitle D of Title I creates a National Commission on Violent Crime Against Women. Subtitle E of Title II requires the Secretary of Education to educate young people about domestic violence. Subtitle B of Title V provides for education and training programs for federal judges and court personnel.

These provisions raise no serious question. Congress has the power to make law and to "provide for the common Defence and general Welfare of the United States." The power to establish and fund commissions is of course ancillary to the power to make law. The power to provide funds to executive and judicial officials is incidental to the power to create lower courts and to create executive offices to carry out national responsibilities. See generally Buckley v. Valeo, 424 U.S. 1 (1976).

Subtitle F of Title II requires the Postmaster General to issue regulations to secure the confidentiality of the addresses of an abused person. Because Congress has the power to "establish Post Offices," Art. 1, section 8, cl. 7, there can be no doubt

that it has the authority to engage in regulatory activity of this sort. See, e.g., Hamling v. United States, 418 U.S. 87 (1974); Badders v. U.S., 240 U.S. 391 (1916); In re Rapier, 143 U.S. 110 (1892).

B. Federal grants to state and local government are authorized by the Spending Clause. Much of S. 15 consists of conditional federal grants. With respect to Title I: Subtitle B grants money to state and local governments, and to Indian tribes, to combat violent crimes against women. Subtitle C grants money to prevent crime in urban transportation and in public parks. Subtitle F grants money for education and prevention of sexual assaults. With respect to Title II: Subtitle B provides grants to encourage states and localities to treat spousal violence as a serious violation of the criminal law. Subtitle C appropriates money to fund shelters for victims of domestic violence. Subtitle D provides grants for public information campaigns, shelter assistance, and related purposes.

Title IV generally provides grants for campus rape education and prevention. It also requires reporting of the relevant activities and of the levels of criminal offenses on campus. In the relevant programs, the school must disclose to the victim of sexual assault the outcome of any investigation. Title V creates grants to develop programs to be used by states on rape, sexual assault, and domestic violence.

There is no doubt that these programs are constitutional under the spending clause ("The Congress shall have Power To . . . provide for the common Defence and general Welfare of the

United States"), taken in conjunction with the necessary and proper clause. Programs of cooperative federalism -- in which the national government grants money, but with strings attached -- are extremely well-established. See South Dakota v. Dole, 483 U.S. 203 (1987); Pennhurst State School & Hosp. v. Halderman, 451 U.S. 1 (1981); Steward Machine Co. v. Davis, 301 U.S. 548 (1937).

If Congress attached an arguably unconstitutional condition to a grant, there would of course be room for constitutional doubt. But none of these programs raises these concerns.*

C. New evidentiary rules are authorized by Article III.

Subtitle E creates new evidentiary rules in cases of violence against women. Congress unquestionably has the power to create such rules under its power to create lower federal courts, together with the necessary and proper clause. If this provision raised serious questions, the Federal Rules of Civil Procedure and the Federal Rules of Evidence would do so as well; there is ample authority to the contrary. See, e.g., Hanna v. Plumer, 380 U.S. 460, 472 (1965) ("For the constitutional provision for a federal court system [augmented by the Necessary and Proper Clause] carries with it congressional power to make rules governing the practice and pleading in those courts, which in turn includes a power to regulate matters which, though falling within the uncertain area between substance and procedure, are rationally capable of classification as either."); In Re Air

*The fact that universities must disclose the outcomes of proceedings to victims does not violate rights of assailants or of universities.

Crash Disaster Near Chicago, 701 F.2d 1189, 1193 (7th Cir. 1983);
Flaminio v. Honda Motor Co., 733 F.2d 463, 470 (7th Cir. 1984).

D. Congressional protection against interstate sexual violence falls within the commerce clause, and the full faith and credit clause justifies congressional protection of state "protective orders." Title II makes it a crime for someone to travel across state lines to injure a spouse or intimate partner. It also creates a federal penalty for the violation of a protective order in states other than those in which the order was issued, and allows restitution in such cases. Finally, it grants full faith and credit in all states to protection orders issued in any state.

All of these provisions are plainly permissible. Congress' power over interstate commerce of course allows it to regulate interstate crimes. See Perez v. United States, 402 U.S. 145 (1971). The latter two provisions of Title III are authorized by the full faith and credit clause (Article IV, section 1), together with the necessary and proper clause. These two provisions are designed to protect orders in one state against the possible threats to them that are posed by the existence of a federal system. They therefore fall well within congressional power.

III. Title III

Title III of S. 15 creates a cause of action for anyone who has been subject to "crimes of violence motivated by the victim's

gender." It allows the victim to sue for (among other things) compensatory and punitive damages. With the appropriate record and findings, this provision is in all likelihood constitutional under both the commerce clause and section five of the fourteenth amendment. It would, however, be highly desirable to amend S. 15 in certain respects, in order to make clearer the connection between Title III and Congress' enumerated powers. I outline some possibilities below.

A. The commerce clause. (1) Background. In a series of cases, the Supreme Court has held that the commerce power is exceptionally broad, allowing Congress to reach seemingly local activity. In Wickard v. Filburn, 317 U.S. 111 (1942), for example, the Court upheld the wheat quotas in the Agricultural Adjustment Act, as applied to a dairy farm that appeared to produce wheat merely for consumption on the farm itself. The Court said that the consumption of purely home-grown wheat could be regulated nationally: "It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions. This may arise because being in marketable condition such wheat overhangs the market But if we assume that it is never marketed, it supplies a need of the man who grew it. . . ." Id. at 128. Purely local activity could thus be regulated because of its "effect" on interstate commerce. Importantly, the Court said that the cumulative effect of a number of purely local activities could be sufficient to find the necessary "effect." Such a cumulative effect was all that was required.

Along similar lines is Perez v. United States, 402 U.S. 146 (1971). There the Court upheld a prohibition on loan-sharking enforced by threats of violence, as applied to acts committed wholly intrastate, and without proof of interstate movement, use of interstate facilities, or interstate effects. The Court said that loan sharking "in its national setting" is a method used by "interstate organized crime," and that so long as the broad class of activities has interstate effects, there was no need for proof "that the particular intrastate activity against which a sanction was laid had an effect on commerce." According to the Court, "where the class of activities is regulated and that class is within the reach of federal power, the courts have no power 'to excise, as trivial, individual instances' of the class" (emphasis in original; citation omitted). Id. at 154. See also United States v. Darby, 312 U.S. 100, 121 (1941) (allowing regulation "when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government.").

Finally, consider Katzenbach v. McClung, 379 U.S. 294 (1964). There the Court upheld the application of the Civil Rights Act of 1964 to Ollie's Barbecue, a family-owned restaurant in Birmingham, Alabama. The Court emphasized evidence before Congress that discrimination on the basis of race discouraged interstate travel, and therefore had consequences for interstate commerce. Congress could reasonably find that "established restaurants . . . sold less interstate goods because of the

discrimination, that interstate travel was obstructed directly by it, that business in general suffered and that many new businesses refrained from establishing there as a result." Id. at 300. The Court said that such evidence suggested that all restaurants could be regulated, even if particular restaurants had little connection to interstate commerce. If "the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end." Id. at 304-04.

Other cases reiterate this "rational basis" standard. See, e.g., Hodel v. Virginia Surface Mining Assn., 452 U.S. 264 (1981); Hodel v. Indiana, 452 U.S. 314 (1981); Katzenbach v. McClung, 379 U.S. at 303-04; Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 258, 262 (1964). In Hodel v. Indiana, the Court described the basic test in this way: "A court may invalidate legislation enacted under the Commerce Clause only if it is clear that there is no rational basis for a congressional finding that the regulated activity affects interstate commerce, or that there is no reasonable connection between the regulatory means selected and the asserted ends." 452 U.S. at 323-24.

(2) Title III and the commerce clause. These cases suggest three basic principles that bear on Title III. First, the standard of review is highly deferential; Congress need only have a "rational basis" for its decision. Second, Congress can reach activity that by itself does not affect interstate commerce, so

long as it is part of a class of activities having a cumulative effect on interstate commerce. Third, Congress can reach activity that by itself is trivial or without interstate effects.

With appropriate evidence and findings,* S. 15 should fit comfortably under the rationale of these cases. Congress could reasonably find, for example, that the existence of sex-related violence "overhangs the market," in the sense that it discourages women from working in jobs and travelling to places in which sex-related violence occurs. Such violence might well lead women to keep to the home or to stay out of certain places -- including workplaces and other institutions engaged in interstate commerce -- altogether, and thus to disrupt the interstate production of goods and services. This was precisely the rationale on which the Court relied in upholding the 1964 Civil Rights Act with respect to race (and, presumably, sex as well). Indeed, it is probably more plausible to say that sex-related violence, as a class, affects interstate commerce than it is to say that nonviolent sex-related acts of discrimination, as a class, affect interstate commerce -- and under Heart of Atlanta Motel, broad congressional power can be found under the latter rationale.

In addition, Congress might reasonably find that sex-related violence affects interstate commerce not simply by deterring women from engaging in certain interstate commercial activities, but also by producing large losses in interstate productivity

*I do not, however, take a position on whether the relevant evidence justifies the necessary findings, and my subsequent references to what Congress might "reasonably find" are based on the assumption that the record in fact justifies that conclusion.

after the violent acts have occurred. The facts before the Committee -- emphasizing enormous levels of sex-related violence, and the recent increase in that form of criminality -- could reasonably justify the conclusion that the interstate market is adversely affected. The adverse effects might include a decrease in goods and services, diminished employee productivity, increased medical costs, and decreases in both the supply of and demand for interstate products. Compare Heart of Atlanta Motel, supra. For all of these purposes, it is irrelevant that isolated acts of sex-related violence do not have such effects. The cumulative effect principle would be entirely sufficient.

I believe that under this rationale, Title III would and should be found within congressional power.* It would, however, be extremely valuable to ensure that the text of the statute and its history include the necessary findings and the evidence on which they are based. I recommend that section 301(a) be amended to include two additional subsections briefly referring to the findings described in the previous two paragraphs of this statement.

b. Section 5. (1) Background. The equal protection clause of the fourteenth amendment was the only provision of that amendment that was entirely new to the American Constitution. Its basic motivating force was to ensure that the system of criminal

*This view would not mean that Congress has the general power to enact a federal criminal code. It depends on specific congressional conclusions about the interstate effects of sex-related violence -- just as in Perez, Heart of Atlanta Motel, Darby, and many other cases.

justice would protect blacks as well as whites from criminal violence (public and private). Thus the background to the clause prominently included the concern that in the aftermath of slavery, the states were not protecting blacks against acts of violence as well as they were protecting whites. In its core meaning, the equal "protection" of the laws was designed to ensure that the criminal justice system would protect black people, no less than whites, against crimes. See generally Fairman, *Reconstruction and Reunion, 1864-1888, Part 1* (1971); Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights?*, 2 *Stan. L. Rev.* 5 (1949); Frank & Monro, *The Original Understanding of "Equal Protection of the Laws,"* 1972 *Wash. U. L.Q.* 421. Section 5 of the fourteenth amendment unquestionably gives Congress power to respond to this situation. Indeed, that was one of its core purposes.

With respect to Congress' precise power under section 5, however, the law is somewhat unsettled. In an early case, the Supreme Court suggested that under section 5, Congress could actually conclude that a practice violated the fourteenth amendment even if the Court disagreed; and having so concluded, Congress could prohibit that practice. On this "substantive" view, Congress can actually define the content of the equal protection clause. Katzenbach v. Morgan, 384 U.S. 641 (1966). In Katzenbach, the Court upheld a statute barring states from denying the right to vote to people who had at least a sixth grade education, on the theory that Congress could conclude that the denial "constituted an invidious discrimination in violation

of the Equal Protection Clause." Id. at 656. The majority of the Court has not accepted this broad, substantive view of congressional power in any subsequent case. It would therefore be unwise to attempt to rely on the substantive view to defend S. 15.

A much more modest and generally accepted view, also set out in Katzenbach, says that section 5 allows Congress to provide remedies for what are, uncontroversially, violations of the fourteenth amendment. These remedies may be quite broad and prophylactic, in the sense that in the process of reaching constitutional violations, Congress can also reach practices that do not violate the Constitution. See City of Rome v. United States, 446 U.S. 156 (1980); cf. South Carolina v. Katzenbach, 383 U.S. 301 (1966) (similar reasoning under fifteenth amendment).

In City of Rome, for example, the Court used this rationale to uphold the Voting Rights Act prohibition on racially discriminatory effects in voting systems -- even though such effects do not violate the Constitution unless accompanied by a discriminatory intent. The Court said: "Congress could rationally have concluded that, because electoral changes by jurisdictions with a demonstrable history of intentional racial discrimination in voting create the risk of purposeful discrimination, it was proper to prohibit changes that have a discriminatory impact." 446 U.S. at 177. Here, as under the commerce clause, the Court has applied highly deferential rational basis review. Moreover, it has allowed Congress to reach activities that by themselves do

not raise constitutional concerns so long as those activities are part of a class of activities within congressional authority.

(2) S. 15 and section 5. The Court has made it very clear that state laws and practices that discriminate on the basis of sex will be scrutinized closely under the equal protection clause. See, e.g., Craig v. Boren, 429 U.S. 190 (1976); Mississippi University for Women v. Hogan, 458 U.S. 718 (1982). If the criminal justice system discriminated against women, it would be violating the equal protection clause. Moreover, one form of impermissible discrimination could be a refusal to treat violence against women as seriously as other forms of violent crime, or as violence against men. See Yick Wo v. Hopkins, 118 U.S. 356 (discriminatory enforcement of the law violates the equal protection clause); McCleskey v. Kemp, 481 U.S. 279 (1987) (refusing to find discriminatory purpose in the existence of capital punishment simply because of statistical evidence, but acknowledging that if a discriminatory purpose were present, the process would violate the equal protection clause).

As McCleskey makes clear, courts are ill-equipped to remedy systemic discrimination in the criminal justice system. Indeed, the McCleskey Court expressly invited a legislative response to any such discrimination: "McCleskey's arguments are best presented to the legislative bodies." 481 U.S. at 319.

A congressional finding of an equal protection violation here could take one of two forms. Under the more controversial "substantive" reading, Congress could simply say that it has reached its own independent conclusion that existing criminal

justice systems deny the equal protection of the laws to women because they deal inadequately with sexual violence against women. Under the much less controversial "remedial" reading, Congress could say that it is seeking to remedy what would clearly be a constitutional violation under the Supreme Court's own decisions. Such a violation consists of bias or discrimination in the administration of the criminal justice system -- in the form of a refusal to deal adequately with crimes against women, in part because the victims in the relevant cases are women.

On this second view, S. 15 is quite similar to the provisions of the Voting Rights Act upheld in South Carolina v. Katzenbach and City of Rome v. United States. In both of these cases, it was irrelevant that not every instance of prohibited conduct violated the equal protection clause. In both of these cases, the Court allowed Congress to invalidate a practice that the Court would not itself strike down. In both cases, the Court relied heavily on extensive factual documentation of widespread, systemic discrimination. In both cases, the Court allowed Congress to paint with a broad brush, that is, to reach situations that might not, in their particulars, violate the Constitution, in the interest of creating a prophylactic against situations that do violate the Constitution.

This argument on behalf of S. 15 appears to fall well within the precedents, and indeed it seems clearly correct. It does suggest, however, that Title III should be rewritten to emphasize legislative findings of equal protection violations, instead of

or as well as violations of the privileges and immunities clause.* I would suggest that section 301(a)(3) be rewritten along these lines, and that at the very least, a new section (c) be added after the current section (b) to make this crystal clear.

Notably, this argument would make it altogether unnecessary to ask the complex, controversial, and unresolved question whether section 5 of the fourteenth amendment allows Congress to reach purely private action. On the argument outlined above, Congress is responding to an equal protection problem in the administration of state and local law by state and local governmental authorities. It is not responding to private acts at all -- no more than the equal protection clause itself does so by requiring states to protect blacks as well as whites from private

*In its current version, S. 15 refers to rights, privileges, and immunities. See 301(b). The purpose of this provision is not entirely clear. Insofar as it is referring to the privileges and immunities clause of article IV, section 2, it is referring to a provision that has nothing to do with sex discrimination. Insofar as it is referring to the privileges and immunities protected by the fourteenth amendment, it is referring to a relatively narrow category of rights, as held in The Slaughter-House Cases, 83 U.S. 36 (1873) (referring to expressly guaranteed national rights, to right to use navigable waters to the United States, the right of free access to seaports, and the right to come to seat of government to assert claims upon it). The relationship between section 5 of the fourteenth amendment and the privileges and immunities clause raises large and difficult questions. Insofar as it is building on 42 U.S.C. 1983 as a precedent, that statute is fundamentally different, since it creates a cause of action for (a) violations of existing federal constitutional rights and (b) violations of existing federal statutory rights. Unless Congress can point to some other source of constitutional authority to add "gender crimes" to (a) and (b) -- and I believe that it does -- section 1983 seems to be an inadequate precedent. The intended function of section 301(b) is therefore most obscure.

violence. Thus it is entirely unnecessary to decide the question unanswered by United States v. Guest, 383 U.S. 745 (1966), whether Congress may reach purely private action, or purely private acts of violence. The target of S. 15 is the administration of the system of criminal justice, as applied to sex-related violence. Indeed, S. 15 is far easier than Guest, (a) because it is aimed at state criminal justice systems and not private people at all, and (b) because to the extent that it is aimed at both of these, there is far clearer state involvement here than in Guest itself, which found sufficient involvement solely on the basis of false private reports of criminal activity that had been given to police officers.

IV. Conclusion

Almost all of S. 15, as currently drafted, falls easily within constitutional authority. Moreover, the idea that Congress can ensure that no group is because of its group status subject to particular forms of violence, and that there is equality in the administration of the criminal justice system, fits most comfortably with the words and history of the fourteenth amendment, and with the post-Civil War allocation of authority between the national government and the states.*

Title III raises somewhat more subtle issues, but I believe

*To this extent, the federalism concerns -- expressed about a predecessor to this bill in the letter of October 9, 1990, from the U.S. Department of Justice to this Committee -- seem misplaced.

that with the appropriate text, findings, evidence, and legislation history, it too would raise no serious constitutional doubt, and would be upheld under both the commerce clause and section 5 of the fourteenth amendment. I have outlined several possible amendments designed to accomplish that end.

I would be happy to respond to any questions that you may have.

The CHAIRMAN. Thank you very much.

I think both of your suggestions are useful and very, very helpful, and hopefully sufficient once incorporated to meet the Justice Department's concerns.

Let me ask you two questions, though. And I will presume to take you up on your offer to help us and to make specific proposals about how to redraft the language to incorporate your two recommendations. But with regard to the proof, should we require in the preamble or anywhere in the law, the language of the bill, proof of lack of equal protection? I mean, is that accomplished by merely stating that or making findings, or is it accomplished by showing statistically that women are victimized more than men? What do we need to do?

Mr. SUNSTEIN. I think if you have, as I heard this morning, statements in the legislative history referred to in the committee report maybe, showing discrimination and bias, judges not taking these crimes seriously because they are crimes against women, that would do the job.

Fortunately, for the equal protection issue as for the Commerce Clause issue, the standard of review is the rational basis test. So you don't need a whole lot.

The CHAIRMAN. You don't need a whole lot. That was my next question. Now, let me turn to the issue of demonstrating in the law the existence and extent of violence against women as a deterrent in interstate commerce. I assume again this is more—well, let me not state what it is for; let's just put it on the record. If you can show that there is a deterrent to a class, a class of people—that women are deterred from entering certain jobs, taking on certain endeavors in interstate commerce because they are women—that's all that need be shown. It would not be a defense in court, would it, for the defendant to state, "Well, Mary Jones obviously wasn't deterred. She did have a job in interstate commerce. She did have a job that took her into other realms, took her into other States, had her working at night, and so forth." I mean, there would be no ability for the defendant to counter that the individual plaintiff was—although part of a class in that she is a woman—was not deterred as women as a class have been deterred.

Mr. SUNSTEIN. That's correct. There were a lot of black people who went to restaurants in the South and who worked in places in the South even though there was discrimination. But the fact that some black people were deterred didn't mean a lot weren't deterred.

The CHAIRMAN. I'm having the greatest difficulty with my colleagues, not because they can't understand—because they clearly could if they had the time. Because of my jurisdictional responsibility, I have to focus in detail on this issue. But they find themselves asking questions, as I do on legislation relating to the banking industry, or specific environmental issues that are complex, I find myself often saying to one of my colleagues, "Well, I read in such-and-such a weekly magazine or the newspaper the following. Explain to me quickly why that isn't the case." And I find that many of my colleagues—because the Justice Department made the assertion—granted their constitutional concerns a weight that I think exceeded the merit of the argument. That's why I am being pedes-

trian about asking some of these questions. It should be communicated, in practical terms, what the Congress means when we say that this—what appears to be a totally private action—nonetheless falls within the purview of the Federal Government to regulate, to impact on, to change, to legislate. That's the reason for these questions.

Mr. SUNSTEIN. That's right. The Justice Department's concerns are invited by presenting this bill as targeted at private actors. If it is targeted instead at inadequate State and local criminal justice systems, which is what all the testimony this morning was about, then the Justice Department's concern is alleviated.

The CHAIRMAN. Professor Neuborne, I was very impressed with your testimony not only about the constitutionality of this undertaking, but the rationale for the undertaking. And I want to underscore two things that you have mentioned, that I have mentioned in the past. There are so many aspects of this legislation that some of the important principles underpinning the legislation somehow—understandably—get lost. My ultimate, overall, objective here is not to legislate a remedy to eradicate violence against women—I wish I could. My overall objective here is to raise the awareness of the public, men and women alike, as to what is at stake here and what changes have to take place beyond the law.

One of the things that you mentioned was that a woman can have the psychic relief of responding in her own way. The psychiatrists and psychologists who have testified before us, as well as the victims who have testified before us, have said that survivors feel they lose control in our criminal justice system. I might add, in terms of the ultimate decision to prosecute or not prosecute—they must lose control. One of the things that I want to underscore is that I hope that if title III becomes law, that you will find the Government having to respond, because women have an independent course of action.

I would not want to be the U.S. attorney or the district attorney, the prosecutor in my county, my city, my State or for the Federal Government, who refused to pursue a case, even though the burden of proof is different, that resulted in a woman going into Federal court, filing a civil action, and recovering a large sum of money in a celebrated trial; I'd have a whole hell of a lot of explaining to do. Therefore, I believe that if this were to pass, to the extent that the scrutiny is diminished in cases relating to rape—and there is evidence that it is—that that scrutiny may be ratcheted up several levels.

Mr. NEUBORNE. I couldn't agree more. I think we always keep Government honest when there is a private alternative to Government action. When Government has to look over its shoulder and see whether private people are doing the job better, that simply helps Government do the job better as well.

I should just also mention one other, I think, very important benefit that would come from title III. It came to mind because of Senator Thurmond's, I thought, very incisive question about how you prove when an act of violence is gender-motivated and when it is just the kind of random violence where the victim happens to be a woman.

One of the things this bill will do is open up a high-visibility forum in which that precise question will be litigated. I mean, we will not be able to ignore as a society anymore the fact that much of this violence is gender-motivated violence precisely because it will be a central issue in many of these cases, and you're going to then have for the first time psychologists, specialists in the area, talking in a highly visible way that will educate an entire community about the nature of this violence.

One of the things that Federal civil rights legislation has always done is that it has reached down into the maelstrom of ordinary acts and picked out a group of them for community scrutiny in the high-visibility telescope of what the Federal courts can bring to bear, and to do this to gender-motivated violence at this point in the Nation's evolution I think is a tremendously important step.

And I couldn't answer Senator Thurmond's question this morning because we don't know the answers to all of those questions, but this bill will help us get those answers by putting that issue directly into the courts in a way in which we'll be able to answer it over the next couple of years.

The CHAIRMAN. Well, you have touched on another concern I have and the reason I decided to go forward with this. You refer to community scrutiny, and reaching down into the maelstrom and picking out those things that warrant special scrutiny by a community, by society, and by a nation. And I would respectfully suggest that we only do that for the things that we say we value the most. And in our broad spectrum of values that we say we adhere to, we say one of the things that we value most is the notion of equality and another is the notion—at the base of our whole jurisprudential system—that mere physical force cannot, should not, and will never be, the measure by which any dispute is resolved.

We say we value those two things, and it seems to me that we have just described violence against women. And therefore if we don't reach down into the maelstrom and hold it up for community condemnation, then it is obviously not as valuable to us as we say it is.

My chief of staff, a very talented guy, always says in another context, "Don't go out, Joe, and tell any woman or man who works for you that you value their work if there isn't a correlation between what you pay them and how much you say you value the work." And I think the same thing exists with regard to this issue—at least that is one of the things I'm attempting to do.

Let me conclude with this question for both of you based on a concern of the Senator from South Carolina. One of the changes I made in this year's legislation from last year's legislation was a single word: "Overwhelming." As you know, in the bill as reported out of the committee last year, the civil rights provision allowed women to sue only where they could prove that the defendant's act was "overwhelmingly motivated by gender."

Now, some legal experts objected because that term, "overwhelmingly," is not found in any other civil rights law. The language in title III of S. 15 now, this year, tracks the language of existing civil rights laws, defining "motivated by gender" as a violent crime committed "because of gender or based on gender." We tracked that

language because the courts have had substantial experience in interpreting those terms.

Now—and this is for both of you, if you would, please—in your opinion would the inclusion of the term, “overwhelmingly,” be helpful or detrimental to the future ability to apply my civil rights remedy, and if so, depending on your answer, how?

Mr. SUNSTEIN. I would think it would be harmful, and here’s why. The basic purpose of this bill is to say that women should be protected just like everybody else from private violence, that the criminal justice system should treat them equally, and they shouldn’t be subject to special disabilities. To put the word “overwhelmingly” in there is to create for women a special disability that nobody else has. Blacks don’t have it; disabled people don’t have it; men, God knows, don’t have it.

Why there ought to be this—I have never heard of something like this in any criminal or civil law, that there has to be overwhelming proof. “Overwhelming” is a novel word. And why women should be uniquely faced with this burden is a mystery to me. It would seem to feed into precisely the sorts of biases that the law is trying to eliminate.

The CHAIRMAN. Professor Neuborne.

Mr. NEUBORNE. I agree with Professor Sunstein. First of all, it would not be helpful. It would complicate the law in a very troublesome way. As Cass points out, there is no precedent for this in any other statute so you’d be launching a boat that nobody has any idea which way it is going to sail or what it is going to look like, so it would complicate the statute immensely; it would make its application much more expensive and much more difficult, and what’s worse, it is not necessary.

The fact that you have in there a requirement that it be motivated by gender puts the burden of proof on the woman who wants to use the statute to prove by a preponderance of evidence that this was caused by gender. That is a causation standard that courts are familiar with; they use it in title VII cases now, and I think it would provide exactly the correct legal matrix for the operation of the statute.

The CHAIRMAN. Well, I can’t make Senator Thurmond’s argument nearly as well as he can, and so I will not attempt to make his argument. He, by the way, has an overwhelming interest in this subject, although he is now at another hearing. But I may ask him and his staff if they might want to submit questions in writing to you on the question I just asked.

Mr. NEUBORNE. Of course.

The CHAIRMAN. Let me just say—and I never have to say anything in fairness to Senator Thurmond; this does not relate to Senator Thurmond—in fairness to some of my critics on this legislation, they say, “You know, Biden, the difference here in some of the crimes that you are attempting to give a different cast to, give different alternatives to women who are victims of those crimes, particularly rape, is that nowhere else is consent an issue.” You don’t hear many people where there is a robbery saying, “You know, the real issue is Charlie consented to me robbing him,” or “Mary consented to my robbing her,” or in burglary, “So-and-so

consented to let me go into the house and steal that television," and so on.

There is a complicating factor in crimes that are sexual—where sex is used as pure violence. From the standpoint of the defendant, the defendant says there was consent. Now, obviously, I doubt whether many people would be able to say, "She consented to me beating her black and blue." But in rape cases, the defense almost always made is that "The complainant here consented to engaging in sexual relations with me," consented to the fondling that took place, or consented to the violence that did not result in any physical scarring but did result in sexual molestation. Consent, my colleagues say, "that's the complicating factor, Biden, and that's why we're afraid of your legislation because you may err on the side of victims and do damage to the rights of criminal defendants."

Now, I ask you—that is a very broad and probably unfair rendition of the criticism that is often pointed my way by some of my colleagues and others. Mr. Neuberne, you have never been accused of being unaware of or unmindful of the rights of criminal defendants—

Mr. NEUBORNE. I plead guilty to that.

The CHAIRMAN. Give me the best argument against my legislation from the standpoint of criminal defendants—not just title III, across the board. But also, there are civil defendants, and you have not been unmindful of the rights of civil defendants, as well. Is there a case against my legislation that it adversely affects the rights of individual defendants against whom a suit is brought and/or an indictment is brought? Are their constitutional rights being protected less than they would be without this legislation? Is there an argument?

Mr. NEUBORNE. No. The argument against aspects of your legislation that I have heard from people who are concerned about the rights of defendants goes not to the guilt/innocence process, and it does not affect the fairness of the adjudicatory process at all. If anything, it makes it fairer because it provides for a more level playing field and a better consideration of the evidence. It is the concern that there is too much emphasis on increased sentences, too much emphasis on the penal aspects of it, the post-act punishment, rather than—

The CHAIRMAN. Rather than guilt or innocence.

Mr. NEUBORNE [continuing]. Rather than dealing with the causes. But the actual adjudication of guilt or innocence certainly in the criminal context isn't changed one bit by this bill, really, not in an effective way. The evidence rules I think could be argued to alter it modestly, but I don't think in a way that would affect rights in a significant way.

In the civil situation, sure, consent is always going to be an issue in these cases, but I would hate to see the imposition of a very large burden of proof on the gender motivation issue being used as a surrogate for the consent issue because what someone is doing there is they are doing a great injustice to a woman, because what they are doing is changing the burden of proof on consent in a sub rosa way that takes us back a full generation.

The CHAIRMAN. Don't you think that has been the history of the process, though?

Mr. NEUBORNE. Oh, yes. I think one of the reasons why we don't enforce rape laws effectively in this country is that there is a refusal on the part of large numbers of people to give up on the illusion that women really consent in those situations and that they protest only after the fact. And giving up on that cultural assumption is painful to men, but it is one of the things that has to be driven out of the system.

The CHAIRMAN. Cass, do you have any comment on that at all—you need not, but you may.

Mr. SUNSTEIN. Sure, I can give you a short comment. The short answer I think to this concern is that it is a legitimate concern, but consent is a defense under this bill as under any other law, so it doesn't compromise consent.

Still short, but a somewhat longer answer is that "consensual rape" is an oxymoron; there is no such thing. When it is consensual sexual intercourse it is called "consensual sexual intercourse." And it is not as if there isn't an analogy. There is no such thing really as consensual theft, though there is such a thing as a loan or a gift. So it is not as if the notion is really unique because the consent issue is uniquely present here—it is present elsewhere, too.

The CHAIRMAN. I have so many questions for you, but I'm just going to ask two more. Is the term "overwhelmingly," as included in my original draft and what was passed out of committee, and as suggested be reincluded by Senator Thurmond and others, is it in any way necessary to make the civil rights remedy I am proposing constitutional? Does it have any bearing on the constitutionality of title III?

Mr. SUNSTEIN. Absolutely not.

Mr. NEUBORNE. Absolutely not.

The CHAIRMAN. And from a civil rights perspective, would we be making a wise choice by adding the term "overwhelmingly" to the civil rights remedy, just for the record?

Mr. SUNSTEIN. I don't think so because it would impose on women, who are supposed to benefit from this bill, a unique obstacle.

The CHAIRMAN. I don't have any more questions, but with your permission, we may submit several to you if it would not overburden you. I know you are all busy as can be. I truly, truly appreciate the fact that you have made the trip from New York and Chicago to come and testify on what I think to be the most important piece of legislation I have worked on in a long, long time. I appreciate your interest.

Mr. SUNSTEIN. Thank you.

Mr. NEUBORNE. Thank you, Senator.

The CHAIRMAN. Thank you very, very much.

Now, last but surely not least—and not intended to be last but for the fact that I picked up the paper in the wrong order here—we are going to hear from Amy Kaylor, who is a 21-year-old survivor of a sexual assault by a serial rapist. She is now a premed student at the University of Toledo in Ohio. We welcome also Gill Freeman, who is an expert on gender bias in the judicial system, is vice-chair of the Florida Supreme Court Gender Bias Commission and now heads the commission in charge of implementing its recommendations. She has studied extensively the problems that the

State judicial system poses for survivors of sexual assault and domestic violence.

I welcome you both and truly appreciate the fact that you have been willing to wait so long.

Let me begin with you, Ms. Kaylor, and make it clear to you that I believe, and all the members of this committee do, as well as the staff, that it is a difficult thing for you to be here. You are probably nervous as the devil. But just keep in mind that no one in the press over there takes me seriously, so there is no reason for you to take me seriously, or anyone else.

I wish, in these hearings, we did not have this dias. That is why I like the hearings in the caucus room where the tables are across from each other, and they are level, and it is not like a judge and a witness.

And lastly, if at any time you don't feel like talking about anything at all and you want to stop, just stop. I know from personal experience that sometimes dredging up memories that are painful makes them no less painful merely as a consequence of the passage of time.

So we appreciate your being here, and I mean that sincerely, and I fully understand if at any time you have just had enough of this process. As a matter of fact, the only thing I don't understand is your courage in being able to come here today. I appreciate it; I envy it; I don't fully understand it.

So why don't we begin with you, Amy, in any way you want to. Just proceed at your own pace. Just talk to me. This is not an inquisition.

STATEMENT OF A PANEL CONSISTING OF AMY KAYLOR, SEXUAL ASSAULT VICTIM, TOLEDO, OH; AND GILL FREEMAN, CHAIR, FLORIDA SUPREME COURT GENDER BIAS STUDY IMPLEMENTATION COMMISSION, MIAMI, FL

Ms. KAYLOR. Thank you.

My name is Amy Kaylor. I am 21 years old, and I am here today as a survivor of stranger rape.

Although it is extremely unpleasant to talk about, my experience has become a part of me. This experience has drastically altered every aspect of my life and thus not talking about it would be analogous to denying a part of my "self." By breaking the silence that has long been associated with this taboo issue, I hope to give you an idea of what it is like to live after being raped.

Fear for my life, nightmares, flashbacks, and complete oblivion in my daily routine is what I encountered as I turned 19. On my 19th birthday, I was raped by a stranger who I would later learn had been twice before convicted of violent crimes and paroled. Both times while on parole, my assailant reoffended.

As I drove home from a concert on the night of my birthday, I noticed someone tailgating me. I continued driving and slowed down to allow the tailgater to pass, but he persisted. Finally, as I turned onto my road, the car rear-ended me. I was already on my road when I stopped and looked back to see this person stopped on Route 579 with his flashers on. For a moment I debated as to whether I should go back and investigate the damage or go straight

home, since it was already 2 a.m. My sense of what is right took over, and I backed my car onto the highway and pulled behind the car that had rear-ended me.

As I stepped out of my car, a man with tousled black hair and a faded jean jacket asked, "Are you OK?" I told him I was fine as I glimpsed at the bumper of my car. My bumper appeared to be undamaged so I proceeded to get into my car. As I reached to shut my door, I realized that the man was standing there, holding the door of my car open. As I looked up at him, he pulled out a knife and sprayed mace into my eyes and yelled, "Move over."

Frantically, I moved to the passenger side of my car. The mace in my eyes burned and impaired my vision. He drove around the block several times before he raped me. As we drove, I knew that there was little chance of escape because it was a rural area, and the houses were few and far between.

I thought my life was over. As I prepared to die, I looked out the window of the car at the familiar houses we passed. This was the area in which I grew up, and we drove past the houses of many of my childhood friends. I kept looking for some help in those houses. I desperately wanted one of my friends to come strolling out of her house and save me. Needless to say, no one came to my rescue.

The man raped me and then threatened that if I told anyone, he would kill me. He claimed that he had a police radio in his car and that if I reported it, he would know about it, and he would come back for me. He took my address from the cover of my checkbook and drove back to where his car was still parked and told me that he would leave my keys by a sign near the highway. He explained that I could get my keys as soon as I saw him get into his car and drive away.

Through teary eyes, I watched him drive away. I was within walking distance from my parents' house, but I reasoned I should at least see if he had left my car keys. I ran to the road sign and, to my surprise, found my car keys lying there. I ran back to my car and drove home, filled with euphoria because I had survived. I thought I was going to die, but I didn't.

I thought that this experience had given me a new appreciation of how precious life is and how little time we have on this planet. Although this is part of what happened to me, within 1 week the euphoria wore off and the realities of surviving rape on a daily basis began to enter my life.

Due to the difficulty I had readjusting my life after the rape, I lost a rewarding job. One week before the attack, I had signed a contract with my employer agreeing to a raise and funding to cover 100 percent of my tuition and books for my undergraduate education. Because of my assailant's threats to my life, fear, insecurity and nightmares of retribution became part of my everyday existence.

As a result of my inability to concentrate on my studies, I dropped out of school for the quarter. Lack of sleep and fear of driving alone often made me late for work. Further time was missed from work due to meetings with detectives and a parole hearing. Although my supervisor knew the extenuating circumstances surrounding my attendance record, she was intolerant and threatened to terminate my employment on several occasions. This

eventually resulted in the loss of my job and funding of my college education.

In addition to having to deal with my altered life, I was also dealing with the criminal justice system. I remember asking the detective who questioned me the morning after I was raped if I would be blamed for what had happened. "They try not to do that," was his response. What the detective failed to communicate to me that day was that my role in the case was nothing more than "witness for the prosecution." After I identified my assailant and he was arrested, the police stopped calling me.

At this point, I failed to understand why the police would ignore the person who had reported the crime. When I reported the rape, I believed that I was risking my personal safety and the safety of my family because of the assailant's threats. If I was silent, I would not get hurt, my perpetrator had told me. Despite these threats, I chose to report. Although I believed my life was in danger, the police said that there was nothing they could do to protect me unless the perpetrator came near me. The same day that I made my statement to the police, I moved out of my parents' house out of fear for my life.

Fortunately, the assailant was arrested 4 days later. When I tried to call the police again a few days later to inquire about the case, I was told to call the prosecutor's office. It was through the prosecutor that I learned that I was nothing more than a witness and that how I felt about the case meant nothing.

When the defendant and his attorney and the prosecutor conferred, I was not even allowed in the room. I had to learn about the case secondhand, sometimes by reading about it in the newspaper. The prosecutor failed to return my phone calls unless there had been a change in the date of the trial or a hearing.

After waiting 6 months for a trial, the case was plea bargained. Although the sentence was satisfying—30 to 90 years—I was frustrated because I had lost a chance to face my assailant and tell him about the hell he had put me through. Furthermore, this man is up for parole in 15 years. The judge in the case told me that I could testify at his parole hearings to prevent him from being released. Although I am grateful that I will have the opportunity to testify at his parole hearing, at the same time this means that I will once more have to face this man and all the agony he has brought to my life. The rape will undoubtedly shape the rest of my life.

In order to make this man pay for what he had done to me, my father wanted to file a civil suit against the defendant. An attorney told my father and me that it would have been hopeless to file a civil suit. The man who raped me was a serial rapist and thus lacked gainful employment and assets, the attorney told us. I did not pursue this route any further because at that time I was unaware that victims can file civil suits and obtain a portion of the money that the assailants earn in prison. Furthermore, the police investigation and court proceedings had already drained me mentally, physically and emotionally. I did not feel as though I could fight another battle. Also, I lacked funding for legal costs to pursue a civil suit.

Although it has been nearly 3 years since I was raped, I still live with the tormenting repercussions. Whenever I get prank phone

calls, I immediately fear that my assailant has either escaped or been released and that no one has informed me of it. I am afraid of driving alone at night, living alone, and walking on campus alone. Furthermore, on occasion I get flashbacks of the rape, which paralyze my ability to concentrate in school.

Perhaps the saddest part is the fact that the rape happened where I grew up. It is a beautiful rural area, and I never felt scared living there prior to the rape. But now I'll never be able to take walks out there alone again without feeling fear.

Reminders of the rape have entered my daily routine and become a part of me. I thank you for this opportunity to share my experience, and I hope that by expressing the incredible impact that this act of violence has had on my life and has had on the lives of many other survivors, you will agree to educate police forces, prosecutors, judges and attorneys about the plight of the rape survivor. However, perhaps in addition to formal education about the topic, people in the legal system need to be less concerned with their busy schedules and more concerned with practicing some simple, human compassion.

Thank you.

The CHAIRMAN. Amy, I always find it a difficult judgment to make as to whether or not to have a victim testify. There is a very thin line between what can be sensationalized and what can be educational. But in the case of rape and violence against women, I don't know any other way to make the case of how badly help is needed.

You are the third young woman who has testified before this committee, the third victim, and I found it most disheartening to hear a phrase you used that everyone has used in three different circumstances, and that was that you asked the policeman "Will I be blamed?" No one had to educate you about whether or not you would be blamed; instinctively, you asked, "Will I be blamed?"

An equally talented young woman from a university in Pennsylvania who was raped—it was an acquaintance rape—when she got back to her dormitory, she testified that she took a scalding shower and came out, and she was hysterical, distraught. Two of her roommates, floormates, were there, and they said, "You've been raped." And she said her first response was, "No, I wasn't raped; I knew him."

I think it is important and painful for you and hopefully painful for people who hear you to face up to the fact that there has got to be something wrong with a system that, when a bright young woman like you, after having been raped by a serial rapist at knife-point, would ask a police officer, "Am I going to be blamed for this?"

The CHAIRMAN. Ms. Freeman, would you talk to us, please?

STATEMENT OF GILL FREEMAN

Ms. FREEMAN. Thank you, Mr. Chairman.

I find it difficult to talk after listening to Ms. Kaylor, if you will give me 1 second.

The CHAIRMAN. Take your time.

Ms. FREEMAN. My name is Gill Freeman. I am a partner in the law firm of Ruden, Barnett, McClosky, Smith, Schuster & Russell in Florida. And as you previously said, I was vice chair of the Florida Supreme Court Gender Bias Study Commission, and I am presently chair of the Florida Supreme Court Gender Bias Study Implementation Commission.

I thank you for inviting me here today to speak in support of the Violence Against Women Act of 1991, but more importantly, I thank you for drafting and sponsoring this very important bill.

In June 1987, the Florida Supreme Court, Chief Justice Parker Lee McDonald, signed an administrative order creating the Gender Bias Study Commission. It was a blue ribbon commission of which one-third of its members were judges, and it was chaired by Florida Supreme Court Justice Gerald Kogan; the remaining members from all fields of law, legal education and our State legislature.

The 2-year study received \$300,000 in funding from our legislature, and it did a comprehensive job of studying the effects of gender bias in the court system in Florida. We studied domestic violence, rape, dissolution of marriage, child support, prostitution, incarceration of women in the system, and women in the profession.

I brought with me today a dozen copies of the study for members of your committee.

The CHAIRMAN. We thank you very much.

Ms. FREEMAN. The commission did find gender bias throughout the system. I understand that Florida is really no better nor any worse than any other of the States, as demonstrated by similar studies that have been done elsewhere. That is to say that we have found that much of what happens in the justice system impacts adversely upon women and on rare occasions against men, whether it be as litigants, witnesses, lawyers or employees of the system.

Previously, I sent to the committee staff a 1-hour documentary which was produced by the Fox Network, channel 29 and was aired on television on March 11, 1991. The first segment, which is approximately 15 minutes, concerns domestic violence, which is the other area that your bill concerns. I think you will find the footage in that documentary in connection with domestic violence absolutely compelling in graphically detailing the injuries that battered women suffer.

I have been asked to focus my attention upon rape and gender bias in the courts as rape cases go through the system. Unfortunately, our Florida Gender Bias Study Commission heard stories like Ms. Kaylor's around the State. Unfortunately, her experience does not appear to be unique. Florida has made efforts over the year to improve the prosecution and handling of rape and sexual assault matters. It has in some areas of the State specialized sexual crimes units in both law enforcement and in the State attorneys' offices. We do have a rape shield law, and we prohibit jury instructions requiring special scrutiny of the victim.

However, rape remains a crime in which the victim is often as traumatized by the system as they are by the assailants themselves.

Florida has consistently ranked third or fourth in the Nation with reported rapes. Over 60 percent of the reported forcible rapes are against children under the age of 18, and less than 20 percent

of those rapes are the traditional stranger rapes. These numbers do not include statutory rapes, which are not considered forcible, nor does it include incest.

Yet in Florida there persists the widespread belief that people who are raped precipitate it in some way, whether it be by dress, having a drink in a bar, accepting a ride in a car, or accepting a date. The assailant, usually a male adult between the ages of 24 and 35 years, is believed to become so overpowered by something that the victim does that he loses all control and becomes the victim of the victim, and he is forced to rape.

For example, in October 1990, a jury freed an alleged rapist because the victim was wearing a lace miniskirt, and therefore she had invited the rape.

More recently, a judge in the middle of the State refused to sentence a confessed rapist to jail because he felt sorry for him being involved with such a pathetic woman. He recalled this woman from a divorce case that he had handled several years before.

Another judge commented to a rapist as he was sentencing that the lesson he had to learn was that he had to "take the women out to dinner first, like the rest of us."

At one of our hearings, a prosecutor from north Florida testified that he had been arguing a rape case when the judge asked him, "What in the world was the woman doing out in the streets late at night?" She was a coed, going to mail a letter to her mother at 11:30 p.m., to tell her mother when she was coming home for vacation.

The CHAIRMAN. By the way, for the record it shouldn't matter if she was out there soliciting.

Ms. FREEMAN. You're right; it shouldn't.

Unfortunately, in our society, we still believe that women make rapes; that victims make their assailants victims.

In those areas where there are no specialized sex crime divisions, prosecutors often consider rape cases "garbage." They are passed around the office, and the lowest ranking prosecutor available gets the case.

In some areas, polygraph tests are used routinely on victims. We heard one story from a victims' advocate where a woman was polygraphed for close to 3 hours, and the polygrapher and the investigating law enforcement agent kept going over and over again: "Were you forced? Was it forced?" The victim testified that she lived in a trailer park, and one of her neighbors had knocked on the door and asked to come in and talk to her for a while. She let him in, and after a while she asked him to leave, and he refused. He picked her up and bodily dragged her to the back of the trailer, and she caught hold of the doorway and pulled off the pieces on the framing. And they kept asking her whether she was forced, and whether he understood that he was forcing her to do something that she didn't want to do. She finally replied, "Well, I don't know whether he understood that I felt I was being forced, and I don't know what was in his mind." And finally they had her sign a paper saying that she had fabricated the story and that she had not been raped.

The message that gets out into the community is to not report because as a victim you will be tried, battered, and abused by the system.

Dr. Dorothy Hicks, the founder of the rape treatment center in Miami, commented to me last week that she thought we were backsliding. A law enforcement officer confirmed that impression as a result of the publicity that was received over the sentencing in the middle of the State.

These highly publicized cases, where women who do report are abused by the system sends out the message, loud and clear: Do not report.

I heard from law enforcement officers around the State that rape is a low priority in their systems; that systematically, their units have staffing changes or are not adequately staffed, and funds get transferred other places.

Moreover, we need to have trained law enforcement personnel and prosecutors as well as educating judges to understand the dynamics of sexual violence.

We need to have the funding for these units so that these prosecutions can go forward. In my testimony that I have submitted, I document the experience in the Metro Dade County police department the first 3 months of this year compared to the same 3 months last year, and closure or clearance of cases, ones that have been fully investigated, and arrest has occurred or the case has otherwise been closed, is down approximately 19 percent as a result of reduced staffing in the sex violence crime unit.

In those areas where there are specialized sex crime units, and law enforcement and prosecutors are trained, they are more successful in their prosecutions. First, the victim is not passed from one prosecutor to the next, and a rapport is established. Law enforcement and prosecutors are trained in the most up-to-date scientific tools as well as the rape trauma syndrome, which aid the victim in staying with the prosecution.

More than half those reporting cases, remember, are under 18 years of age. In most areas of the State, prosecutors are not filing acquaintance or date rape cases, and they have told the commission so: We just don't file those cases. We don't believe we can win them, and therefore we don't go forward. They believe that since those cases boil down to swearing matches that they are not worth filing.

In one metropolitan area I learned they are filing all the cases in which there is probable cause, and they are successfully getting pleas to the charges—not necessarily pleas to lower charges, but they are getting pleas to the charges. If we were to train and educate, we will be more successful with these cases. That is why education is one of the primary recommendations of the Florida Supreme Court Gender Bias Report and why your bill is so important.

As I said, one of the prime problems in Florida is funding. I spoke with several law enforcement agencies and people who are specialized in sex crimes. They told me that funding in their units is consistently a problem. The message I received from one law enforcement officer was: Please tell Congress we are drowning; we need help.

I spoke to the Florida Department of Education, and I was told that they were going to have a training session in August to hopefully train teachers to teach as part of the sex education courses sex violence as well. They will have one training session this year. They will train 50 people, and that is it. That's all the funding they have available.

The best way to make a change in this epidemic that we are seeing in our society is to educate our children before they become sexually active as to what is and is not sexually accepted behavior, and that rape is a crime, and that domestic violence is a crime, and that society will not accept this behavior anymore. And that requires funding.

Also with respect to prosecution of rapes, there is a racial or ethnic aspect as well. One law enforcement officer told me about "dirty feet rapes." Those are when the victims are not quite up to middle class standards—maybe it is prostitute, maybe it is somebody who is homeless, maybe it is somebody from a ghetto community. Those rapes don't get the same attention as others do.

We had a problem a couple of years ago with Haitian or migrant workers being systematically raped in the camps where they worked. Many of those people were illegal aliens. They were afraid to report to the police, and they were told that if they did report, they would be shipped out of the country.

We have a crimes compensation fund in Florida. I heard recently that there are insufficient funds in that compensation fund and that victims of rape who sought counseling, which they were promised would be paid for by the State, have now been turned over to collection agencies, and not only have they suffered from the psychological effects of being raped, but they are not suffering the harassment of collection agencies.

One of the law enforcement officers told me that every year she goes out and teaches a course to a local junior high school. She said the kids tell her that they think it is okay to force sex when they have spent money on girls. Girls think that they owe something when somebody has taken them out to a concert or taken them out to dinner. And they have learned at home that you don't anger men, and you don't say no. They get raped, and they don't know why they feel bad, but they are permanently scarred.

Your act, Senator, is very important to send the message to our States and to our people that this kind of behavior, that violence against women must stop.

Thank you very much.

[The prepared statement of Ms. Freeman follows:]

GILL S. FREEMAN'S TESTIMONY BEFORE THE
UNITED STATES SENATE JUDICIARY COMMITTEE

April 9, 1991

Mr. Chairman and Members of the Senate Judiciary Committee, my name is Gill S. Freeman and I am a partner in the law firm of Ruden, Barnett, McClosky, Smith, Schuster & Russell, P.A. in Miami, Florida. I served as Vice Chair of the Florida Supreme Court Gender Bias Study Commission, and am now the Chair of the Florida Supreme Court Gender Bias Study Implementation Commission. I thank you for inviting me to appear before you today to offer testimony in support of the Violence Against Women Act of 1991.

A. HISTORY OF THE FLORIDA COURT GENDER BIAS COMMISSION

In June of 1985, members of the Florida Association for Women Lawyers became concerned that there was a need to investigate whether gender bias existed in the Florida courts and, if so, to what extent. They approached the Florida Supreme Court and requested that a commission to investigate gender bias in the courts be formed. The Court responded that if a prima facie showing of gender bias could be made, it would indeed create such a commission.

Florida State University School of Law funded a preliminary study. That study, which reviewed existing documentation in the State of Florida, made three important findings: First,

that there was in excess of Two Hundred Fifty Million Dollars in uncollected child support in the State of Florida and that by and large, women were the recipients of child support; second, that sentencing for the crime of rape is reduced or mitigated three times more often than sentencing for any other crime; third, that women lawyers across the board earned less than their male counterparts.

Based on this preliminary study, The Florida Bar Board of Governors passed a resolution requesting that a gender bias commission be appointed. Chief Justice Parker Lee McDonald responded by creating a steering committee to further investigate and to recommend whether a gender bias commission should be created and its composition. The steering committee concluded that a gender bias commission should indeed be formed and made recommendations with respect to its composition.

The Gender Bias Study Commission was chaired by Supreme Court Justice Gerald Kogan with myself as Vice-Chair. There were 25 members of the Commission which included 9 judges, in addition to Justice Kogan, 3 appellate level judges, 4 trial court judges, and 2 judges of the lower jurisdiction (or county court). Of those judges, one was Dean of the New Judges College and is now a Justice on the Florida Supreme Court; another was Chair of the Circuit Court Judges Conference; and a third was Chair of the County Court Judges Conference. Also on the Commission was one State Senator and one State Representative. The remaining members included the Dean of the University of Miami School of Law; a professor in women's

studies at Florida International University; a Lieutenant from the Orlando Police Department who heads the Domestic Violence Unit for that jurisdiction; the State Prosecuting Attorney for Monroe County; the Public Defender for Orange County; the head of Legal Services for Duval County; and notable practitioners from around the State. It was a blue-ribbon commission.

The legislature funded almost \$300,000 for the 2-year study. The Commission conducted a thorough investigation of Florida's legal system.^{1/}

^{1/} It included a multi-disciplinary approach in which public hearings and regional meetings were held around the State. The Commission received testimonial reports from judges, legislators, attorneys, law professors, criminologists and law enforcement officers. It sought out and questioned social scientists, social workers, probation officers, psychologists, prosecutors and public defenders and litigants. Among the variety of persons appearing before the Commission were representatives of fathers' rights groups, women's rights groups, victims' advocates, and representatives from sexual and domestic abuse treatment programs.

We sought the testimony of experts in the areas of family law, domestic violence, sexual assault and the prison system around the State. We compiled information from the Florida Department of Health and Rehabilitative Services, and we welcomed anyone who wished to address the Commission to come and testify. In addition to receiving the testimony and comments of the public, we did a survey of 15,000 members of The Florida Bar, a survey of 2,000 members of the criminal, family and trial practice law sections of The Florida Bar. We commissioned the study of adult arrest and sentencing patterns, including a preliminary study on sentencing patterns in sexual battery cases. We did a study of the juvenile justice system, a study of prostitution in Florida, a study of salaries and positions of court personnel statewide, a survey of law students regarding sexual harassment and disparate treatment in employment interviews and classrooms exchanges, and a survey of the Florida Association for Women Lawyers regarding career conflicts and gender bias in employment. We did a survey of the facilities and programs for men and women incarcerated in Florida's jails and prisons.

(Footnote continued on next page.)

The Commission presented its final report in March 1990 to the Florida Supreme Court. The Report is presently in its third printing and is being actively used and referred to by the Court administrators, judges, the Florida legislature and other groups who are seeking to improve Florida's legal system.

In October 1990, Chief Justice Leander Shaw created the Supreme Court Gender Bias Implementation Commission and appointed me as Chair. Like the Gender Bias Study Commission, it is a blue-ribbon committee.

Throughout our work, we were in part guided and assisted by consultants from the National Judicial Education Program to Promote Quality for Women and Men in the Courts. They helped us develop our investigative strategies and assisted us in putting together our Report. I brought with me today copies of the Commission's final report. I know that your staff has received a copy of the chapter on sexual assault, however, our Report also addresses other areas of the law with which this Committee is concerned, particularly domestic violence. I have also sent a videotape of a documentary entitled Blind Justice based on the Gender Bias Report produced by the Fox Network in Palm Beach County.

(Footnote continued from previous page.)

There was a study of judicial attitudes based on interviews with Florida's Circuit and County Court judges, as well as a survey of Florida's judges. Additionally, we commissioned and did a review and analysis of reported family law decisions between 1983 and 1988.

The first part of this Program is a twelve minute segment on domestic violence. Some of the footage in that section was taken from the files of the State Attorneys' Office in Dade County, as well as from a documentary produced by a local Miami station, Channel 7, documenting some of the horrible injuries women suffer at the hands of batterers.

I have been asked by your Committee to focus on the area of rape, and therefore, I'll now turn to that issue.

B. RAPE IN FLORIDA

First, I wish to commend you on developing The Violence Against Women Act. Should it pass with all its funding, it will go a long way toward reducing the violence which is so prevalent in our society. It is important that the Federal Government send a message to the States that violence against women is not acceptable and that they, along with the Federal Government, must do more to stop this terrible victimization which appears to have reached epidemic proportions. Moreover, as the Violence Against Women Act recognizes, the effort to reduce this problem must be multi-dimensional. The effort must include the judicial system, law enforcement and perhaps most importantly, education.

Based on the research of the Gender Bias Commission, it appears that Florida has made efforts over the years to improve the prosecution and handling of rape and sexual assault matters. However, while we have taken some steps forward, we have not yet been able to satisfactorily take control of the problem or successfully make a dent into its incidence.

Florida has consistently ranked third or fourth in the nation for reported incidents of sexual battery. I have brought and included in my materials the Florida Department of Law Enforcement statistics for 1989.^{2/} The statistics reveal that 67% of reported sexual batteries are against children under the age of 17 and that the most frequently arrested assailant is a white male between the ages of 24 and 35. These statistics do not include statutory rape. Metropolitan Dade County's police department reports that of 743 rapes in the last year only 116 are the type involving a stranger totally unknown to the victim.

There is still in Florida a widespread belief that people who are sexually molested, raped, or assaulted somehow precipitate that action. Whether it be the way the victim dresses, some place the victim went, something the victim said or did, people persist in believing something about the victim caused the rape - something that is so powerful that an assailant, usually an adult male, could not control himself and he therefore becomes the victim and is forced to rape. Unfortunately, evidence of this attitude has been found to exist among law enforcement personnel, jurors and judges in the State of Florida. Not only have police officers, lawyers, and rape counselors come forward and revealed this, but we have repeatedly, within recent times, read in the newspapers incident reports about some of the more egregious occurrences.

^{2/} The most current available.

For example, in October 1990, a jury freed a rapist because it believed that the victim was dressed in a provocative manner, and as a consequence, had invited the rape. The Miami Herald reported that once the trial began, the defense attorney had free reign to attack the victim's character, painting her as a prostitute. Yet, there was no evidence that she was a prostitute and she did not have a criminal record. The trial judge reportedly said that he allowed the free-wheeling defense because the State Attorney did not object. The Miami Herald described this trial as a circus in which the victim was tried and not the rapist. After his acquittal, the accused rapist was extradited to Georgia where he was convicted of rape. He is now serving a life sentence.

More recently, a judge in Seminole County refused to sentence a confessed rapist to jail because he felt sorry for him for having been involved with the victim. The assailant confessed to having imprisoned the victim for many hours and having repeatedly raped her during this time. The judge recalled the victim as someone whose divorce he had ruled upon several years earlier. At sentencing, the judge described this woman and refused to sentence the assailant to jail because the judge thought the woman was a pathetic creature and somehow excused the rapist's behavior based upon his own perception of the victim.

At one Gender Bias Study Commission public hearing, an Assistant State Attorney testified that he was prosecuting a rape case which had occurred on Florida State University campus

and was arguing the case in Jacksonville. The rape occurred at 11:30 at night. He was halfway through his argument when one of the judges asked him, "What in the world was she doing out that late at night walking down the street?" The attorney responded to the judge that, as a matter of fact, the record reflected that she was a co-ed going to mail a letter to her mother telling her when she was going to arrive home over the holidays. The implication was that a college woman did not have the right to walk to a student center to mail a letter at night and that, if she was doing so, she was somehow inviting sexual assault.

The Assistant State Attorney further stated, that if he had been mugged walking from a hotel room to get coffee and donuts in the middle of the night, nobody would ever imply that he was doing anything wrong or that the testimony he was about to offer should be scrutinized lest there be a wrongful conviction.

Another judge in South Florida also at a sentencing hearing was reported to have commented to the convicted rapist, "You have to take them out to dinner first like the rest of us."

One rape victim, advocate testified that it was her experience in dealing with the prosecuting attorneys' office in the Florida Panhandle that, if an attorney was assigned a rape case before the facts were even known, he or she immediately decided that it was a "garbage case" and did not want to try it. In that jurisdiction none of the prosecutors was specially designated to handle sexual assaults and therefore none were specially trained to handle them.

Many of the Florida State Attorneys refuse to file charges on acquaintance rape cases and, the Gender Bias Study Commission heard from several assistant state attorneys that most prosecuting attorneys' offices were either reluctant or would not prosecute an acquaintance rape case since the credibility of the victim was at issue. They believe that juries would be most likely to decide that if the victims got into the car with the assailant, or had a drink, it was her fault and she used poor judgment.

That message, I believe, has been reinforced with recent publicity about acquittals based on dress, judicial refusal to sentence, and in other cases, egregious actions by judges who are insensitive and do not understand the crime or the victim. The founder of the Dade County Rape Treatment Center recently commented that we are slipping backward.

C. THE NEED FOR SPECIALIZED TRAINING AND SENSITIVITY

There is in Florida a need to have law enforcement prosecutors and judges educated and trained in the handling and disposition of sexual batter cases. For example, a victims' advocate told us that she had heard police officers and other court personnel ask a victim if she enjoyed the rape. She further reported that it wasn't unusual for there to be lots of jokes made about sexual battery victims by court personnel. One witness testified to hearing a police officer joking about a rape case and making the comment, "Women are like Kotex, you use them once and throw them away." The victims' advocate reported that there were judges who would bar her from the

courtroom upon the rationale that if she was there for the victim, the jury might start to feel more sympathy for her because someone was there. Of course, it was never announced who she was or that she was a victims' advocate, but it would be clear to the jury that she was there as some type of support for the victim and that she should not be present.

Many of the State Attorneys' offices in the State did not have attorneys designated as specialists in the sex crimes area. Oftentimes, as in the case I described where the defense used the victim's clothing as evidence that "she asked for it," the State Attorney is ill-equipped and not sufficiently educated to confront the nature of the victimization, the intensity of the victimization, or to effectively focus on the crime and the assailant as opposed to allowing trial of the victim. Rape cases in those offices are passed around from prosecutor to prosecutor and no rapport is ever established with the victim. She then feels further victimized by the system, having to repeatedly tell her story over and over again. Generally speaking, sex crime cases are ill-favored among the State Attorneys' offices and, if there is no sex crime unit or specialist, those cases are often dumped on the most junior prosecutor in the office.

The Commission was told that fear is the biggest enemy in sex crime prosecution. When a woman comes into the criminal justice system, she has already been victimized. She enters an alien forum and she will repeatedly have to tell her story, so if she is shuffled around from prosecutor to prosecutor, she

feels more abused and victimized by the system, oftentimes she is reluctant to continue the prosecution process. When one prosecutor handles the case from beginning to end, a bond is created between the prosecuting attorney and the victim, which helps maintain the victim's willingness to prosecute.

In those areas where there is a sex crimes unit, and the prosecutors specialize and are trained in those cases, the prosecutions are more successful. In one metropolitan area, where there is a knowledgeable sexual battery unit, prosecutors are filing all the cases with probable cause. There are an extremely high percentage of pleas in the cases and very few trials. The pleas are also to the charges which are not being reduced. The problem is that more State Attorneys' offices are not filing cases.

Among the recommendations made by The Florida Gender Bias Study Commission was the need for education and training at all levels of law enforcement, state prosecutors and judges.

D. PROBLEMS OF PRIORITY AND FUNDING

In Florida, we found that sentencing in sexual battery cases is reduced or mitigated three times more often than any other crime. There was a great deal of speculation as to why this might be so, and certainly some cases can be attributed to judges who "feel sorry" for the assailants but we also believe that prosecutors and judges will accept pleas and work out shorter sentences in order to get an adjudication on record, particularly in those cases where convictions are difficult to obtain.

I have also heard from victims' advocates and law enforcement personnel handling sex crimes that rapes or sexual batteries are low priority crimes. In one metropolitan area, sex crimes were removed from the violent crimes unit. Thereafter, it became one of the lowest staffed units in the department. This is particularly a problem since investigation of sexual batteries requires more time and investigation than many other crimes. It was estimated that an average sexual assault investigation required thirty-six hours to complete. For example, due to budget cuts Metro Dade County's sex crimes unit is short two detectives. The cuts have resulted in significantly fewer cases being cleared.^{3/}

In preparation for today's hearing, I learned that there was also a racial/economic component which was repeated to me by several law enforcement officers in different locations. If the rapes are in poor, black or minority areas, they are given less attention than those in more affluent neighborhoods. One officer told me those rapes are referred to as "dirty feet cases." If the victim is not "clean" according to middle class standards, the case may receive less attention than needed.

^{3/} Cleared means the investigation has resulted in an arrest or the matter is otherwise closed. Clearance rates for 1991 as compared to 1990 are as follows:

Jan. 1990	51%	Feb. 1990	59%	March 1990	59%
Jan. 1991	37%	Feb. 1991	34%	March 1991	41%

In talking to one law enforcement officer, I asked her, "Is there anything that you'd like me to make sure that the Senate Judiciary Committee hears?" There was a pause, and a deep breath, and the officer said,

I'll probably get fired, but I have to tell you, the administration around here really does not consider rape a serious crime unless it happens to their own daughters, wives, or mothers. The administration takes away our assigned people, puts them into other slots, and the sex crimes unit is consistently getting short-shifted in terms of staffing and other needs. Nobody cares, and again, it seems to be a class problem. We had a situation of a serial rape epidemic going on in [a poor black neighborhood] and we could not get enough help to properly investigate the problem. There was a rape in an upper middle class area, an isolated incident, not a serial kind of thing, and it received a tremendous amount of attention and publicity and everybody tried to help.

This police officer said, "Please tell the Senate Committee that we are drowning and that we need help."

In other areas of the State where things are supposedly "better", I also heard complaints about understaffing, and the taking away of personnel slotted for sex crimes units. In addition, Florida has a Victim's Crime Compensation Fund that reimburses victims of crime for medical treatment, counseling, if necessary, and loss pay from work. Apparently, our Victim's Crime Compensation Fund is inadequately funded. Rape victims are not being reimbursed for psychological counseling and other expenses. One police officer told me that victims who sought counseling which was supposed to have been paid by the Crimes Compensation Fund, have now been turned over to collection

agencies, and are additionally being harassed for the medical treatment they sought, received, and now cannot afford to pay.

E. USE OF POLYGRAPHS

One of the more egregious aspects of sexual assault prosecutions in certain places in our State, is routine polygraphing of victims. Some police officers maintain that it is absolutely necessary in a rape case. However, the fact is that it is not necessary. The clear message to the victim is that she is not to be believed and that her testimony is not trustworthy. In no other crime is a victim routinely polygraphed. One victims' advocate told of an experience that she had watching a polygraph test of a victim which went on for more than 3 hours. The victim was badgered over her use of the word "force." She said that she was raped, and then she graphically went through the described action.

She lived in a trailer. Late at night, her neighbor came to her trailer, said he was upset, and asked if he could talk to her. She was a very caring person, so she said, 'yes,' and let him in. They sat down for a while and then she asked him to leave. He would not. He dragged her into the back of the trailer to the bedroom area. She described how, as she was passing through the narrow hall of the trailer, she attached herself to the door jam of the bathroom and ripped it loose as he dragged her back to the bed, and raped her. The polygrapher repeatedly asked her, 'Did he force you?' 'Did he force you?' Earlier the polygrapher asked her, 'well, in his mind maybe it wasn't force?' She said she didn't know what was in his mind. After the polygraph test had gone on for close to 3 hours, she said, 'Maybe you're right, maybe it wasn't force'. So they then asked her then to sign a paper in which she said she had fabricated the story.

Later, that woman, suffering from the emotional effects of the rape, had a nervous breakdown and went for counseling. The same victims' advocate was at the counseling center. One of the first things she told when she went in for counseling was that, in addition to the rape, one of the hardest things for her to handle was that nobody believed her.

F. THE NEED FOR EDUCATION

One of the most important factors provided in the Violence Against Women Act is the educational components, both for judicial education, as well as for other members of the public.

Two years ago a judge in Broward County was reported in newspapers for ordering a sexual assault victim jailed because she had changed her mind about prosecuting her ex-boyfriend who had raped her. The same judge also jailed a 22 year old rape victim for 6 days because she was reluctant to testify after an assailant allegedly kidnapped and assaulted her. It was obvious that this judge had absolutely no understanding about rape, trauma syndrome, the emotions generated by being raped by either a stranger or somebody you know and have been close to. The Judge's reaction, when faced with the reluctance of these victims, was to throw them in jail.

These kinds of incidents, along with judges who refuse to sentence because they feel sorry for rapists, send a message to society that rape is not a serious crime and that the victims will be tried, not their assailants. We need to make sure that every police force has investigators who are trained with

respect to the investigation and handling of sexual assault cases.

We need to make sure that every State Attorneys' Office has prosecutors trained to understand the dynamics of sexual assault. We need to make sure that every police force has investigatories trained to investigate and handle sexual assault cases. We need to have our judges educated to understand the psychological factors, as well as the legal factors, involved in a sexual assault. They need to understand that sexual assault and rape are real and that they are not crimes of passion, but crimes of violence against women.

In reviewing the Florida Law Enforcement statistics, it is apparent that approximately one-half of reported rape victims are children under the age of 18. In Broward County, for example, four children are treated by the Rape Crisis Center every day of the year. The education component of the Violence Against Women Act will stimulate the creation and implementation of this course work.

It is clear from the Gender Bias Study Commission's research that we need to teach our children, at least by junior high and again in high school, what is and is not acceptable sexual behavior. We need to have incorporated in our schools' programs, curriculum to teach children that no one has the right to force sexual activity, that "no" does mean "no" and that it is also okay to say "no". One police officer told me that when she goes out and teaches a course in her local junior high school every year, the kids tell her that they think it's

okay to force sexual behavior on somebody if they spend money on them, or if they've been going out with them for a while. The girls oftentimes believe that they owe a guy sex if he spends money on them, that they should submit to sexual advances, even though they don't want to. Many of them are taught that you don't say "no" to men, that you don't anger men and that you submit to sexual advances. And when these young women get raped, they feel guilty; and they feel responsible. They are not taught to stand up for themselves. The human cost in terms of psychological pain in suffering is incalculable.

We also need training about rape for our police. One officer told me that she tried to get permission to go to an interdisciplinary rape training conference that was being held in Miami. The total cost for the law enforcement department for the 4-day program would have been approximately \$400.00. The Interdisciplinary Rape Science Training Institute is considered one of the best in the country and is held in Dade County. The law enforcement department denied the request because it was too interdisciplinary and would, therefore, be a waste of time. The officer told me that, if she had wanted to go to a program where she would hear "war stories" from police officers who had been around for 40 years, there wouldn't have been any question and she would have been allowed to go. In this program, where she would have learned how to better deal with her victim, how to get the most of her investigation, the department could not understand how these benefits would

enhance her effectiveness as a police officer, and the request was denied.

We also need the Violence Against Women Act in order to deal with situations where our states give short shrift to what I described as the "dirty feet rapes." Every American has the right to be free to live and move about society without being sexually assaulted. If the states cannot or will not protect our rights as citizens, then it is up to the Federal Government to provide a civil rights action which will provide alternatives and, by its very existence, increase the responsiveness of the states.

I certainly hope the Violence Against Women Act receives the support of Congress, including receiving the proposed funding, so that we can eliminate violence against women.

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The CHAIRMAN. Thank you both for your testimony.

I have kept you very late, and I have some questions if you would be willing to stay a little longer and you will allow me to make one phone call. I need to explain to the person who has been sitting in my office since 1:15 why I am not coming—for me personally to explain that to them—if you could give me literally 120 seconds to go and do that, we'll come back, and I'd like to keep you for another 15 minutes or so because I have some questions I'd like to follow up on.

We'll adjourn for just a moment.

[Short recess.]

The CHAIRMAN. Thank you. I apologize for the interruption.

I should explain, by the way, the reason for the absence of some of my colleagues. On Tuesdays, from 12:30 until somewhere after 2, the entire Senate meets in caucuses. The Republicans all meet for lunch, and the Democrats all meet for lunch. It is one of the few times we each have to discuss policy questions. So that is the reason for the absence of most of my colleagues, not the absence of interest.

Let me begin with you, Ms. Freeman, and ask you the following question. One of the hopes—at least, I was told—one of the hopes and expectations with regard to sensitizing the court, prosecutors, and police to the plight of victims was that with the increasing number of women on police forces, as prosecutors and as judges—some of us would argue not enough, but nonetheless more than existed in the past—that we would begin to see a change in attitudes. Yet we have had a fair amount of testimony over the last year and a half to indicate that our hopes have exceeded the reality of the situation—not merely the hope in terms of the number of female prosecutors and so on, but that there is not a vast difference of attitude.

What has been your experience, if any, that you could speak to with regard to the commission's undertakings? Was there a difference—I don't suggest that you necessarily catalog that—but could you give me an impression?

Ms. FREEMAN. There is a difference. When women become involved particularly in law enforcement and the investigation of these crimes, they bring a very different perspective and a sensitivity to it. But the problem is that women have not yet risen in the ranks where they are in a position to make policy, where they are in a position to make decisions as to staffing and funding, and as a result we haven't seen as much of the change as we would like to.

The CHAIRMAN. Now, with regard to education, you pointed out the inadequacy of the education devoted to the subject of rape and violence against women. I have spoken on this subject for some time as an advocate of greater education and I find myself confronted with well-meaning—that's almost a pejorative term these days—with people who I know to be honorable people, who suggest that such an initiative will interject into the classroom, interject into a school setting, matters that are of sexually explicit nature that should be left to parents to discuss.

I respond by saying that we have no difficulty telling kindergarten children that they have to share when they fight over the toy in the sandbox; we have no difficulty telling first and second grad-

ers that they cannot lift their hand and strike another child because they are angry. And I don't understand why we have difficulty even at that early age—whether we talk about rape or not—in making it clear to young men that they have no right under any circumstances to raise their hand in anger or to use any physical force relative to a woman—whether it is for purposes of striking out in anger or whether it is for purposes of seeking sexual attention.

Did the commission look at the education piece in this equation at all?

Ms. FREEMAN. We looked at it in that we felt that it was something that needed to be done, and we made it one of our recommendations that the school systems as well need to teach our children that sexual violence is not OK. That basically came from our review of research and the finding of a Cranston, RI, study, which I am sure you are familiar with.

I have been on the campaign in Florida to try and have a curriculum instituted on a widespread basis in our schools, and the question always comes back to me, well, isn't this something that the parents should be doing in the home. And my response is absolutely. But the fact of the matter is that parents aren't doing it in the home, and we need to teach our children that this is not acceptable.

The prevalence of rape just goes to show us that we really do need to do something, and if parents aren't doing it, somebody else has to.

The CHAIRMAN. Amy, you were an unfortunate exception in many ways, in the sense that you were the victim of a brutal crime of violence. But a lot of people who are victims of that same crime are victims at the hands of someone they know. You didn't know this individual. And what I want to do is ask you to talk with us a little bit about your attitude toward yourself after this was over. You have indicated to us that you felt a sense of almost euphoria and relief that you were alive, and then the dulling and deadening reality of what had occurred set in.

You also mentioned to us that you wondered whether or not you would be blamed. Tell me, why did you even ask that question? Was it because of something that a police officer, a parent, a friend, or a relative said to you when you told them about what happened, or was it because of what you had watched on television, what you had heard on campus or at your work? Why did you ask that question?

Ms. KAYLOR. I think it was a combination of many things that had happened to me. When I was 12 or 13, my mom went to some sort of meeting or club, and they had a speaker there who spoke on rape, and she came home, and she had all the pamphlets lying on the desk. I saw them there, and I was asking her about it, and she wouldn't talk to me about it. She wouldn't tell me about it.

Also, just the media, things I saw on television about rape victims and trials, and how they are always blamed, things like that. I think it became ingrained in me.

The CHAIRMAN. Was your concern validated—did people blame you? In addition to not being able to participate in the outcome, it being totally beyond your control—a frustration I think almost

anyone could understand, at least I hope to God they could—were there any other ways—and I'm not asking for names of friends or anything—when you spoke to your friends and your acquaintances, did you get peppered with questions as to why you were alone at the concert, or why did you go?

Ms. KAYLOR. Sure. Why were you out so late? Why did you get out of your car when he rear-ended you? You were alone—why would you ever do something like that. Things like that I heard often.

The CHAIRMAN. Did you feel your acquaintances understood your plight and dilemma, or do you think that they questioned it, that they wondered about it?

Ms. KAYLOR. I'm not sure they questioned it so much as I just don't think they understood it at all. I'm not sure if they questioned it; I just never thought they really understood.

The CHAIRMAN. In your case, you had at least the satisfaction of everyone knowing that there was a serial rapist and that you were his victim. There are so many—as ironic and as weird as it sounds to say that—there are so many young women who never have what happened to them validated in the minds of other people.

We had testimony, as I said—and I'd like you to comment on it—we had testimony from some victims that not only was their judgment, but their veracity, was questioned by some of their friends: "Why did you have that extra drink? Why did you bother to go up into the room in the first place with So-and-So? Why did you walk home?"

You were in a sense spared that, I guess, because of the nature of the rape; is that right?

Ms. KAYLOR. That's correct.

The CHAIRMAN. When you reported the attack, did you go home and immediately tell your parents, and then they contacted the police right away: Is that what happened?

Ms. KAYLOR. That's right. I went home immediately and called the police.

The CHAIRMAN. Were you asked questions about whether or not you resisted? Ms. Freeman gave us the example of a case where a young woman was raped in her trailer and literally pulled off the doorjamb going back into where she was being forced, and the police kept asking her whether she had resisted. Was that a major piece of the interrogation or questioning of you?

Ms. KAYLOR. Actually, I was really fortunate in that I had a detective who was very understanding. I felt on the defensive when I gave him my statement, and I kept saying to him over and over, "I thought I was going to die, so I just did everything that the rapist told me to do." I said I thought that if I tried to fight back, I would die. And the detective told me that I did the right thing. He said that if I had tried to fight back, I probably wouldn't be here.

The CHAIRMAN. That's good. Let me ask you if I can, Ms. Freeman, what kind of response has your commission report received? I mean, how would you characterize it?

Ms. FREEMAN. Actually, amazing. It is in its third printing, actually. The legislature has pending before it a dozen bills that contain recommendations that we made. The dean of the new judges' college who is on our commission sat his faculty down a few weeks

before the new judges' college convened this year with the report and also a racial bias report that has come out in our State and told each of them to tell him how they were going to incorporate the findings and the recommendations into their education program.

There have been a lot of groups around the State that have taken up the report and tried to make the changes that have been recommended. So it has been a very favorable experience. We have a very, very long way to go before we correct the problems.

The CHAIRMAN. The use of polygraph examinations in your State—is that what you testified to, in some parts of the State?

Ms. FREEMAN. In some places, it is used routinely. I spoke to a law enforcement officer in the middle of the State, and she told me that it was routinely used with all victims when she arrived 5 years ago and that she put a stop to it.

The CHAIRMAN. Now, obviously, the use of a polygraph on a victim is fundamentally different than the use of a polygraph on a defendant. A defendant can and is expected to in many cases just refuse to do it, and most counsel would instruct them not to participate. But I suspect the hammer being held over the head of the victim is that they are under the assumption that if they did not participate in a polygraph, their case would be dropped. Was that the implied threat, or in fact is that how it worked?

Ms. FREEMAN. Well, it was not only implied, but in a great deal of the situations we were told that that was what they were told—that if they didn't pass the polygraph that not only would the case not be prosecuted, but in fact they might be subject to prosecution for filing a false claim.

The CHAIRMAN. I think the work of your commission was first rate. I just hope that its recommendations see the light of day in Florida, and I hope it goes beyond your State because this sort of "blame the victim" syndrome continues to prevail. Do you have any idea, as a consequence of your work, why that is the case? Why do we do that in cases of violence against women? Why is it there and seems not to be in other cases? I don't hear many people blaming the victim because they left the key in the ignition or because they forget their wallet and left it on top of the washstand when they were washing their hands, or because they left the front door unlocked in the case of a burglary. Why is the "blame the victim" syndrome so powerful and predominant in cases of violence against women?

Ms. FREEMAN. It is part of our mythology about sex. You can even take it back to the Adam and Eve story, that the woman is the enchantress, and if she doesn't want to have sex or doesn't want to allow this to happen to her, that she is somehow able to prevent it, and unless she can show that she was totally unable to prevent it, this mystique permeates, and we keep looking for ways to justify what has happened.

The CHAIRMAN. I expect someday, some innovative lawyer is going to try to demonstrate that there is a chemical reaction that takes place in the male that is triggered by a movement, a type of dress, an odor from a woman, and therefore he loses control, and the rape is beyond his capability. I can't understand the irrational fear that some women who don't like the legislation, and some men

who don't, have about us clamping down on this problem; it almost seems as though they believe that if certain things are done, a young man loses all control. It's like the pollen is dropped, and it is beyond the ability—I'm serious.

Ms. FREEMAN. I know. And then also part of the mythology that young men learn from their older brothers and uncles and what-have-you is that even though she says no, she really don't mean it.

The CHAIRMAN. Yes, there are a lot of songs that literally have those lyrics in them.

Let me ask you, Amy, is there anything you'd like to tell us or anyone who is listening that I haven't asked you about or you haven't had a chance to say?

Ms. KAYLOR. Not other than what I said in my statement, that this experience just drastically alters every aspect of your existence.

The CHAIRMAN. As hard as it has been—I mean, I suspect this is not the first time you have had to recount what has happened to you—is it cathartic in value? Have you found it strengthens you, as hard as it is? Tell me about that aspect of it, that is, speaking about it, talking about it, not submerging it totally. Has that been helpful in your recovery, or how would you characterize it?

Ms. KAYLOR. It is a catharsis, I think. It does help to talk to people about it. I notice that if I go for a long period of time without talking to anyone about it, it starts to haunt me again.

The CHAIRMAN. Well, you are a courageous person. Like I said, I don't know how you do it. And by the way, I might add—this is totally unrelated—but you have a great deal of poise and presence. I don't know what line of work you are going into, but—

Ms. KAYLOR. Medicine.

The CHAIRMAN [continuing]. Well, your bedside manner is very soothing and reassuring. Seriously, you are a very good witness. We truly appreciate the fact that you would share this awful experience you have had with us, hopefully for the benefit of others, and hopefully diminishing the prospect that similar things will happen, and God forbid, if they do happen, that the treatment of the victim will be as a victim and not as a suspect.

Ms. Freeman, your devotion to this concern is obvious, and we appreciate it. I am confident that this is not the last effort you will be undertaking in behalf of bringing about a change in attitude as well as in law.

I thank you both very, very much. And I would also like to thank those of you who have been here today through the hearing for your interest and your concern. This legislation or anything closely approximating it will not come to fruition unless the women and men of this country who care strongly about the subject are willing to speak about the subject.

So again, I thank you all very, very much, and I'm sorry to have skipped over your panel; it was my fault—it comes with age. I looked down at the sheet, and I went from panel 1 to panel 3.

And particularly to you, Amy. I know how hard it must be if you are waiting there, never having testified before a committee, and you're all ready, and then that guy up there running the hearing doesn't call your name, and you've got to wait another hour. So I do apologize to you both.

Again, thank you all. The hearing is adjourned.

[Whereupon, at 2:25 p.m., the committee was adjourned.]

[The following articles were supplied for the record:]

MARCH 28, 1991

Guard accused of rape

Krome detainee freed after report

By **LESLIE ALVARINEZ**
Miami Staff Writer

A 31-year-old Haitian woman who said she was raped by a Krome Detention Center guard was released from the camp Wednesday after her lawyer told immigration officials that she feared being attacked again.

The guard suspected of the crime is still at Krome, but he has been banned from working inside the compound near any inmates.

The incident allegedly occurred Jan. 23 at the Krome health clinic, said the woman's attorney, William Sanchez. Two days later, after doctors noticed the woman was distraught, she broke down and told a nurse what had happened. The woman told Sanchez that she was so fearful and ashamed that it took her two months to tell him. Sanchez asked immigration officials Wednesday to parole her.

"These detainees expect to find authority figures in this country who respect them as individuals," Sanchez said. "It's extremely appalling."

In an affidavit, the woman said Krome doctors took blood and urine samples two days after the rape, but did not conduct a gynecological exam, routine in collecting evidence after allegations of rape.

Dr. Aida Rivera, director of public health service at Krome, which operates separately from the Immigration and Naturalization Service, was in Key West on Wednesday, and her staff said they could not reach her to relay a request for comment.

INS learned of the alleged rape Jan. 25 and immediately sent a report to the office of the inspector general in Fort Lauderdale, which conducts investigations at Krome,

said INS District Director Richard Smith. On the same day, the suspected guard was assigned to duties away from detainees, Smith said.

But it was not until a month later that the FBI interviewed the alleged victim. Until last week, her attorney knew nothing about the FBI visit. David Hedgescock, the FBI agent in charge of the case, would not confirm when the investigation began.

Smith said he cannot discipline the suspected guard — whose identity immigration officials would not reveal — until the outside agencies finish their reports.

"It's totally out of my hands," Smith said. "After an investigation has begun, then my people stay out of it."

Although the FBI began looking last year into complaints of physical abuse by guards at Krome, this is the first time a detainee still inside the camp has reported being raped.

Since January, the woman has suffered from severe depression and fear, Krome medical records show. Initially, she refused to eat and cried uncontrollably. Despite Smith's assertion that the guard is no longer working inside the compound, the woman told her lawyer that she has seen him about five times since Jan. 23 and is afraid he may try to harm her again.

INS agreed to parole her Wednesday after Sanchez argued that the woman was afraid of the guard.

Sanchez also had requested she be paroled in February, before he knew about the alleged rape but after INS officials had been informed. INS denied the request.

The woman plans to live with her adoptive mother in Stamford, Conn., until immigration officials decide whether to grant her political asylum. She claims that the Tou-Tou Macoutes, former dictator Jean-Claude Duvalier's private security force, extorted money from her.

She was taken to Krome on Jan. 19 when she arrived at Miami International Airport without documents.

Cheryl Little, a Haitian Refugee Center attorney, took a sworn statement from the woman Tuesday. This was her story:

After she finished breakfast about 7 a.m. Jan. 23, she decided to call her family in Connecticut. A guard offered to make the call for her free

of charge from the doctor's office. She followed him into the room and spoke to her family for about five minutes.

At that point, the guard started fondling her breasts.

"I tried to push him away," she said. "He hung up the phone . . . Then he sat on a chair, pulled me onto his lap and took off my slacks. And he also tore off my panties. I still have those panties and you can see where they are torn."

The guard allegedly raped her for about two minutes while she was on his lap.

"During all this time, I was crying, trying to break away," she said.

"I finally managed to push him, to pull away, and then I jumped up."

Then, she said, he forced her to perform oral sex.

"I wanted to vomit, I felt nauseated . . . I wanted to scream when I was being forced to do these things, but we were in a back room and he was holding the keys . . .

"I have nowhere to go since I am in jail and at their mercy," she said.

Little said she has heard many stories of abuse committed by Krome guards. A Miami Herald story chronicling those abuses last year sparked ongoing investigations by the FBI and human rights groups.

"We continue to hear stories about abuse, but nothing is being done," she said. "I don't think the majority of the guards abuse detainees, but enough do so that it's a consistent problem. You're talking about a detainee who has nowhere to go."

Smith said the guards attend training at an INS academy, where they learn how to deal with detainees. Male guards are not allowed inside the women's barracks but do monitor them inside the cafeteria, the visitation room and the administrative area.

"In running a facility like this, what you have is a small community of which you are responsible," Smith said. "And unfortunately, because you are dealing with nothing but human beings, you are going to run into these situations."

In the last year, no guards have been fired or transferred because of misconduct, Smith said.

"These are the kinds of problems I don't like to see come up," he said about the alleged rape. "Even if the case comes up totally unsubstantiated, it still bothers me."

Tactics, verdict in rape case stir outrage

By JAMES F. McCARTY
Herald Staff Writer

Outrage mushroomed Thursday over a Broward jury's acquittal of a rape suspect because jurors felt the woman "asked for" a sexual attack with her provocative dress.

Critics focused on the tactics of defense attorney Tim Day, who some say placed the 22-year-old Coconut Creek woman on trial, instead of her accused attacker.

The woman's experiences demonstrate the chilling effect the judicial system can have on rape victims, sex-crimes experts and women's rights advocates said.

"This case can be a lesson to all of us that punitive action against rape victims is not past," said Sally Goldfarb, attorney for the National Organization for Women's Legal Defense and Education Fund in New York.

The six-member jury — three men and three women — found Steven Lord, 26, a Georgia drifter with a history of sex-crime arrests, not guilty Wednesday of armed kidnapping and armed sexual assault.

Five jurors said the woman's enticing dress and cool demeanor on the witness stand influenced their opinion. Thursday, one juror, Dean Medeiros of North Lauderdale, de-

fended the decision. "She was a high-class call girl," he said.

Several anonymous calls, some threatening, were received at jury foreman Roy Diamond's southwest Broward home, according to his wife. Requests for interviews also came from the local media, *Good Morning America*, Fox TV's *The Reporters*, *Inside Report*, New York and Pittsburgh, she said.

"There was so much innuendo about her life style and the way she was dressed," said prosecutor James DeHart. "But I can't fault a defense attorney for doing his job. He can use whatever tactics the court allows. I just couldn't believe the verdict."

Day, a public defender, told jurors the woman agreed to have sex with Lord in exchange for \$100 and cocaine, but later changed her mind. The woman denied that.

Legal minds say it is sometimes cruel, but legally proper, to shift blame on victims.

"You use whatever defense is available to you," said Bruce Lyons of Fort Lauderdale, past president of the National Criminal Defense Lawyers Association. "If the defense is that the woman consented and was scantily dressed, attacking

her [character] is something any good, competent lawyer would do."

Broward Circuit Judge Mark Speiser said Lord's attorney acted within his legal rights. "Any defense attorney has the right to impeach the credibility of a witness," he said.

Testimony about the woman's dress — a lacy white miniskirt without panties and a green tank top — should be "completely irrelevant," NOW's Goldfarb said.

The Broward woman said she was "more outraged and angry at the system than I am at Steven Lord. I feel raped by the system."

On Nov. 6, 1988, she said, Lord abducted her at knife-point from a Fort Lauderdale restaurant parking lot and raped her repeatedly after driving north to Indian River County. She escaped. He later was captured.

She said she felt victimized again in June when Speiser ordered deputies to arrest her because she missed several court appearances. She spent six days in County Jail.

"In a way," Goldfarb said, "this jury has done us all a favor by expressing ideas that exist in the minds of many juries. It's unusual when jurors are so open in expressing them."

In 3rd trial, rapist receives 17-year term



Mitchell

By **DAVID ZEMAN**
Herald Staff Writer

A stone-faced Rufus Mitchell was given a maximum 17-year prison term Friday for his role in the 1987 gang rape of 15-year-old Lauren Cox on a Singer Island beach.

It was the third time Mitchell had been sentenced for the crime, after two trips through the appellate courts. Dressed in prison blues and wearing a lanyard with a serpentine figure, Mitchell said nothing during the hearing.

The Palm Beach County courtroom was packed with Cox's family and supporters. For them, Cox's case has come to symbolize what they contend to be legal obstacles to successfully prosecuting rape suspects.

Cox, now 20, and her mother, Michelle Mead-

ows, read prepared statements to Judge Walter Colbath Jr. before he pronounced sentence.

Meadows went first, reading aloud the poem her daughter wrote only months after the rape. The poem spoke of the girl's grief and anger, of "feeling dead inside," and of her "unending pain."

Then Cox stepped forward. She has been through several trials already and has appeared on national television shows in hopes of inspiring other rape victims to overcome their ordeals.

Despite that, Cox was unable to get through her statement without tears. She said she hoped nobody would ever know her pain.

"Not only is it impossible," she said, "but I wouldn't want you to do that. I wouldn't want any of you to know how I feel."

When she was finished, Colbath said, "My hands are severely tied in the sentence I can impose."

The reason is this: Mitchell and friend Rodney Walker were found guilty of raping Cox in 1987 and were sentenced to 22 years in prison. How-

ever, those convictions were later overturned when an appeals court ruled that the county's jury selection process unfairly excluded blacks. The teen-agers arrested were black.

Mitchell was later sentenced to 17 years in prison but that sentence also was overturned, resulting in the trial which took place in January.

Under U.S. Supreme Court precedent, a defendant who wins a new trial cannot receive a harsher penalty than was imposed previously.

Walker was acquitted at his second trial in January 1990. A third man, Hassan Jones, accepted a plea bargain of 30 years in prison.

Cox said after the hearing that she will continue her lobbying efforts to toughen criminal sanctions for sexual attacks. She said she never wants to see the inside of a courtroom again.

Defense attorney Craig Boudreau, meanwhile, said he believed the judge made several prejudicial rulings during the trial.

He said his client would file another appeal. "Rufus," he said, "will be back."

Man who raped daughter finds sentencing loophole

By DAVID ZEMAN
Herald Staff Writer

A 43-year-old Boca Raton man who raped his young daughter likely will serve less than five years in prison — rather than 25 years — because his attorney found a loophole during his sentencing last week.

The man, who will not be identified to preserve his daughter's anonymity, was convicted of rape in January in Palm Beach County Cir-

cuit Court.

The daughter testified that her father raped her, forced her to perform oral sex and made her view his pornographic magazine collection — which included *Dominated and Diapered*, *Naughty Babies* and *Baby Letters* — on numerous occasions in 1989, when the girl was 11.

Jurors were told the defendant was 41 at the time.

In Florida, a man older than 17 who rapes a child less than 12 gets

an automatic life term with no parole for 25 years.

But defendants 17 or younger who have no criminal record are entitled to much shorter sentences — in the seven- to nine-year range — with actual time served maybe half that length due to prison overcrowding.

On Jan. 17, the six-person jury returned a guilty verdict, finding that the man had raped his daughter.

But at the sentencing hearing Friday, defense attorney Jack Fleischman argued that his client was eligible for the more lenient sentence because the verdict form — the piece of paper jurors fill out in deliberations — did not specifically ask jurors to make a finding that the defendant was older than 17.

Betsy Resch, who prosecuted the case, was out of town for the sentencing. Judge James Carlisle called the prosecutor's office looking for

"a warm body" to handle the hearing. Ten minutes went by, nobody showed.

So Carlisle sentenced the man to nine years in prison. He likely will go free in less than five years.

"I disagree with the judge's order and I'm appealing the sentence," an upset Resch said Tuesday. She declined to comment further.

Fleischman defended the result. "I'm his defense attorney and I have to hold the state to proving

each and every element of the case," he said. "I have to make sure the state in essence follows the law. In this case it didn't."

Judge Carlisle agreed.

"I have to have a finding that the jury reached certain conclusions," Carlisle said Tuesday. "I just can't assume findings just because I knew [the defendant's] age. He was obviously more than 17 years old. But you can't just presume that."

A LEGISLATIVE BATTLE

Do women's clothes invite rape?

By Elizabeth Sneed
USA TODAY

From New York to Paris, designers are showing off skimpy, sexy, snug and sheer looks.

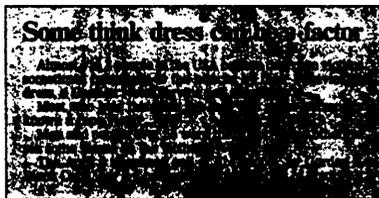
Fashion buyers are eagerly stocking up on these styles for summer and fall.

Are women who wear such clothes asking to be raped?

Last fall, a Fort Lauderdale, Fla., jury said "yes." Now the Florida House of Representatives says "no."

Last week, the House passed a bill forbidding the use of a rape victim's clothing as evidence in a trial without her permission.

The legislation was inspired by a Fort Lauderdale rape trial. The defendant was acquitted after the victim's clothing was used as evidence. Her lace-trimmed denim mini and crop top were "passed around the courtroom and given to the



jury to hold up," says Rep. Elaine Gordon, D-Miami, one of the bill's sponsors.

After the trial, one juror said: "The way she was dressed, she was asking for it."

The defendant was later convicted of a Georgia rape and was sentenced to life in prison.

"A woman's clothing is simply inappropriate and irrelevant evidence in a rape case," says Charlene Carres of the

American Civil Liberties Union in Florida.

But it's not uncommon in courtrooms, Carres says, citing gender-bias studies of the justice system in New York and New Jersey.

Although the bill passed the House easily, Sen. Peter Weinstein, chairman of the committee that will bear the bill later this spring, says it may not be constitutional. He says the bill is "well-meaning" but may lead

to convictions being overturned on appeal because defendants were denied use of evidence.

If the bill succeeds, "I'm sure there will be an outcry for similar bills around the country," says Anne Gannon, a lobbyist for the National Organization for Women, which helped write the legislation.

Women have historically been blamed for provoking violent crimes against them, says fashion historian Valerie Steele.

"But I doubt a defense attorney would say a man who was mugged was asking for it because he wore a nice suit or costly watch," Steele says.

Melissa Sonex, of the fashion magazine *Mirabella*, says clothing does send messages in social situations, "but rape has nothing at all to do with sexual arousal. It is a violent crime and a woman's clothing does not provoke or incite it."



By Larry Fed
NO BLAME: Designer Gordon-Henderson says skirt styles don't invite rape.

Designers defend their short skirts

Some U.S. designers showing the shortest skirts on Seventh Avenue say their styles do not invite rape.

Isaac Mizrahi says he favors the Florida bill that would ban the use of a rape victim's clothing as evidence in court without her permission. He says, "It's foolish that rape is caused by clothing is just so insane. Rape is an insane act that has nothing to do with a woman's dress."

Charlotte Neville says, "Short skirts champion the beauty of a woman's leg, but not in a crass manner. It's frightening that in our society, we have forgotten our God-given rights. It's such a grave misconception that clothing causes rape. I find that concept so sexist and it revolts me."

"Only naive people could believe a woman's clothing can cause a man to rape her," says Ronald Shamer.

Gordon-Henderson says, "Rape is not a sexual crime. It is a crime of violence that has nothing to do with a woman's clothing."

However, Norma Kamali, who showed some of the sexiest shorts of the season, advises women to think before they dress.

"This is a time where unpredictable behavior, violence and sexual abuse seems to be rampant. I would hate to think our freedoms are limited and I don't. But it's a more conservative time, for many reasons. Therefore we must be more sensible in our choices."

'I wanted her to think about this . . . and tell the truth'

Broward judge jailed 2nd sex crime victim

By **CHRISTINA CHEAKALOS**
Herald Staff Writer

Broward Circuit Judge Mark Speiser, frustrated because a sexual assault victim changed her mind about prosecuting her ex-boyfriend, put the woman in jail for a night.

"If I ever was attacked again, I would never, never call the police or go to court," says the woman, now 26. "I would just cry and work it out alone."

In an unrelated case, the same judge jailed a 22-year-old rape victim for six days in June because she was reluctant to testify after a

stranger allegedly kidnapped and assaulted her.

In that case, Speiser blamed the Broward Sheriff's Office for taking the woman to jail instead of bringing her to him.

Speiser calls rape "the worst crime" and believes women have a responsibility to help the state put their attackers behind bars.

In the case that surfaced a few days ago, "the woman lied under oath in court" and deserved to go to jail, Speiser declared.

On the basis of the woman's account, police reports, court documents and interviews, this is what



JUDGE SPEISER: Said the state's case 'was shot.'

happened:

The woman worked nights as a cocktail waitress and studied days

PLEASE SEE SPEISER, 9A

Judge jailed a 2nd sexual assault victim

SPESER, FROM 1A

to become a veterinarian. She lived in Hollywood.

On Nov. 1, she returned to her apartment at 1 p.m. to feed her three dogs.

There, inside, waited her ex-boyfriend, Marcus Santoni, 27. He had a key. With him was his friend, Wayne March, also 27.

About 45 minutes later, the woman ran screaming from her apartment. A neighbor called the police.

Taped statement

Before officers arrived, the two men left. Police took the woman to the Hollywood police station, and she gave a taped statement to detective Kevin Doyle.

Doyle wrote a summary: "Upon opening her door, she was then overpowered."

The woman told the detective the men pinned her to the wall, covered her mouth, slapped her, pulled off her T-shirt, grabbed at her breasts and otherwise tried to assault her. She said she fought them off.

Several hours after the woman left the police station, she telephoned the detective. She said she

Donnelly decided to file charges anyway. He charged the two men with kidnaping, attempted sexual battery and grand theft — because a \$1,000 gold bracelet was missing.

Police arrested Santoni and March. The next day the woman signed a formal "waiver of prosecution," again trying to drop the whole thing.

Donnelly proceeded anyway. He said "three quarters" of sexual assault victims try to back out of pressing charges.

The two men came before Judge Speiser at a bond hearing Dec. 1. The woman arrived in the courtroom with Santoni's mother.

Felt ungrateful, disloyal

She had dated Santoni on and off for seven years. They had broken up about nine months earlier. She left him, she said, because he had a cocaine habit.

His parents had helped put her through college. She said she felt ungrateful, disloyal.

At the hearing, she testified for the defendants about the episode.

"It's not true, and it is really exaggerated."

"It was a domestic argument. My boyfriend was there, and we were

'The state, the judge, everybody [was hurting me]. Nobody thinks of me. I'm the victim, you know.'

The judge questioned the woman harshly, reading aloud parts of the detective's summary, repeating intimate details of the attack and some of the vulgar language the men allegedly used during the assault.

During the interrogation, Speiser found out about the taped statement she had given. He ordered the detective to bring it to the courtroom and play it.

Prosecutor Donnelly told the judge the woman felt pressure from Santoni's family.

Speiser replied: "I'm going to jail her right now."

He set a bond of \$23,000 each for both men, then told the woman he had heard enough.

She said she wasn't lying.

"Ma'am, the more you talk, the more you get yourself in trouble,

The prosecutor tried to intervene.

"I have given her the number of the Sexual Assault Treatment Center, and I have spoken to them today. I would just ask that she be allowed to contact those people, and that would be how we resolve this thing."

"No way," Speiser said. "I'm going to sentence her to a period of incarceration of 60 days in Broward County Jail. There will be no bond."

A bailiff took her into custody.

"I was shaking," the woman said. "I was petrified. I was too scared to cry. I was handcuffed and taken away. I begged and pleaded with Tim [the prosecutor]: 'Tim, do something.' He's a nice man. He looked like he was going to cry."

The prosecutor told the woman in jail that night, telling her he would do his best to get her out.

"I have a lot of respect and admira-

tion for the judge, but I didn't agree with what happened," Donnelly said last week. "I would prefer not to comment beyond that."

The next morning, the prosecutor, a public defender and a counselor from the Broward Sexual Assault Treatment Center asked the judge to release the woman.

VICTIM,
jailed for lying about attack

'I know I lied'

Said the prosecutor: "Judge, I spoke to her every day this week. And yesterday at the hearing, I asked that she be sent to counseling instead of the sentence that was imposed. . . . I don't think she is a criminal. I don't think she belongs in jail."

Speiser asked the woman if she had anything to say.

"I know I lied," she said. "You know, I was scared because they were here, and the family were here. And I couldn't tell the truth because I was scared. I lived with the guy. I know his father. I know their whole family."

"I'm just scared."

Speiser suspended the 60-day sentence after the woman agreed to seek counseling from the rape center.

Three months later, the woman gave defense attorneys Don Cohen

and Henry Gonzalez a statement.

It wasn't Santoni who attacked her, she said; it was the cocaine. Yes, she said, the assault occurred. And everyone was "hurting" her.

"The state, the judge, everybody. Nobody thinks of me. I'm the victim, you know."

She begged them not to make her testify in court.

Struck a deal

The defense lawyers struck a deal with the prosecutor. Santoni and March each pleaded guilty to a single charge of attempted rape.

Speiser put them on probation for a year.

Last week the judge explained why he put the woman in jail:

"I wanted her to think about this right then and there, to reflect upon the trauma of that incident and tell the truth.

"I knew she'd be back in front of me the next day, and we'd remedy the problem. The problem from the state's vantage point was [that], after she came in and lied under oath, their case was shot.

"If, in fact, the rape didn't occur, and she lied, I wanted her to remember this experience in court."

The Miami Herald

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Rape victims' dress

STATE REP. Luis Morse did more than just put his foot in his mouth the other day in the way that he publicly expressed reservations about a bill that seeks to limit trial evidence about rape victims' dress. The Miami Republican, regrettably, articulated a popularly held but misguided belief about the nature of rape.

"If a woman walked around the street totally naked, in a dark alley, you could not introduce that as evidence at a trial for rape?" he asked the bill's sponsor, Rep. Elaine Gordon, Democrat of North Miami, in apparent astonishment.

Mr. Morse's question betrayed the untenable assumption that some women actually encourage rape by dressing provocatively. That is simply not so. Yet it was revulsion at this kind of thinking that led Ms. Gordon to sponsor the legislation. It cleared the House 111-0 last week and now goes to the Senate. If it passes there — and by rights it should — the law would preclude using a rape victim's mode of dress as evidence that she provoked the attack.

That prohibition is needed. Rape, despite its sexual expression, actually has very little to do with sex or sexual desire. If it did, nude bars would be prohibited out of fear that the dancers' nudity might entice the

NOT FOR TRIAL EVIDENCE

patrons to rape them. Nor would elderly women have to worry about being raped.

Unfortunately, all women have to worry. For rape is a vicious, physical assault that can happen to any woman (or any man, in some circumstances), elderly, middle-aged, young, or child; slim or obese; attractive or homely. Insinuating that some victims "ask for it" when they dress in a certain way is like saying that a home-invasion victim deserves to be robbed because he left his door unlocked.

Regrettably, that fact still is not well understood — hence, the need to chisel it in law. Only last fall, a rapist was acquitted in Fort Lauderdale after the defense attorney showed the jury the victim's lacy miniskirt and claimed that she was a prostitute.

To his credit, Mr. Morse later withdrew his objection to the bill and recorded a Yes vote with the House clerk. One hopes that he did so after properly informing himself of the deep, dark, irrational forces that impel some emotionally sick men to violate another human being's body.

It is time for others to do likewise.

Fraternity rape haunts woman after 8 years

By **MARGARIA FICHTNER**
Herald Staff Writer

I'm feeling about done with this whole thing," she says. "I don't have any feelings left about what happened, so I don't think I'm really effective when I talk about it anymore. And every time I do, I really pay an emotional price. But I've been on the *Today* show, and a couple of other national shows, and local shows. And I've never done one of those that I haven't had somebody call and say, 'This happened to me, too.' So I guess that's really the bottom line."

In fact, Meg Davis of State College, Pa., never will be done. Eight years ago this summer, when she was 19, Davis was raped, savagely and repeatedly, during a party at a Penn State fraternity house.

"I had a friend there who was graduating at the end of August. We were mostly just friends, drinking buddies, although we had had sex, fairly casual sex from time to time. . . . So the night of the

Gang rape persists as campus nightmare

FIU seminar to study dating and violence

By MARGARIA FICHTNER
Herald Staff Writer

It is every woman's nightmare, and when it occurs on college campuses it typically preys upon the most susceptible victims — young, naive female disastrously vulnerable to drink drugs and a few sweet words.

Gang rape

"Every semester we get news of some appalling happening," says anthropologist Peggy Povey Sar day, author of the new book, *Fraternity Gang Rape: Sex, Brotherhood and Privilege* (New York University Press, \$19.95).

"Everywhere I go, I hear about a rape that occurred a week before I got there. I know of one campus that had six rapes in one semester and none of them was reported. They get reported to the rape crisis center or women's counseling center, but that's as far as it goes.

Not always. In July, Dante Oltarsh of Fort Lauderdale was sentenced to 364 days in jail plus two years of community control and 20 years' probation for his participation in the 1988 gang rape of a dangerously inebriated 18-year-old coed at Florida State University. Two of Oltarsh's Pi Kapp Alpha fraternity brothers receive probation in the case.

"Violence against women in America is, I think, our biggest problem," says Marilyn Hoder Salmon, director of the Women's Studies Center at Florida Intern-

tional University. "It's a tragic epidemic when you include all the manifestations, and we have done very little to address it."

It will be addressed now. The center has invited Sunday to be keynote speaker at its "Focus on Gender" conference Friday. Her theme: how young men become indoctrinated in socialized violence and how it later follows them into the corporate life.

For Sunday, primitive, ritualistic and often unspeakably brutal gang rapes within the university social framework are stark evidence of what can happen when age-old misogynist dynamics of group loyalty, male bonding, obedience, subordination, abuse and softness become entangled and explosive.

1 in 4 becomes victim

Estimates say that as many as one in four American college and university coeds will become victims of sexual attack by the time they graduate. Many will be assaulted as freshmen away from home for the first time, assertively indulging in alcohol or drugs and trying desperately to make friends.

"I think we can affirm that it does happen," says Jonathan Brant of Indianapolis, executive vice president of the National Interfraternity Conference, which represents 62 men's Greek organizations and their 5,300 members across 100 U.S. campuses. "I'm not sure it is as common as the perception offered in some comments you hear. But it's a significant enough problem. If it happens to one person, it's too often."

Figures released earlier this month indicate reported sexual assaults were up 10 percent during 1989 within the Florida state university system. The University of Florida had the most incidents — eight — with others at the University of South Florida (four), Florida State (three) and Florida A&M and FIU (one each). The University of Miami also reported one for the same period.

No one can speculate how many other victims may have been too timid or traumatized to come forward. The recent Florida Supreme Court study on gender bias within the legal system determined that as few as 10 percent to as many as 50 percent of all rapes are reported.

"Generally speaking," says Miami lawyer Jill Freeman, who co-chaired the study, "most are not."

"The women feel very guilty, very responsible," says Glenda Belote, assistant vice president for student affairs at FIU. "The concept that's easiest to deal with is that stranger who comes out of nowhere, and you are totally victimized. But 'Yes, I went to his apartment, but he was my friend. Yes, we had a couple of beers, but I trusted him. Yes, I wanted to kiss him,' that's different. So then if there's intercourse, even when she has said no to it very clearly, she still feels guilty."

Meg Davis of State College, Pa., who was raped repeatedly during a party at a Penn State fraternity house almost eight years ago, waited six weeks before going to the police.

When is it rape?

"At first," she says, "I wouldn't have called what happened to me rape. It was just 'things got out of hand.'" Even later, when crisis counselors persuaded her to report

the incident, "I was pretty aware that it was not a good case to prosecute. I was drunk, and I had been sexually active. But I also came to believe really that one of the reasons it happens is that women are afraid to talk about it when it does."

Ninety percent of the people who are raped on campuses know their assailants, says Michael Griffin, associate vice president for student affairs at Barry University. "And because they know them, to deal with it is even more difficult. How do you come forward and say something about a friend or about a friend of a friend? It's hard."

It is so hard sometimes, women are too afraid even to open up to the college officials who could suspend or expel their attackers and instead take other action, such as scribbling the names of their assailants on campus bathroom walls. "There just seems to be a kind of pervasive idea that boys will be boys," Sanday says, "and this is part of college."

As professor of anthropology at the University of Pennsylvania at Philadelphia, Peggy Sanday is a dispassionate observer of humanity's strengths and foibles. She has done extensive field work among the Minangkabau people of Southeast Asia, has written about cannibalism as a cultural system and has devoted enormous thought and energy to mulling the struggles over sexual power and dominance that beset and afflict much of the human race.

"I always have had an interest in understanding human behavior that I saw around me," she says. "For her, her boyfriend did not have to be her father."

the University of Pennsylvania's Alpha Tau Omega house. It is a virtual textbook case: During a party, a troubled young woman hazed by alcohol and tripping on acid has intercourse with several men, who observe each other in the act.

Although Sanday veils the identities of the fraternity and the school, calling them simply XYZ and U., she does not hold back much else. Her descriptions of the rape itself, reconstructed from court documents, newspaper stories and interviews, and her recountings of other fraternity practices — from nude circle dances to humiliating, sadistic initiation rituals — are chilling.

Sample: A discussion of the XYZ rape with members of a neighboring fraternity draws this astonishing response:

"I kind of feel responsible for what happened to XYZ because I was there, and I could have just as easily picked her up before they did, and I could have brought her back here, and they never would have gang-banged her."

"Yeah, because we would have!"

"No, we wouldn't have, because I would have locked the door and had

her myself."

"In one case I'm examining," Sanday says, "the fraternity house bedrooms had holes in the walls. . . . A guy brings in one kind of woman, and everyone's allowed to watch. When he brings in his girlfriend, no one's allowed to watch. It's possession. He owns her. I'm not going to share her with you. Share the whore, but Madonna's mine."

As with other types of sexual abuse, gratification is not even necessarily the point: The woman is merely a surrogate, a vehicle for what Sanday calls the participants' "no-holds-barred orgy of togetherness." The homophobic and homophobic undertones are obvious. Those who ritualize gang rape simply vent their interest in each other through whatever female body lies at hand.

Still, "many of our students feel this could never happen to them," says FIU's Belote. "The people they spend their time with, they cannot conceptualize doing this sort of thing to them. It happens to someone else. It's rather like student attitudes toward AIDS. 'Yes, I know about it. But it doesn't happen to me.'"

Not good enough. University student-affairs offices now routinely include date-rape discussions as part of the new-student orientation process. Fraternities and women's residence halls hold meetings and discussion groups. In October, the National Interfraternity Conference, which furnishes material or date rape to its affiliates, will cosponsor a national conference on sexual assault in Orlando.

Getting message across

The message is clear. "Our men and our women need to be educated on definitions," says Richard Walker, associate dean of student affairs at UM.

When is sex sex, and when is it rape? Is rape between or among people who know each other a question of male assault or female mis calculation? "Sure, she put up a little fight, but they all do." Is she saying "no" because she means it or because she knows she is supposed to?

Glenda Belote: "What's rape? I she says no, and he does it, that's rape."

As coordinator of crime prevention at UM, Coral Gables police officer Patricia Haden leads many discussions on the topic.

"With the women we try to stress that when you mean no, you've got to say it loud and clear," she says "and you've got to demonstrate that you mean it with nonverbal communication, too."

"And we tell the men that the don't have the right to any sex whatsoever. No matter if they've paid for the date or if they've had sex with this woman before. No doesn't mean maybe. No means no, and if there's any doubt then it's time for the date to be over and for him to take her home."

THURSDAY, OCTOBER 5, 1989, THE MIAMI HERALD

Jury blames woman in rape case

Drifter acquitted of violent assault

By JAMES F. McCARTY
Herald Staff Writer

A Broward jury, saying a 22-year-old woman got what she deserved, acquitted Georgia drifter Steven Lord on Wednesday of kidnapping and raping the woman at knife-point.

The woman, who lives in Coconut Creek, had been reluctant to testify and was jailed for six days in June because of that.

"We all feel she asked for it for the way she was dressed," said jury foreman Roy Diamond of Fort Lauderdale. The others — three women and a man — nodded in agreement: Her clothing was too enticing.

The woman said she was "totally shocked" by the jurors' comments.

"I can't understand how anybody could think I deserved to be cut up with a knife, raped multiple times, knocked out and almost killed in a car crash," the woman said.

"I thought this was 1989," said Alex Siegel, her attorney. "I guess this means every pervert and nut

out there has a license to rape any person who dresses in a manner they think is provocative."

The jurors found Lord, 26, not guilty of armed kidnapping and armed sexual assault.

Throughout the eight-day trial, the jurors were repeatedly shown a lacy white miniskirt and bright green tank top the woman wore the night she said she was abducted at knife-point by Lord from a Fort Lauderdale restaurant parking lot on Nov. 6, 1988.

One of the women jurors held the skirt up against herself for comparison purposes.

Reaction to the jurors' comments came swiftly.

"The whole idea that the woman is asking for it is horrendous," said Dorothea Gallagher with the Broward chapter of the National Organization for Women. A short skirt and tank top "does not mean a woman is making sexual advances toward men," she said.

'I can't believe it'

"I can't believe it," Joanne Richter, director of the Broward County Sexual Assault Treatment Division, said. "Even if you had a bikini on, does that give someone the right to have sex with you? A tank top and shorts — that's what I have on right now."

Prosecutor James DeHart couldn't hide his disappointment.

"It hurts me because I know this guy did it," DeHart said. "When a defense attorney is able to dirty a victim's reputation, common sense sometimes goes out the window," he said.

Defense attorney Tim Day and Lord told the jury the Broward woman was a prostitute who agreed to have sex with Lord in exchange for \$100 and cocaine. They said the woman went along with Lord voluntarily but later changed her mind.

Day said the woman's credibility played a pivotal role in the verdict.

The woman testified she did not scream or resist when Lord abducted her and stole her red sports car because she was afraid.

Lord drove her car north on Inter-

state 95, threatened her life and raped her three times along the roadside, she testified.

She escaped five hours later in Indian River County. Lord was captured the next day.

The jurors said discrepancies in the woman's story swayed them to side with Lord. But much of their verdict was based on gut feelings, they said.

"She was too calm about it," said Dorothy Murray of Lauderhill, recalling the Broward woman's demeanor on the witness stand.

The woman didn't act as traumatized as a 24-year-old Georgia victim who testified that Lord abducted and raped her at knife-point in September 1988. That case is pending

"She was emotional, you could hear it in her voice that she was frightened," said Murray of the Georgia woman.

'Make a good actress'

The Coconut Creek woman "would make a good actress," said juror Mary Bradshaw of Coral Springs.

The jurors did not know about the woman's six-day stay behind bars in June. But they said that knowledge would not have swayed them.

Broward Circuit Judge Mark Speiser had the woman picked up by Broward deputies in June after she failed to respond to subpoenas for court appearances. The woman said she had been traveling and was unaware

of the subpoenas. Speiser and deputies blamed each other for keeping her in jail six days.

"It makes me think that maybe we did make the right decision," said juror Dean Medeiros of North Lauderdale.

Bailiffs led a smiling Lord away in handcuffs. Speiser ordered him returned to Georgia to stand trial for the rape of another woman and for sexual crimes involving two other women.

"My only solace is that he won't be getting out of jail for a long time," the Coconut Creek woman said.

Herald Writer Laurie M. Grossman contributed to this report.

Sun-Sentinel, Sunday, July 20, 1990

Circuit judge's remarks shock divorcing woman

His advice: Hit singles bar, get yourself a guy

By JOE KOLLIN
Staff Writer

Broward Circuit Judge Paul Marko had some unusual advice for a woman whose divorce case he was hearing: Go look for a new husband, preferably a doctor, in a singles bar.

"You've got to go out and get another guy," he told Marianne Price, 33, of Pembroke Pines. "The single bars are full of them. I've been there, I'm a single man. There are all kinds of bimbos in those places, and there are all kinds of guys running around in open shirts with eagles on their chest. There are great guys out there. . . ."

"You'll find them in single bars, there are wacky brain surgeons out there. You go — you go find a brain surgeon," Marko said.

Price, however, is going to a different kind of bar. She is asking the 4th District Court of Appeal in West Palm Beach to reverse Marko's rulings in her case.

Price's appeal is based on two major points:

■ Marko forbade Marianne Price from having a male live in her house, although he said her ex-husband, Gordon Price, could have anything he wants in his home, including the "entire Dolphins cheerleading squad running through his apartment naked."

In fact, Marko ordered the house sold if Marianne Price allows a male to live there. "I don't want her all of a sudden taking up with some nice, sweet, little blond from Norway," Marko said.

■ Marko refused to order the husband to pay alimony and job training costs for Marianne Price, even though Marko repeatedly said she did not make enough money as a waitress to support herself, that she needed training, and that she would not make it on her own.

He did order Gordon Price to pay \$120-a-week child support for their 10-year-old son.

Marianne Price's attorneys, Peter Mineo Jr. and Brenda DiJoia, will not comment on the case. They are not charging Marianne Price for the appeal.

Thomas Holden, the attorney for Gordon Price, also said he preferred not to

comment. He is asking the West Palm Beach-based appeals court to uphold Marko's rulings.

The appeals court is expected to hear arguments late this year.

Marko, a Broward judge since 1970 who was re-elected last week when no one filed against him, said he only meant the comments to make the Prices see the difficulties they would face if they divorced.

"Sometimes the tongue goes into action before the brain goes in gear, but I was only trying to explain the problems to them," he said.

But the Broward chapter of the National Organization for Women plans to keep a watch on Marko. Siobhan McLaughlin, president of the 1,042-member chapter, called the judge's remarks, contained in a transcript of the divorce hearing, "outrageous."

"He's extremely paternalistic. It's like he's talking to a child, and he demeans Mrs. Price. He's sexist and insulting," McLaughlin said. "When you first read what he says, you think he's joking or that you're taking it out of context. But when you read the entire transcript you can see the tone and that it is no joke."

"It's the old double standard."

The NOW chapter recently formed a Courtwatch Task Force of about 10 to 15 members, and "it would be fair to say that Judge Marko will be among the first it watches," she said.

Marianne Price said the judge's tone and comments at the final hearing on Nov. 27 devastated her.

"For two days I walked around in shock," she said. "I still can't believe a judge talked like that. . . . I cried for days."

Price said she did not know how to respond, especially because so much was at stake.

"I was scared," she said. "I was really scared. He said I would never make it; he stressed it over and over again. That I wouldn't make it. I knew I would; there was no

question in my mind, but I couldn't answer. I wouldn't argue with him because I thought he would try to take away my child if I tried to do.

Marko apologized to Price after being questioned about the case by the *Sun-Sentinel*.

After reviewing a portion of the transcript, Marko wrote Price a letter saying, "Divorce proceedings are at best, difficult and stressful, for both the litigants, attorneys and judge.

"I truly regret the remarks I made. My negative attitude reflected in the transcript [was] a result of my frustration [with] the financial and legal matters before me, and not directed toward you personally. I am extremely sorry."

Marko said he only wanted to show Marianne Price the financial perils of ending her 10-year marriage.

Although she and her husband were able to live comfortably on their combined incomes — her husband earned \$800 a week as a superintendent for a construction company — Marko said he was concerned that Marianne Price would not be able to survive on her pay as a waitress, about \$720 a month. He said he wanted her to know she had two choices: Get a better job or find another man to support her.

He said he did not actually mean for her to look for a new husband in singles bars.

"It was a poor choice of words. I should not have said it," said Marko, 58, a divorced father of two.

The problem, he said, is his frustration with wives who regularly demand alimony that he cannot grant.

"They want support for themselves and their child, and I can't give 100 percent of the husband's income," he said. "I have to leave a certain percent for him, and what I can give is often insufficient to support the wife without her having a job."

The wives who insist they can survive financially generally do not consider sudden emergencies such as costly car repairs, he said.

"They think things are going to be great," he said. "How do you get through to these people?"

Marianne Price's mother has been living with her and sharing expenses since January. Price has

been working as a \$13,000-a-year clerical assistant in Pembroke Pines for six months.

"I am making it," she said.

Marko said his ruling that Marianne Price cannot have a man live with her is to protect the child.

The order came as a complete surprise to Marianne Price.

"It was never brought up [by the lawyers]; he just told me no male live-in lover. I have no idea why he said it, but he kept saying it over and over," Marianne Price said.

Restrictions on ex-wives having males in their homes are not that unusual. Judges impose them to protect children and prevent ex-husbands from supporting ex-wives' boyfriends or new husbands.

But Marianne Price's attorneys, in their appeal, note that neither reason applies in this case. The judge ordered the wife to make all mortgage payments, not the husband, so the husband has no financial interest in the house until it is sold, they said. And protecting the child is not a valid reason, they said, because the judge specifically noted that the husband could have "the entire Dolphins cheer-leading squad" in his home, where the child will be visiting every other weekend.

Does that make Marko sexist?

"I don't think I am," Marko said.

EXCERPTS

Excerpts from the transcript of the final divorce hearing between Marianne Price and Gordon J. Price on Nov. 27, with Broward Circuit Judge Paul Marko presiding:

JUDGE: No live-in boyfriend is to come into that house. No live in boyfriend is coming in. . . . If she wants to get married that's one thing, they'll have to do something else; but I don't want any husbands in there, and I don't want any boyfriends in there. I don't want her all of a sudden taking up with some nice, sweet, little blond from Norway.

MINEO (wife's attorney): What about an Italian from Rome?

JUDGE: No live-in boyfriends.

MINEO: Judge, I don't know if that's the law.

JUDGE: I don't want a live-in boyfriend. . . .

MINEO: Judge, I got to tell you it seems pretty sexist to me.

JUDGE: What do you mean, sexist? It's not a sexist thing, no live-in boyfriend.

MINEO: I mean, he's going to have the kid on weekends.

JUDGE: He can have all the things he wants, it's his house. He can take the Dolphin cheerleaders in there if he wants to.

MINEO: I hope he does.

MARKO (to Marianne Price): You're going to end up making \$5 an hour for the rest of your life unless you have a guy or you learn how to be a carpenter, or printer, or anything so that you can better yourself. . . . Together you can make it, you know; by yourself you can't.

Single women just don't do well in the United States, and they do a lot better in the United States than in any other place in the world.

JUDGE: You're going to go out and find somebody new, and he's going to go out and find somebody new. My brother told me, I never thought about it until 30 years later, it's a lot easier to fall in love with a rich woman than a poor one. The only trouble is I keep falling in love with the poor ones.

There's these rich girls running around this town — I mean there are tons of them. I keep finding the ones that don't have nothing. So, the point I'm trying to make with you: it's going to be frightfully expensive and you're not going to get out of the hole. . . .

A P P E N D I X

Violence Against Women: The Increase of Rape in America 1990

A Majority Staff Report

Prepared for the Use of the

Committee on the Judiciary

United States Senate

One Hundred Second Congress

First Session

March 21, 1991

Violence Against Women: The Increase of Rape in America 1990

TABLE OF CONTENTS

Overview

Introduction by Chairman Joseph R. Biden, Jr. i.

Factual Findings v.

Chapter I: Women In Danger: The National Rape Epidemic 1.

The Rape Problem Is Immense... And Growing 2.

It Is National 4.

It Is American 6.

It Is Underestimated 7.

Rape Data's Other Side: Unofficial Reports 8.

Conclusion 9.

Chapter II: The Violence Against Women Act: A Response To The Epidemic 11.

Safe Streets For Women 12.

Safe Campuses For Women 15.

Civil Rights For Women 17.

Conclusion 18.

Chapter III: Measuring the Epidemic: The Report's Methodology 19.

What Does This Data Tell Us? 20.

Where Did The Data Come From? 20.

How Accurate Is It? 21.

What Does It Count? 22.

What Does It Not Count? 23.

Silent Data: Unreported Rapes 27.

List of Tables

Table 1	Number of Reported Rapes in 1990 (by alphabet)	.....	30.
Table 2	Number of Reported Rapes in 1990 (by number)	.....	31.
Table 3	Number of Reported Rapes in 1990 (by increase)	.....	32.
Table 4	Regional Analysis of Reported Rapes	.....	33.
Table 5	Number of Rapes -- 29 State Records	.....	34.

List of Charts

Chart 1	Number of Rapes Known To Authorities.
Chart 2	Number of Rapes: 29 Record-Setting States In 1990
Chart 3	Number of Rapes: Percent Increases In 1990

INTRODUCTION

by Senator Joseph R. Biden, Jr.
Chairman, Senate Committee on the Judiciary

Over the past year, the Senate Judiciary Committee has been holding hearings on the topic of violence against women in this country. We have discussed the problem at length with victims and experts, and I have tried to use these hearings to show the American people just how pervasive, devastating and immediate the problem has become.

Today, we are releasing the findings of a Majority Staff Report that reveals the extent of the rape epidemic that has spread across the country. Here are our conclusions:

- * In 1990, more women were raped than in any year in United States history.

- * In 1990, the number of rapes in this country reported to authorities exceeded 100,000 for the first time ever.
- * There was over a 6% increase in the number of rapes last year. The increase -- 5,929 attacks -- was the largest in over a decade.
- * 1990 continued a three-year trend of increases in the number of rapes. Further, the 1990 increase was nearly 3 times greater than the 1989 increase.
- * Last year, over 1/2 of the states (29) set all-time records for the number and rate of rapes.

What do all of these findings tell us? This simple yet horrible fact: American women are in greater peril now from attack than they have ever been in the history of our nation.

Unfortunately, it has taken these findings to again prove that our society and our laws must be changed to address the problem that is so very real to far too many American women.

I cannot imagine what other form of proof our nation needs before it moves vigorously to right such an obvious, destructive wrong.

To address the problem, I reintroduced S.15 -- the "Violence Against Women Act" -- in this Congress. I hope this Act will serve as the cornerstone of the movement to make the United States a safer place for women. Some of its provisions include:

- * Doubling penalties for rape and aggravated rape, creating new penalties for repeat sex offenders, and increasing the restitution for victims of sex crimes.

- * Aiding women in prosecuting their attackers by requiring states to pay for women's medical examinations to determine if that have been raped and by extending "rape shield law" protections.

- * Authorizing \$300 million for beefed-up law enforcement efforts to combat sex crimes, with \$100 million targeted for the 40 metropolitan areas most dangerous for women.

- * Defining gender-motivated crimes as "bias" or "hate" crimes that deprive victims of their civil rights, allowing them to bring civil rights suits against their assailants.

- * Creating a \$20 million grant program for the neediest colleges to fund campus rape education and prevention programs and services.

Although violence against women in the United States has recently reached explosive, record-breaking levels, the problem itself is an old one. While no single law or individual program will change a problem that is so longstanding, it is my hope that a bill as comprehensive as the "Violence Against Women Act" is a positive and necessary first step.

As I release this report today -- with all of its deplorable findings -- I think about the women who have suffered and who continue to suffer, hoping for America to become a safer place. Women, like all Americans, feel it is their right to be safe, to feel secure in their homes and offices and on the streets. I agree with them.

I urge everyone to consider the findings in today's report. I urge them not to take these facts in stride, but to take them to heart.

Today's findings reveal the magnitude of the problem of violence against women. They document the spread of a rape epidemic across the country. Through S.15, the Violence Against Women Act, I hope to implement the much needed programs that will help reverse current trends. Otherwise, the raging epidemic will brutally touch the lives of hundreds of thousands more mothers, wives, sisters, and daughters... and their families.

Judiciary Committee Majority Staff Report

Violence Against Women: The Increase of Rape in America 1990

Summary of Findings

The Senate Judiciary Committee's Majority Staff has undertaken an extensive study of state and local law enforcement agencies and rape crisis centers in all 50 states to discover -- as early as possible -- the true extent of the escalating epidemic of rape. Below are the major findings:

- * In 1990, more women were raped than in any year in United States history.
- * In 1990, American women were more likely to be raped than ever before.
- * In 1990, the number of rapes in this country reported to authorities exceeded 100,000 for the first time ever.
- * There was over a 6% increase in the number of rapes last year. The increase -- 5,929 attacks -- was the largest in over a decade.
- * 1990 continued a three-year trend of increases in the number of rapes. Further, the 1990 increase was nearly 3 times greater than the 1989 increase.
- * Last year, over 1/2 of the states (29) set all-time records for the number and rate of rapes.

Chapter I

Women in Danger: The National Rape Epidemic

More American women were raped in 1990 than in any year in our nation's history. After contacting hundreds of state and local officials, the majority staff of the Senate Judiciary Committee has compiled the first comprehensive count of rape in 1990.

And the picture is bleak; there is an epidemic of rape spreading across the country. There were over 100,000 rapes identified by authorities last year. The majority of states set all-time rape records -- and more than 4 out of every 5 states reported increases in the number of rapes they recorded.

This chapter details the findings of our study.

The Rape Problem Is Immense... And Growing

It is easy to understand why women in this country do not feel safe. At one point, their fears were confined to dark, secluded alleys. Now women must worry about crowded offices, local restaurants, and comfortable homes. For women, there is no longer any place that they can call "secure."

The findings of this report confirm that the number and rate of rapes have increased at a truly devastating rate. In 1989, there were 94,504 rapes known to police -- at the time, a record number. In 1990, however, police identified over 100,000 rapes -- shattering the previous record.

In 1989, according to the FBI, there were 10 rapes every hour. In 1990, the "crime clock" ticked faster -- up to 12 rapes every hour, close to 300 every day.

Further, the rape rate -- the percentage of women who were raped -- rose to a record level last year. This means that in 1990, American women were more likely to be raped than ever before.

These painful facts are apparent to no one more than to women, who must daily face the prospect of being attacked. And as if these facts were not terrible enough, there is every indication that the worst is yet to come.

The number of rapes known to authorities rose over 6% last year. The increase -- 5,929 attacks -- was the largest in more than a decade. Specifically, the last time the number of rapes increased so much was back in 1979.¹

Looking more closely at the current trend, the number of rapes known to authorities has increased every year since 1987. In 1988 the increase was 1.5%. In 1989, it was 2.2%.

And then last year, ominously, the rate of increase jumped to 6.3%.

Thus, last year's increase was nearly 3 times greater than the 1989 increase.

Although violence against women has recently increased at shocking and historic levels, the problem of rape is not a new one. The number of rapes has been rising as long as America has been collecting data on the subject.

- * Compared to 1970, women were over 2 times more likely to be raped last year.
- * Compared to 1960, women were nearly 4 times more likely to be raped last year.

¹ Historical rape data provided by the FBI.

Not only is the threat of rape increasing with each passing year, but -- even more disheartening -- it is increasing faster than the threat of other crimes.

In fact, the rape rate has increased much faster than the overall crime rate -- 4 times faster over the last 10 years.

Rape Is A National Problem

This report reveals that 1990 was the worst year ever for the personal safety of American women. A detailed analysis of the data collected by the committee shows that this deplorable fact held true for every region of the country. No state or locality was immune.

Of all of the committee findings, none is more illustrative of the national rape crisis than this fact: In 1990, 29 states set records for the number of reported rapes while 27 set records for the rate of reported rapes.

In other words, more than half of the states in the country set rape-related records last year.

- * The 5 states suffering the greatest number of rapes are located in every area of the country. Those states were, in order: California (12,413), Texas (8,427), Michigan (6,938), Florida (6,874), and New York (5,315).

- Every region of the country had at least one state whose rape rate increased by double-digits. A sampling of these states include: Alaska (31.4%), Colorado (26.3%), Missouri (16.9%), Virginia (16.9%), Minnesota (14.0%), and Vermont (10.7%).²

Moreover, every region of the country had states that set all-time records for the number and rate of rapes. Below is a sampling:

- Northeast: Massachusetts, Connecticut, and New Hampshire.
- Midwest: Michigan, Indiana, and Iowa.
- South: Virginia, Tennessee, and Alabama.
- West: Washington, Utah, and Colorado.

All corners of the country -- and everywhere in between -- have been plagued by these record-breaking increases: From Washington to Florida, Arizona to New

² In the "Tables" at the back of this report, Utah appears near the top of the list of states with record increases in the number and rate of rapes. However, in the text of this report Utah will not appear as an example of a state experiencing abnormally high increases because, in fact, we have reason to believe that the state's increase was not as dramatic as the data suggest. The state had a reporting problem in 1989 that resulted in a low rape count. That problem has been corrected and the current (1990) tally is accurate, but the discrepancy has led to the present situation. Because no other data is available for Utah except the "faulty" 1989 and "real" 1990, we have used the data provided, but we wanted to explain the reason for its exclusion for this discussion section. (Similarly, we have reason to believe that Montana's impressive decrease is due more to reporting problems than a "real" drop in the number of rapes.)

Hampshire, and Mississippi to Minnesota.

Rape Is An American Problem

While we have surrounded ourselves in gender-specific violence, women in no other nation or culture are more likely to be raped than those around us.

In 1990, the United States led the world with its number and rate of reported rapes.³

No other nation is even close to the United States when it comes to the number and rate of reported rapes.

- * Last year, American women were eight times more likely to be raped than were European women.

- * Further, in 1990 the rape rate in the United States was 20 times higher than it was in Portugal, 26 times higher than in Japan, 15 times higher than in England, 8 times higher than in France, 23 times higher than in Italy, and 46 times higher than in Greece.

³ United States Department of Justice, Bureau of Justice Statistics Special Report, International Crime Rates, May 1988.

Rape Is An Underestimated Problem

These first findings from 1990, just as the FBI's annual results that will be released in August, count only those rapes known to police. Thus, the trend here is evident simply from the number of reported rapes.

What about all the rapes that police never hear about? This report provides evidence that even these are on the rise. Worse, that they are increasing faster than the number of reported rapes.⁴

Before discussing the phenomenon of rape under-reporting, it is important to note that this section in no way undermines the importance of the FBI's Uniform Crime Reporting system, even as it regards rape. The FBI provides the only objective, national counting of the number of women raped every year.

The fact that the totals are objectively reached and uniformly gathered year-in and year-out helps policy-makers define the presence -- if not always the magnitude -- of trends in criminality.

Even so, we must keep in mind that rape is the crime least often reported to authorities. Women report being raped only 7% of the time. By comparison, the reporting rate for robbery is 53%; assault, 46%; and burglary, 53%.

⁴ This is discussed in our section on rape crisis center data.

Researchers have also discovered that young women are the least likely of all to report their rape. The most comprehensive study ever of college rape victims found that less than 5% inform police that they have been so victimized. And further, more than half of college rape victims tell no one of their plight.⁵

This issue will be discussed further in Chapter III.

Rape Data's Other Side: Unofficial Reports

To complement the rape data obtained from law enforcement authorities, the Senate Judiciary Committee contacted rape crisis centers in over half of the states in the country. The information supplied by these centers paints an even bleaker picture for American women.

- * Every crisis center that provided state-wide totals reported increases in the number of rapes.

- * In 2 out of every 3 cases, the state-wide rape crisis center totals showed higher -- often dramatically higher -- increases than the data provided by police.

⁵ Dr. Mary Koss, testimony before the Senate Judiciary Committee (August 29, 1990).

- For example, Louisiana authorities reported a 0.3% increase in the number of rapes, but that state's central rape crisis center reported a 39% increase. Similarly, Michigan authorities reported a 4.7% increase while its central crisis center claimed a 36% increase.⁶

This data is extremely important because it silences the skeptics who believe that the rising rape rates are nothing more than a function of more women reporting their rapes to police.

Because the rape crisis center data is independent of official rape reporting trends and because the data indicate that the rape rate is rising at a pace even greater than that suggested by the Uniform Crime Reporting system, we know that the surging epidemic is real.

Conclusion

Today, as never before, women in the United States are forced to live in fear. This report shows just how "real" that fear is. Knowing that 1 in 5 women will be raped at some point in their lives, each women must ask herself -- every day of her life -- "will it be me?" and "if so, will it happen today?"

⁶ Although the rape crisis centers provide strong data, their information does raise certain statistical issues that will be addressed in Chapter III.

That these questions must prey daily on the minds of American women is intolerable. Sweeping, comprehensive changes must be made in our laws and society that will allow the women of this country to live in peace.

Chapter II

The Violence Against Women Act: A Response to the Epidemic

The findings released in today's report prove -- once again -- that violence against women is a serious problem in the United States. More than that, the findings reveal an epidemic fueled by accelerating rape rates. It should be plain to everyone that something must be done to stop this senseless, gender-motivated violence.

We cannot permit hundreds of thousands more women to be raped before we undertake such changes. We should not wait for more years of record rape totals to make the point any clearer.

This chapter offers a comprehensive plan to attack the epidemic of rape.

On January 14, 1991, Judiciary Committee Chairman Joseph R. Biden, Jr. introduced the "Violence Against Women Act" (S.15) in the 102nd Congress. This legislation can be the cornerstone of an effort to make America a safer nation for women.

The discussion below will summarize the three titles of the "Violence Against Women Act" that concern themselves primarily with rape.⁷

Safe Streets For Women

Title I seeks to make the streets safer for America's women -- and make the court system harsher on America's rapists.

The Act achieves this purpose with a variety of measures. It creates new penalties for rape and increases the severity of those penalties already on the books.

- * The Act doubles penalties for rape and aggravated rape prosecuted in federal courts, creates new penalties for repeat sex offenders, and increases restitution to the victims of sex crimes.

⁷ The Violence Against Women Act also deals with domestic violence -- but, given the focus of this report, only the rape-related titles are discussed.

Current penalties for rape are out of line with the heinousness of the crime: the punishment must be made to fit the offense. Under current sentencing law, robbers are treated more severely; kidnappers are treated twice as severely; even many drug offenders receive stiffer sentences. Indeed, the basic penalty for non-aggravated rape is 1/3 lower than the average robber's sentence.⁸ Such a pattern cannot be justified in light of the respective severity of these offenses.

The Act further hopes to deter rapists by encouraging women to prosecute their attackers. The encouragement comes in many forms, from educating women about their rights, to helping them prove their case, to making rape trials more bearable.

On August 29, 1990, the Judiciary Committee held a hearing at which rape survivors spoke of their "second victimization" -- the injuries they sustained at the hands of society and in our courtrooms.

There is no reason for women to have to endure more hurt from "the system" than they did from their original attackers. Perhaps the most widely known example of this problem is the story of Marla Hanson, who testified at the August hearing that "[I]t never occurred to me to blame myself for my own attack; that is, until the courts, the press and society began to insinuate and to question if I were the architect of my own

⁸ Sentencing data provided by the United States Sentencing Commission.

suffering."⁹

- * The Act requires states to pay for women's medical examinations to determine if they have been raped; extends "rape shield law" protection to civil cases; authorizes \$65 million in funds for rape prevention and education; and bars the use of women's clothing to claim, at trial, that the victim incited or invited sexual assault.

The Act seeks to make the streets safer by boosting law enforcement efforts to prevent rape and creating more secure public environments.

- * The Act authorizes \$300 million for law enforcement efforts to combat sex crimes, with \$100 million targeted for the 40 metropolitan areas most dangerous for women. Further, the Act creates special units of police, prosecutors, and victim advocates to fight crime against women.
- * And for a more secure public environment, the "Violence Against Women Act" funds increased lighting and camera surveillance at bus stops, bus stations, subways, and parking lots adjacent to public transit facilities.

⁹ Ms. Marla Hanson, testimony before the Senate Judiciary Committee (August 29, 1990).

The Act also targets \$25 million in existing park funds for increased lighting, emergency telephones, and police.

Safe Campuses for Women

Women between the ages of 18 and 24 are among those most likely to be raped. And a large portion of these young women are in college. To specifically address the needs of college women, the "Violence Against Women Act" takes several important and necessary steps.

- First, it creates a \$20 million grant program for colleges to fund campus rape education and prevention programs and services.

At a 1990 Judiciary Committee hearing, several college women described their experiences of having been raped. One thing that linked all of their testimonies was the idea that they had not expected it to happen and that they had not been aware of precautionary measures they might have taken to avoid being victimized.

The rape education and prevention measures contained in the "Violence Against Women Act" aim at correcting this problem by teaching women how to minimize their chances of being raped -- and what to do if threatened by attack.

- Second, the Act requires grantee colleges to disclose to rape survivors the outcome of college disciplinary proceedings against their attackers.

This way the women who have been attacked can be sure that justice is served. The survivors will know what measures their school has taken against their attacker and they can seek other judicial remedies if they are not satisfied.

- Third, it strengthens campus security by requiring colleges to report not only rape but all forms of sexual assault.

Although Congress passed a measure last year requiring colleges to report crime statistics, more must be done to assure a full disclosure of violence on campus. This provision closes a loophole in reporting laws that has for a long time masked the true extent of the problem of violence against women on America's college campuses. As it stands, colleges hope to avoid the "bad public relations" that accompanies admitting that serious crimes occur on their campuses.

- And fourth, the Act requires grantee colleges to expressly bar sexual assault as a violation of student disciplinary codes.

Civil Rights For Women

Perhaps one of the most far-reaching titles of the Act, Title III allows women to seek justice and vindication by exercising their civil rights.

- * The Act defines gender-motivated crimes as "bias" or "hate" crimes. This definition opens the door to civil rights suits that women can bring against their attackers.

At the June 20, 1990 Senate Judiciary hearing on violence against women, a noted lawyer in the field of civil rights abuses testified that violence motivated by gender "is not merely an individual crime or a personal injury, but is a form of discrimination."¹⁰

The "Violence Against Women Act" seizes on this idea in its effort to bring justice to the women, like rape victims, who are victimized simply because they are women.

- * Furthermore, this title extends "civil rights" protection to all gender-motivated crimes by making gender-based assaults a violation of federal civil rights laws.

This provision holds a three-fold advantage for rape victims. It allows the victims another legal "tool" with which to seek justice; it makes proving an offense easier; and, it places the victims in the federal court system where judges are "insulated from local

¹⁰ Written testimony of Helen Neuborne, submitted to the Senate Judiciary Committee (June 20, 1990).

political pressures and the power to screen out jurors who harbor irrational prejudices against, for example, rape victims."¹¹

Conclusion

This section has briefly discussed the relevant titles of S.15, Senator Biden's "Violence Against Women Act." Together, the titles form a comprehensive and progressive plan to help end the brutality women are now forced to endure.

The Congress should pass, and the President should sign, the "Violence Against Women Act." It is a needed first step in an effort to make America safer for women and to arrest the rape epidemic outlined in this report.

¹¹ Report on the Violence Against Women Act of 1990, Report No. 101-545, p. 42.

Chapter III

Measuring the Epidemic: The Report's Methodology

This chapter discusses the methodology used to compile this report. It should be noted straight away that, in essence, we have merely replicated the methodology used by the FBI's Uniform Crime Reports (UCR) program.

The data presented in this report, just as those the FBI releases annually, are not the result of some tangled, complicated methodology. Rather, the final count is simply that -- a count of the number of rapes reported to police departments around the country. Thus, the strength of this report's findings lies in the fact they are based on a census, not a survey.

What Does This Data Tell Us?

It is worth noting at the outset that it would be impossible at this point to know the exact number of rapes that police reported last year. In fact, the tabulations continue to change even after the FBI publishes its findings in August. Still, although the exact number of reported rapes is elusive, we believe that our extensive information-gathering and analysis has yielded a very close estimate.

The findings of this report -- by replicating the FBI's methodology -- represent the closest and, yet, most conservative estimate of the number of rapes known to police in 1990.

Where Did It Come From?

The data presented in this report comes from two sources. The first source -- and by far the largest one employed here -- is state and local law enforcement agencies.

In the majority of states, local law enforcement offices pass on their annual crime counts to a centralized crime data collection centers which, in turn, pass their information on to the FBI. In the states that do not have such centers, localities submit their data directly to the FBI.¹² 1990 rape data had been collected and tabulated and was available at the state level in over 1/2 (27) of the states we contacted.

¹² There are only eight states that do not have centralized crime data collection centers.

When state-level data was not available, we relied on city-level law enforcement agencies. By contacting vast numbers of cities -- over 200 total -- we gained a highly accurate picture of the number of reported rapes in each of these states.

The second source of data is rape crisis centers. The Committee contacted numerous of these centers around the country to find out how many more (or less) women reported to them of being raped.

Because the data collection techniques varied between the centers -- with some counting the number of hotline calls, others counting the number women who "walk in," and still others counting only the number of women who receive rape crisis counselling -- the information obtained was used to verify the trends described by state and local law enforcement data rather than as a wholly independent basis for estimating the number of women raped in a given state. In other words, the rape crisis centers served as an separate check on the trends and data obtained from law enforcement agencies.

How Accurate Is It?

In essence, the numbers presented here represent completely objective information: a simple counting of the number of rapes reported to police.

One caveat should be noted: in its report, Crime in the United States, the FBI must correct the raw data to account for non-reporting agencies. For instance, if 95% of

the agencies in a given state report their rape data to federal authorities, the FBI will add to that data its estimate of the number of rapes that occurred in the remaining 5% of the state's agencies. The sum of the two figures -- the 95% known plus the 5% estimated -- will yield the official rape total for the state.

To take a concrete example, in 1989, police agencies covering 87.9% of the rural population eventually reported crime data to the FBI. The remaining 12.1% had to be estimated by the FBI to yield the rural crime total.

What Does It Count?

This report, like the FBI's, counts the number of rapes known to police. The information comes from state and local law enforcement agencies and, so, by definition, the police must be informed of a rape for it to be tabulated in our final count. Also, like the FBI, we include reports of attempted rapes in our count of total "rapes."¹³

Further, this report's definition of rape is the same as the one relied on by the FBI -- "carnal knowledge of a female forcibly and against her will." The point of this report is to show the rate of change in the number of rapes reported between 1989 and 1990. To do this, we need to use the same, standard UCR definition or else our findings would not be directly comparable to the UCR data. While other national surveys and

¹³ The Department of Justice's Bureau of Justice Statistics (BJS) publishes annually its National Crime Survey. In it, the BJS makes a distinction between rapes and attempted rapes and calculates them separately before adding them together for a final "rape total." As noted (here and below), however, the UCR makes no such distinction and, therefore, neither do we for the purposes of this report.

reports may employ a more enlightened and complete definition of rape, we have replicated the FBI's methodology.

What Does It Not Count?

As with any census, there are a few gaps in the data collection process. Basically, our report misses the data from three areas: 1) Police who do not report their rape data to state collection centers, 2) Police who do report their rape data to the state centers, but belatedly, and 3) Localities missed in our polling of states whose collection centers either were not prepared to release data or were non-existent, as is the case in eight states.

The first area of missed data concerns the local law enforcement agencies that do not report their data to state crime information centers. The crux of the problem is this -- even in the states with operational UCR reporting systems, often localities provide their data on a volunteer basis. So, while most localities report, there are also some that do not. This results in a number of missed rapes, even though they were reported to police at the local level.

To generate its final national tally of rapes (and all other crimes), the FBI estimates the rape totals of the localities that did not pass along their data to the state level and adds these estimates to the number received from the states to determine a "grand total."

Because the FBI adds these estimates to the state data, its "grand total" is usually larger than the figure initially given to them by the states.¹⁴ Basically, if any agency or part of an agency in a state does not report its data, assuming that there is some measure of crime in that agency, the FBI's "grand total" -- which adds the crimes estimated for non-reporting jurisdictions -- will be higher than the state's original, incomplete reported number of crimes.

To ensure that our estimate would be conservative, we considered the state-wide data we gathered to be the total for each state. In other words, the rapes that went unreported to the states were also not counted in this report.¹⁵

The second area of missed data concerns late reporting. Some localities volunteer their data to the state data collection centers but do not deliver their results until after the FBI's state reporting deadline. The FBI publishes its Crime in the United States in August and even then there are still reports trickling in.

This problem was particularly evident when we contacted states to find their 1989 and 1990 rape totals. Some states provided 1989 figures that differed from those appearing in the 1989 UCR report. The reason: The states had recalculated their rape

¹⁴ Of course, this would not be true when fully 100% of a state's metropolitan, suburban, and rural agencies report their data to the FBI. In 1989, there were 10 states, including the District of Columbia, that provided the FBI with 100% of their agencies' data.

¹⁵ This point applies only to those states that provided state-level data.

totals to account for late-arriving information. For example, the UCR claims that South Carolina reported 1,632 rapes in 1989, but the state now says that there were actually 1,649. This example is not as dramatic as some others, but it illustrates the point nonetheless.

There are two points to be made about this problem:

First, to ensure a uniform statistical foundation for all states when figuring rape increases or decreases, we used the 1989 rape totals listed in the UCR.

Second, in the interest of generating a conservative estimate, we did not add to the 1990 state-wide data to compensate for late-arriving crime reports.

The third area of missed data are those suburban and rural areas of the country in states that did not report data to us. The majority of states (26) reported state-level data. For the remaining states, we contacted over 200 cities.

The cities we contacted represent all of the 24 states' major metropolitan areas, and, thus, we accounted for a high percentage of each state's crime totals. For instance, in 1989, Omaha accounted for 49% of the rapes reported in all of Nebraska. In addition, Lincoln, North Platte, and Grand Island, accounted for another 27% of the rapes reported. So, we have an actual count from jurisdictions that reported most (76%) of

the rapes known to police in Nebraska in 1989.

Using this method, we were able to contact enough cities so that we received actual counts for the areas that account for an average of 60% of each state's reported rape totals from 1989.¹⁶

The fewer the number of large metropolitan areas in a state, the more cities we had to contact to reach a strong percentage of the previous year's reported rapes. The lowest percentage contacted was 29% (Mississippi) and the highest was 87% (Hawaii).

An issue arose over how to measure the number of rapes that were reported to police yet not known to us -- meaning the rapes reported to police in localities we did not contact. As mentioned above, the FBI faces this challenge every year. And they answer the challenge by extrapolating a "grand total" for each state based on a very complicated set of statistical assumptions.

Ultimately -- again in the spirit of producing a conservative estimate -- we decided to apply no increase to these remaining agencies, despite every indication that these areas experienced increases in their numbers of reported rapes.¹⁷

¹⁶ The percentages are based on comparing the number of 1989 reported rapes in the contacted cities with the 1989 UCR reported rape total for the state.

¹⁷ According to the 1990 6-month figures released by the FBI in October, reported rapes in suburban areas increased by 7% on average while they increased by 5% in rural areas. Also, the FBI category of "other cities" -- those with fewer than 50,000 population -- reported increases of 15% on average.

So, to take Nebraska as an example again, we contacted the cities that account for 76% of the rapes in that state. Then, to derive a state total, we used the 1990 data for these contacted areas plus the 1989 rape data for the non-reporting ("non-contacted") agencies.¹⁸

Silent Data: Unreported Rapes

When counting the number of women raped last year, the one set of data that was necessarily missing was the massive number of rapes undiscovered by the authorities. This set of "silent data" by far accounts for the vast majority of rapes that occur each year in this country.

Experts provide numerous reasons why women do not report their rapes.

Dr. Mary Koss, who testified before the Senate Judiciary Committee last August, has shown that 1 in 5 women will be raped at some point in their lives. This is the "lifetime statistic."

But what about the chance of being raped in any given year? This is how the government measures the problem. For instance, the FBI's Crime in the United States measures the annual incidence, not the lifetime incidence, of rape. And another

¹⁸ Footnote 17 explains why 1989 rape data is almost certain to be lower than 1990 rape data. In addition to the telling 6-month FBI figures, cities that we contacted around the country confirmed that, even at the year's end, 1990 rape totals were significantly higher.

Department of Justice unit, the Bureau of Justice Statistics (BJS), also publishes its findings (the National Crime Survey) according to annual incidence rates.

It is important to note that even the Administration believes that the FBI and BJS undercount the number of rapes. The BJS's latest National Crime Survey finds that the rape total is 127,000 -- and that was back in 1988.¹⁹ The Survey has extensive methodological flaws that all, including BJS, agree result in a severe undercounting of victims.

In fact, one noted researcher estimates that the BJS incidence figure is low by a factor of 15.²⁰

In other words, as many as 2 million women are raped each year when non-reporting is taken into account.

Because there is such an enormous discrepancy between the number of rapes reported to police and the number that researchers claim actually occur, we emphasize that our findings represent no more than the number of "offenses known to authorities."

¹⁹ Department of Justice, Bureau of Justice Statistics, Sourcebook on Criminal Justice Statistics, 1989, Table 3.2, p. 221.

²⁰ Dr. Mary Koss, testimony before the Senate Judiciary Committee (August 29, 1990).

**Tables
and
Charts**

Table 1

NUMBER OF REPORTED RAPES IN 1990
(by alphabet)

<u>State</u>	<u>Number</u>	<u>Increase</u>
Alabama	1,369	7%
Alaska	367	31%
Arizona	1,480	15%
Arkansas	969	5%
California	12,413	4%
Colorado	1,518	26%
Connecticut	897	1%
Delaware	520	-9%
District of Columbia	303	63%
Florida	6,874	9%
Georgia	3,610	15%
Hawaii	530	7%
Idaho	272	15%
Illinois	4,128	-1%
Indiana	1,931	7%
Iowa	483	5%
Kansas	1,004	10%
Kentucky	968	6%
Louisiana	1,680	0%
Maine	163	-29%
Maryland	2,184	23%
Massachusetts	1,983	5%
Michigan	6,938	5%
Minnesota	1,553	14%
Mississippi	1,044	3%
Missouri	1,822	15%
Montana	150	4%
Nebraska	426	12%
Nevada	771	16%
New Hampshire	348	6%
New Jersey	2,358	-4%
New Mexico	772	10%
New York	5,315	1%
North Carolina	2,093	7%
North Dakota	81	4%
Ohio	5,038	3%
Oklahoma	1,328	10%
Oregon	1,330	1%
Pennsylvania	3,044	3%
Rhode Island	245	-8%
South Carolina	1,840	13%
South Dakota	225	-2%
Tennessee	2,424	7%
Texas	8,427	6%
Utah	636	30%
Vermont	145	11%
Virginia	1,915	17%
Washington	2,948	0%
West Virginia	420	21%
Wisconsin	1,019	3%
Wyoming	132	-2%
<u>TOTAL</u>	<u>100,433</u>	<u>5%</u>

Table 2

NUMBER OF REPORTED RAPES IN 1990
(by number)

<u>State</u>	<u>Number</u>	<u>Increase</u>
California	12,413	4%
Texas	8,427	6%
Michigan	6,938	5%
Florida	6,874	9%
New York	5,315	1%
Ohio	5,038	3%
Illinois	4,128	-1%
Georgia	3,610	15%
Pennsylvania	3,044	3%
Washington	2,948	0%
Tennessee	2,424	7%
New Jersey	2,358	-4%
Maryland	2,184	23%
North Carolina	2,093	7%
Massachusetts	1,983	5%
Indiana	1,931	7%
Virginia	1,915	17%
South Carolina	1,840	13%
Missouri	1,822	15%
Louisiana	1,680	0%
Minnesota	1,553	14%
Colorado	1,518	26%
Arizona	1,480	15%
Alabama	1,369	7%
Oregon	1,330	1%
Oklahoma	1,328	10%
Mississippi	1,044	3%
Wisconsin	1,019	3%
Kansas	1,004	10%
Arkansas	969	5%
Kentucky	968	6%
Connecticut	897	1%
New Mexico	772	10%
Nevada	771	16%
Utah	636	30%
Hawaii	530	7%
Delaware	520	-9%
Iowa	483	8%
Nebraska	426	12%
West Virginia	420	21%
Alaska	367	31%
New Hampshire	348	6%
District of Columbia	303	63%
Idaho	272	15%
Rhode Island	245	-8%
South Dakota	225	-2%
Maine	163	-29%
Montana	150	4%
Vermont	145	11%
Wyoming	132	-2%
North Dakota	81	4%
<u>TOTAL</u>	<u>100,433</u>	<u>6%</u>

Table 3

NUMBER OF REPORTED RAPES IN 1990
(by increase)

<u>State</u>	<u>Number</u>	<u>Increase</u>
District of Columbia	303	63%
Alaska	367	31%
Utah	636	30%
Colorado	1,518	28%
Maryland	2,184	23%
West Virginia	420	21%
Virginia	1,915	17%
Nevada	771	16%
Idaho	272	15%
Arizona	1,480	15%
Missouri	1,822	15%
Georgia	3,610	15%
Minnesota	1,553	14%
South Carolina	1,840	13%
Nebraska	426	12%
Vermont	145	11%
New Mexico	772	10%
Oklahoma	1,328	10%
Kansas	1,004	10%
Florida	6,874	9%
Alabama	1,369	7%
Hawaii	530	7%
Indiana	1,931	7%
Tennessee	2,424	7%
North Carolina	2,093	7%
New Hampshire	348	6%
Texas	8,427	6%
Kentucky	968	6%
Massachusetts	1,983	5%
Iowa	483	5%
Arkansas	969	5%
Michigan	6,938	5%
Montana	150	4%
North Dakota	81	4%
California	12,413	4%
Ohio	5,038	3%
Mississippi	1,044	3%
Pennsylvania	3,044	3%
Wisconsin	1,019	3%
New York	5,315	1%
Oregon	1,330	1%
Connecticut	897	1%
Louisiana	1,680	0%
Washington	2,948	0%
Illinois	4,128	-1%
Wyoming	132	-2%
South Dakota	225	-2%
New Jersey	2,358	-4%
Rhode Island	245	-8%
Delaware	520	-9%
Maine	163	-29%
<u>TOTAL</u>	<u>100,433</u>	<u>6%</u>

Table 4

REGIONAL ANALYSIS OF RAPES

<u>Region</u>	<u>1989 Number</u>	<u>1990 Number</u>	<u>Increase</u>
<u>Northeast</u>			
Connecticut	892	897	
Maine	229	163	
Massachusetts	1,881	1,983	
New Hampshire	327	348	
New Jersey	2,449	2,358	
New York	5,242	5,315	
Pennsylvania	2,983	3,044	
Rhode Island	266	245	
Vermont	131	145	
Subtotal	14,380	14,498	1%
<u>Midwest</u>			
Illinois	4,161	4,128	
Indiana	1,804	1,931	
Iowa	459	483	
Kansas	917	1,004	
Michigan	6,824	6,938	
Minnesota	1,363	1,553	
Missouri	1,587	1,822	
Nebraska	381	426	
North Dakota	78	81	
Ohio	4,872	5,038	
South Dakota	229	226	
Wisconsin	993	1,019	
Subtotal	23,468	24,648	8%
<u>South</u>			
Alabama	1,276	1,369	
Arkansas	924	969	
Delaware	569	520	
District of Columbia	186	303	
Florida	6,299	6,874	
Georgia	3,150	3,610	
Kentucky	917	968	
Louisiana	1,676	1,680	
Maryland	1,783	2,184	
Mississippi	1,017	1,044	
North Carolina	1,964	2,093	
Oklahoma	1,209	1,328	
South Carolina	1,632	1,840	
Tennessee	2,270	2,424	
Texas	7,951	8,427	
Virginia	1,638	1,915	
West Virginia	347	420	
Subtotal	34,807	37,968	9%
<u>West</u>			
Alaska	279	367	
Arizona	1,286	1,480	
California	11,966	12,413	
Colorado	1,202	1,518	
Hawaii	496	530	
Idaho	236	272	
Montana	146	150	
Nevada	662	771	
New Mexico	702	772	
Oregon	1,314	1,330	
Utah	489	636	
Washington	2,938	2,948	
Wyoming	134	132	
Subtotal	21,849	23,319	7%
<u>GRAND TOTAL</u>	<u>94,504</u>	<u>100,433</u>	<u>8%</u>

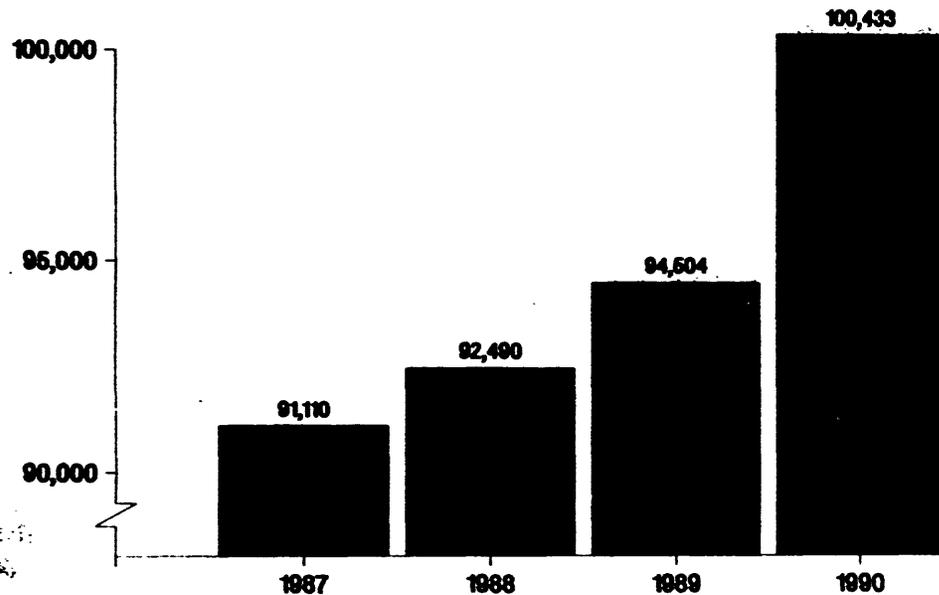
Table 5

NUMBER OF RAPES -- 29 NEW STATE RECORDS IN 1990

<u>State</u>	<u>Old Record Number</u>	<u>New 1990 Record Number</u>	<u>Increase</u>
Hawaii	393	530	34.9%
Utah	489	636	30.1%
Virginia	1,638	1,915	16.9%
Idaho	236	272	15.3%
Georgia	3,150	3,610	14.6%
South Carolina	1,632	1,840	12.7%
Maryland	1,944	2,184	12.3%
Missouri	1,638	1,822	11.2%
Nebraska	385	426	10.6%
Kansas	917	1,004	9.5%
Florida	6,299	6,874	9.1%
Minnesota	1,439	1,553	7.9%
Alabama	1,276	1,369	7.3%
Indiana	1,808	1,931	6.8%
Tennessee	2,270	2,424	6.8%
North Carolina	1,964	2,093	6.6%
New Hampshire	327	348	6.4%
Kentucky	917	968	5.6%
Massachusetts	1,881	1,983	5.4%
Iowa	459	483	5.2%
Michigan	6,624	6,938	4.7%
Ohio	4,872	5,038	3.4%
Mississippi	1,017	1,044	2.7%
Wisconsin	993	1,019	2.6%
Arizona	1,458	1,480	1.5%
Oklahoma	1,315	1,328	1.0%
Connecticut	892	897	0.6%
Colorado	1,510	1,518	0.5%
Washington	2,938	2,948	0.3%

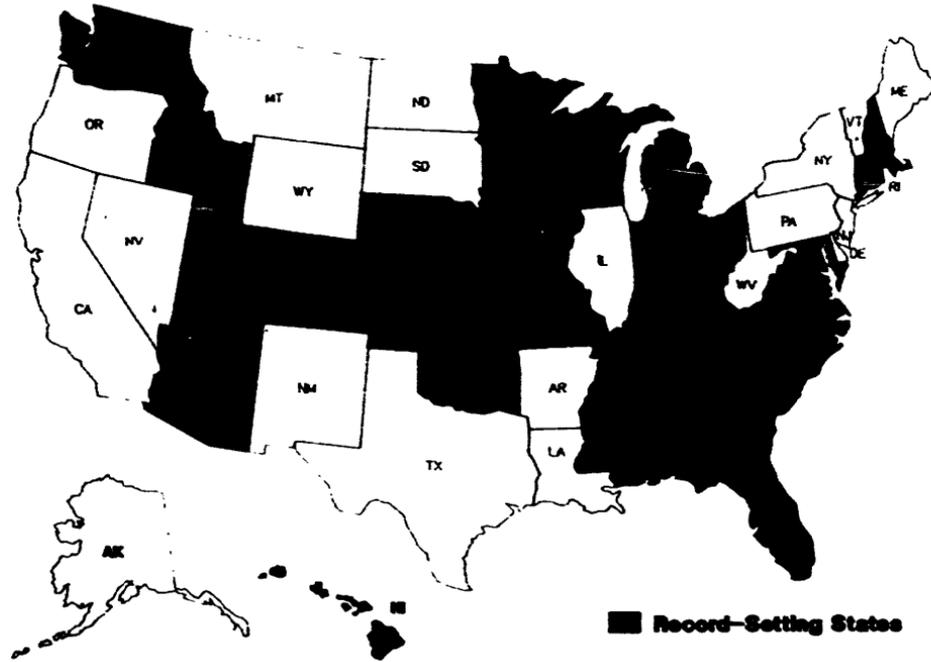
TOTAL NUMBER OF NEW STATE RECORDS -- 29

Number Of Rapes Known To Authorities (1987 - 1990)

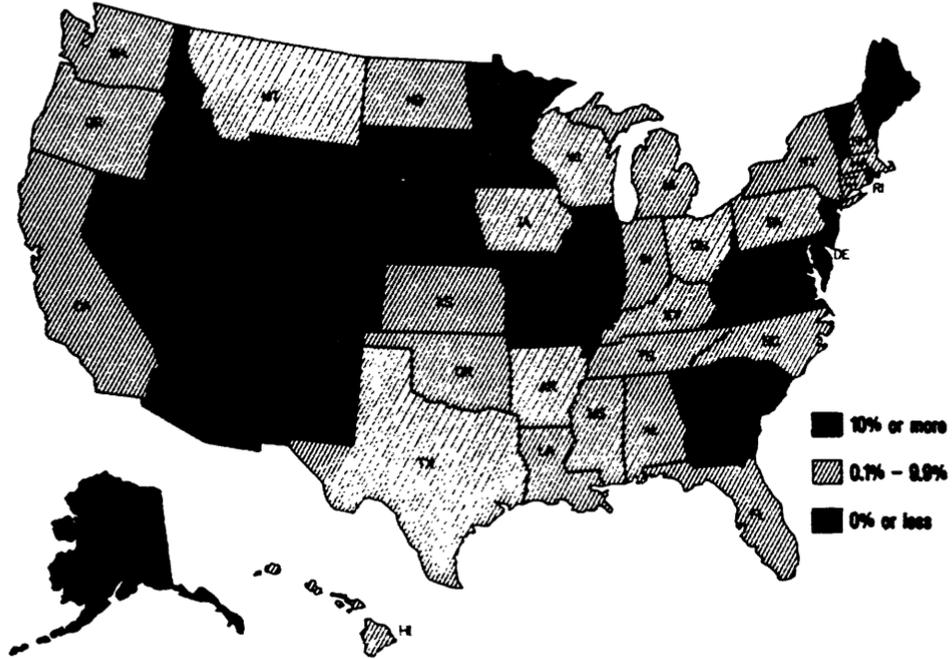


Source: Federal Bureau of Investigation

Number Of Rapes: 29 Record-Setting States In 1990



Number Of Rapes: Percent Increases In 1990



George Mason University

March 29, 1991

Ms. Victoria Nurse
U.S. Senate Judiciary Committee
Dirksen Building, room 224
Washington, DC 20510

Dear Ms. Nurse:

My thanks for conferring with me over the phone on Wednesday afternoon, March 27. Following your instructions, I hereby request the enclosed materials be considered as submitted testimony to Senator Biden and the Senate Judiciary Committee in regard to their work on the subject of rape. Emotionally, I must admit that this has not been an easy matter for me to give reflection. I hope you will find it useful.

If you wish any further information or materials, please feel free to contact me at 1739 Corcoran St., NW, Washington 20009; phone: 202-483-9138. CV is enclosed for your information.

My best wishes for success in your work on this most important and tragically widespread matter.

Sincerely yours,



Alan H. Levy, Ph.D.
Assoc. Professor of History

Testimony on the Subject of Rape

I begin by pointing out that what I present here should in no way be construed to counter any of the significant findings already at the core of your committee's work. I simply wish to augment what I judge to be a somewhat incomplete record with a dimension somewhat neglected in your deliberations thus far, as well as in virtually all journalistic and scholarly treatments of the subject with which I am familiar. I would like to address the matter of the rape of males.

While I will present you no systematic, data-laden study on the subject, my findings, albeit impressionistic, from volunteer work with dysfunctional families and with children of alcoholics, reveal that a significant number of males have been the victims of sexual violence in their lives, mostly as young boys. A colleague who runs a rape crisis center in Pittsburgh also told me that in 1987 approximately 40% of the victims who came to her center were males--almost all young boys. I cannot judge whether that statistic is typical, or, for that matter, whether it is accurate, but if it is the least bit valid we have a major, and largely untouched dimension to the whole problem before us.

Perhaps the FBI has data on the number of male rape victims. I would guess that, as was the case with women for so many years, and which still remains the case for many, a reluctance to report rape hides the degree of severity of the problem of male victims. In addition to the hidden facts about young males, there are of course the well-documented tragedies which occur in prisons. The other factual evidence with which I preface my remarks is highly personal--I was raped when I was eight years old.

There are three points I would like to address in regard to the implications of the added dimension of male victim of rape to which I believe your committee ought give careful consideration. 1) If official reports, as well as journalistic coverage, would give attention to all victims, there may be a reduction in the levity with which some men still regard the topic. What I call the "Bobby Knight outlook"* has certainly diminished over the past two decades; nevertheless it remains virulent.

*When asked by NBC News' Connie Chung: "How do you deal with stress?" Knight responded: "Well it's like rape, if it's going to happen, just sit back and enjoy it." Knight may have had a valid point about stress and the illogic of self-repression. Thus, in addition to being ridiculous, his metaphor was actually contradictory. (Why do we continue to believe that if someone is highly skilled at one thing, their views elsewhere must have profundity?)

2) Derived from the first point, if males were more aware of rape as a crime of which they can also be potential life-long victims, Federal, state, local, and private agencies may be willing to devote more resources than is currently the case. Given: a) continued male preponderance in most areas of governance, and b) that leaders will tend to take seriously that which affects them directly, a heightened awareness of male as well as female victimization from rape could yield increased allocations of sorely needed resources. These days many crisis centers are barely managing, and it would indeed be tragic if some closed due to a public indifference which could be readily countered with a proper, and full, addressing of the subject from such a body as yours.

3) This matter is less significant in my mind than the first two, though it is perhaps more politically sensitive (and will require more words). Rarely have I raised the issue of male victimization in conversations with women and met anything but empathy and understanding. But occasionally I have encountered a disturbing and frankly hypocritical subset of radical feminism which seeks, in effect, to use rape as an honorific to highlight male/female antagonisms. Indeed truly radical feminists going back to Kate Millett assert unresolvable gender antagonisms to be a fixed premise on which analysis of all male/female interaction must be based. For such ideologues rape is a most hideous and basic theme, famously articulated by Susan Brownmiller in

Against Our Will in which she asserts that all men are potential rapists; all women are victims; and rape is but an exaggeration of what men do to women all the time. Similarly, Becky Thompson wrote in a manual distributed by the American Sociological Association, "I begin with the basic feminist principle that in a ... sexist society we have swallowed oppressive ways. ... it is not open to debate whether a ... male is sexist. He simply is." To confound such convictions with the undeniable fact that men too are victims of rape undercuts the premise of these virulent minority views which pervade much discourse over the subject.

From my experience, such ideologues respond to the undeniable dimension of male victimization of rape in manners which range from consternation to laughter to angry dismissal-- a similar range to that I have witnessed among the "Bobby Knight" types. Some women have even mockingly asked: did you enjoy it? All such responses involve denial, in some cases indeed in the full psychological sense of the word, of the complete human tragedy of rape. The "Bobby Knights" are pathetic; the "Susan Brownmillers," while not wrong (except in the assertion that all men are rapists), are, however, sadly incomplete. Most listen; many, however, chose to ignore. My colleague at the Pittsburgh center had to dismiss a coworker who would not budge from the concept that the center ought deal exclusively with women. Such narrowness is often indulged at many institutional levels for fear, I think, of any serious questioning yielding McCarthy-like

charges of insensitivity. The paradox of course is that the insensitivity here actually lies within the one believing she is the more humane.

Violence against women needs to be understood in a humanist context, for a more narrow feminist framework ignores many victims. This is an ignorance which is distorting, alienating, and dangerously empowering in its effects. In parallel, treatment of domestic violence reveals similar pitfalls, for many of the victims here are also male, and they are totally ignored. Again, this neither negates nor diminishes such horrors women face. But it does compel everyone to face the tragic but unavoidable fact that all people are potential victims, and that the proclivity toward violence is not the purview of one gender. Indeed Mg. magazine has recently touched upon the growing, heretofore closeted problem of domestic violence within some lesbian households. Tendencies toward violence may manifest themselves in different forms in men and women, but neither is immune. (And indeed males and females appear equally prone to child abuse.) But we allow the false notion of gender immunity to color our treatment of issues like rape. Hence to some victims--males--the message is: your pain is not real, or at least it does not warrant much political attention. (Such a perspective is not terribly different than Bobby Knight's; both are fundamentally sexist.)

When we indulge falsehoods over the immunity some claim

with respect to tendencies toward violence, many hidden prices are paid. The acceptance of such notions of immunity superficially comfort and politically empower. A still largely male power structure accepts the rhetorical assertion of some feminists that they legitimately hold 100% of the claim on victimization here. This constitutes hegemony at its worst. The exchange between the politically powerful and the officially recognized victims soothes the powerful who can then congratulate themselves that they have acted humanely, which they have, but not as completely as they could. Meanwhile all other victims are ignored, the politically acceptable victims have, with the utmost of self-entitlement, drowned them. These officially recognized victims then suppress any subsequent questioning of the arrangement as that which does not fit the party line. They thus become victimizers themselves while never recognizing it.

Further amplifying the treachery inherent in the potential self-entitlement that arises in such work as you engage here, consider the absurd canard that is actually gaining respect in certain academic circles--that only whites can be racists. As with respect to Becky Thompson's views that all men are sexists, how can such views do anything but exacerbate hatreds? Yet they are indulged by many in positions of institutional power for fear of outraging those who will speak loudly if not cogently, the same fears that silenced many who could have said "no" to McCarthy. Here the simple fact is that no heart is naturally immune from

hate, nor no mind from ignorance. The likes of Al Sharpton and Susan Brownmiller need then to be ignored. Their sense of their own immunity exacerbates the hatred they hold. Rejecting them takes courage, the courage to see politics as more than a mere matter of placating the noisiest constituencies. Let us keep the likes of Martin Luther King and Betty Friedan at the forefront and face all such problems in their fullest human context. Otherwise they will simply keep coming back, not despite our good efforts but paradoxically because of them.

The incompleteness inherent in seeing and rhetorically casting rape exclusively as a matter of female victimization can too easily enter into official reports and journalistic coverage. There is no question that women must live with far greater fears of rape than men, wherever they work, walk, jog But there remain men who must live with ghosts that can be just as debilitating; of that I can personally assure you. The vocabulary of gender exclusivity which colors the subject here adds to the alienation and pain of the male victim. Few seem to care about this, perhaps preferring to avoid the raising of the hackles of politically and journalistically active feminist constituencies. There is a hidden human victimization in the frankly political calculations, be they implicit or explicit, which subsume the indulgence of these noisy constituencies. The pattern of political behavior that produces this victimization must be broken if the problem of rape is to be handled with the complete

justice your committee doubtlessly desires.

Such work as your committee is doing can itself be of therapeutic value to the victims of rape, independent of any legislation which may emanate. For the fact of being recognized, of being met, can be cathartic. In this regard, recall the thoughts of the theorist D.W. Winnicott who said that if the subject, the victim, does not feel met in any therapeutic work regarding his/her traumas, the work will sadly recapitulate those traumas. Your endeavors hold the potential of catharsis for many rape victims, but if you fall into the same pattern of virtually all politicians and writers who have gone before you on this subject, you will compound the traumas of some victims. Obviously, I believe you do not want to do that, but I am less sure you understand the shift in the pattern of rhetorical and political indulgence that must occur for you genuinely to avoid this problem. People like myself have not the trumpeting power of a Susan Brownmiller or an Angela Dworkin. We can only beg you to consider the cogency of our thoughts over their mere volume and political connectedness. Let truth be spoken to power and not the reverse.

While psychologists could likely come to no consensus here, I further conjecture that a casting of the issue of rape in male vs. female terms, rather than in a context of violent criminal vs. victim, may perversely empower males with latent proclivities toward violence to feel somehow reinforced in their behavior

versus women--that they can thus act, not as criminals, but "as men." Might some of our heady rhetorical habits indulged by political convenience not unwittingly magnify this? Might our tendencies to indulge certain political fringes then hurt in ways we do not fully realize? Sometimes well-intentioned solutions do actually aggravate a problem on hand, and I fear your committee could easily fall into this trap.

Any addressing of the issue of rape ought never divide humans on the basis of gender, it ought always seek to unite. We often say rape has nothing to do with sex; it is a crime of violence and degradation. Let that fact never be diluted or distorted by an incomplete reporting of the victims, lest efforts prove to lose their potential spiritual affirmation and become but an instrument of interest-group politics.

I am grateful to you for your consideration of my thoughts.



Alan H. Levy, Ph.D.

Assoc. Professor of History

STATEMENT OF
NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN, INC.

ON VIOLENCE AGAINST WOMEN

To the

Committee on the Judiciary

United States Senate

United States Congress

Presented By

Elizabeth Athanasakos

National President

BPW/USA

April 1991

I. INTRODUCTION

Mr. Chairman and members of the Committee, thank you for the opportunity to present this statement to you. I am Elizabeth Athanasakos, National Preseident of Business and Professional Woman/USA (BPW)/

Business and Professional Women/USA (BPW) supports the ideals behind the proposed Senate judiciary Committee bill on Violence Against Women. BPW commends the Committee, under the direction of Chairman Biden, for introducing the first comprehensive package of legislation targeting violent crimes against women. First, I would like to tell you about BPW and its interest in the issues before the Senate Judiciary Committee.

Business and Professional Women/USA (BPW) is an organization dedicated to advancing economic equity, self-sufficiency, and full participation in the work force for all working women. Formed in 1919, BPW is open to working women and men without regard to financial position, educational attainment or occupation.

BPW today is an organization of more than 120,000 members in every State and Congressional district. BPW is bipartisan; forty-three percent of BPW members are Republican and forty-two percent are

Democrats. A majority of members have worked without interruption throughout their careers and have a college degree; seventeen percent have a graduate degree in their profession. The family status of members is varied; fifty-four percent are married, twenty five percent are separated, divorced, or widowed; and twenty percent are unmarried. Over two-thirds of BPW members have household incomes between \$20,000.00 and \$75,000.00 per year. BPW membership is strongest in smaller metropolitan areas and towns. Although BPW membership is strong nationwide, it is particularly strong in the south and the Midwest. In sum, the profile of a typical BPW member is a politically active, mainstream American who is employed full-time and continuously.

IN furtherance of BPW's dedication to advancing the economic equity, self-sufficiency, and full participation in the work force for all working women, I would like to address two issues:

1. Why "violence against women" is an issue of importance to women in business and other professions; and
2. Whether violent crimes against women have a significant impact on women's economic opportunity.

In addressing these issues I point out that approximately one-third of BPW's members own and operate their own businesses in the

areas of banking, law, real estate, insurance, financial investment and tax, to mention only a few. Thus my comments address these two issues on violence against women from overlapping perspectives: that of the employer of women victimized by violent gender-based crimes and that of the individual victim.

II. VIOLENCE AGAINST WOMEN

The alarmingly high statistics on violent crimes against women, or gender-based crimes are staggering:

- Every 15 second, a woman is beaten by her husband or boyfriend;
- Every six minutes a woman is forcibly raped;
- Battering is the single largest cause of injury to women in the United States;
- Over 1 million women in the United States seek medical assistance each year for injuries sustained by their husbands or other partners;
- As many as 20% of hospital emergency room cases are related to wife battering;
- One fifth to one half of American women were sexually abused as children, most of them by an older male relative;

- Of American women alive today, three out of four will be the victim of at least one violent crime;
- The incidence of rape has risen four times as fast as the total national crime rate over the past 10 years;
- In 1989, 3 to 4 million women were abused by their husbands - a number greater than the women who were married.

III. IMPACT ON EMPLOYERS

Violent crimes committed against women employees directly impact their ability to perform at work, their absenteeism rates and the medical benefit costs to the employer. This, in turn, increases the cost of doing business, especially for the small minority employer. From the employer's perspective, the effects of violent crime on women is debilitating. The following statistics are illustrative:

- Statistics on abused women from the 1985 National Family Violence Resurvey by the Department of Criminal Justice show that those who were severely assaulted (victims who were kicked, bitten, punched, choked, burned, beaten or had weapons used against them):
 - (i) spent twice as many days in bed as other women

- (ii) reported being in poor health three times as often as other women;
- (iii) had twice as many headaches, four times the rate of depression, and five and a half times more suicide attempts.
- Among abused women surveyed 9.3% reported taking time off from their jobs because of domestic violence with 19% of those who were severely assaulted spending time away from work;
- Harassment on the job by the batterer, as well as the burden of time spent waiting to appear in court, reduce battered women's ability to maintain or secure employment;
- On a national level, domestic violence has been estimated to cost employers between 3 to 5 billion dollars annually due to absenteeism in the workplace;
- Medical cost related to domestic abuse are estimated at \$100 million a year; directly impacting the cost of medical benefits paid by employers.

IV. ECONOMIC IMPACT ON WOMEN

The costs, however, do not end with the cost to employers. On an individual level, the costs in lost employment opportunities is enormous. Deprived of the ability to be safe in their own homes, to

walk freely on the streets, and to travel alone without fear of attack, women find their employment options in life sharply reduced. This is especially true when you consider that the likelihood of crime on certain modes of public transportation acts as a barrier to mobility. If women are in fear of becoming crime victims in the streets or on public transportation, their employment opportunities are dramatically reduced.

IN addition, domestic violence impairs women's ability to seek and maintain employment, by deterring women from moving freely within the community. Women who either cannot leave their homes or are afraid to show the physical effects of the violence will either forego employment opportunities available or jeopardize their current employment by absenteeism and poor work performance.

Wives are also psychologically victimized. They lose their self-esteem, self-worth resulting in an inability to do the work or seek the job opportunities they could easily have done or obtained. Instead they place themselves at lower levels of income and spend weeks, months and years in counseling. This, again, adversely affects their ability to contribute financially to the family -- even after a separation.

A woman with children is also concerned over the possibility that her husband or father of the child (children) will take the child (children) out of the State. Will that State recognize a Restraining

Order from the home State? How long will it take to get the children back?

What if a woman is abused by her husband or boyfriend - will the police officer recognize that the situation is serious and that the woman "did not ask for it?" Will one jurisdiction uphold a Restraining Order of another jurisdiction or will the officer say that the Restraining Order is not any good because the Wife is living in a different house or apartment than stated in the Restraining Order? All these concerns and fears have an adverse effect on the woman and her work.

The following statistics provide support for the effect of violent crimes against female employees:

- One 1980 psychological journal reported that almost 50% of the rape victims studied were forced to quit jobs in the year following the rape;
- In a Minnesota study, 1/3 of the women said their abusing husbands had prohibited them from working; 1/4 said that their spouse had prohibited them from going to school;
- In the same study, almost 25% reported that they lost a job partly because of being abused; over 50% reported that their abusing spouse harassed

them at work by phone or in person;

- An American Insurance Association pilot study reported that 44% of the battered women interviewed lost a job because of the abuse; over 70% were harassed on the job by the abuser;
- More than half of the women studied in the AIA study reported late for work 5 or more times each month because of the abuse; and missed 3 days a month at work.

The economic consequences of gender-based crimes against women are magnified when one considers the effects of such crimes against young women. Recent studies show a startlingly high number of woman students victimized by rapists. One study found that a woman in college has a 1 in 13 chance of being raped in a given year.

College women are not only at risk demographically (acquaintance rape happens most frequently among those between the ages of 15 and 24), but they are at a risk psychologically and educationally. It is not unusual for a college woman victimized by rape, to drop out of school altogether. And, even if a woman does not drop out, she may feel it necessary to interrupt her college career simply to avoid her attacker.

V. CONCLUSION

BPW strongly urges the enactment of federal legislation to combat gender-based violence. To this end we must support the Committee's efforts at:

(i) Calling for the first federal program for college rape education and prevention;

(ii) Making "safe streets for women" a law enforcement priority by insuring that States will have the kind of resources necessary to step up police protection, prosecution, and conviction;

(iii) Creating grants to States, cities and other localities to improve security in public transportation, to enhance law enforcement, prosecution, data collection, victim services programs and/or organizations, HIV testing of convicted rapists, and for HIV testing and counseling for victims;

(iv) Providing funding for capital improvements, such as lighting and camera surveillance, to prevent crime in public transportation and national and public parks;

(v) Encouraging certain essential State law reforms, such as linking federal funds to the enactment of State laws requiring payments for forensic rape exams;

(vi) Recognizing that we cannot effectively combat violent crimes against women without education on the kind of attitudes that nurture violence (i.e., rape prevention)

Thank you for the opportunity to present this testimony.

Joan Lima
42 Tioga Avenue
Yonkers, NY 10704

4/3/91

Victoria Nourse
Senate Judiciary Committee
SD/224
Washington, DC 20510

Dear Ms. Nourse:

I spoke with Tracy last week, regarding the April 9th hearing.

She called me today to tell me you had the people you required specifically for this hearing.

Tracy as well as Iona Siegel, Director of the Mt. Sinai Rape Crisis Intervention Program here in New York, suggested that it I could write to you anyway. Perhaps it can be useful in the future.

I wanted to write to someone a long time ago, in regard to the laws concerning punishment for rapists and perpetrators of other violent crimes, but I didn't know who to write to. Your office sounded like just the right place to send my letter.

Thank you for your time. Perhaps you can get back to me to let me know what you think regarding the enclosed information and if it really is helpful at all, or if anyone really hears what it says and if there are constructive ways my opinion can help.

Thanks again.

Sincerely,

A handwritten signature in cursive script that reads "Joan Lima". The signature is written in dark ink and is positioned to the right of the typed name "Joan Lima".

Many years ago, I was held captive for over 3 1/2 hours and tortured and raped by one, clean-cut, decent looking teenager, with a knife, a needle in the handle of the knife and instruments I didn't recognize. That incident changed the entire course of my life.

Now after a nation has been outraged for the last several weeks over the brutal rape and beating of the jogger in Central Park, I have a great need for someone to hear me; not just anyone, our lawmakers, the people who make up our justice system.

I don't believe for a minute that this incident was racially motivated in the least. If an animal, a dog or cat crossed the path of those teenagers that night, they probably would have tortured and killed it. If one of their own, a lone teenager, had crossed their path, they would have done the same thing.

When my crime happened, I was not only outraged at just the fact that it happened, I was outraged that the laws were not a strong enough deterrent to prevent that from happening to me in the first place.

The rapist himself, was confident enough to brag to me about two things. The first was that he didn't think he would get caught, and the other, was that even if he did get caught, "jail was not such a bad place", he said. They have recreation, entertainment, doctors, dentists, whatever he would need. He said if he was real lucky, they would send him to a prison where they would allow his girlfriend to visit and stay over night with him, but if not, another inmate would do.

When I was a child, my parents could get me justice. In school, my teacher or principal could get justice for me. When I became an adult, I found there was no justice that protected me.

The last weeks, city officials have held prayer vigils outside a dying victim's hospital and also prayed that the public wouldn't hate, and ask for the death penalty. Those prayers were a little late for the jogger, for me and for other surviving victims the world over. Why didn't they pray before. Why didn't they care enough before, to have instituted laws to prevent these heinous crimes and at least if crimes happen anyway, the law would put these criminals in jail and lock them up forever. Instead, because of our own greed, plea bargaining came into existence. We weren't satisfied we had one criminal; we wanted a bigger criminal. We also wanted to make things convenient, speed things up for everyone, plea bargain justice, sanity and hope for all our futures away. A first time rapist can trade off for something like 10th degree sexual misconduct, after all, we don't want to ruin the future reputation of the rapist, the victim's future doesn't matter. A vicious beating and torture can become aggravated assault. These lesser crimes mean little and sometimes no jail time at all for the criminal. If a person is out on parole, probation or for whatever reason, and he rapes and kills a doctor in Bellevue but doesn't have his lawyer present when he makes his confession, even though the police have all the physical evidence, the evidence is all thrown out, which equals, NO CRIME HAS BEEN COMMITTED. How can our justice system not see that whatever laws determine a crime to be interpreted in that way, that that law

is insane. If the people in our justice system do see that those laws are insane, why haven't they changed them? The police say, all I can do is arrest the person, they're out on the street before I finish my report. The prosecutors say, I did my best. I had all the evidence, everyone knew the criminal was guilty as hell, but the courts had to throw everything out. The judges say, my hands are tied, I can only pass judgement and carry out the law the way they are written. If a person got up in front of a group of people and proposed the law the way it is interpreted in the statement above, the group would say he was insane and they would probably throw the nut out. Yet that's what actually happens in real life, after the trials, (if they catch the criminal), the behind the scenes plea bargaining and the like. When the doctor in Bellevue was killed, city officials were outraged then too.

I want the people with the power to change those ridiculous, insane laws to care enough to hear me and people like me. Who do I write to? Who do I talk to? Justice system is not a person's name. Judge is not a person's name. Which judge, which lawyer? My family, friends and other surviving victim friends care, but they can't change the law.

I speak for myself and for others I know, victims and non victims who say we should reinstate the death penalty. When we express this feeling, it's not from a vigilante's point of view to have the death penalty, or just for the hell of it, it's because of the frustration of seeing that our present justice system doesn't work. The reason they ask for the death penalty is because it is the ONLY GUARANTEE that the criminal would not slip by the justice system; he couldn't get out of jail. The criminal wouldn't slip by and maybe not spend even one day in jail.

Our officials have no right to be outraged and tell us not to be angry. They're the ones who say in their election speeches that they will get TOUGH on criminals. We should have asked them what their definition of tough is.

Between my crime years ago, and the jogger today, the only way the law has changed, is that the justice system has made it easier for the criminals to get away with their crimes. And what about the victims, doctors, psychiatrists, friends and family can't always put the victim back together again, but the criminal is out free to do whatever they want.

I thought to myself we are giving the city back to the animals, but I realized that even animals don't do that to their own. They fight to protect, to feed their own. They just don't turn on their own and slaughter them for no reason.

Many people are worried that nuclear war will destroy humanity. Humanity is already destroying humanity. I think we should stop and do something about our now, if there is to be a future.

I needed someone to hear me. I trust someone will.

(Grand Jury follow)

The sound of a loud explosion scared the hell out of the rapist and the victim. A split second chance for the victim to try to push the rapist away in the hope of getting away.

It sounds too unbelievable even for a Hollywood movie script or a novel. Unfortunately, it wasn't fiction, it wasn't a movie. That's how it really happened to me. And I did get away. Happy ending? Not quite, but working on it.

The explosion was thunder, and it really was only a matter of seconds for me to try to get away from a normal looking, but crazed teenager, about 19, who raped and tortured and did outrageously unspeakable things to me for almost 4 hours.

For those 4 hours I fought to live, but ironically in the end, I wanted to die. Getting away was not the happy ending you might expect.

The many physical wounds would eventually heal. You wouldn't be able to see the hell I endured, just by looking at me. But the mental wounds never healed. There was no bandage to cover the feelings of humiliation. There was no antiseptic to wash away the feeling that I had been dumped into some slimey, filthy pit that my whole being absorbed and could never be washed away. There was no pill that could relieve the constant nagging pain, the choked up lump in my throat at just the thought of what happened to me. And there were no rose colored glasses to erase the image that reflected back at me when I accidentally caught a glimpse of myself in the mirror that day. It was a picture that haunted my dreams at night and gave me nightmares in the daytime when I was wide awake.

It was all too horrible. Until I told a counselor almost 20 years later, I hadn't told a living soul. After all that time, it seemed as hard to tell as when it happened. I knew though if there ever was to be a happy ending for me, it would come in the telling.

But now I had a need for someone to know that someone did something so horrible to me, that they had no right to do that to me. I needed someone to know what I felt, the pain and hurt and rage. I needed someone to feel outraged for me and hurt for me and I guess I wished someone could somehow take it all away from me. So it started with my counselor and she gave me those things I needed. And for the first time, something I didn't even know I needed, that was hearing someone say, "it wasn't my fault." I tried some other avenues in the process of talking it out, but found you have to be very selective. I needed what I felt was a safe place, and safe people, to talk to. Then I learned about the Mt. Sinai Rape Crisis Intervention Program, and met Iona, the Director of the program. I decided to meet with Iona and 10 other survivors, listened to them, talked to them. It wasn't easy, but this program was the only thing that helped. It helped to rid me of the humiliation and disgust that somehow became mine, though I had done nothing wrong and enabled me to get back some of the parts of me and my life that were left behind with a rapist. Now I knew there were people who knew how I felt, people who cared and wanted to help. I wasn't alone with a mad rapist anymore. I finally got away from the rapist at last.

At the time I felt the laws weren't strong enough to prevent what happened to me and I didn't want to be humiliated once by police & our justice system then I was at the hands of the rapist. My point is that a criminal, especially rapist, get little or no punishment or jail time and my life was ruined for many years. - Some survivors live, are ruined forever. The laws must be made to the government ~~for~~ the victim.

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STATEMENT OF

DR. LESLIE R. WOLFE
EXECUTIVE DIRECTOR
CENTER FOR WOMEN POLICY STUDIES

SUBMITTED TO THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

APRIL 5, 1991

The Center for Women Policy Studies was founded in 1972 as the first national policy institute to focus specifically on the social, legal, and economic status of women. From its creation, the Center has conducted research, developed policy options, and provided technical assistance to policymakers and advocates alike on issues of violence against women. During the 1970s, for example, the Center was instrumental in defining rape as a federal policy issue and contributed to development of the Rape Prevention and Control Act. With support from the federal government over many years, the Center also established the first national Resource Center on Family Violence and published the journal, Response to the Victimization of Women and Children.

We are pleased to have the opportunity to present testimony to the Committee, based on our current work in this field. Our testimony will support efforts to include violent crimes against women in the definitions of hate crime. We believe that similar protections must be provided for crimes against women -- of all racial, ethnic, and religious groups -- that are motivated by gender, as are provided for crimes motivated by race, nationality, ethnicity, sexual identity, and religion. The following statement is submitted for the official record of the Committee's hearing on this issue.

This statement is drawn from the Center's forthcoming Policy Paper, tentatively entitled Violence Against Women as Bias Motivated Hate Crime: Defining the Issues. We decided to develop this report in response to two related but disparate events -- the

passage of the Hate Crimes Statistics Act of 1990¹ without inclusion of gender bias crimes, and the murder of fourteen women engineering students in Montreal by Marc Lepine, who declared his intention to "kill the feminists" and then lined up the women students against the classroom wall and opened fire with a 22-caliber automatic rifle. Though not a crime of sexual violence, this was a classic example of a sexist crime, a hate crime.

To understand the nature and extent of violence against women, we first must look at the culture of domination and patriarchy against which women's movements worldwide have struggled for many years. Indeed, during the past two decades, feminist theorists have written extensively about these issues² and have defined violence as the quintessential example of sex discrimination and sexual oppression. As Charlotte Bunch has recently reiterated:

sex discrimination kills women daily. When combined with race, class, and other forms of oppression, it constitutes a deadly denial of women's right to life and liberty on a large scale throughout the world.

The most pervasive violation of females is violence against women in all its manifestations, from wife battery, incest, and rape, to dowry deaths, genital mutilation, and female sexual slavery.³

Violence -- and the internalized and constant threat of violence -- are seen as instruments of control, keeping women in their place. As with other hate crimes, violence against each woman terrorizes and intimidates the entire class -- all women.

As this Committee has undoubtedly heard from others testifying on behalf of the Violence Against Women Act, the threat of violence permeates every aspect of women's lives. It alters where women live, work, and study, as they try to be safe by staying within certain prescribed bounds.

Women -- whether they are white or women of color, heterosexual or lesbian, young or old -- know that they cannot go to places men can go without the fear of being attacked or violated. Campuses, parking lots, libraries, shopping centers, parks, jogging trails -- all are possible danger zones.

And, even when women stay within those prescribed bounds their safety is not assured; studies have shown that women are most at risk with their intimate partners or friends.⁴ Women learn these rules when they are girls; they learn to "protect" themselves by restricting their lives, to "be careful" and to accept the blame when their precautions fail. In short, women learn their "place" and their fear very early.

Women also learn (as do men) the cultural myths about violence against women which continue to victimize women and which, in large part, still shape our attitudes. These myths suggest that woman battering and rape are "crimes of passion," that wife abuse is a "private, family affair," and that women who are battered, raped, or killed "had it coming" because of some fault or error of their own. Even when violence against women is defined as a societal rather than a personal problem, it does not receive the level of serious attention that other violations of individual freedom or

of civil and human rights receive.⁸

Such attitudes are woven throughout the fabric of our society, and violence against women still is portrayed as acceptable and inevitable in many subtle and overt ways. These attitudes are so deeply ingrained that a Rhode Island Rape Crisis Center survey of 1,700 sixth to ninth grade students in 1988 found that a substantial percentage of these pre-adolescents and adolescents believed that a man has the right to kiss or have sexual intercourse with a woman against her will, particularly if he has "spent money on her." Half of the students said that a woman who walks alone at night and dresses "seductively" is "asking to be raped."⁹

As men absorb and accept their patriarchal rights of ownership of wife and children, they also may assume their right to control and demand obedience from their wives and partners and even to use force to ensure it. Indeed, the common law's "rule of thumb" is evidence of longstanding legal and political support for such violence.⁷ Cultural support reaffirms it, as "men who assault their wives are actually living up to cultural prescriptions that are cherished in Western society -- aggressiveness, male dominance, and female subordination -- and they are using physical force as a means to enforcing that dominance."⁸

Battered women who seek to break the cycle and free themselves from abusive relationships still confront sexist assumptions that further victimize them. In court, battered women often are blamed for the abuse and its seriousness is minimized -- suggesting that

such violence is a normal expression of male dominance. Examples are legion, as the women who operate shelters for battered women and the attorneys who represent them can attest; in one case, for instance, the judge hearing her divorce case told a battered woman -- who had suffered physical and mental abuse during 23 years of marriage -- "that he thought she was lying and that he could not believe that her husband, an upstanding citizen, would beat her unless she 'had it coming.'"

Women who are raped are further victimized by cultural myths infused into the legal system¹⁰ and the rape laws that were based on patriarchal assumptions about female sexuality and men's rights. Women who are raped must defend themselves from the suggestion that they consented to violent sexual intercourse by "contributory behavior" -- by saying "no" but meaning "yes," by wearing "seductive" clothes, by having had a prior sexual history, by going to "dangerous" places (a bar, a campus fraternity party, Central Park). In short, women must confront the assumption that most men do not rape and that most women bring it on themselves.

Acquaintance rape, like wife abuse, is still defined as a woman's personal problem. The myth that rape is a crime of sexually aroused and violent strangers -- not "normal" men, not friends or dates or partners -- further punishes women. It is assumed that the existence of any prior relationship suggests consent and that a man is entitled to sexual control of a woman; acquaintance and date rapes thus are trivialized and hidden. Indeed, young women who report such assaults on campuses often find

themselves doubly punished for raising the issue.

While stranger rape and acquaintance rape are both considered rape, the differences in attitude and prosecution are monumental. Men who know their victims are least likely to be arrested, prosecuted, and convicted. Where there is so-called "contributory behavior" by the woman, juries are less likely to convict. An aggravated rape -- defined as one in which there are multiple assailants, the rape is accompanied by additional violence, or the rapist uses a weapon -- will more likely result in a conviction. Indeed, while theoretically all rapes are investigated and prosecuted to the fullest extent of the law, in reality if a woman is raped by a stranger -- especially if a weapon has been used and the alleged rapist is a man of color while the victim is white, thus reflecting the extent of race and sex bias combined -- she is more likely to be believed and to see him prosecuted and convicted.¹¹

Finally, while male murder victims are likely to be murdered as a result of felonious activities or during alcohol or drug-influenced brawls,¹¹ women are most likely to be murdered **simply** because they are women. Many murders of women are classic examples of gender-biased hate crimes. Perhaps the most obvious case is the Montreal murders committed by Marc Lepine, mentioned earlier; before he murdered fourteen women engineering students, he expressed his hatred of them as "feminists" who had gained entry into the male dominated field that he could not. Their visibility in this field increased his anger and hatred of all women; not only

did he resent their success, he also blamed their presence for his failure to be admitted to the engineering program. It is a classic case, to be sure. But it is not the only one.

Feminist analyses have been instrumental in ensuring that violence against women is no longer defined solely as a crime against an individual who happens to be female and is unfortunate enough to become a victim. While not every man beats his female partner or rapes women, feminist theorists would suggest that society's acceptance of patriarchal assumptions and structures also accepts and condones these violations of women's autonomy. The evidence is in the fact that women worldwide "are routinely subject to torture, starvation, terrorism, humiliation, mutilation, and even murder simply because they are female."¹¹

"The message," Charlotte Bunch reminds us, "is domination; stay in your place or be afraid. Contrary to the argument that such violence is only personal or cultural, it is profoundly political. It results from the structural relationships of power, domination, and privilege between men and women in society. Violence against women is central to maintaining those political relations at home, at work, and in all public spheres."¹¹

The Center for Women Policy Studies takes the next step in this analysis -- placing violence against women in the context of widely accepted definitions of bias-motivated hate crimes. We seek to show that acts of violence based on gender -- like acts of violence based on race, ethnicity, national origin, religion, and sexual identity -- are not random, isolated acts but rather are

crimes against individuals that are meant to intimidate and terrorize the larger group or class of people -- women.

The very pervasiveness of violence against women -- reflected in available statistics, inadequate as they may be -- documents the extent to which "the risk factor is being female."¹³ Department of Justice figures show overwhelmingly that reported crimes against women are increasing while crimes against men are decreasing. According to a recent study by this Committee, the rate of sexual assaults is now increasing four times faster than the overall crime rate, and the number of reported rapes reached 100,000 in the United States in 1990. Since 1974, assaults against young women have risen by an astounding 50 percent, while assaults against young men have dropped by 12 percent.¹⁴ Many women live in fear of violence not only on the streets but in their own homes.

Women are not safe on the streets

- * In 1984, 2.3 million violent crimes (rape, assault, and robbery) were committed against women over the age of 12.¹⁵
- * In 1988 the FBI received reports of 92,486 forcible rapes of women over the age of 12; only 20 percent to 40 percent were stranger rapes.¹⁶
- * In 1982, 4,118 serial murders were reported; the majority of the victims were women.¹⁷
- * Two hundred and three rape cases, many involving prostitutes or women who used drugs, were dropped by the Oakland (CA) Police Department without even minimal investigation.¹⁸
- * Since 1974, the rate of reported assaults against women ages

20 to 24 has risen by 48 percent, but assault rates against young men in the same age group declined by 12 percent."⁹

Women are not safe in their homes

- * Every 15 seconds a woman is beaten by her husband or boyfriend."⁹
- * Thirty percent of women who are homicide victims are killed by their husbands or boyfriends."⁹
- * Each year, 4,000 women are killed in the context of domestic violence situations -- by husbands or partners who have abused them."⁹
- * One in four -- 25 percent -- of women who attempted suicide had been victims of family violence."⁹
- * One in seven women in a San Francisco sample reportedly were raped by their husbands."⁹
- * Nearly nine percent of college women who are raped are raped by family members."⁹

Women are not always safe with their friends

- * Rape crisis centers report that 70 to 80 percent of all rapes are committed by acquaintances of the women."⁹
- * A study of 2,291 adult working women found that 39 percent of rapes were committed by husbands, partners, or relatives; only 17 percent were committed by total strangers."⁹
- * According to a national study, 84 percent of women who had been raped knew their attackers."⁹
- * Studies of high school and college students conducted

during the 1980s reported rates of dating violence ranging from 12 to 65 percent."

Women are not safe on college campuses

- * In a survey of 3,187 college women, 478 reported having been raped; of these, 10.6 percent were raped by strangers, 24.9 percent were raped by non-romantic acquaintances, 21 percent were raped by casual dates, and 30 percent were raped by steady dates."
- * One out of every four college women is attacked by a rapist before she graduates; one in seven will be raped."
- * More than half of college rape victims are attacked by dates."
- * The number of college women raped in 1986 was 14 times higher than officially reported in the National Crime Survey."

Women are not safe in the workplace

- * A study by the federal Centers for Disease Control found that 42 percent of workplace trauma deaths of women from 1980-85 were homicides, compared to 12 percent of men's occupational fatalities."

Women are not safe from sexual harassment at school, at work, and on the streets

- * A government survey revealed that 42 percent of female respondents working in federal government agencies reported that they had been harassed during a two year period from 1985 to 1987."

- * A survey of women psychology graduates found that 17 percent had sexual contact with their professor while they were working towards their degree."
- * Virtually every woman has been subject to some form of street harassment, in which individual men or groups of men whistle, make sexual comments or slurs, issue sexual invitations, or yell obscenities at women passing by."

These statistics do more than demonstrate the pervasiveness of violence against women in our society. They tell us that women are not safe anywhere, from anyone. In the larger sense, as Susan Schechter has stated: "violence against women robs women of possibilities, self-confidence, and self-esteem. In this sense, violence is more than a physical assault; it is an attack on women's dignity and freedom."⁴⁰ And each act of violence against a single woman intimidates and terrifies all women.

These are not isolated random instances of violence in our homes and on the streets. Yet as compelling as the statistics on reported crimes are, they represent a substantial undercount of actual violence against women, for a variety of reasons. Many women's anti-violence groups believe that violence against women is minimized because women's lives are not valued and the violence is so commonplace.⁴¹ Perhaps for similar reasons, women often do not report incidents of rape and battering; national studies indicate that as many as four million women are battered each year, but only about two million cases are reported.⁴² Furthermore, only 7 percent of all rapes are reported to police and fewer than 5

percent of college women report incidents of rape to the police; more than half of raped college women tell no one of their assaults.

While women often are the victims of violence for the same reasons men are (robbery, burglary, larceny, motor vehicle theft), women also are victims of violence simply because they are women. This continuum of hatred of women is expressed in forms ranging from sexist language and harassment to explosions of violence such as rape, assault, and murder. Although such violence is traditionally seen as "personal," it is not.

Yet the suggestion that violence against women as women should be defined as bias crime and included in anti-bias crime legislation has met with some resistance. Allies and partners in efforts to ensure equal rights for all have expressed questions and doubts about the efficacy of including gender in hate crimes legislation, about the usefulness of defining rape, battery, and murder of women as bias-motivated hate crimes, and about the legitimacy of fashioning appropriate civil rights remedies for such crimes.

Violence against women does indeed meet the requirements of widely accepted definitions of hate crimes, which are acts of terrorism directed not only at the individual victim but at her/his entire community.⁴ It is violence directed toward groups of people that generally are not valued by "mainstream" society and who do not have full access to institutions meant to remedy social, political and economic injustice.

The most comprehensive definition of hate crime, which has been accepted by various anti-bias crime organizations, was originally developed by the California Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence:

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

It is interesting to note that this definition originally included "sex" as a protected category; but when it was adopted by other organizations, "sex" was deleted. Indeed, the history of this definition's development is instructive. It was adopted by the Criminal Justice Department of the State of California. While "sex" was included in the definition itself, the journal article

explicating the definition and the concept of hate crime did not include any discussion of sex-based hate crime. This omission undoubtedly reflects the fact that even when violence against women is understood to be a pervasive form of hate violence, it remains ill-defined and often invisible except in feminist analyses of the kind cited above.

Other organizations have relied on the California definition, but have deleted "sex" from the list of protected groups. The definition of bias-motivated hate crime adopted by the Anti-Defamation League (ADL) of B'nai B'rith states that hate crime is "any act to cause physical injury, emotional suffering, or property damage, which appears to be motivated, all or in part, by race, religion or sexual orientation."⁴

The definition adopted by the National Institute Against Prejudice and Violence states that hate crimes are violent expressions of bigotry that are damaging to the preservation of equality, because they focus on superficial characteristics which victims are powerless to change and which do not relate to individual accomplishments or other common criteria of self-worth.⁵

Finally, the federal Hate Crime Statistics Act of 1990, signed into law in April of 1990, defines hate crimes as those that "manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity."⁶ The Hate Crimes Statistics Act mandates the collection of data on murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault,

intimidation and arson, as well as destruction, damage or vandalism of property motivated by hatred against those groups enumerated in the Act." A House of Representatives report on the Hate Crimes Statistics Act states that "while each incident represents a personal tragedy for the victim, hate crimes are an attempt to intimidate a larger group or class of people."

The Women's Project of Little Rock, Arkansas, which monitors hate crimes in Arkansas, includes violence against women in its definition of hate crime. In fact, the Project adopted the definition of the California Task Force; and, without realizing that "sex" had originally been included in that definition, incorporated gender in its definition, believing it was the first group to do so. Indeed, the Women's Project is one of very few that monitors sexist, racist, anti-Semitic and homophobic hate violence and that has developed theoretical support for its inclusion of violence against women as hate crime: "hate violence comes from generalized hatred or prejudice toward a group of people who hold in common a single difference from the defined norm -- religion, race, gender, sexual identity -- and it evolves out of a societal system of oppression such as anti-Semitism, racism, (or) sexism."

Peter Finn suggests that hate crimes can range from threatening phone calls to murder; they include the full range of words or actions intended to intimidate or injure an individual because of his or her race, religion, national origin, or sexual identity." He also suggested guidelines for identifying whether

a crime is bias related, which have been adopted by the National Institute of Justice:

- * common sense (such as burning of a cross on a lawn)
- * language used by the perpetrator (such as slurs)
- * severity of the attack (including mutilation)
- * lack of provocation
- * previous history of similar incidents in the same area
- * absence of any other apparent motive (battery without robbery, for example)"

Acts of violence against women -- from threatening obscene telephone calls to street harassment, from battering to rape to serial murders with mutilation -- clearly include many of these characteristics.

The use of racial, ethnic, and homophobic slurs characterizes either a verbal attack or the defacing of property as a hate crime. Women too are subject to hate language daily -- including sexual innuendos, catcalls, threats and other street harassment -- that are meant to intimidate, harass, and denigrate each woman and all women. Yet women are the only group in society that is expected to view such harassment as "flattery." Further, hate language often accompanies violent assaults; it is so intense and obscene that I cannot quote the words used by men who rape, batter, and murder in this chamber.

Many experts believe that so-called "motiveless crimes" -- such as battery without robbery or murder without an apparent motive -- are indicative of hate crimes." Both media and police

reports officially define virtually all serial murders of women and many individual murders of women by men as "motiveless crimes." The "motive" for rape is generally understood to be hatred of women, rather than sexual desire -- thus suggesting hate crime. Further, as other experts in the field of domestic violence undoubtedly have testified in earlier hearings, wife abuse is clearly a "motiveless" crime of domination and control. In virtually all of these cases, the "motive" is hatred and anger at women, acted out on a particular woman.

Many acts of violence against women involve the excessive violence, including mutilation, that characterizes bias-motivated hate crimes. Indeed, those who monitor such violence daily, as our colleagues at the Women's Project in Little Rock do, are overwhelmed at how extraordinary it is, how excessive and brutal the attacks are.

For many, the ultimate example of hate violence against women is that perpetrated by serial murderers, who usually mutilate their victims, frequently binding, raping, and torturing them before they murder them. And the "people who torture, kill, and mutilate in this way are men, while their victims are predominantly females."³⁴ Of the five college students murdered in August, 1990 at the University of Florida in Gainesville, for example, four were women and three of them were mutilated. The police profile of the murderer described him as a "methodical killer who stalked his women victims at close range, and he seemed to have a taste for petite brunettes."³⁵

Further, even though the police stated that the young man who had been killed was clearly an unintended victim, news reports of this and other similar cases often use gender neutral terms, thus suppressing the fact that the murderer almost always is male and his victims are female. As news reports from Gainesville made clear, these murders traumatized the entire university community and left the community of women terrorized, fearful, and intimidated -- as bias crimes are intended to do.

Although these well-publicized serial murders are truly horrible, and clearly fit the accepted definitions of bias-motivated hate crimes, far more women are murdered every day -- by men -- in ways that also suggest hate crime -- by the lack of provocation, the lack of apparent motive, the severity of the attack, the existence of mutilation, and the obvious intention to terrorize and annihilate. In Arkansas, a mostly rural state with a population of 2.3 million, 81 women in the state were murdered in 1990, in cases where robbery was not a motive. According to the Women's Project, in 65 of these cases the murderers were known; in all 65 cases, the murderers were men and in all cases there was a lack of any other apparent motive. In 48 of these 65 cases, the killers were known to their victims -- 18 were husbands, 5 were estranged husbands, 12 were boyfriends, 3 were estranged boyfriends, 4 were acquaintances, and 6 were other relatives; in 20 cases, the relationship was unknown.

These murders -- by partners and relatives of the women victims -- were particularly brutal; 45 of the women were shot,

including 10 who were killed by shotgun blasts to the face and one by a shotgun blast to the stomach. Fifteen women were murdered by stabbing or cutting and seven by strangulation; three were beaten to death and four were burned. In one particularly horrific case, the man tied a rope around the woman's neck, tied the other end to his car, and dragged her down the road until the road ended and she was dead. In some cases, there were witnesses: 11 children witnessed their mother's brutal murders. And in some cases, there were related murders: six children were killed with the women."

The guidelines for identifying an act of violence as a hate crime can also be applied to wife (or partner) abuse. Indeed, the murder of a woman that results from battering is not a domestic quarrel that "got out of hand"; it is the ultimate result of systematic violence. A Police Foundation Study in the mid-1970s found that in 85 to 90 percent of partner homicides, police had been called to the home at least once during the two years preceding the homicide. In more than half of these cases, police had been called five times or more." According to more recent data, the average battered woman is attacked three times each year" and a third of women are battered again within six months after a reported incident of abuse."

And both the murder of a battered spouse and the battery itself suggest hate crime; the brutality, the frequent use of hate language and name calling, the terrorization of the woman (often over many years), and the lack of motive other than a man's domination of his female partner portray these as hate crimes."

What makes many of these sexist hate crimes different from hate crimes based on religion, race, ethnicity, or sexual identity is the intimacy of the relationship. In the case of acquaintance rape as well as wife abuse, it is in the personal interaction and daily contact that male domination and gender bias -- expressed through violence -- coexist and survive. Batterers act out their terrorism against women they believe they own, whom they can control and dominate with impunity.

It is, perhaps, for this reason that understanding that most violence against women is bias-motivated hate crime is so difficult for many otherwise concerned individuals and groups. The idea that women provoke the violence directed against them is the defense often used by perpetrators of acquaintance rape and battering; indeed, it is virtually only in such cases that "blaming the victim" in this way is an accepted defense against charges of assault, rape, and battery.

But as we have seen, hate crimes are usually defined as crimes perpetrated against an unknown victim who represents a hated "minority" group. Yet women are often victimized by close associates, close to home, as well as by hate-filled strangers. Women are not a separate minority group in society; nor can women be seen as a group only encountered on the street or in the workplace. Women are part of all families and communities; women do not need to "cross community boundaries" to be attacked and violated.

Yet sexual violence against women is only "counted" as a hate

crime if the woman can claim that she was raped because of her race, ethnicity, sexual identity, or religion. Indeed, the federal Hate Crimes Statistics Act's enumeration of violent crimes for which data are to be collected includes "forcible rape," but "gender" is not included as a protected category. This suggests that an act of sexual violence against a woman can only be a hate crime if she also "fits" another protected category.

Observers of hate crimes also point out that these crimes are significantly different from other violent crimes because of the motivation that provokes them. Not only do hate crimes victimize whole groups, but their individual victims generally suffer more serious harm than do other crime victims. They are more likely to be attacked by multiple perpetrators and suffer long-term psychological harm than are victims of other crimes.⁴ Gang rape, an increasing phenomenon among acquaintances on campuses as well as strangers on the streets, certainly fits this definition. And "battered woman syndrome" itself evidences the existence of long term psychological harm as a result of violent abuse and intimidation over time.

And violence against one woman affects all women. As I am certain this Committee has been told -- by other witnesses and by the women in your lives -- virtually all women, whether they have been victims of violence themselves, have been intimidated by the pervasiveness of such hate violence into living lives governed by fear. A recent study interviewed 5,000 people in several large cities to find out how fear influenced their daily lives. Sixty-

eight percent of the women, but only 5 percent of the men, said they never go to bars and clubs alone. And 47 percent of the women but only 7.5 percent of the men said they never go downtown alone after dark." Can it be that this "female fear" still is so accepted and so "ordinary" that it is considered normal? We would suggest that it really represents the success of hate crimes against women -- who are, as a group, terrorized and intimidated.

Finally, another characteristic of hate crimes that links gender-bias crime with racial, ethnic, religious, and homophobic violence is the continuing backlash against the movements for equality. As a recent article in Governing magazine pointed out: "You can't vandalize the Black Student Center until there is a Black Student Center and you can't throw things at the Gay Rights Parade until there is a Gay Rights Parade."³ It has also been suggested that the escalation of violence against women during the past decade is in part due to a male backlash against the gains of feminism. The fault lies not with feminism or with women seeking equality but with the vestiges of a patriarchal culture that terrorizes women; when supremacy is challenged, whether it is racial or sexual domination, this terror may be intensified.⁴ As we have seen, terror may be in the form of verbal harassment, rape, assault, or murder -- a continuum of violence held in place by old attitudes and myths, by hostility to women and to women's equality.

Despite this and much more evidence, crimes motivated by gender hatred are not included in the data collection mandated by the Hate Crimes Statistics Act.⁵ Although feminist groups that

were part of the Coalition on Hate Crimes Prevention introduced the idea of including gender, the Coalition decided not to do so, for a variety of reasons. The first reason was a political and strategic one: some members of the Coalition wanted the bill to pass quickly and believed that including gender would delay passage; they suggested that the Coalition could consider including gender bias at a later time.

Some groups also expressed the concern that including gender would open the door to lobbying by other groups for inclusion of violence based on age, disability, position in a labor dispute, party affiliation, or membership in the armed forces. Others believed that including gender would make the Hate Crimes Statistics Act too cumbersome and complicated, thus hampering enforcement.

Others who opposed inclusion of crimes against women in the Hate Crime Statistics Act suggested that data collection would be too difficult, because violent crime against women is so pervasive and not all acts of violence against women fit the definition of "hate crime," particularly if the violence is committed by an acquaintance. The Anti-Defamation League, for example, prepared a document that presented arguments for and against including gender in hate crimes statutes, which suggested as one argument against including gender that "a substantial majority of women victims of violent crimes were previously acquainted with their attackers. While a hate crime against a black sends a message to all blacks, the same logic does not follow in many sexual assaults.

Victims are not necessarily 'interchangeable' in the same way; in cases of marital rape or date rape for example, the relationship between individual perpetrator and victim is the salient fact -- whether the defendant is a woman-hater in general is irrelevant."

Feminist theorists and anti-violence groups would not agree. As we have shown above, much of the violence against women that is not now defined as hate violence does indeed qualify for inclusion in that category. Rather than eliminate such crimes from consideration, careful analysis of data and crime reports -- using guidelines for defining characteristics of hate crimes -- could be mandated. As with crimes motivated by other forms of prejudice, a determination could be made whether a particular crime against a particular woman meets the criteria for defining a bias-motivated hate crime.

Further, the suggestion that "the relationship" or acquaintanceship between victim and perpetrator is "the salient fact" and that "whether the defendant is a woman-hater in general is irrelevant" assumes the legitimacy of male ownership and domination of women; the notion that violence committed by an acquaintance or partner cannot, by definition, be motivated in major part by woman-hating in general ignores the reality of these crimes against women. Victims are indeed "interchangeable" when a batterer abuses a second wife or a college student commits multiple date rapes, for example. We must identify the crime itself and its motivation rather than perpetuate old patriarchal notions. And we must also remember that crimes based on race,

religion, ethnicity, and sexual identity all have their own particular qualities as well; they are not necessarily identical, but they are all bias-motivated hate crimes with certain essential characteristics in common.

We are particularly gratified that this issue has been raised in the Violence Against Women Act, which for the first time labels crimes of violence based on gender as bias crimes that deprive women of civil rights.² Title III, "Civil Rights," defines gender violence against women as a bias crime and provides civil rights remedies for women survivors of gender-motivated crimes, defined as "including rape, sexual assault, and sexual abuse, or any other crime of violence committed because of gender or on the basis of gender."¹

We look forward to working with the Committee to ensure that the remedies provided are appropriate and powerful. We believe that these remedies must provide women of all racial and ethnic groups with the same legal recourse as is currently available to victims of violence based on race, religion, and national origin.

We are grateful for this Committee's leadership in confronting violence against women as the crime against society that feminist theorists have long understood it to be. Until women can live and work without fear of victimization and annihilation, we will not achieve our goal of a free and equal society.

1. Public Law 101-275, 101st Congress, April 23, 1990.

2. See Eva Figes, who suggests that the "motivation for male domination is the idea of paternity. . . [as man] saw himself as the physical father of the child [woman] bears. . . himself as creator, woman [as] mere vessel. Since no man can control all men, it is primarily the woman he must control, mentally/physically." Eva

Figes, Patriarchal Attitudes, (Greenwich, CT: Fawcett, 1970) 34.

Susan Brownmiller links rape and patriarchy in Against Our Will: Men, Women, and Rape, (New York: Simon and Schuster, New York, 1975). Also see Andrea Dworkin, Woman Hating, (New York: Dutton, 1974); Catherine MacKinnon, Toward a Feminist Theory of the State, (Cambridge, MA: Harvard University Press, 1989); Kate Millett, Sexual Politics, (Garden City, NY: Doubleday, 1970).

See bell hooks, who writes that "both groups [white men and Black men] have been socialized to condone patriarchal affirmation of rape as an acceptable way to maintain male domination. It is the merging of sexuality with male domination within patriarchy that informs the construction of masculinity for men of all races and classes." bell hooks, Yearning, (Boston: South End Press, 1990) 59.

3.Charlotte Bunch, "Women's Rights as Human Rights: Toward a Revision of Human Rights," Human Rights Quarterly, 12 (1990) 489.

4.See Angela Browne, When Battered Women Kill, (New York: The Free Press, 1987) 114.

5.See Charlotte Bunch's excellent analysis: "Despite a clear record of deaths and demonstrable abuse, women's rights are not commonly classified as human rights. This is problematic both theoretically and practically, because it has grave consequences for the way society views and treats the fundamental issues of women's lives." Bunch, 436.

6.Judy Mann, "Twisted Attitudes Taint Youth," Washington Post, May 6, 1988, D3.

7.Elizabeth Holtzman, "Women and The Law," Villanova Law Review, (October, 1986) 1435. "In addition to sexual domination and control, men were granted ownership rights to physically abuse their wives. The expression 'rule of thumb' comes from the tradition embodied in common law that made it legal for a man to beat his wife as long as the stick used was not bigger around than his thumb."

8.R. Emerson Dobash and Russell Dobash, Violence Against Wives, (New York: Free Press, 1979) 24.

9.Supreme Court, Final Report of the Michigan Supreme Court on Gender Issues in the Courts, (Lansing, MI: Task Force, December, 1989) 24.

10.See Carol Smart, Feminism and the Power of Law, (London and New York: Routledge, 1989).

11. Susan Estrich, Real Rape, (Boston: Harvard University Press, 1987) 3.
12. Uniform Crime Reports, 1990
13. Bunch, 486.
14. Bunch, 491.
15. Lori Heise, "International Dimensions of Violence Against Women," Response, vol. 12, no. 1 (1989): 3, quoted in Bunch, 490.
16. National Crime Survey, 1989, cited in Congressional Caucus on Women's Issues, Violence Against Women, July, 1990. It is likely that this increase reflects both an increase in crimes against women and an increase in reporting of these crimes.
17. Select Committee on Children, Youth, and Families, Hearing on Women, Violence, and the Law, September 16, 1987, 3.
18. Federal Bureau of Investigation, Uniform Crime Reports for the United States 6, 13-15 1987.
19. Caputi, 203.
20. Jane Gross, "203 Rape Cases Reopened in Oakland as the Police Chief Admits Mistakes," The New York Times, September 20, 1990, 14.
21. Committee on the Judiciary, Violence Against Women Act of 1990, Report 101-545, October 2, 1990, 30.
22. Bureau of Justice Statistics, Preventing Domestic Violence Against Women, Special Report, August 1986.
23. Federal Bureau of Investigation, Crime in the United States, 1986.
24. E. Stark, et al. "Wife Abuse in the Medical Setting: An Introduction for Health Personnel," Monograph Series No. 7, 1981 Give complete citation.
25. Angela Browne, 68.
26. Diana E. H. Russell, Rape in Marriage, (Bloomington, IN: Indiana University Press, 1990) 57.
27. House Select Committee on Children, youth and Families, 1990.
Complete citation

Check original source--does statistic refer to college women or college age women?

28. Robin Warshaw, I Never Called It Rape, (New York: Harper and Row, 1988) 12.

29. Mary P. Koss, "Rape Incidence: A Review and Assessment of the Data," Testimony before the Senate Judiciary Committee, August 29, 1990, 7.

30. Suzanne S. Ageton, Sexual Assault Among Adolescents: A National Study. Final report submitted to the National Institute of Mental Health, 1983.

31. Barrie Levy, "Abusive Teen Dating Relationships," Response, vol. 13, no. 1, (1990): 5.

32. M. P. Koss, C. A. Gidycz, and N. Wisniewski, "The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students," Journal of Consulting and Clinical Psychology, 55, 162-70.

33. Koss, 1990

34. Koss, 1990

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36. Oakland Tribune 8/17/90

37. Gordon Chapman, "Sexual Harassment of Women in Federal Employment," Response, vol. 11, no. 2, (1988): 26.

38. Project on the Status and Education of Women, "Sex with Professor Not a Good Idea in Retrospect," On Campus With Women, vol. 16, no. 1, (Summer 1986): 3.

39. Jean O'Gorman Hughes and Bernice Sandler, Peer Harassment--Hassles for Women on Campus, (Washington, DC: Project on the Status and Education of Women, AAC, 1988) 5.

40. Susan Schechter, Women and Male Violence, (Boston: South End Press,) 317.

41. Suzanne Pharr, "Hate Violence Against Women," Transformation, The Women's Project, January, 1990, 3.

42. United States Department of Justice, 1985. Battered women do not report abuse for many reasons. Women face the legitimate fear that their partners will carry out their threats of retaliatory violence or loss of access to their children if they report the crime or leave the relationship. Indeed, much evidence suggests that a woman is in the greatest danger when she tries to leave her abuser. In addition, as substantial research has reported during the past two decades, many battered women are economically dependent on their abusive partners and many still suffer from the constellation of beliefs and feelings now defined as "battered woman syndrome." And finally, a woman may believe (with some evidence) that the criminal justice system will trivialize her reports of abuse and be unable to protect her.

43. Pat Clark, Director of Klanwatch, in conversation, 1990.

44. "Emerging Criminal Justice Issue: When Hate Comes to Town -- Preventing and Intervening in Community Hate Crime," Research Update, Office of Criminal Justice Planning, Spring, 1989, vol. I, no. 4 (California Department of Justice, April, 1986): 1.

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46. National Institute Against Prejudice and Violence, Striking Back at Bigotry: Remedies Under Federal and State Law for Violence Motivated by Racial, Religious, and Ethnic Prejudice, 1988 supplement, (Washington, DC: Hogan and Hartson, 1988), 2.

47. Public Law 101-275, 101st Congress, April 23, 1990.

48. House Report 101-109, 101st Congress, 1st Session, June 23, 1989.

49. House Report 100-575, 100th Congress, 2nd Session, April 20, 1988, page 3.

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51. Peter Finn, "Bias Crime: A Special Target for Prosecutors," The Prosecutor, Spring, 1988, 9.

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61. Klanwatch, Special Report: Outlawing Hate Crime, November 20, 1989.
62. Margaret T. Gordon and Stephanie Riger, The Female Fear.
63. Adele Dutton Terrell and Jim Castelli, "Good Police Work and New Laws Reduce Hate Crimes," Governing, (August, 1990): 83.
64. Caputi, 35.
65. The Hate Crimes Statistics Act of 1990 (Public Law 101-275, 101st Congress, April 23, 1990) mandates the collection and publication of data about crimes that manifest prejudice based on race, religion, homosexuality or heterosexuality, or ethnicity. For the first time, the US Department of Justice will be required to include data on the extent and nature of such crimes in its official crime reports. These statistics will help pinpoint the geographical location and extent of hate crimes and will identify both the perpetrators and the victims. Law enforcement agencies and public officials will be able use the data to focus on problem areas, to promote new programs to improve community relations, and to punish perpetrators. In addition, the process of data collection will assist in evaluating the effectiveness of bias crime legislation.
66. Anti-Defamation League of B'nai B'rith, Civil Rights Division Policy Background Report, Hate Crimes Statutes: Including Women as Victims, (1990):12.
67. Violence Against Women Act of 1991, S. 15, 102nd Congress, 1st session, January 14, 1991, 78-79.

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78, lines 15-17..



TESTIMONY OF THE FAMILY RESEARCH COUNCIL
IN SUPPORT OF A RIGHT OF ACTION AGAINST
PORNOGRAPHERS FOR VICTIMS OF CRIMES INCITED BY
PORNOGRAPHY

before the

United States Senate Judiciary Committee

Tuesday, April 9, 1991

TESTIMONY OF THE FAMILY RESEARCH COUNCIL
IN SUPPORT OF A RIGHT OF ACTION AGAINST PORNOGRAPHERS
FOR VICTIMS OF CRIMES INCITED BY PORNOGRAPHY

Senate Committee on the Judiciary

April 9, 1991

The Family Research Council actively supports the creation of a right of action in tort against pornographers, for victims of crimes incited by pornography. Senator McConnell will shortly be introducing a bill to achieve this goal, and the same concept is also to be found in Title II of Senator Dole's Women's Equal Opportunity Act. It is an idea whose time has come.

We begin with a piece of personal testimony:

"My husband became 'addicted' to pornography.... He started trying everything out on me in our bedroom.... After one and a half years of fear and three visits to specialists to correct damage he had done to my female organs, I filed for divorce."

This quote is from a letter to the Attorney General's Commission on Pornography.¹ The story it tells is typical of what many witnesses told that commission about what pornography had done to their lives.

The woman who wrote that letter, and potentially millions like her, currently have some degree of protection in the criminal law, both federal and state. But prosecutions are difficult. Even though the Department of Justice has cracked some significant cases in this area recently, they will no doubt admit that a lot of noxious stuff is still out there. At present, in most states, a woman has no legal recourse in her own right. All too often, the real culprits are not really liable to the ultimate victims: the battered wives, the rape victims, the abused children.

Does pornography really cause these things? There was a time when many psychologists did not think so. Back in the 60s, when barriers were falling throughout the realm of sexual morality, the push was on to find that pornography was merely a harmless diversion for the broad-minded. The catharsis theory became popular -- the theory that pornography may act as a form of relief. A 1968 Presidential commission substantially backed these views.

But things did not turn out the way that commission anticipated. While pornography may indeed "bore" many of its

¹See New York Daily News, September 6, 1986

consumers, there were and are different reactions to this boredom. While some turned away from pornography, many others turned toward progressively harder, more violent, and more perverse forms of it. This part of the pornography market grew throughout the seventies, and is predominant today. These were among the findings of the more recent Attorney General's Commission on Pornography, initiated by the then-Attorney General, the late William French Smith -- a commission on which Dr. James Dobson of Focus on the Family also had the honor of serving.

The phenomenon whereby the addict is driven to ever-harder forms of pornography is called desensitization. To produce the titillation that used to be produced by relatively soft-core material, the addict now needs materials that explicitly depict rape, torture, scatological acts, and even dismemberment.

To think that such material, consumed in massive quantities, has no effect on the outlook of the addict, is to defy reality. True, he may not try to act out everything he reads about or sees pictured, but at a minimum his view of what is normal will be affected.

In the testimony of many of the women who spoke to the Attorney General's Commission about the effects of pornography on their marriages, a pattern emerges: the husband starts out with a penchant for porn that at first scarcely even alarms his wife;

he gradually moves on to harder stuff, and more and more of the family budget is being spent on it; in some cases he loses his job because he spends exorbitantly long lunch hours in the porn shops; and then there are, typically, the demands on the wife to start doing what the people in pornography do.

Since these were married women whose husbands were or became pornography addicts, their testimony naturally emphasizes the harms done by pornography in the marital context. The evidence suggests that among unmarried and divorced man, the ravages of pornography may be even worse. According to a recent Justice Department study, married men commit 9 percent of all violent crimes against women, while divorced or separated men commit 35 percent and boyfriends and ex-boyfriends commit 32 percent.²

In view of the close correspondence between such cases and what common sense should tell us about the effects of pornography, it is wrong to dismiss such testimonies as "anecdotal." Furthermore, there is academic research that points to the same conclusions.

²Croline Wolf Harlow, Ph.D., Female Victims of Violent Crime, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, January 1991, NCJ-126826

A three-year study by Dr. Edward Donnerstein of the University of Wisconsin, done under the auspices of the National Science Foundation, measured the attitudinal effects of exposure to various types of films that linked sex and violence. He found that those who viewed such materials were more prone, as compared with control groups, to underestimate the quantity and seriousness of violence in a particular film, and to give a low estimate to the degree of suffering undergone by a hypothetical rape victim.

Daniel Linz, a colleague of Dr. Donnerstein, did similar studies using subjects whose psychological testing scores showed them to be of above average aggressiveness. These subjects showed the same level of desensitization after viewing two violent pornographic films that the more average subjects had shown after viewing five.

The Linz subjects exhibited the following attitudes after viewing pornography:

- greater sexual arousal to subsequent depictions of sexual violence against women;
- a greater tendency to endorse deprecatory beliefs about women (e.g., women enjoy sexual violence, women are often responsible for their own rapes, etc.);
- a greater tendency [in a laboratory

situation) to punish females.³

One may ask why something that does as much harm as pornography does nonetheless seems, in some quarters, to be less harshly condemned than, say, smoking. Part of the answer is that there are certain myths that prevail among the culture-forming classes in our society, which function to protect pornography. Here are some of those myths:

- 1) that pornography is a suitable diversion for mature minds;
- 2) that opposition to pornography is a sign of intellectual backwardness (this is the flip side of number 1);
- 3) that pornography has no harmful effects on its users;
- 4) that, whatever effects it may have on its users, it has no effects on anyone else.

It may well be that these myths rest on a certain snobbery. Lenience toward pornography is a sure way to distinguish oneself from such culturally disapproved groups as fundamentalist Christians, small-town dwellers, etc. Disapproving of the sort of people who disapprove of pornography is virtually a class ritual for urban intellectuals.

³See Scott, How Pornography Changes Attitudes, in MINNERY, ed., PORNOGRAPHY: A HUMAN TRAGEDY, 1966, at 133

I would suggest that if one must accredit oneself among the sophisticated, there are better ways to do it than by being indulgent towards something as toxic as pornography. After all, it is impossible to say how many men start down the road toward addiction, dehumanization, and brutality each time an influential person states publicly that porn is harmless and that its opponents are mere outmoded moralists.

A few words about the tort approach to pornography. A person who has been assaulted by someone who was incited to that crime by pornography is, herself, a victim of pornography. The primary responsibility rests with the assailant, of course, but the producers and purveyors of the material that incited the assailant are also culpable. The harm that resulted was a reasonably foreseeable consequence of their actions. They should be liable to victim.

Traditionally, tort law demands proof of causation between the act or omission complained of and the harm that the plaintiff suffered. Before the age of mass production and mass communications, this was a fairly straightforward matter. But today, we see more and more plaintiffs who can prove that they were harmed by a certain product, and that the defendant manufactured

some of that product, but who have difficulty proving that the defendant's particular product caused the plaintiff's particular injury.

This is the difficulty generally raised about tort liability for pornographers. One of the ways the courts have solved it in product liability cases is to reason that if the defendants placed the plaintiff at risk, then they should bear the burden of proving that their particular product did not cause the plaintiff's harm. What the plaintiff has to prove is that he or she was injured by a product, and that the defendants manufactured at least some of that product.⁴

The various pornography victims' compensation acts being debated in this Congress all require that the plaintiff link the defendant's pornography to the assailant's act by means of expert testimony, the assailant's testimony, or unusual similarity between the acts depicted and what the assailant did. This is at least as high a causation standard as any we have seen in the recent products liability cases.

It is time to provide some legal deterrence against producing

⁴See e.g. Collins v. Eli Lilly Co., 116 Wis.2d 166, 342 N.W.2d 37, cert. denied sub nom. E.R. Squibb & Co. v. Collins, 469 U.S. 626 (1984)

material that has been shown to turn men into monsters. The Family Research Council urges that this Congress enact a Pornography Victims' Compensation Act.

Sent Federal Express No.

April 9, 1991

Ms. Victoria Nourse
Senate Judiciary Committee
334 Senate Dirksen
Washington, DC 20510

RE: WRITTEN TESTIMONY FOR SENATOR BIDDEN'S HEARING ON
VIOLENCE AGAINST WOMEN AND THEIR CIVIL RIGHTS

Dear Ms. Nourse,

As a result of my conversation with Ms. Tracey Dougherty, I am sending this testimony in the above-captioned matter.

Does this sound like american justice to you?

I was at a toga party and the music was loud. So I left with one guy to talk in his car. Ten minutes later -- three of his friends got in the back of the car and held me. This is where the beginning of the abduction happened. As we drove, I went into shock. All I could think of was how I could get out. I went to jam my foot on the brakes and the driver said, "if I did it again he would kill me." I said, "do you know that you will be charged with rape?", sensing that that would be one if not one of several acts of violence done to me. A guy in the back showed me a badge and said he was a police officer. I guess to intimidate me. I don't know whose apartment I was taken to but terror struck over me as I was walking up to the apartment. This is where they orally and vaginally penetrated me as well as before taking me home, urinating on me. They brought me back to the party in one of my assailant's shirt and shorts. I went in got my clothes and went home. I was too ashamed to talk to anyone not even my girlfriend. When I got home, I slept and did not take a shower. When I awoke, I told my mother and called the police. They met me at the emergency room. I did not go to work on Monday because I was needed by the police for investigation.

..../Continued

W. H. Hourse Ltr.
 April 9, 1991
 Page 2

Tuesday, I went to work felt sick from the shots they gave me in the hospital and told my boss. He said take as long as you like but he fired me the day I came back from medical leave. Also, during that time my case was transferred down to another county where they said the incident occurred.

The other county was given the name of one of my assailants and never brought him in for questioning. When the police asked two of the girls about the incident, they incorrectly stated that I left with all four guys and knew I was going to be raped. (I believe they did this because they may have been threatened by the perpetrators.) They never brought anyone else in for questioning nor have they done to date. When my father and I went to the police department, they tried to stop us from pressing charges.

To date, almost 5 years later, the hospital and Violent Crimes Compensation Board said I did not contribute in any way to the assault and cleared my good name. The guys are still out there and the State Bureau of Investigation says that there was nothing they could do. One guy at the bureau even said, "Isn't it your fantasy to be raped by four guys!" I cannot feel safe until they are in jail or I know that their dead.

Also, when I was sixteen years-old, a boy who molested me got psychiatric care and I was to go home and be well-adjusted.

Memories, thoughts of suicide, being on anti-depressants and a chance of being my old self will never happen but why should the justice system victimize us even more because by humiliating us and treated us like damaged goods to be forgotten about.

Should you want more information about this, copies are available on request. Please send all inquiries to: Ms. Dawn Bosshard, c/o Bosshard Bros. Electric Svc., 18 Water St., Hackensack, NJ 07601.

Survivor,


 Dawn Bosshard

WILLIAM J. ROBINSON
 NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires April 27, 1994



By John A. Franklin

Sen. Joe Biden Jr.'s great opinion on March 25, "We need a crime bill with teeth to it" attacks a group of firearm owners with little factual base and a large helping of emotion. What he really proposes is to stink his teeth into a group of law-abiding firearm owners with little regard for evidence on impact of criminal misuse.

Some facts he ignores or fails to mention are:

• "Assault Rifles" — which are generally defined as military firearms with automatic fire capability and sometimes the capability to be switched to semi-automatic — have been effectively regulated by the federal government in very restrictive terms (registration, transportation, etc.) since the 1930s.

I've read that only one of these firearms has been seized since then and that was a policeman's personally owned weapon. What Sen. Biden is really referring to is "semiautomatic military style firearms," according to a congressional report. Using the term "assault rifle," even though they know it is misleading, gives Sen. Biden and the news media more emotional impact on the general public than the correct terminology.

• Biden says, "If this crime bill would ban the most dangerous assault rifles . . ." Since these are already highly regulated, we assume he is referring to semiautomatic, military-style firearms. Just how dangerous are these as compared to other criminally used firearms? How often are these really seized? How many of these misuses were acquired legally through the existing system of laws? What limited information there is indicates these firearms are not used very often — as compared to pistols, nor are they very dangerous for con-



John A. Franklin

41 inches long and weighs 13.92 pounds loaded. This isn't something a criminal can carry around without being noticed.

Most experts also agree injuries sustained by military semiautomatic (most of these firearms will not reliably use sporting ammo without jamming) is less damaging than lead-cored sporting ammo. In other words, the survival rate for injuries inflicted by these firearms is generally higher than for many other types, such as shotguns.

• Despite what Biden infers, not all police organizations support his restriction of military-style firearms. I also understand those listed by Biden have not polled their membership to see if the rank and file concur.

• Biden says, "Assault rifles are the weapons of choice for drug dealers and international terrorists . . ." While automatic weapons may be the choice of these elements internationally, this is not what Biden proposes in his crime bill for America. As I noted before, private ownership of automatic weapons is already

prohibited in his crime bill. These military-style firearms are not proving to be the weapon of choice of the criminal element compared to other firearms. They only seem to be because of media emphasis.

• As for the legitimate purpose of military-style firearms, that depends on who and what you are talking about. These firearms are used in legitimate shooting matches and by thousands of law-abiding American citizens for recreational shooting. Finally, I don't think grain alcohol or guns over 100 mph have a legitimate use.

• We should not be misled by emotional outbursts without some statistical basis to support them. A year ago, I contacted our congressional delegation relative to my concern over the media hype, emotion and what appeared to be a total lack of factual evidence supporting opposition to "ownership" of military-style firearms.

The results were:

• Sen. Biden's office was sent a letter (including a phone call). Several months later a response was received. No facts were included on the issue.

• A letter was sent to Congressman Carper, but no response was received.

• Sen. Roth was sent a letter. A response was received indicating my questions were forwarded to the appropriate office (BATE). About six months later, a phone call was received indicating his office has received a response but it seemed insignificant. I requested an military-style firearms mine and ownership was not available. No one had collected this information nationally. Then a month or so ago I received a specific congressional report on the subject.

• As a 64 year old with three metastatic diseases, it was nice to

be so well informed enough in the facts to help me.

The report (dated Jan. 26, 1991) was prepared by Keith Rex, Analyst, American National Government, Government Division, Congressional Research Service, the Library of Congress and is entitled, "Semi-automatic military style firearms: Statistics and Issues."

• Sen. Biden, as chairman of the Senate Judicial Committee, in name of this congressional report, which he apparently chooses to ignore: If he will look on page CRS-29 (the first page), it states there is a lack of information on the subject (military-style firearms) and that "Congress may also wish to consider ways in which to secure the compilation of more accurate data on firearms by criminals." It also goes on to say, "It seems clear, however, that many persons, institutions and interest groups would consider sound data in this matter worth the cost."

• But don't take my word for it. Ask Sen. Biden for a copy of the above report and come to your own conclusions. Hopefully, Sen. Biden will be far-sighted enough to provide the report without including any material from his anti-gun lobby supporters to bias your conclusions.

• I hope our congressional delegation voices on the facts and not knee-jerk emotions! But, while watching Sen. Biden's lecture during the senate debate on the Gulf in January, and after reading his great opinion, I'm disappointed. When it comes to facts, Sen. Biden doesn't seem to be know anything more about the war on crime than he did on the war in the Gulf. Short of that, perhaps it's a good thing there is a pro-gun lobby that provides a counter-balance.

EDITOR'S NOTE: John A. Franklin is a Dover resident and a member of the Dover chapter of

Biden's crime bill doesn't look at the facts

Guest opinion



THE WOMEN'S CIRCLE

OLD AGENCY BOX 689
SISSETON, SOUTH DAKOTA 57262
(805) 698-4129

May 3, 1991

The Honorable Joseph R. Biden, Jr.
United States Senate
Chairman, Senate Judiciary Committee
Washington, DC 20510-0802

Dear Senator Biden:

We are Indian women working in the sexual assault and domestic violence movements. We are writing in support of the Violence Against Women Act (S.15) and to express our position about some issues and concerns that have been raised regarding the effect of certain Title I provisions on Indian people.

The Violence Against Women Act addresses some of the major problems that we have faced in our efforts to end violence in the lives of Indian women and children. We have leadership roles in our organizations, in our communities and in the national battered women's and sexual assault movements. We face first hand and day to day the problems of Indian women who have been battered and/or raped by their partners and who have attempted to receive a just response to that violence.

We know that the law is followed to the letter when it is used against Indian people and other people of color. We recognize that the law enforcement and judicial systems are disproportionately harsh on people of color. We also recognize that the increase in penalties in S.15 will most effect Indian people. However, while we as Indian women stand side by side with our brothers in the fight against racial oppression, violence against Indian women is causing great and irreparable harm not only to Indian women but to our families and communities as a whole. This violence and destruction must stop.

Federal sentences need to be increased because compared to the violence committed, no one is being convicted or sentenced, Indian or nonIndian, on or off reservations. The current penalties are not adequate for Indian or nonIndian offenders. Federal courts are presently sentencing below their own guidelines with sentences for nonaggravated sexual assault now averaging 4 years. It is necessary for Congress to correct this problem. Furthermore, since the majority of rapes are acquaintance rapes, many of which are nonaggravated, an increase in federal sentences for nonaggravated

Page Two

rape will serve to equalize the treatment of stranger and acquaintance rape.

We also favor the mandatory restitution section of the bill. The concept of restitution is traditional in many tribes. If someone does harm to you part of the consequences are to restore the damage. Although Indian people and other people of color suffer disproportionately from economic injustice, consideration of a violent person's economic circumstances should not take precedence over the harm caused by violence to women and children. Offenders are not totally without resources; land can be sold and prison salaries can be used for this purpose. The concern that restitution would provide a constant reminder of the crime is misplaced since women and children have to live with the effects of violence for the rest of their lives.

Indian women and children are not safe in their homes and communities. The focus needs to be on the women and children because their needs are not being addressed or met. In addition to increased penalties the issues of criminal investigation and prosecutorial discretion needs to be addressed. Federal courts are failing to prosecute and in turn failing to inform tribal courts that they have done so. If not in the context of this legislation, we urge the Senate Judiciary Committee to look into the problems of criminal investigation and prosecutorial discretion at some future time.

We as Indian people have not always had equal access to the justice system to meet our needs. The measures outlined in this bill will allow us to begin to have access to justice. Thank you for your efforts to address violence against women and for listening to our concerns.

Sincerely,

Brenda Hill

Brenda Hill
Women's Circle
(domestic violence and sexual
assault program serving Lake
Traverse Reservation)
Sisseton, SD

Barbara Anderson
Southwest Women's Shelter
(serves 10 counties and Upper
and Lower Sioux Reservations)
Marshall, MN

Karen Artichoker
Director, White Buffalo Calf
Women's Society Shelter/South
Dakota Coalition Against
Domestic Violence and Sexual
Assault/National Coalition
Against Domestic Violence
Vermillion, SD

Tillie Blackbear
Chair, National Coalition
Against Domestic Violence
St. Francis, SD

Danna Farabee
Sexual Assault Program of
Beltrami, Cass and Hubbard
Counties
(serves Red Lake and Leech Lake
Reservations)
Bemidji, MN

Mary Ann Largen
National Network for Victims of
Sexual Assault
Arlington, VA

Bev Warren
Northwoods Coalition for
Battered Women
(Shelter serving Mahnoman,
Clearwater, Lake of the Woods,
and Beltrami counties and White
Earth and Red Lake
Reservations)
Bemidji, MN

Elvira Wood
Reno Sparks Indian Colony
Substance Abuse Program Reno
Sparks Indian Colony, NV

Address
 Mary L. Johnson (MC)
 Ruth L. Scaud (PC, MS)

Native American Rights Fund

1712 N Street, N.W. • Washington, D.C. 20036-2976 • (202) 783-4166 • Fax (202) 822-0068

May 3, 1991

Executive Director
 John L. Schabert
 Deputy Director
 Edw J. Neale

Main Office
 620 Broadway
 Boulder, CO 80502-4468
 (303) 447-0740
 FAX 447-7776

VIA MESSENGER

The Honorable Joseph R. Biden
 United States Senate
 Washington, D.C. 20510-0802

Dear Senator Biden:

The Native American Rights Fund submits the attached statement of its client, the Turtle Mountain Chippewa Tribe of North Dakota, on S. 18 -- the Violence Against Women Act. We ask that the comments be made part of the record and be considered at mark-up.

This bill has the potential to significantly impact Indian tribes nationwide, because most reservations are subject to Federal jurisdiction over major crimes such as rape. We respectfully request that the Judiciary Committee consider the special effects this bill may have in Indian Country as explained in the attached statement and mark the bill up accordingly.

Thank you for the opportunity to comment.

Sincerely,



Peg Rogers,
 NARF attorney

Enclosure: Statement of Turtle Mountain Chippewa Tribe
 Resolution No. 4414-04-91

cc: All Members of the Senate Judiciary Committee (w/enclosure)

Honorable Edward Kennedy
 Honorable Howard Metsenbaum
 Honorable Dennis DeConcini
 Honorable Patrick Leahy
 Honorable Howell Heflin
 Honorable Paul Simon

Honorable Herbert Kohl
 Honorable Strom Thurmond
 Honorable Orrin Hatch
 Honorable Alan Simpson
 Honorable Charles Grassley
 Honorable Arlen Specter
 Honorable Hank Brown

Written Statement
of the Turtle Mountain Chippewa Tribe
Submitted to the Senate Judiciary Committee
on S. 15 - the Violence Against Women Act

The Turtle Mountain Chippewa Tribe of North Dakota submits this statement and the attached tribal council resolution (No. 4414-04-91), on S. 15, the Violence Against Women Act, through its attorney the Native American Rights Fund, a nonprofit law firm representing Indian interests nationwide. We ask that these comments be added to the hearing record for consideration at mark up.

We first wish to commend Senator Biden for developing legislation designed to curb violent crime against women not only on the streets and other public places, but in the home. As an Indian sovereign nation, we applaud Senator Biden's efforts to expressly include tribes as eligible grantees in many of S. 15's proposed grant programs, such as Title I's general law enforcement grant provisions. Tribes can clearly benefit from the increased federal funding for law enforcement, domestic violence shelters, and education programs that S. 15 proposes. S. 15 shows a sensitivity to the funding needs of tribes by expressly including tribes in many of the bill's substantive provisions.

However, we oppose the increased federal sentences proposed by Title I, subtitle A because Indian people would be disproportionately impacted. Although no less law-abiding than non-Indians, Native Americans comprise the single largest group

sentenced under federal law for the sexual offenses addressed by S. 15. According to the U.S. Sentencing Commission, in the twelve month period between October 1, 1989 and September 30, 1990, approximately 60 percent of defendants sentenced for aggravated sexual abuse and 75 percent sentenced for sexual abuse under federal law were American Indians and Alaska Natives. This unusually high percentage results not from any abnormal criminal propensity on the part of Native Americans, but from the fact that Indian reservations are the most populated areas subject to federal jurisdiction.¹ While S. 15 does not expressly state that Indians should bear the weight of the increased penalties, that would be its result.

We suggest the following alternative approaches to the Judiciary Committee with regard to increased federal sentences:

1. If Congress prefers increased sentences rather than one of the two alternatives suggested below, S. 15 should be amended to add an opt-in provision for individual Indian tribes. Allowing each tribe to decide for itself whether the increased sentences should apply to its members on the reservation would further the federal policies of self-determination and tribal sovereignty. Senator Biden has proposed a tribal opt-in provision for the expanded death penalty in his general crime

¹Compare, for example, the Navajo Indian Reservation, which had an Indian population of approximately 132,000 in 1980, to Shenandoah National Park, which has a maximum of 344 residents during its peak season (98 resident federal employees and 246 private employees of concessionaires), according to figures supplied by the Park to NARF in a telephone conversation on February 23, 1991.

control legislation (S. 618). We support that approach in the crime bill, and believe that the language used in S. 618 would work equally well in Title I, subtitle A of S. 15. We prefer the opt-in approach to the lengthened federal sentences of S. 15, but offer the following two alternatives for the Committee's consideration.

2. Instead of lengthening sentences, mandate treatment. The House counterpart to S. 15 (H.R. 1502) incorporates this approach, which we believe to be the more constructive choice.

3. Direct the U.S. Sentencing Commission to examine current penalties for federal sexual crimes to determine whether they are appropriate and to recommend changes, if needed. This alternative would expressly direct the Sentencing Commission to consider the impact of increased sentences on Native Americans by soliciting testimony from tribal governments and individuals residing in Indian country. The Commission's recommendations would be published in the Federal Register, where interested parties would have the opportunity to comment. This alternative is supported by the National Women's Law Center, the Women's Legal Defense Fund, the United Methodist Church (General Board of Church and Society), Ministry of God's Human Community, the American Civil Liberties Union (Women's Rights Project), and other organizations.

In addition to commenting on the increased sentences in Title I, we wish to comment on the interstate enforcement provisions of Title III, subtitle A. This section criminalizes

interstate travel followed by injury to a spouse or in violation of a protection order. Tribes are defined as "states" in this section, which means that crossing reservation boundaries as well as crossing state lines without leaving a reservation amount to interstate travel.

We understand that one rationale for including tribes in this section was to prevent individuals from traveling into or out of a reservation for the purpose of avoiding prosecution or enforcement of protection orders. We support that purpose. However, many reservations are bisected by state lines. We believe the bill should be amended to expressly exclude tribal members crossing state lines without leaving their reservations.

S. 15 would expand federal jurisdiction into areas where only tribal jurisdiction exists today, contrary to the federal policy of strengthening tribal sovereignty by encouraging strong tribal courts. For example, a Navajo Indian on the Navajo Reservation in Arizona could drive into New Mexico without leaving the reservation, commit a misdemeanor assault on his or her Navajo spouse, and be prosecuted in federal court under S. 15. Under current law, tribal courts have exclusive jurisdiction over misdemeanors committed on the reservation where the defendant and the victim are tribal members. In the interest of respecting tribal sovereign rights to self-government and preserving the established jurisdictional arrangement, S. 15 should be amended to exclude tribal members crossing state lines within their own reservations. The House bill has such an

exemption.

Finally, we propose the following miscellaneous suggestions:

1. Title II, subtitle D (sec. 245 on page 69), modifying the Family Violence Prevention and Services Act, should be amended to strike "is authorized to make" instead of "is authorized."

2. Title II, subtitle E (Youth Education and Domestic Violence) should expressly include schools funded by the Bureau of Indian Affairs by inserting "including schools funded by the Bureau of Indian Affairs" after "higher education" in Section 261(b) on page 77.

This concludes our comments on S. 15. We wish to thank the Senate Judiciary Committee for the opportunity to convey our opinions on the Violence Against Women Act--a bill which, with a few amendments, has the potential to significantly benefit Indian people.

RESOLUTION NUMBER 4414-04-91 OF THE DULY ELECTED AND CERTIFIED
GOVERNING BODY OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

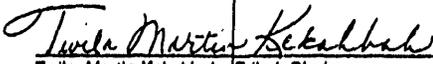
- WHEREAS, the Turtle Mountain Band of Chippewa Indians, hereinafter referred to as the Tribe, is an unincorporated Band of Indians acting under a revised Constitution and By-Laws approved by the Secretary of the Interior on June 16, 1959, and amendments thereto approved April 26, 1982, and April 03, 1975; and
- WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-laws empowers the Tribal Council with the authority to negotiate with the Federal, State and Local governments and with private persons; and
- WHEREAS, the Tribe recognizes the need for SB.15, "the Violence Against Women Act", to provide for the safety of individuals who are victims of sex crimes and family violence; and
- WHEREAS, the Tribe requests that the amendments suggested by Native American Rights Fund, be adopted; and
- WHEREAS, The Tribe favors the opt-in approach as an alternative to the lengthening of federal sentences; and treatment should not be of the opt-in approach but mandated; and
- WHEREAS, the Tribe feels that the High Intensity Grants, Section 1411 and Section 1412, be omitted and in its place, and monies made available for treatment of sexual and domestic abusers; and
- WHEREAS, It is the intent of the Tribe to assist the national campaign to combat family violence; now
- THEREFORE BE IT RESOLVED that the Tribe approves of SB.15, with the above suggested amendments.

CERTIFICATION

I, the undersigned Tribal Secretary of the Turtle Mountain Band of Chippewa Indians, do hereby certify that the Tribal Council is composed of nine(9) members of whom *nine (9)* constituting a quorum were present at a meeting duly called, convened and held on the *25th day of April, 1991* that the foregoing resolution was adopted by an affirmative vote of *eight (8) in favor*; with the Chairperson not voting.


Joleen Pettier, Tribal Secretary

CONCURRED:


Twila Martin Kekahbah, Tribal Chairperson

WILLIAM S. COHEN
SENATOR

United States Senate

WASHINGTON, DC 20510-1801

May 24, 1991

Senator Joseph R. Biden, Chairman
Senate Judiciary Committee
224 Dirksen Building
U.S. Senate
Washington, D.C. 20510

Dear Joe:

I have enclosed a copy of a statement from Lois Galgay Reckitt on behalf of the Maine Commission on Domestic Abuse concerning the Violence Against Women Act (S. 15).

I would greatly appreciate your including Ms. Reckitt's statement in the Committee's April 9th hearing record on S. 15. In addition to being a member of the Maine Commission, Ms. Reckitt is Executive Director of the Family Crisis Shelter in Portland, Maine. Her statement discusses the importance of the Violence Against Women Act to ongoing efforts in the State of Maine to address the growing problem of domestic abuse.

Thank you for your consideration of this request.

With best wishes, I am

Sincerely,



William S. Cohen
United States Senator

WSC:kxc
Enclosure

STATEMENT
LOIS GALGAY RECKITT, MEMBER
ON BEHALF OF
MAINE COMMISSION ON DOMESTIC ABUSE
S.15

The Maine Commission on Domestic Abuse is pleased to have this opportunity to comment on the pending legislation concerning Violence Against Women - S.15. The Commission exists by virtue of Maine's commitment to take steps in a comprehensive and effective way to end violence in Maine homes. Because our own focus and mandate is on domestic abuse, we will restrict our comments largely to Title II - Safe Homes for Women Act. This in no way is intended to imply a lack of interest in the other titles of the act.

The Shelters and Safe Home Projects in Maine number nine - and stretch from Caribou to Sanford. All have been receiving approximately \$3900 in FVPSA monies. Even when coupled with VOCA monies, this represents less than 10% of the monies needed to operate these programs.

The number of domestic violence cases in Maine has been steadily increasing. Recently released crime reports for 1990 show a 30.3% increase in reported domestic assaults in Maine - 3699 cases per year. Members of the Maine Coalition for Family Crisis Services, however, report an even larger number served - 7585 in Fiscal Year 1990. And the numbers served by all members of the Coalition

are growing nearly exponentially.

Clearly, Maine has a problem - and it is one we cannot solve alone. It is also true that a substantial number of families flee here from other states seeking assistance. This is, in our minds, all the more reason for the federal government to take a leadership role in both funding and substantive issues related to domestic abuse.

For my part, one of my most vivid recollections as a former director of a shelter, was the call I received while working in Washington, D.C. from a District Attorney in Maine telling me that an ex-client of our program had been tracked down and murdered in another state by an ex-husband who located her from contacts within their church. There is no way for me to know whether the provision in S.15 calling for interstate enforcement of protective orders would have helped her. But perhaps it would have.

There are several issues special to Maine which we would like to emphasize to the Senate. For one, the distances women are required to travel are sometimes excessive - as you can see from the enclosed map (remembering always that Maine stretches over 400 miles from Kittery to Madawaska).

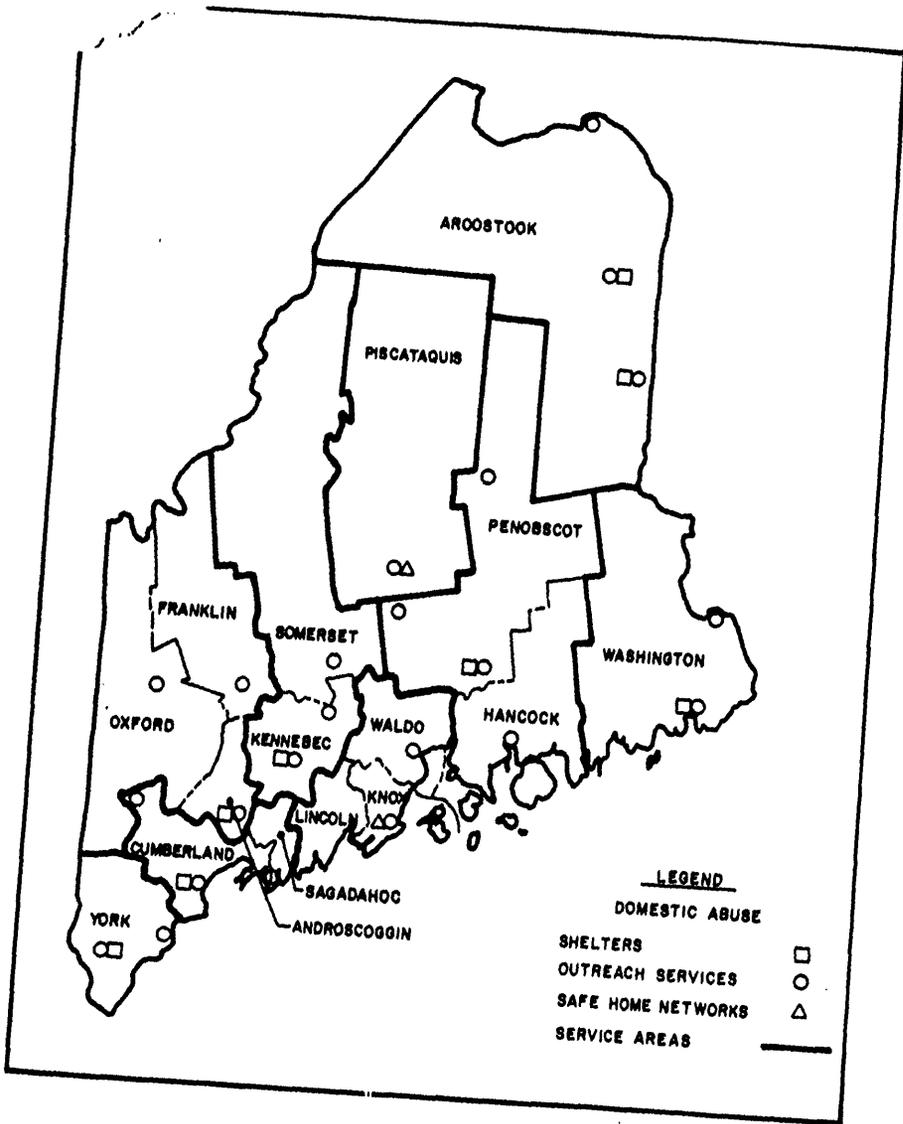
Second, in Maine there has been increased attention paid to the

plight of the homeless. This has resulted in the opening of a number of shelters for this need. However, the experience of the operators of these facilities indicates that the vast majority of women seeking refuge are victims of domestic violence. This indicates to us that the existing domestic violence shelters are either too far away or too crowded to accommodate this population.

Lastly, as a result of Maine's fiscal crisis, the monies usually expended for the once per year conference of Maine's judges has been cut. This removes the ability of any group, ourselves included, to effectively reach the members of the judiciary with training on domestic violence issues. Title V. - the Equal Justice for Women in the Courts Act - would clearly address this need.

Maine has had for over ten years a comprehensive domestic violence statute. In 1990 that act was made even stronger. All of the segments of the criminal justice system are attempting through the Commission and other forums to meet the needs of Maine people in this area. The police in most jurisdictions, at least on paper, have adopted pro-arrest policies. The domestic abuse statute calls for mandatory arrest for violation of protective orders. The prosecutors in the state have nearly completed a Domestic Abuse Model Prosecutors Policy.

What remains as a need are the funds to do the work we are all committed to doing - to aid the victims of these crimes and to substantially reduce the incidence of domestic abuse in Maine. The commitment of the federal government to assist in jurisdictional issues and to provide increased funding for services and educational efforts is essential in order to meet these goals.





Dartmouth College HANOVER · NEW HAMPSHIRE · 03755
 Department of Philosophy · Thornton Hall · TELEPHONE: (603) 646-2386

Statement for the Written Record on S.15--Violence Against Women Act of 1991

To: The members of the Senate Judiciary Committee

From: Susan J. Brison, Assistant Professor of Philosophy, Dartmouth College

My name is Susan Brison and I'm writing in support of S.15, the Violence Against Women Act of 1991. Last summer, I survived a near-fatal sexual assault while on a trip to France. Actually, I'm *still* surviving it, although my physical wounds have healed, and I want to tell you some of the things I'm learning during this long, unimaginably painful process of recovery. One of the hardest things to recover from has been the knowledge that a man who didn't even know me hated women enough to want to ruin my life--indeed, and it--just because I am a woman. I would like my story to be part of the written record on S.15, especially insofar as it addresses Title III of the Act, which provides for a civil rights remedy in the case of gender-motivated violence.

The FBI has noted that in the U.S. a rape is reported on an average of every 6 minutes. Every 15 seconds, a woman is beaten. The prevalence, the everyday-ness, of sexual violence, as evidenced by these mind-numbing statistics leads many to think that male violence against women is natural, a given, something not in need of explanation, and not amenable to change. When I started telling people about my attack, I said I was the victim of an attempted murder. People typically asked, in horror, "What was the motivation? Were you mugged? Was your purse snatched?" When I replied, "No, it started as a sexual assault," most people were satisfied with that as an explanation of why some man wanted to murder me. I would have thought that a murder attempt *plus* a sexual assault would require more, not less, of an explanation than a murder attempt by itself.

Given the prevalence of sexual violence, it's odd that most people continue to think that they, and the women they love, are immune to it, provided, that is, that they don't do anything "foolish." How many of us have swallowed the potentially lethal lie that "If you don't do anything wrong, if you're just careful enough, you'll be safe"? How many of us have believed its damaging, victim-blaming corollary: "If you *are* attacked, it's because *you* did something wrong"? These are lies. My purpose in telling my story is not to get your pity, nor to be sensationalistic, but to expose these lies and to help bridge the distance between those of us who have been victimized and those who have not.

Last summer, on July 4th, I celebrated my independence by going for a morning walk along a peaceful-looking country road in a village outside of Grenoble. It was a gorgeous day, and I didn't envy my husband who had to stay inside and work on a manuscript with a French colleague of his. I sang to myself as I set out, stopping to pet a goat and pick some wild strawberries along the way. A short while later, I was suddenly seized from behind. I hadn't seen or heard anyone coming. The first thing I was aware of was the impact of a man running into me and grabbing me with such force that I couldn't move. I had no idea what was happening. I struggled to escape, but before I knew it I had been pulled off the road and down into a bank. In what seemed like a single motion, my assailant pinned me down, sat on top of me, and hit me with his fist. He was

strong and muscular, and the blow knocked out a contact lens, realigned my teeth, and caused one side of my face to swell up so much that by the end of the attack I couldn't open my left eye. Feeling absolutely helpless and entirely at my assailant's mercy, I talked to him, trying to appeal to his humanity, and, when that failed, addressing myself to his self-interest. He called me a whore and told me to shut up. Although I had said I'd do whatever he wanted, as the sexual assault began I instinctively fought back which so enraged my attacker that he strangled me until I lost consciousness. When I came to, I was being dragged by my feet down a steep ravine. He had to do *something* with the body. I still couldn't believe this was happening to me and tried to wake up from what was surely a nightmare. But it was no dream.

After ordering me, in a gestapo-like voice, to get on my hands and knees in the muddy creek bed at the bottom of the ravine, he strangled me again. I wish I could convey the horror of losing consciousness while my animal instincts desperately fought the effects of strangulation. This time, I was sure I was dying.

But I revived, just in time to see him lunging toward me with a rock. He smashed it into my forehead, knocking me out. When I came to, I felt no pain, only terror, intensified by the fact that my other contact lens had flown out and I couldn't see anything more than vague shapes. At that moment, while my assailant was hurling more abuse at me, I realized there are things worse than dying and I wanted to give up the struggle. I was saved by a sudden, piercing image of my husband's future pain on finding my corpse in that ravine. (Later when I gave my deposition to the police from my hospital bed, I stopped at this point in the story and asked whether it was appropriate to include this image of my husband in my recounting of the facts. The *gendarme* replied that it definitely was and that it was a very good thing I mentioned my husband, since my assailant, who had confessed to the sexual assault, was claiming I had provoked it. Could it have been those baggy Gap jeans I was wearing? Or was it the heavy sweatshirt? My maddeningly seductive jogging shoes? Or was it simply my walking along minding my own business that had *provoked* his murderous rage?)

I pleaded with my attacker not to kill me. He said he had to. I said I wouldn't tell a soul about the attack, I'd say I was in a car accident. (All this pleading was, of course, in French, which put me at somewhat of a disadvantage.) He ordered me to shut up while he listened for sounds coming from the road above us. I thought, this is my last chance, so I screamed, as loud as I could, but no one heard. No help came. This final attempt to save myself fueled his rage and he tried to suffocate me by stuffing my sweatshirt into my mouth. When that didn't work, he strangled me again, and eventually he left me for dead. As I later learned, he then headed home to take a shower, change his clothes, and have lunch as though nothing had happened. I managed to climb up to the road and was rescued by a farmer who pulled me into his tractor and took me to his house. Neighbors gathered and someone called the police, a doctor, and an ambulance. I had multiple head injuries, my trachea had been fractured by the strangulation and I could hardly breathe, but I knew I had to remain conscious. Fortunately, the dizzying pull towards oblivion was not as strong as the galvanizing fear of dying without seeing my husband again. When I finally did see him, in the ambulance, I was (he later told me) unrecognizable.

My healing began during my eleven days in the Grenoble hospital, but I had no idea how long the process would ultimately take. My emotional recovery has been facilitated by the fact that my assailant was swiftly apprehended, indicted for rape and attempted murder, and put in prison where he awaits trial this summer. But it was hampered by the thought that there was nothing I could

do to protect myself and by the fact that even some well-meaning individuals, caught up in the myth of their own immunity, suggested the attack was somehow my fault. One staffperson in a prosecutor's office, whom I had phoned for legal advice, stressed that *she herself* had never been a victim and said that I would benefit from the experience by learning not to be so trusting of people and to take basic safety precautions like not going out alone late at night. She didn't pause long enough during her lecture for me to point out that I was attacked suddenly, from behind, in broad daylight.

Those who haven't been sexually violated may have difficulty understanding why women who survive assault often blame *themselves*, and may wrongly attribute it to a sex-linked trait of masochism or lack of self-esteem. They don't know that it can be less painful to believe that you did something blameworthy than it is to think that you live in a world where you can be attacked at any time, in any place, simply because you are a woman. It is hard to go on after an attack that is both random--and thus completely unpredictable--and *not* random, that is, a crime of hatred towards the group to which you happen to belong. If I hadn't been the one who was attacked on that road in France, it would have been the next woman to come along. But had my *husband* walked down that road instead, *he* would have been safe.

The realization of my vulnerability led to a debilitating despair. I *wished* I could find something foolish, something reckless I had done, so that I could simply avoid doing it in the future. But as hard as I looked, I couldn't find anything. The fact is that I was brutalized, tortured, and nearly killed, simply because *I am a woman*.

Imagine how outraged, how *cheated* a woman feels if she "plays by the rules," circumscribes her life on a daily basis, deprives herself of a great deal of freedom enjoyed by men--and *she still gets assaulted*. I'm convinced that the way to eliminate sexual violence is *not* to restrict women's lives. It is *not* going to be eliminated by blaming and distancing ourselves from those who are victimized. We have to put the blame back where it *belongs*--on the rapists, the batterers, the murderers, and on the misogynous society that produces them and silences their victims.

My healing has been a full-time job and I suppose it will be a life-long one as well. But I am healing. In fact, I feel stronger than I've ever felt before. I've been helped in this process by countless hours of counseling, by friends and family, by a superb women's self-defense class (taught by Linda Ramzy Ranson), by a survivors' support group, by political activism, and by speaking out.

We can not afford to let sexual violence restrict our lives any longer. We are not going to let it "keep women in their place." We are going to take back the night--and the morning and the afternoon--and the dorm rooms, the city streets, and the country roads. In speaking out, those of us who are survivors are reclaiming our voices, our stories, our *selves*--selves that have been violated, physically brutalized, and emotionally shattered. In passing the Violence against Women Act of 1991, you will be helping us to reclaim our *right* to be in the world.

Susan J. Brison

Susan J. Brison

**STATEMENT
BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
ON
S.15, VIOLENCE AGAINST WOMEN ACT OF 1991**

**Submitted on Behalf of the
Conference of Chief Justices
The Honorable Vincent L. McKusick, President**

**STATEMENT BY CONFERENCE OF CHIEF JUSTICES ON S. 15 -
VIOLENCE AGAINST WOMEN ACT OF 1991**

On January 31, 1991, at its midyear meeting, the Conference of Chief Justices adopted a resolution which supported the general purposes of S. 15 and most of its major provisions, but which took exception to Section 301(c). This provision, which creates a federal civil right to sue for damages arising from crimes of violence motivated by gender, could, as currently drafted, cause major state-federal jurisdictional problems and disruptions in the processing of domestic relations cases in state courts. Stated below are the reasons for the concerns of the state supreme court chief justices.

Impact of Section 301 on domestic relations cases. If, as appears to be the case, Section 301(c) permits civil suits against male relatives, particularly against husbands or intimate partners, it can be anticipated that this right will be invoked as a bargaining tool within the context of divorce negotiations and add a major complicating factor to an environment which is often acrimonious as it is. Adding to the likelihood of this occurrence are the facts that: (1) the bill, in Section 302, applies the Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988) to suits filed under Title III of S. 15; (2) Section 301(c) permits punitive damages which would not be permissible under the laws of many states; (3) the term "crime of violence," as used in Section 301(c) and defined in Section 301(d), appears to include misdemeanor assaults; (4) under this civil cause of action the "crime of violence" would be provable not by an evidentiary standard of "beyond a reasonable doubt," but rather by a mere preponderance; and (5) S. 15, by failure to make federal jurisdiction exclusive, appears to grant concurrent jurisdiction to state courts pursuant to the holding in Gulf Offshore Co. v Mobil Oil Corp., 453 U. S. 473,478.

The issue of inter-spousal litigation goes to the very core of familial relationships and is a very sensitive policy issue in most states. It does not appear that S. 15 is meant to plunge the federal government into this complex area which has been traditionally reserved to the states, but this might well be the result if the current language stands. It should be noted that the volume of domestic relations litigation in state courts is enormous. State courts reported the filing of 17,321,125

civil cases in 1989, of which roughly 20% were domestic relations cases (see table below). This volume alone should raise a warning signal about introducing a major new ingredient into this area.

COMPARISON OF CIVIL CASELOADS: FIVE STATES

<u>Case Type</u>	<u>Connecticut</u>	<u>Florida</u>	<u>Kansas</u>	<u>Minnesota</u>	<u>North Dakota</u>
Tort	8%	11%	3%	5%	2%
Contract	13%	9%	41%	4%	22%
Real Property	9%	20%	11%	14%	5%
Domestic Relations	14%	28%	20%	22%	36%
Estate	23%	8%	9%	7%	11%
Mental Health	2%	2%	3%	1%	4%
Small Claims	30%	23%	13%	46%	20%
TOTAL	100%	100%	100%	100%	100%

Source: State Court Caseload Statistics: Annual Report 1989

It should also be noted that the very nature of marriage as a sexual union raises the possibility that every form of violence can be interpreted as gender-based. It would be imprudent to include spousal litigation under Section 301 when in fact the criminal protections afforded spouses under Title II of S. 15 incorporate Chapter 109A of Title 18, United State Code which permits marriage as a defense to a charge of sexual abuse (18 U. S. C. Sec. 2243(c)(2)).

Section 301(c) appears to eliminate, or at least vitiate, the "state action" requirement for civil rights litigation and is so broad in scope that it can, with unknown consequences, throw great confusion into state laws and decisions affecting hundreds of thousands of litigants. Section 1983 of Title 42, United States Code provides a federal civil remedy for persons whose rights under the Constitution or federal statutes have been violated "under color of state law." Section 301 of S. 15 invokes the "state action" language of Section 1983 but significantly changes its effect. As Section 301(c) of S. 15 is now worded, "state action" is not a prerequisite for a suit as it is under Section 1983 of Title 42. Instead, Section 301(c) of S. 15 applies to "Any person, including any person who acts under color of any statute . . ." suggesting that any individual can be sued under the law without reference to the "state action" test. This breadth of coverage raises important implications for state-federal relations and appears to be a major shift in the jurisdictional balance between state and federal courts.

In pursuit of a noble, but fairly limited, objective, Section 301(c) overrides state laws on damages and civil suits between spouses, and creates a definition of a "crime of violence" which is so broad that it makes minor misdemeanors the basis for a civil suit under 301(c). Specifically, Section 301(d) defines a crime of violence by incorporating the following language from Section 16 of Title 18, United States Code.

The term crime of violence means:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b)

Obviously, there is a need to protect women. It is, therefore, hard to take issue with any aspect of a bill which arises from a genuine concern for the welfare of women. However, sober consideration of the broad-scale implications of Title III of S. 15 can only lead to the conclusion that in pursuit of a narrow objective it can wreak major unforeseen changes in a large area of civil litigation which is not federal in nature.

Conclusion. The Conference of Chief Justices reaffirms its opposition to Section 301(c), requesting its elimination, or at the least, amendments to address the concerns noted above.



Men's Anti-Rape Resource Center
 Rus Ervin Funk, Coordinator
 P. O. Box 73559, Washington, D.C. 20056
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CIVIL RIGHTS FOR WOMEN:

WHY?

Rus Ervin Funk
 Men's Anti-Rape Resource Center

Rape is a fundamental violation of a person's very being and their right to self determination. Domestic violence is a fundamental violation of a person's bodily integrity and their right to autonomous decision making. To violate these rights needs to be defined as a violation of that person's civil rights. Defining rape and domestic violence as the civil rights violations that they are is important because men's violence against women occurs on such a massive scale as to have become generally accepted. Additionally, men's violence is so common in our society as to have effectively created a "hostile environment" for women. Creating the understanding that men's violence is a violation of one's civil rights could dramatically alter the arena of the discussion, and begin a dialogue which could see actual reductions in these forms of men's violence. Furthermore, it is an insult to define men's violence against women as other than a civil rights violation--for that interpretation implies that these victims/survivors are acceptable targets, and that these forms of violence are in some way different than other forms of hate violence.

Civil Rights are those rights which are generally recognized as being fundamental to all members of the human race. They include, as has been articulated elsewhere: the right to vote, freedom of expression, the right to quality educational opportunities, among others. All of these rights are guaranteed regardless of race, ethnicity, religion, etc. These rights should also be guaranteed regardless of a person's gender.

Most basic of these rights, as stated in the Declaration of Independence, is the right to "life, liberty, and the pursuit of happiness." Given the extent and forms of men's violence against women--rape (victimizing 42% of all women¹), domestic violence (victimizing 64% of all women²), and sexual harassment (victimizing 78% of all women in the classroom or the work place³); coupled with the ever present threat of men's violence that impacts on all women's lives, and it becomes quickly apparent that women's most basic civil rights are being violated on an all but a continual basis. Expanding the thinking of what is meant by civil rights to include these rights would improve the quality of life not only for individual women who experience victimization, not only women as a class, but for all of us as citizens.

Additionally, such legislative language provides the opportunity for women to file a class action suit against a particular institution (such as a university administrations, police departments, etc.) for not providing a safe environment for women. As has been shown historically, there is a direct relationship between civil suits and institutional responses. Allowing women the possibility for civil recourse could motivate state and local governments to implement effective policies addressing the concerns of the victims and survivors of men's violence, as well as combatting that violence.

3) It is important, when considering the possibilities of expanding the civil rights language to include women, that women be recognized as a specific "class" of U.S. citizen. When a particular group of people is targeted or "set aside" for specific forms of discrimination and abuse, it has been argued that these kinds of groupings then constitutes a "class" of people. The person who is attacking is not only victimizing the person as an individual, he is also attacking the person as a member of a particular class. Men beat and rape women not only as individual human beings, but as members of the class "woman."

In terms of civil rights violations, when a certain class of people is victimized by a specific form of victimization (such as rape or domestic violence, gay-bashings, lynching, etc.) and that person happens to be a member of a specific class of people (Black, Homosexual, Women, etc.), then that individual should have the right to file for civil damages as a result of that victimizing experience. This protection is currently afforded to people based on their membership in racial, ethnic, or religious classes of people. This protection should include women as well.

It must be kept in mind that not all individuals within a particular class are victimized, and that not all victimization of a member of a class is necessarily a civil rights violation. However, each individual must be given the opportunity to prove that such may be the case within their particular circumstance. We currently have a system--civil courts--that is established to evaluate and attempt to determine which cases are civil rights violations, and which are not.

Women are dis-proportionately victimized by a variety of forms of men's violence--rape and domestic and dating violence. In many (perhaps most) cases, women are victimized by men exactly because of their membership to a specific class of American--that of "woman". The decision of whether or not that particular woman's victimization experience constitutes a civil rights violation needs to be left to that individual woman and to the civil courts, based upon the available evidence of that individual woman's personal situation.

It should be pointed out that this argument is very similar to the line of reasoning used to determine violence and discrimination against other, more commonly recognized "classes" (religion, skin color, sexual orientation, etc.) Who would argue, for example, that the civil rights of Jewish People are

6) Civil rights legislation affords women (and some men) the opportunities to respond in civil court to the attack(s) they survived. Aside from the obvious benefits, these opportunities will prove advantageous on a personal and emotional level to many survivors. Both sexual assault and wife battering are experiences during which the control is taken away from those who are being victimized. Offering her (or him) the opportunity to make the decision to file civil suit against the perpetrator is a way for her, and not the state, to exercise some control over the situation. This process can provide survivors with the experience of taking the control of their lives back and thus the feeling of empowerment that many report losing as a result of the attack(s) and the criminal court process. As such, civil rights remedies could prove beneficial to the healing process of survivors of men's violence.

Additionally, offering women (and some men) the opportunity to file civil suit against the victimizer also provides women with yet another opportunity to seek justice--an opportunity which all too often seems to escape survivors who have been victimized by men's violence.

Furthermore, given that 1 in 25 rape survivors report the rape to the police; and of those, 1 in 10 go to court; and of those, 1 in 8 result in conviction 4, it would seem obvious that the current remedies are not adequate. Affording women the right to respond in civil court expands their opportunities to create further remedies in response to their victimization. Without this potential remedy, women are left to the mercy of the criminal justice system--a system not known for its sensitive treatment of women in general, and specifically women who are survivors of men's violence (see various states Gender Bias in the Courts Reports including: Maryland, California, and others).

Moreover, the state civil justice system presents many obstacles that prevent cases involving men's violence against women from being brought up in the first place. Examples of these kinds of limitations are the tort immunity doctrines that forbid suits by a child, parent, or spouse against a spouse; and the unrealistically short statute of limitations.

7) It must also be recognized that when dealing with the issues of men's violence against women, the crime(s) occur against a person. Current criminal law language dictates that the crime occurred against the "state". Providing civil remedies for women (and some men) who are victimized in this way sends a necessary message about men's violence--that the government recognizes the person beneath the crime, and that a person was injured by the violence. The law should also recognize that this person has the right to civil recourse for their victimization.

102D CONGRESS
1ST SESSION

S. 15

To combat violence and crimes against women on the streets and in homes.

IN THE SENATE OF THE UNITED STATES

JANUARY 14 (legislative day, JANUARY 8), 1991

Mr. BIDEN (for himself, Mr. COHEN, Mr. DECONCINI, Mr. DODD, Mr. INOUYE, Mr. COATS, Mr. SIMON, Mr. LIBBERMAN, Mr. EXON, Mr. SARBANES, Mr. REID, Mr. HARKIN, Mr. BRYAN, Mr. AKAKA, Mr. RINGLIS, Mr. PELL, Mr. ADAMS, Mr. PACKWOOD, Mr. SHELBY, Mr. KERRY, Ms. MIKULSKI, Mr. LEVIN, Mr. CRANSTON, Mr. MCCONNELL, Mr. BOBEN, and Mr. ROCKWELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To combat violence and crimes against women on the streets
and in homes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Violence Against Women
5 Act of 1991".

6 SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.

Sec. 2. Table of contents.

Subtitle B—Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women

Sec. 121. Grants to combat violent crimes against women.

Subtitle C—Safety for Women in Public Transit and Public Parks

Sec. 131. Grants for capital improvements to prevent crime in public transportation.

Sec. 132. Grants for capital improvements to prevent crime in national parks.

Sec. 133. Grants for capital improvements to prevent crime in public parks.

Subtitle D—National Commission on Violent Crime Against Women

Sec. 141. Establishment.

Sec. 142. Duties of commission.

Sec. 143. Membership.

Sec. 144. Reports.

Sec. 145. Executive Director and staff.

Sec. 146. Powers of commission.

Sec. 147. Authorization of appropriations.

Sec. 148. Termination.

Subtitle E—New Evidentiary Rules

Sec. 151. Sexual history in all criminal cases.

Sec. 152. Sexual history in civil cases.

Sec. 153. Amendments to rape shield law.

Sec. 154. Evidence of clothing.

Subtitle F—Assistance to Victims of Sexual Assault

Sec. 161. Education and prevention grants to reduce sexual assaults against women.

Sec. 162. Rape exam payments.

TITLE II—SAFE HOMES FOR WOMEN

Sec. 201. Short title.

Subtitle A—Interstate Enforcement

Sec. 211. Interstate enforcement.

Subtitle B—Arrest in Spousal Abuse Cases

Sec. 221. Encouraging arrest policies.

Subtitle C—Funding for Shelters

Sec. 231. Authorization.

Subtitle D—Family Violence Prevention and Services Act Amendments

Sec. 241. Expansion of purpose.

Sec. 242. Expansion of State demonstration grant program.

Sec. 243. Grants for public information campaigns.

Sec. 244. State commissions on domestic violence.

Sec. 245. Indian tribes.

Sec. 246. Funding limitations.

- Sec. 247. Grants to entities other than States; local share.
- Sec. 248. Shelter and related assistance.
- Sec. 249. Law enforcement training and technical assistance grants.
- Sec. 250. Report on recordkeeping.
- Sec. 251. Model State leadership incentive grants for domestic violence intervention.
- Sec. 252. Funding for technical assistance centers.

Subtitle E—Youth Education and Domestic Violence

- Sec. 261. Educating youth about domestic violence.

Subtitle F—Confidentiality for Abused Persons

- Sec. 271. Confidentiality for abused persons.

TITLE III—CIVIL RIGHTS

- Sec. 301. Civil rights.

TITLE IV—SAFE CAMPUSES FOR WOMEN

- Sec. 401. Short title.
- Sec. 402. Findings.
- Sec. 403. Grants for campus rape education.
- Sec. 404. Disclosure of disciplinary proceedings in sex assault cases on campus.

TITLE V—EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT OF 1990

- Sec. 501. Short title.

Subtitle A—Education and Training for Judges and Court Personnel in State Courts

- Sec. 511. Grants authorized.
- Sec. 512. Training provided by grants.
- Sec. 513. Cooperation in developing programs in making grants under this title.
- Sec. 514. Authorization of appropriations.

Subtitle B—Education and Training for Judges and Court Personnel in Federal Courts

- Sec. 521. Education and training grants.
- Sec. 522. Cooperation in developing programs.
- Sec. 523. Authorization of appropriations.

1 TITLE I—SAFE STREETS FOR

2 WOMEN

3 SEC. 101. SHORT TITLE:

- 4 This title may be cited as the "Safe Streets for
5 Women Act of 1991".

1 (b) **TABLE OF SECTIONS.**—The table of sections for
2 chapter 109A of title 18, United States Code, is amended by
3 adding at the end thereof the following:

“2247. Repeat offenders.”.

4 **SEC. 112. FEDERAL PENALTIES.**

5 (a) **RAPE AND AGGRAVATED RAPE.**—Pursuant to its
6 authority under section 994(p) of title 28, United States
7 Code, the United States Sentencing Commission shall amend
8 its sentencing guidelines to provide that a defendant convict-
9 ed of aggravated rape under section 2241 of title 18, United
10 States Code, or rape under section 2242 of title 18, United
11 States Code, shall be assigned a base offense level under
12 chapter 2 of the sentencing guidelines that is at least 4 levels
13 greater than the base offense level applicable to such offenses
14 under the guidelines in effect on November 1, 1990, or other-
15 wise shall amend the guidelines applicable to such offenses so
16 as to achieve a comparable minimum guideline sentence. In
17 amending such guidelines, the Sentencing Commission shall
18 review the appropriateness of existing specific offense charac-
19 teristics or other adjustments applicable to such offenses, and
20 make such changes as it deems appropriate, taking into ac-
21 count the severity of rape offenses, with or without aggravat-
22 ing factors; the unique nature and duration of the mental in-
23 juries inflicted on the victims of such offenses; and any other
24 relevant factors.

1 **(b) EFFECT OF AMENDMENT.**—If the sentencing guide-
2 lines are amended after the effective date of this section, the
3 Sentencing Commission shall implement the instructions set
4 forth in subsection (a) so as to achieve a comparable result.

5 **(b) STATUTORY RAPE.**—

6 (1) Section 2248(a) of title 18, United States
7 Code, is amended by striking “5 years” and inserting
8 “10 years”.

9 (2) Section 2248(b) of title 18, United States
10 Code, is amended by striking “one year,” and inserting
11 “two years,”.

12 (3) Pursuant to its authority under section 994(p)
13 of title 28, United States Code, the United States Sen-
14 tencing Commission shall promulgate guidelines or
15 amend existing guidelines to incorporate the increase in
16 maximum penalties provided by this section for sections
17 2248(a) and 2248(b) of title 18, United States Code.

18 **SEC. 118. MANDATORY RESTITUTION FOR SEX CRIMES.**

19 **(a) IN GENERAL.**—Chapter 109A of title 18, United
20 States Code, is amended by adding at the end thereof the
21 following:

22 **“§ 2248. Mandatory restitution**

23 **“(a) IN GENERAL.**—Notwithstanding the terms of sec-
24 tion 8668 of this title, and in addition to any other civil or

1 criminal penalty authorized by law, the court shall order res-
2 titution for any offense under this chapter.

3 “(b) SCOPE AND NATURE OF ORDER.—(1) The order of
4 restitution under this section shall direct that—

5 “(A) the defendant pay to the victim the full
6 amount of the victim’s losses as determined by the
7 court, pursuant to paragraph (8); and

8 “(B) the United States Attorney enforce the resti-
9 tution order by all available and reasonable means.

10 “(2) For purposes of this subsection, the term ‘full
11 amount of the victim’s losses’ includes any costs incurred by
12 the victim for—

13 “(A) medical services relating to physical, psychi-
14 atric, or psychological care;

15 “(B) physical and occupational therapy or reha-
16 bilitation;

17 “(C) lost income;

18 “(D) attorneys’ fees; and

19 “(E) any other losses suffered by the victim as a
20 proximate result of the offense.

21 “(3) Restitution orders under this section are mandato-
22 ry. A court may not decline to issue an order under this
23 section because of—

24 “(A) the economic circumstances of the defendant;

25 or

1 “(B) the fact that a victim has, or is entitled to,
2 receive compensation for his or her injuries from the
3 proceeds of insurance or any other source.

4 “(4)(A) Notwithstanding the terms of paragraph (8), the
5 court may take into account the economic circumstances of
6 the defendant in determining the manner in which and the
7 schedule according to which the restitution is to be paid.

8 “(B) For purposes of this paragraph, the term ‘economic
9 circumstances’ includes—

10 “(i) the financial resources and other assets of the
11 defendant;

12 “(ii) projected earnings, earning capacity, and
13 other income of the defendant; and

14 “(iii) any financial obligations of the defendant, in-
15 cluding obligations to dependents.

16 “(C) An order under this section may direct the defend-
17 ant to make a single lump-sum payment or partial payments
18 at specified intervals. The order shall also provide that the
19 defendant’s restitutionary obligation takes priority over any
20 criminal fine ordered.

21 “(D) In the event that the victim has recovered for any
22 amount of loss through the proceeds of insurance or any
23 other source, the order of restitution shall provide that resti-
24 tution be paid to the person who provided the compensation,

1 but that restitution shall be paid to the victim before any
2 restitution is paid to any other provider of compensation.

3 “(5) Any amount paid to a victim under this section
4 shall be set off against any amount later recovered as com-
5 pensatory damages by the victim from the defendant in—

6 “(A) any Federal civil proceeding; and

7 “(B) any State civil proceeding, to the extent pro-
8 vided by the law of the State.

9 “(c) **PROOF OF CLAIM.**—(1) Within 60 days after con-
10 viction and, in any event, no later than 10 days prior to sen-
11 tencing, the United States Attorney (or his delegee), after
12 consulting with the victim, shall prepare and file an affidavit
13 with the court listing the amounts subject to restitution under
14 this section. The affidavit shall be signed by the United
15 States Attorney (or his delegee) and the victim. Should the
16 victim object to any of the information included in the affida-
17 vit, the United States Attorney (or his delegee) shall advise
18 the victim that the victim may file a separate affidavit.

19 “(2) If no objection is raised by the defendant, the
20 amounts attested to in the affidavit filed pursuant to subsec-
21 tion (1) shall be entered in the court’s restitution order. If
22 objection is raised, the court may require the victim or the
23 United States Attorney (or his delegee) to submit further affi-
24 davits or other supporting documents, demonstrating the vic-
25 tim’s losses.

1 “(3) If the court concludes, after reviewing the support-
2 ing documentation and considering the defendant’s objections,
3 that there is a substantial reason for doubting the authentic-
4 ty or veracity of the records submitted, the court may require
5 additional documentation or hear testimony on those ques-
6 tions. Any records filed, or testimony heard, pursuant to this
7 section, shall be in camera in the judge’s chambers. Notwith-
8 standing any other provision of law, this section does not
9 entitle the defendant to discovery of the contents of, or mat-
10 ters related to, any supporting documentation, including med-
11 ical, psychological, or psychiatric records.

12 “(4) In the event that the victim’s losses are not ascer-
13 tainable 10 days prior to sentencing as provided in subsection
14 (c)(1), the United States Attorney (or his delegee) shall so
15 inform the court, and the court shall set a date for the final
16 determination of the victim’s losses, not to exceed 90 days
17 after sentencing. If the victim subsequently discovers further
18 losses, the victim shall have 60 days after discovery of those
19 losses in which to petition the court for an amended restitu-
20 tion order. Such order may be granted only upon a showing
21 of good cause for the failure to include such losses in the
22 initial claim for restitutionary relief.

23 “(d) DEFINITIONS.—For purposes of this section, the
24 term ‘victim’ includes any person who has suffered direct
25 physical, emotional, or pecuniary harm as a result of a com-

1 mission of a crime under this chapter, including, in the case
 2 of a victim who is under 18 years of age, incompetent, inca-
 3 pacitated, or deceased, the legal guardian of the victim or
 4 representative of the victim's estate, another family member,
 5 or any other person appointed as suitable by the court: *Pro-*
 6 *vided*, That in no event shall the defendant be named as such
 7 representative or guardian.”.

8 (b) TABLE OF SECTIONS.—The table of sections for
 9 chapter 109A of title 18, United States Code, is amended by
 10 adding at the end thereof the following:

“2248. Mandatory restitution.”.

11 **Subtitle B—Law Enforcement and**
 12 **Prosecution Grants to Reduce Vio-**
 13 **lent Crimes Against Women**

14 **SEC. 121. GRANTS TO COMBAT VIOLENT CRIMES AGAINST**
 15 **WOMEN.**

16 (a) IN GENERAL.—Title I of the Omnibus Crime Con-
 17 trol and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is
 18 amended by—

- 19 (1) redesignating part N as part O;
 20 (2) redesignating section 1401 as section 1501;
 21 and
 22 (3) adding after part M the following:

1 **"PART N—GRANTS TO COMBAT VIOLENT CRIMES**
2 **AGAINST WOMEN**

3 **"SEC. 1401. PURPOSE OF THE PROGRAM AND GRANTS.**

4 **"(a) GENERAL PROGRAM PURPOSE.—**The purpose of
5 this part is to assist States, Indian tribes, cities, and other
6 localities to develop effective law enforcement and prosecu-
7 tion strategies to combat violent crimes against women and,
8 in particular, to focus efforts on those areas with the highest
9 rates of violent crime against women.

10 **"(b) PURPOSES FOR WHICH GRANTS MAY BE**
11 **USED.—**Grants under this part shall provide additional per-
12 sonnel, training, technical assistance, data collection and
13 other equipment for the more widespread apprehension, pros-
14 ecution, and adjudication of persons committing violent
15 crimes against women and specifically, for the purposes of—

16 **"(1) training law enforcement officers and pros-**
17 **ecutors to more effectively identify and respond to vio-**
18 **lent crimes against women, including the crimes of**
19 **sexual assault and domestic violence;**

20 **"(2) developing, training, or expanding units of**
21 **law enforcement officers and prosecutors specifically**
22 **targeting violent crimes against women, including the**
23 **crimes of sexual assault and domestic violence;**

24 **"(3) developing and implementing police and pros-**
25 **ecution policies, protocols, or orders specifically devot-**

1 ed to identifying and responding to violent crimes
2 against women, including the crimes of sexual assault
3 and domestic violence;

4 “(4) developing, installing, or expanding data col-
5 lection systems, including computerized systems, link-
6 ing police, prosecutors, and courts or for the purpose of
7 identifying and tracking arrests, prosecutions, and con-
8 victions for the crimes of sexual assault and domestic
9 violence; and

10 “(5) developing, enlarging, or strengthening
11 victim services programs, including sexual assault and
12 domestic violence programs, to increase reporting and
13 reduce attrition rates for cases involving violent crimes
14 against women, including the crimes of sexual assault
15 and domestic violence.

16 “(c) **GRANTS FOR MULTIPLE USES.**—Grants under this
17 part must be used for at least 3 of the 5 purposes listed in
18 subsection (b).

19 “Subpart 1—High Intensity Crime Area Grants

20 “**SEC. 1411. HIGH INTENSITY GRANTS.**

21 “(a) **IN GENERAL.**—The Director of the Bureau of Jus-
22 tice Assistance (hereafter in this part referred to as the ‘Di-
23 rector’) shall make grants to areas of ‘high intensity crime’
24 against women.

1 “(b) DEFINITION.—For purposes of this part, a ‘high
2 intensity crime area’ means an area with one of the 40 high-
3 est rates of violent crime against women, as determined by
4 the Bureau of Justice Statistics pursuant to section 1412.

5 “SEC. 1412. HIGH INTENSITY GRANT APPLICATION.

6 “(a) COMPUTATION.—Within 45 days after the date of
7 enactment of this part, the Bureau of Justice Statistics shall
8 compile a list of the 40 areas with the highest rates of violent
9 crime against women based on the combined female victim-
10 ization rate per population for assault, sexual assault (includ-
11 ing, but not limited to, rape), murder, robbery, and
12 kidnapping.

13 “(b) USE OF DATA.—In calculating the combined
14 female victimization rate required by subsection (a), the
15 Bureau of Justice Statistics may rely on—

16 “(1) existing data collected by States, municipali-
17 ties, Indian reservations or statistical metropolitan
18 areas showing the number of police reports of the
19 crimes listed in subsection (a); and

20 “(2) existing data collected by the Federal Bureau
21 of Investigation, including data from those governmen-
22 tal entities already complying with the National Inci-
23 dent Based Reporting System, showing the number of
24 police reports of crimes listed in subsection (a).

1 “(c) **PUBLICATION.**—After compiling the list set forth
2 in subsection (a), the Bureau of Justice Statistics shall
3 convey it to the Director who shall publish it in the Federal
4 Register.

5 “(d) **QUALIFICATION.**—Upon satisfying the terms of
6 subsection (e), any high intensity crime area shall be qualified
7 for a grant under this subpart upon application by the chief
8 executive officer of the governmental entities responsible for
9 law enforcement and prosecution of criminal offenses within
10 the area and certification that—

11 “(1) the funds shall be used to reduce the rate of
12 violent crimes against women and for at least 3 of the
13 purposes outlined in section 1401(b);

14 “(2) grantees and subgrantees shall develop a plan
15 for implementation, and otherwise consult and coordi-
16 nate program grants, with nongovernmental nonprofit
17 victim services programs; and

18 “(3) at least 25 percent of the amount granted
19 shall be allocated to each of the following three areas:
20 prosecution, law enforcement, and victim services.

21 “(e) **APPLICATION REQUIREMENTS.**—The application
22 requirements provided in section 513 of this title shall apply
23 to grants made under this subpart. In addition, each applica-
24 tion must provide the certifications required by subsection (d)
25 including documentation from nonprofit nongovernmental

1 victim services programs showing their participation in devel-
2 oping the plan required by subsection (d)(2). Applications
3 shall—

4 “(1) include documentation from the prosecution,
5 law enforcement, and victim services programs to be
6 assisted showing—

7 “(A) need for the grant funds;

8 “(B) intended use of the grant funds; and

9 “(C) expected results from the use of grant
10 funds; and

11 “(2) proof of compliance with the requirements for
12 the payment of forensic medical exams provided in sec-
13 tion 162 of this title.

14 “(f) DISBURSEMENT.—

15 “(1) No later than 60 days after the receipt of an
16 application under this subpart, the Director shall either
17 disburse the appropriate sums provided for under this
18 subpart or shall inform the applicant why the applica-
19 tion does not conform to the terms of section 513 of
20 this title or to the requirements of this section.

21 “(2) In disbursing monies under this subpart, the
22 Director shall ensure, to the extent practicable, that
23 grantees—

24 “(A) equitably distribute funds on a geo-
25 graphic basis;

1 among the States on the basis of each State's popula-
2 tion in relation to the population of all States.

3 "(c) **QUALIFICATION.**—Upon satisfying the terms of
4 subsection (d), any State shall be qualified for funds provided
5 under this part upon certification that—

6 "(1) the funds shall be used to reduce the rate of
7 violent crimes against women and for at least 3 of the
8 purposes outlined in section 1401(b);

9 "(2) grantees and subgrantees shall develop a plan
10 for implementation, and otherwise consult and coordi-
11 nate, with nonprofit nongovernmental victim services
12 programs, including sexual assault and domestic vio-
13 lence victim services programs;

14 "(3) at least 25 percent of the amount granted
15 shall be allocated to each of the following three areas:
16 prosecution, law enforcement, and victim services.

17 "(d) **APPLICATION REQUIREMENTS.**—The application
18 requirements provided in section 513 of this title shall apply
19 to grants made under this subpart. In addition, each applica-
20 tion shall include the certifications of qualification required by
21 subsection (c) including documentation from nonprofit non-
22 governmental victim services programs showing their partici-
23 pation in developing the plan required by subsection (c)(2).
24 Applications shall—

1 “(1) include documentation from the prosecution,
2 law enforcement, and victim services programs to be
3 assisted showing—

4 “(A) need for the grant funds;

5 “(B) intended use of the grant funds; and

6 “(C) expected results from the use of grant
7 funds; and

8 “(2) proof of compliance with the requirements for
9 the payment of forensic medical exams provided in sec-
10 tion 162 of this title.

11 “(e) DISBURSEMENT.—(1) No later than 60 days after
12 the receipt of an application under this subpart, the Director
13 shall either disburse the appropriate sums provided for under
14 this subpart or shall inform the applicant why the application
15 does not conform to the terms of section 513 of this title or to
16 the requirements of this section.

17 “(2) In disbursing monies under this subpart, the Direc-
18 tor shall issue regulations to ensure that States will—

19 “(A) equitably distribute monies on a geographic
20 basis including nonurban and rural areas, and giving
21 priority to localities with populations under 200,000;

22 “(B) determine the amount of subgrants based on
23 the population to be served; and

24 “(C) give priority to areas with the greatest
25 showing of need.

1 “(f) **GRANTEE REPORTING.**—Upon completion of the
2 grant period under this subpart, the State grantee shall file a
3 performance report with the Director explaining the activities
4 carried out together with an assessment of the effectiveness
5 of those activities in achieving the purposes of this subpart.
6 The Director shall suspend funding for an approved applica-
7 tion if an applicant fails to submit an annual performance
8 report.

9 **“SEC. 1422. GENERAL GRANTS TO TRIBES.**

10 “(a) **GENERAL GRANTS.**—The Director is authorized to
11 make grants to Indian tribes, for use by tribes, tribal organi-
12 zations or nonprofit nongovernmental victim services pro-
13 grams on Indian reservations, for the purposes outlined in
14 section 1401(b), and to reduce the rate of violent crimes
15 against women in Indian country.

16 “(b) **AMOUNTS.**—From amounts appropriated, the
17 amount of grants under subsection (a) shall be awarded on a
18 competitive basis to tribes, with minimum grants of \$35,000
19 and maximum grants of \$300,000.

20 “(c) **QUALIFICATION.**—Upon satisfying the terms of
21 subsection (d), any tribe shall be qualified for funds provided
22 under this part upon certification that—

23 “(1) the funds shall be used to reduce the rate of
24 violent crimes against women and for at least 3 of the
25 purposes outlined in section 1401(b); and

1 “(2) at least 25 percent of the grant funds shall
2 be allocated to each of the following three areas: pros-
3 ecution, law enforcement, and victim services.

4 “(d) APPLICATION REQUIREMENTS.—(1) Applications
5 shall be made directly to the Director and shall contain a
6 description of the tribes’ law enforcement responsibilities for
7 the Indian country described in the application and a descrip-
8 tion of the tribes’ system of courts, including whether the
9 tribal government operates courts of Indian offenses as de-
10 fined in 25 U.S.C. 1301 or CFR courts under 25 CFR 11 et
11 seq.

12 “(2) Applications shall be in such form as the Director
13 may prescribe and shall specify the nature of the program
14 proposed by the applicant tribe, the data and information on
15 which the program is based, and the extent to which the
16 program plans to use or incorporate existing services avail-
17 able in the Indian country where the grant will be used.

18 “(3) The term of any grant shall be for a minimum of 3
19 years.

20 “(e) GRANTEE REPORTING.—At the end of the first 12
21 months of the grant period and at the end of each year there-
22 after, the Indian tribal granted shall file a performance report
23 with the Director explaining the activities carried out togeth-
24 er with an assessment of the effectiveness of those activities
25 in achieving the purposes of this subpart. The Director shall

1 suspend funding for an approved application if an applicant
2 fails to submit an annual performance report.

3 “(f) DEFINITIONS.—(1) The term ‘Indian tribe’ means
4 any Indian tribe, band, nation, or other organized group or
5 community, including any Alaska Native village or regional
6 or village corporation (as defined in, or established pursuant
7 to, the Alaska Native Claims Settlement Act (48 U.S.C.
8 1601, et seq.)), which is recognized as eligible for the special
9 services provided by the United States to Indians because of
10 their status as Indians.

11 “(2) The term ‘Indian country’ has the meaning given to
12 such term by section 1151 of title 18, United States Code.

13 “Subpart 3—General Terms and Conditions

14 “SEC. 1431. GENERAL DEFINITIONS.

15 “As used in this part—

16 “(1) the term ‘victim services program’ means any
17 public or private nonprofit program that assists victims,
18 including (A) nongovernmental nonprofit organizations
19 such as rape crisis centers or battered women’s shel-
20 ters, including nonprofit nongovernmental organizations
21 assisting victims through the legal process and (B)
22 victim/witness programs within governmental entities;

23 “(2) the term ‘sexual assault’ includes not only
24 assaults committed by offenders who are strangers to
25 the victim but also assaults committed by offenders

1 who are known or related by blood or marriage to the
2 victim; and

3 “(3) the term ‘domestic violence’ includes felony
4 and misdemeanor offenses committed by a current or
5 former spouse of the victim, a person with whom the
6 victim shares a child in common, a person who is co-
7 habitating with or has cohabitated with the victim as a
8 spouse, or any other person similarly situated to a
9 spouse who is protected under the domestic or family
10 violence laws of the jurisdiction receiving grant monies.

11 **“SEC. 1432. GENERAL TERMS AND CONDITIONS.**

12 “(a) **NONMONETARY ASSISTANCE.**—In addition to the
13 assistance provided under subparts 1 or 2, the Director may
14 direct any Federal agency, with or without reimbursement,
15 to use its authorities and the resources granted to it under
16 Federal law (including personnel, equipment, supplies, facili-
17 ties, and managerial, technical, and advisory services) in sup-
18 port of State and local assistance efforts.

19 “(b) **BUREAU REPORTING.**—No later than 180 days
20 after the end of each fiscal year for which grants are made
21 under this part, the Director shall submit to the Judiciary
22 Committees of the House and the Senate a report that in-
23 cludes, for each high intensity crime area (as provided in sub-
24 part 1) and for each State and for each grantee Indian tribe
25 (as provided in subpart 2)—

1 “(1) the amount of grants made under this part;

2 “(2) a summary of the purposes for which those
3 grants were provided and an evaluation of their
4 progress; and

5 “(3) a copy of each grantee report filed pursuant
6 to sections 1412(g) and 1421(f).

7 “(c) REGULATIONS.—No later than 45 days after the
8 date of enactment of this part, the Director shall publish pro-
9 posed regulations implementing this part. No later than 120
10 days after such date, the Director shall publish final regula-
11 tions implementing this part.

12 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated for each fiscal year 1992,
14 1993, and 1994, \$100,000,000 to carry out the purposes of
15 subpart 1, and \$190,000,000 to carry out the purposes of
16 subpart 2, and \$10,000,000 to carry out the purposes of sec-
17 tion 1422 of subpart 2.”.

18 **Subtitle C—Safety for Women in**
19 **Public Transit and Public Parks**

20 **SEC. 131. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT**

21 **CRIME IN PUBLIC TRANSPORTATION.**

22 Section 24 of the Urban Mass Transportation Act of
23 1964 is amended to read as follows:

1 **“GRANTS TO PREVENT CRIME IN PUBLIC**2 **TRANSPORTATION**

3 **“SEC. 24. (a) GENERAL PURPOSE.—**From funds au-
4 thorized under section 21, and not to exceed \$10,000,000,
5 the Secretary shall make capital grants for the prevention of
6 crime and to increase security in existing and future public
7 transportation systems. None of the provisions of this Act
8 may be construed to prohibit the financing of projects under
9 this section where law enforcement responsibilities are vested
10 in a local public body other than the grant applicant.

11 **“(b) GRANTS FOR LIGHTING, CAMERA SURVEIL-**
12 **LANCE, AND SECURITY PHONES.—**

13 **“(1) From the sums authorized for expenditure**
14 under this section for crime prevention, the Secretary
15 is authorized to make grants and loans to States and
16 local public bodies or agencies for the purpose of in-
17 creasing the safety of public transportation by—

18 **“(A) increasing lighting within or adjacent to**
19 public transportation systems, including bus stops,
20 subway stations, parking lots, or garages;

21 **“(B) increasing camera surveillance of areas**
22 within and adjacent to public transportation sys-
23 tems, including bus stops, subway stations, park-
24 ing lots, or garages;

1 “(C) providing emergency phone lines to
2 contact law enforcement or security personnel in
3 areas within or adjacent to public transportation
4 systems, including bus stops, subway stations,
5 parking lots, or garages; or

6 “(D) any other project intended to increase
7 the security and safety of existing or planned
8 public transportation systems.

9 “(2) From the sums authorized under this section,
10 at least 75 percent shall be expended on projects of the
11 type described in subsection (b)(1) (A) and (B).

12 “(c) REPORTING.—All grants under this section are
13 contingent upon the filing of a report with the Secretary and
14 the Department of Justice, Office of Victims of Crime, show-
15 ing crime rates in or adjacent to public transportation before,
16 and for a 1-year period after, the capital improvement. Sta-
17 tistics shall be broken down by type of crime, sex, race, and
18 relationship of victim to the offender.

19 “(d) INCREASED FEDERAL SHARE.—Notwithstanding
20 any other provision of this Act, the Federal share under this
21 section for each capital improvement project which enhances
22 the safety and security of public transportation systems and
23 which is not required by law (including any other provision of
24 this chapter) shall be 90 percent of the net project cost of
25 such project.

1 “(e) **SPECIAL GRANTS FOR PROJECTS TO STUDY IN-**
2 **CREASING SECURITY FOR WOMEN.**—From the sums author-
3 ized under this section, the Secretary shall provide grants
4 and loans for the purpose of studying ways to reduce violent
5 crimes against women in public transit through better design
6 or operation of public transit systems.

7 “(f) **GENERAL REQUIREMENTS.**—All grants or loans
8 provided under this section shall be subject to all the terms,
9 conditions, requirements, and provisions applicable to grants
10 and loans made under section 2(a).”.

11 **SEC. 132. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT**
12 **CRIME IN NATIONAL PARKS.**

13 The Act of August 18, 1970, the National Park System
14 Improvements in Administration Act (90 Stat. 1931; 16
15 U.S.C. 1a-1 et seq.) is amended by adding at the end thereof
16 the following:

17 **“SEC. 13. NATIONAL PARK SYSTEM CRIME PREVENTION AS-**
18 **SISTANCE.**

19 “(a) From the sums authorized pursuant to section 7 of
20 the Land and Water Conservation Act of 1965, and not to
21 exceed \$10,000,000, the Secretary of the Interior is author-
22 ized to provide Federal assistance to reduce the incidence of
23 violent crime in the National Park System.

1 “(b) The Secretary shall direct the chief official respon-
2 sible for law enforcement within the National Park Services
3 to—

4 “(1) compile a list of areas within the National
5 Park System with the highest rates of violent crime;

6 “(2) make recommendations concerning capital
7 improvements, and other measures, needed within the
8 National Park System to reduce the rates of violent
9 crime, including the rate of sexual assault; and

10 “(3) publish the information required by para-
11 graphs (1) and (2) in the Federal Register.

12 “(c) No later than 120 days after the date of enactment
13 of this section, and based on the recommendations and list
14 issued pursuant to subsection (b), the Secretary shall distrib-
15 ute funds throughout the National Park Service. Priority
16 shall be given to those areas with the highest rates of sexual
17 assault.

18 “(d) Funds provided under this section may be used for
19 the following purposes—

20 “(1) to increase lighting within or adjacent to
21 public parks and recreation areas;

22 “(2) to provide emergency phone lines to contact
23 law enforcement or security personnel in areas within
24 or adjacent to public parks and recreation areas;

1 “(3) to increase security or law enforcement per-
2 sonnel within or adjacent to public parks and recrea-
3 tion areas; and

4 “(4) any other project intended to increase the se-
5 curity and safety of public parks and recreation
6 areas.”.

7 **SEC. 133. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT**
8 **CRIME IN PUBLIC PARKS.**

9 Section 6 of the Land and Water Conservation Fund
10 Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-8) is amended by
11 adding at the end thereof the following new subsection:

12 “(h) **CAPITAL IMPROVEMENT AND OTHER PROJECTS**
13 **TO REDUCE CRIME.**—In addition to assistance for planning
14 projects, and in addition to the projects identified in subsec-
15 tion (e), and from amounts appropriated, the Secretary shall
16 provide financial assistance to the States, not to exceed
17 \$15,000,000 in total, for the following types of projects or
18 combinations thereof:

19 “(1) For the purpose of making capital improve-
20 ments and other measures to increase safety in urban
21 parks and recreation areas, including funds to—

22 “(A) increase lighting within or adjacent to
23 public parks and recreation areas;

24 “(B) provide emergency phone lines to con-
25 tact law enforcement or security personnel in

1 areas within or adjacent to public parks and
2 recreation areas;

3 "(C) increase security personnel within or
4 adjacent to public parks and recreation areas; and

5 "(D) any other project intended to increase
6 the security and safety of public parks and recrea-
7 tion areas.

8 "(2) In addition to the requirements for project
9 approval imposed by this section, eligibility for assist-
10 ance under this subsection is dependent upon a show-
11 ing of need. In providing funds under this subsection,
12 the Secretary shall give priority to those projects pro-
13 posed for urban parks and recreation areas with the
14 highest rates of crime and, in particular, to urban parks
15 and recreation areas with the highest rates of sexual
16 assault.

17 "(3) Notwithstanding the terms of subsection (c),
18 the Secretary is authorized to provide 70 percent im-
19 provement grants for projects undertaken by any State
20 for the purposes outlined in this subsection. The re-
21 maining share of the cost shall be borne by the
22 State."

1 **Subtitle D—National Commission on**
2 **Violent Crime Against Women**

3 **SEC. 141. ESTABLISHMENT.**

4 There is established a commission to be known as the
5 National Commission on Violent Crime Against Women
6 (hereinafter referred to as "the Commission").

7 **SEC. 142. DUTIES OF COMMISSION.**

8 (a) **GENERAL PURPOSE OF THE COMMISSION.**—The
9 Commission shall carry out activities for the purposes of pro-
10 moting a national policy on violent crime against women, and
11 for making recommendations for how to reduce violent crime
12 against women.

13 (b) **FUNCTIONS.**—The Commission shall perform the
14 following functions—

15 (1) evaluate the adequacy of, and make recom-
16 mendations regarding, current law enforcement efforts
17 at the Federal and State levels to reduce the rate of
18 violent crimes against women;

19 (2) evaluate the adequacy of, and make recom-
20 mendations regarding, the responsiveness of State
21 prosecutors and State courts to violent crimes against
22 women;

23 (3) evaluate the adequacy of, and make recom-
24 mendations regarding, the adequacy of current educa-

1 tion, prevention, and protection services for women
2 victims of violent crime;

3 (4) evaluate the adequacy of, and make recom-
4 mendations regarding, the role of the Federal Govern-
5 ment in reducing violent crimes against women;

6 (5) evaluate the adequacy of, and make recom-
7 mendations regarding, national public awareness and
8 the public dissemination of information essential to the
9 prevention of violent crimes against women;

10 (6) evaluate the adequacy of, and make recom-
11 mendations regarding, data collection and government
12 statistics on the incidence and prevalence of violent
13 crimes against women;

14 (7) evaluate the adequacy of, and make recom-
15 mendations regarding, the adequacy of State and Fed-
16 eral laws on sexual assault and the need for a more
17 uniform statutory response to sex offenses; and

18 (8) evaluate the adequacy of, and make recom-
19 mendations regarding, the adequacy of State and Fed-
20 eral laws on domestic violence and the need for a more
21 uniform statutory response to domestic violence.

22 **SEC. 143. MEMBERSHIP.**

23 (a) **NUMBER AND APPOINTMENT.—**

24 (1) **APPOINTMENT.—**The Commission shall be
25 composed of 15 members as follows:

1 (A) Five members shall be appointed by the
2 President—

3 (i) three of whom shall be—

4 (I) the Attorney General;

5 (II) the Secretary of Health and
6 Human Services; and

7 (III) the Director of the Federal
8 Bureau of Investigation,

9 who shall be nonvoting members, except that
10 in the case of a tie vote by the Commission,
11 the Attorney General shall be a voting
12 member;

13 (ii) two of whom shall be selected from
14 the general public on the basis of such indi-
15 viduals being specially qualified to serve on
16 the Commission by reason of their education,
17 training, or experience; and

18 (iii) at least one of whom shall be se-
19 lected for their experience in providing serv-
20 ices to women victims of violent crime.

21 (B) Five members shall be appointed by the
22 Speaker of the House of Representatives on the
23 joint recommendation of the Majority and Minority
24 Leaders of the House of Representatives.

1 (C) Five members shall be appointed by the
2 President pro tempore of the Senate on the joint
3 recommendation of the Majority and Minority
4 Leaders of the Senate.

5 (2) CONGRESSIONAL COMMITTEE RECOMMENDA-
6 TIONS.—In making appointments under subparagraphs
7 (B) and (C) of paragraph (1), the Majority and Minority
8 Leaders of the House of Representatives and the
9 Senate shall duly consider the recommendations of the
10 Chairmen and Ranking Minority Members of commit-
11 tees with jurisdiction over laws contained in title 18 of
12 the United States Code.

13 (3) REQUIREMENTS OF APPOINTMENTS.—The
14 Majority and Minority Leaders of the Senate and the
15 House of Representatives shall—

16 (A) select individuals who are specially quali-
17 fied to serve on the Commission by reason of their
18 education, training, and experience, including ex-
19 perience in advocacy or service organizations spe-
20 cializing in sexual assault and domestic violence;
21 and

22 (B) engage in consultations for the purpose
23 of ensuring that the expertise of the ten members
24 appointed by the Speaker of the House of Repre-
25 sentatives and the President pro tempore of the

1 Senate shall provide as much of a balance as possible and, to the greatest extent possible, cover
2 the fields of law enforcement, prosecution, judicial
3 administration, legal expertise, victim compensation boards, and victim advocacy.

6 (4) **TERM OF MEMBERS.**—Members of the Commission (other than members appointed under paragraph (1)(A)(i)) shall serve for the life of the Commission.

11 (5) **VACANCY.**—A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

13 (b) **CHAIRMAN.**—Not later than 15 days after the members of the Commission are appointed, such members shall
14 select a Chairman from among the members of the Commission.

17 (c) **QUORUM.**—Seven members of the Commission shall
18 constitute a quorum, but a lesser number may be authorized
19 by the Commission to conduct hearings.

20 (d) **MEETINGS.**—The Commission shall hold its first
21 meeting on a date specified by the Chairman, but such date
22 shall not be later than 60 days after the date of the enactment of this Act. After the initial meeting, the Commission
23 shall meet at the call of the Chairman or a majority of its
24 members, but shall meet at least six times.

1 (e) **PAY.**—Members of the Commission who are officers
2 or employees or elected officials of a government entity shall
3 receive no additional compensation by reason of their service
4 on the Commission.

5 (f) **PER DIEM.**—While away from their homes or regu-
6 lar places of business in the performance of duties for the
7 Commission, members of the Commission shall be allowed
8 travel expenses, including per diem in lieu of subsistence, at
9 rates authorized for employees of agencies under sections
10 5702 and 5703 of title 5, United States Code.

11 (g) **DEADLINE FOR APPOINTMENT.**—Not later than 45
12 days after the date of the enactment of this Act, the members
13 of the Commission shall be appointed.

14 **SEC. 144. REPORTS.**

15 (a) **IN GENERAL.**—Not later than 1 year after the date
16 on which the Commission is fully constituted under section
17 143, the Commission shall prepare and submit a final report
18 to the President and to congressional committees that have
19 jurisdiction over legislation addressing violent crimes against
20 women, including the crimes of domestic and sexual assault.

21 (b) **CONTENTS.**—The final report submitted under para-
22 graph (1) shall contain a detailed statement of the activities
23 of the Commission and of the findings and conclusions of the
24 Commission, including such recommendations for legislation

1 and administrative action as the Commission considers appro-
2 priate.

3 **SEC. 145. EXECUTIVE DIRECTOR AND STAFF.**

4 (a) **EXECUTIVE DIRECTOR.**—

5 (1) **APPOINTMENT.**—The Commission shall have
6 an Executive Director who shall be appointed by the
7 Chairman, with the approval of the Commission, not
8 later than 30 days after the Chairman is selected.

9 (2) **COMPENSATION.**—The Executive Director
10 shall be compensated at a rate not to exceed the maxi-
11 mum rate of the basic pay payable under GS-18 of the
12 General Schedule as contained in title 5, United States
13 Code.

14 (b) **STAFF.**—With the approval of the Commission, the
15 Executive Director may appoint and fix the compensation of
16 such additional personnel as the Executive Director considers
17 necessary to carry out the duties of the Commission.

18 (c) **APPLICABILITY OF CIVIL SERVICE LAWS.**—The
19 Executive Director and the additional personnel of the Com-
20 mission appointed under subsection (b) may be appointed
21 without regard to the provisions of title 5, United States
22 Code, governing appointments in the competitive service, and
23 may be paid without regard to the provisions of chapter 51
24 and subchapter III of chapter 53 of such title relating to
25 classification and General Schedule pay rates.

1 (d) **CONSULTANTS.**—Subject to such rules as may be
2 prescribed by the Commission, the Executive Director may
3 procure temporary or intermittent services under section
4 3109(b) of title 5, United States Code, at rates for individuals
5 not to exceed \$200 per day.

6 **SEC. 146. POWERS OF COMMISSION.**

7 (a) **HEARINGS.**—For the purpose of carrying out this
8 subtitle, the Commission may conduct such hearings, sit and
9 act at such times and places, take such testimony, and re-
10 ceive such evidence, as the Commission considers appropri-
11 ate. The Commission may administer oaths before the Com-
12 mission.

13 (b) **DELEGATION.**—Any member or employee of the
14 Commission may, if authorized by the Commission, take any
15 action that the Commission is authorized to take under this
16 subtitle.

17 (c) **ACCESS TO INFORMATION.**—The Commission may
18 secure directly from any executive department or agency
19 such information as may be necessary to enable the Commis-
20 sion to carry out this subtitle, except to the extent that the
21 department or agency is expressly prohibited by law from
22 furnishing such information. On the request of the Chairman
23 of the Commission, the head of such a department or agency
24 shall furnish nonprohibited information to the Commission.

1 (d) **MAILS.**—The Commission may use the United
 2 States mails in the same manner and under the same condi-
 3 tions as other departments and agencies of the United States.

4 **SEC. 147. AUTHORIZATIONS OF APPROPRIATIONS.**

5 There is authorized to be appropriated for fiscal year
 6 1992, \$500,000 to carry out the purposes of this subtitle.

7 **SEC. 148. TERMINATION.**

8 The Commission shall cease to exist 30 days after the
 9 date on which its final report is submitted under section 144.
 10 The President may extend the life of the Commission for a
 11 period of not to exceed one year.

12 **Subtitle E—New Evidentiary Rules**

13 **SEC. 151. SEXUAL HISTORY IN ALL CRIMINAL CASES.**

14 The Federal Rules of Evidence are amended by insert-
 15 ing after rule 412 the following:

16 **“Rule 412A. Evidence of victim’s past behavior in other**
 17 **criminal cases**

18 **“(a) REPUTATION AND OPINION EVIDENCE EX-**
 19 **CLUDED.**—Notwithstanding any other provision of law, in a
 20 criminal case, other than a sex offense case governed by rule
 21 412, reputation or opinion evidence of the past sexual behav-
 22 ior of an alleged victim is not admissible.

23 **“(b) ADMISSIBILITY.**—Notwithstanding any other pro-
 24 vision of law, in a criminal case, other than a sex offense case
 25 governed by rule 412, evidence of an alleged victim’s past

1 sexual behavior (other than reputation and opinion evidence)
2 may be admissible if—

3 “(1) the evidence is admitted in accordance with
4 the procedures specified in subdivision (c); and

5 “(2) the probative value of the evidence outweighs
6 the danger of unfair prejudice.

7 “(c) PROCEDURES.—(1) If the defendant intends to offer
8 evidence of specific instances of the alleged victim’s past
9 sexual behavior, the defendant shall make a written motion
10 to offer such evidence not later than 15 days before the date
11 on which the trial in which such evidence is to be offered is
12 scheduled to begin, except that the court may allow the
13 motion to be made at a later date, including during trial, if
14 the court determines either that the evidence is newly discov-
15 ered and could not have been obtained earlier through the
16 exercise of due diligence or that the issue to which such evi-
17 dence relates has newly arisen in the case. Any motion made
18 under this paragraph shall be served on all other parties and
19 on the alleged victim.

20 “(2) The motion described in paragraph (1) shall be ac-
21 companied by a written offer of proof. If necessary, the court
22 shall order a hearing in chambers to determine if such evi-
23 dence is admissible. At such hearing, the parties may call
24 witnesses, including the alleged victim and offer relevant evi-
25 dence. Notwithstanding subdivision (b) of rule 104, if the rel-

1 evancy of the evidence which the defendant seeks to offer in
2 the trial depends upon the fulfillment of a condition of fact,
3 the court, at the hearing in chambers or at a subsequent
4 hearing in chambers scheduled for such purpose, shall accept
5 evidence on the issue of whether such condition of fact is
6 fulfilled and shall determine such issue.

7 “(3) If the court determines on the basis of the hearing
8 described in paragraph (2) that the evidence that the defend-
9 ant seeks to offer is relevant and that the probative value of
10 such evidence outweighs the danger of unfair prejudice such
11 evidence shall be admissible in the trial to the extent an order
12 made by the court specifies the evidence which may be of-
13 fered and areas with respect to which the alleged victim may
14 be examined or cross-examined. In its order, the court should
15 consider (A) the chain of reasoning leading to its finding of
16 relevance, and (B) why the probative value of the evidence
17 outweighs the danger of unfair prejudice given the potential
18 of the evidence to humiliate and embarrass the alleged victim
19 and to result in unfair or biased jury inferences.”.

20 **SEC. 152. SEXUAL HISTORY IN CIVIL CASES.**

21 The Federal Rules of Evidence, as amended by section
22 151 of this Act, are amended by adding after rule 412A the
23 following:

1 **“Rule 412B. Evidence of past sexual behavior in civil**
 2 **cases**

3 **“(a) REPUTATION AND OPINION EVIDENCE EX-**
 4 **CLUDED.—**Notwithstanding any other provision of law, in a
 5 civil case in which a defendant is accused of actionable sexual
 6 misconduct, as defined in subdivision (d), reputation or opin-
 7 ion evidence of the plaintiff’s past sexual behavior is not ad-
 8 missible.

9 **“(b) ADMISSIBLE EVIDENCE.—**Notwithstanding any
 10 other provision of law, in a civil case in which a defendant is
 11 accused of actionable sexual misconduct, as defined in subdi-
 12 vision (d), evidence of a plaintiff’s past sexual behavior other
 13 than reputation or opinion evidence may be admissible if—

14 **“(1) admitted in accordance with the procedures**
 15 **specified in subdivision (c); and**

16 **“(2) the probative value of such evidence out-**
 17 **weighs the danger of unfair prejudice.**

18 **“(c) PROCEDURES.—(1) If the defendant intends to offer**
 19 **evidence of specific instances of the plaintiff’s past sexual be-**
 20 **havior, the defendant shall make a written motion to offer**
 21 **such evidence not later than 15 days before the date on**
 22 **which the trial in which such evidence is to be offered is**
 23 **scheduled to begin, except that the court may allow the**
 24 **motion to be made at a later date, including during trial, if**
 25 **the court determines either that the evidence is newly discov-**
 26 **ered and could not have been obtained earlier through the**

1 exercise of due diligence or that the issue to which such evi-
2 dence relates has newly arisen in the case. Any motion made
3 under this paragraph shall be served on all other parties and
4 on the plaintiff.

5 “(2) The motion described in paragraph (1) shall be ac-
6 companied by a written offer of proof. If necessary, the court
7 shall order a hearing in chambers to determine if such evi-
8 dence is admissible. At such hearing, the parties may call
9 witnesses, including the plaintiff and offer relevant evidence.
10 Notwithstanding subdivision (b) of rule 104, if the relevancy
11 of the evidence which the defendant seeks to offer in the trial
12 depends upon the fulfillment of a condition of fact, the court,
13 at the hearing in chambers or at a subsequent hearing in
14 chambers scheduled for such purpose, shall accept evidence
15 on the issue of whether such condition of fact is fulfilled and
16 shall determine such issue.

17 “(3) If the court determines on the basis of the hearing
18 described in paragraph (2) that the evidence that the defend-
19 ant seeks to offer is relevant and that the probative value of
20 such evidence outweighs the danger of unfair prejudice, such
21 evidence shall be admissible in the trial to the extent an order
22 made by the court specifies evidence which may be offered
23 and areas with respect to which the plaintiff may be exam-
24 ined or cross-examined. In its order, the court should consid-
25 er (A) the chain of reasoning leading to its finding of rel-

1 evance, and (B) why the probative value of the evidence out-
2 weighs the danger of unfair prejudice given the potential of
3 the evidence to humiliate and embarrass the alleged victim
4 and to result in unfair or biased jury inferences.

5 “(d) DEFINITIONS.—For purposes of this rule, a case
6 involving a claim of actionable sexual misconduct, includes,
7 but is not limited to, sex harassment or discrimination claims
8 brought pursuant to title VII of the Civil Rights Act of 1964
9 (42 U.S.C. 2000(e)) and gender bias claims brought pursuant
10 to title III of the Violence Against Women Act of 1991.”.

11 SEC. 153. AMENDMENTS TO RAPE SHIELD LAW.

12 Rule 412 of the Federal Rules of Evidence is
13 amended—

14 (1) by adding at the end thereof the following:

15 “(e) INTERLOCUTORY APPEAL.—Notwithstanding any
16 other provision of law, any evidentiary rulings made pursuant
17 to this rule are subject to interlocutory appeal by the govern-
18 ment or by the alleged victim.

19 “(f) RULE OF RELEVANCE AND PRIVILEGE.— If the
20 prosecution seeks to offer evidence of prior sexual history,
21 the provisions of this rule may be waived by the alleged
22 victim.”; and

23 (2) by adding at the end of subdivision (c)(3) the
24 following: “In its order, the court should consider (A)
25 the chain of reasoning leading to its finding of rel-

1 evance; and (B) why the probative value of the evi-
2 dence outweighs the danger of unfair prejudice given
3 the potential of the evidence to humiliate and embar-
4 rass the alleged victim and to result in unfair or biased
5 jury inferences.”.

6 **SEC. 154. EVIDENCE OF CLOTHING.**

7 The Federal Rules of Evidence are amended by adding
8 after rule 412 the following:

9 **“Rule 413. Evidence of victim’s clothing as inciting vio-
10 lence**

11 “Notwithstanding any other provision of law, in a crimi-
12 nal case in which a person is accused of an offense under
13 chapter 109A of title 18, United States Code; evidence of an
14 alleged victim’s clothing is not admissible to show that the
15 alleged victim incited or invited the offense charged.”.

16 **Subtitle F—Assistance to Victims of
17 Sexual Assault**

18 **SEC. 161. EDUCATION AND PREVENTION GRANTS TO REDUCE
19 SEXUAL ASSAULTS AGAINST WOMEN.**

20 Part A of title XIX of the Public Health and Health
21 Services Act (42 U.S.C. 300w et seq.) is amended as follows:

22 (1) by adding at the end thereof the following new
23 section:

1 **“§ 1910A. Use of allotments for rape prevention education**

2 “(a) Notwithstanding the terms of section 1904(a)(1) of
3 this title, amounts transferred by the State for use under this
4 part may be used for rape prevention and education programs
5 conducted by rape crisis centers or similar nongovernmental
6 nonprofit entities, which programs may include—

7 “(1) educational seminars;

8 “(2) the operation of hotlines;

9 “(3) training programs for professionals;

10 “(4) the preparation of informational materials;

11 and

12 “(5) other efforts to increase awareness of the
13 facts about, or to help prevent, sexual assault.

14 “(b) States providing grant monies must assure that at
15 least 15 percent of the monies are devoted to education pro-
16 grams targeted for junior high school and high school
17 students.

18 “(c) There are authorized to be appropriated under this
19 section for each fiscal year 1992, 1993, and 1994,
20 \$65,000,000 to carry out the purposes of this section.

21 “(d) Funds authorized under this section may only be
22 used for providing rape prevention and education programs.

23 “(e) For purposes of this section, the term ‘rape preven-
24 tion and education’ includes education and prevention efforts
25 directed at offenses committed by offenders who are not

1 known to the victim as well as offenders who are known to
2 the victim.

3 “(f) States shall be allotted funds under this section pur-
4 suant to the terms of sections 1902 and 1903, and subject to
5 the conditions provided in this section and sections 1904
6 through 1909.”;

7 (2) striking section 1901(b); and

8 (3) striking section 1904(a)(1)(G).

9 **SEC. 162. RAPE EXAM PAYMENTS.**

10 “No State or other grantee is entitled to funds under
11 title I of the Violence Against Women Act of 1990 unless
12 the State or other grantee incurs the full cost of forensic
13 medical exams for victims of sexual assault. A State or other
14 grantee does not incur the full medical cost of forensic medi-
15 cal exams if it chooses to reimburse the victim after the fact
16 unless the reimbursement program waives any minimum loss
17 or deductible requirement, provides victim reimbursement
18 within a reasonable time (90 days), permits applications for
19 reimbursement within one year from the date of the exam,
20 and provides information to all subjects of forensic medical
21 exams about how to obtain reimbursement.

1 **TITLE II—SAFE HOMES FOR**
 2 **WOMEN**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Safe Homes for Women
 5 Act of 1990”.

6 **Subtitle A—Interstate Enforcement**

7 **SEC. 211. INTERSTATE ENFORCEMENT.**

8 (a) **IN GENERAL.**—Part 1 of title 18, United States
 9 Code, is amended by inserting after chapter 110 the follow-
 10 ing:

11 **“Chapter 110A—Violence Against Spouses**

 “Sec. 2261. Traveling to commit spousal abuse.

 “Sec. 2262. Interstate violation of protection orders.

 “Sec. 2263. Restitution.

 “Sec. 2264. Full faith and credit given to protection orders.

 “Sec. 2265. Definitions for chapter.

12 **“§ 2261. Traveling to commit spousal abuse**

13 “(a) **IN GENERAL.**—Any person who travels or causes
 14 another (including the intended victim) to travel across State
 15 lines or in interstate commerce with the intent to injure a
 16 spouse or intimate partner and who, during the course of any
 17 such travel or thereafter, does an act that injures his or her
 18 spouse or intimate partner in violation of a criminal law of
 19 the State where the injury occurs, shall be fined not more
 20 than \$1,000 or imprisoned for not more than 5 years but not
 21 less than 3 months, or both, in addition to any fine or term of
 22 imprisonment provided under State law.

1 “(b) NO STATE LAW.—If no fine or term of imprison-
2 ment is provided for under the law of the State where the
3 injury occurs, a person violating this section shall be pun-
4 ished as follows:

5 “(1) If permanent disfigurement or life-threatening
6 bodily injury results, by imprisonment for not more
7 than 20 years; where serious bodily injury results, by
8 fine under this title or imprisonment for not more than
9 10 years, or both; where bodily injury results, by fine
10 under this title or imprisonment for not more than 5
11 years, or both.

12 “(2) If the offense is committed with intent to
13 commit another felony, by fine under this title or im-
14 prisonment for not more than 10 years, or both.

15 “(3) If the offense is committed with a dangerous
16 weapon, with intent to do bodily harm, by fine under
17 this title or imprisonment for not more than 5 years, or
18 both.

19 “(4) If the offense constitutes sexual abuse, as
20 that conduct is described under chapter 109A of title
21 18, United States Code (without regard to whether the
22 offense was committed in the maritime, territorial or
23 prison jurisdiction of the United States) by fine or term
24 of imprisonment as provided for the applicable conduct
25 under chapter 109A.

1 “(c) **CRIMINAL INTENT.**—The criminal intent of the of-
2 fender required to establish an offense under subsection (b) is
3 the general intent to do the acts that result in injury to a
4 spouse or intimate partner and not the specific intent to vio-
5 late the law of a State.

6 **“§ 2262. Interstate violation of protection orders**

7 “(a) **IN GENERAL.**—Any person against whom a valid
8 protection order has been entered or any agent of that person
9 who travels or causes another (including the intended victim)
10 to travel across State lines or in interstate commerce with
11 the intent to injure a spouse or intimate partner and who,
12 during the course of such travel or thereafter, commits an act
13 that injures his or her spouse or intimate partner in violation
14 of a valid protection order issued by a State, with the intent
15 to injure his or her spouse or intimate partner, shall be pun-
16 ished as follows:

17 “(1) If permanent disfigurement or life-threatening
18 bodily injury results, by imprisonment for not more
19 than 20 years; where serious bodily injury results, by
20 fine under this title or imprisonment for not more than
21 10 years, or both; where bodily injury results, by fine
22 under this title or imprisonment for not more than 5
23 years, or both.

1 “(2) If the offense is committed with intent to
2 commit another felony, by fine under this title or im-
3 prisonment for not more than 10 years, or both.

4 “(3) If the offense is committed with a dangerous
5 weapon, with intent to do bodily harm, by fine under
6 this title or imprisonment for not more than 5 years, or
7 both.

8 “(4) If the offender has previously violated any
9 prior protection order issued against that person for the
10 protection of the same victim, by fine under this title
11 or imprisonment for not more than 5 years and not less
12 than six months, or both.

13 “(5) If the offense constitutes sexual abuse, as
14 that conduct is described under chapter 109A of title
15 18, United States Code (without regard to whether the
16 conduct was committed in the special maritime, territo-
17 rial or prison jurisdiction of the United States) by fine
18 or term of imprisonment as provided for the applicable
19 offense under chapter 109A.

20 “(b) **CRIMINAL INTENT.**—The criminal intent required
21 to establish the offense provided in subsection (a) is the gen-
22 eral intent to do the acts which result in injury to a spouse or
23 intimate partner and not the specific intent to violate a pro-
24 tection order or State law.

1 **“§ 2263. Interim protections**

2 “In furtherance of the purposes of this chapter, and to
3 protect against abuse of a spouse or intimate partner, any
4 judge or magistrate before whom a criminal case under this
5 chapter is brought, shall have the power to issue temporary
6 orders of protection for the protection of an abused spouse or
7 intimate partner pending final adjudication of the case, upon
8 a showing of a likelihood of danger to the abused spouse or
9 intimate partner.

10 **“§ 2264. Restitution**

11 “(a) **IN GENERAL.**—In addition to any fine or term of
12 imprisonment provided under this chapter, and notwithstand-
13 ing the terms of section 3663 of this title, the court shall
14 order restitution to the victim of an offense under this
15 chapter.

16 “(b) **SCOPE AND NATURE OF ORDER.**—(1) The order of
17 restitution under this section shall direct that—

18 “(A) the defendant pay to the victim the full
19 amount of the victim’s losses as determined by the
20 court, pursuant to subsection (3); and

21 “(B) the United States Attorney enforce the resti-
22 tution order by all available and reasonable means.

23 “(2) For purposes of this subsection, the term ‘full
24 amount of the victim’s losses’ includes any costs incurred by
25 the victim for—

1 “(A) medical services relating to physical, psychi-
2 atric, or psychological care;

3 “(B) physical and occupational therapy or reha-
4 bilitation; and

5 “(C) lost income;

6 “(D) attorneys’ fees, plus any costs incurred in
7 obtaining a civil protection order; and

8 “(E) any other losses suffered by the victim as a
9 proximate result of the offense.

10 “(3) Restitution orders under this section are mandato-
11 ry. A court may not decline to issue an order under this
12 section because of—

13 “(A) the economic circumstances of the defendant;
14 or

15 “(B) the fact that victim has, or is entitled to, re-
16 ceive compensation for his or her injuries from the pro-
17 ceeds of insurance.

18 “(4)(A) Notwithstanding the terms of paragraph (3), the
19 court may take into account the economic circumstances of
20 the defendant in determining the manner in which and the
21 schedule according to which the restitution is to be paid,
22 including—

23 “(i) the financial resources and other assets of the
24 defendant;

1 “(ii) projected earnings, earning capacity, and
2 other income of the defendant; and

3 “(iii) any financial obligations of the offender, in-
4 cluding obligations to dependents.

5 “(B) An order under this section may direct the defend-
6 ant to make a single lump-sum payment, or partial payments
7 at specified intervals. The order shall provide that the de-
8 fendant’s restitutionary obligation takes priority over any
9 criminal fine ordered.

10 “(C) In the event that the victim has recovered for any
11 amount of loss through the proceeds of insurance or any
12 other source, the order of restitution shall provide that resti-
13 tution be paid to the person who provided the compensation,
14 but that restitution shall be paid to the victim before any
15 restitution is paid to any other provider of compensation.

16 “(5) Any amount paid to a victim under this section
17 shall be set off against any amount later recovered as com-
18 pensatory damages by the victim from the defendant in—

19 “(A) any Federal civil proceeding; and

20 “(B) any State civil proceeding, to the extent pro-
21 vided by the law of the State.

22 “(c) PROOF OF CLAIM.—(1) Within 60 days after con-
23 viction and, in any event, no later than 10 days prior to sen-
24 tencing, the United States Attorney (or his delegee), after
25 consulting with the victim, shall prepare and file an affidavit

1 with the court listing the amounts subject to restitution under
2 this section. The affidavit shall be signed by the United
3 States Attorney (or his delegee) and the victim. Should the
4 victim object to any of the information included in the affida-
5 vit, the United States Attorney (or his delegee) shall advise
6 the victim that the victim may file a separate affidavit.

7 “(2) If no objection is raised by the defendant, the
8 amounts attested to in the affidavit filed pursuant to subsec-
9 tion (1) shall be entered in the court’s restitution order. If
10 objection is raised, the court may require the victim or the
11 United States Attorney (or his delegee) to submit further affi-
12 davits or other supporting documents, demonstrating the vic-
13 tim’s losses.

14 “(3) If the court concludes, after reviewing the support-
15 ing documentation and considering the defendant’s objections,
16 that there is a substantial reason for doubting the authentic-
17 ty or veracity of the records submitted, the court may require
18 additional documentation or hear testimony on those ques-
19 tions. Any records filed, or testimony heard, pursuant to this
20 section, shall be in camera in the judge’s chambers. Notwith-
21 standing any other provision of law, this section does not
22 entitle the defendant to discovery of the contents of, or relat-
23 ed to, any supporting documentation, including medical, psy-
24 chological, or psychiatric records.

1 “(4) In the event that the victim’s losses are not ascer-
2 tainable 10 days prior to sentencing as provided in subsection
3 (c)(1), the United States Attorney (or his delegee) shall so
4 inform the court, and the court shall set a date for the final
5 determination of the victim’s losses, not to exceed 90 days
6 after sentencing. If the victim subsequently discovers further
7 losses, the victim shall have 60 days after discovery of those
8 losses in which to petition the court for an amended restitu-
9 tion order. Such order may be granted only upon a showing
10 of good cause for the failure to include such losses in the
11 initial claim for restitutionary relief.

12 “(d) **RESTITUTION AND CRIMINAL PENALTIES.**—An
13 award of restitution to the victim of an offense under this
14 chapter shall not be a substitute for imposition of punishment
15 under sections 2261 and 2262.

16 “(e) **DEFINITIONS.**—For purposes of this section, the
17 term ‘victim’ includes any person who has suffered direct
18 physical, emotional, or pecuniary harm as a result of a com-
19 mission of a crime under this chapter, including, in the case
20 of a victim who is under 18 years of age, incompetent, inca-
21 pacitated, or deceased, the legal guardian of the victim or
22 representative of the victim’s estate, another family member,
23 or any other person appointed as suitable by the court: *Pro-*
24 *vided*, That in no event shall the defendant be named as such
25 representative or guardian.

1 **“§ 2265. Full faith and credit given to protection orders**

2 **“(a) FULL FAITH AND CREDIT.—**Any protection order
3 issued consistent with the terms of subsection (b) by the court
4 of one State (the issuing State) shall be accorded full faith
5 and credit by the court of another State (the enforcing State)
6 and enforced as if it were the order of the enforcing State.

7 **“(b) PROTECTION ORDER.—**A protection order issued
8 by a State court is consistent with the provisions of this sec-
9 tion if—

10 **“(1)** such court has jurisdiction over the parties
11 and matter under the law of such State; and

12 **“(2)** reasonable notice and opportunity to be heard
13 is given to the person against whom the order is
14 sought sufficient to protect that person’s right to due
15 process. In the case of ex parte orders, notice and op-
16 portunity to be heard must be provided within the time
17 required by State law, and in any event within a rea-
18 sonable time after the order is issued, sufficient to pro-
19 tect the respondent’s due process rights.

20 **“(c) CROSS OR COUNTER PETITION.—**A protection
21 order issued by a State court against one who has petitioned,
22 filed a complaint, or otherwise filed a written pleading for
23 protection against abuse by a spouse or intimate partner is
24 not entitled to full faith and credit if—

1 “(1) no cross or counter petition, complaint, or
2 other written pleading was filed seeking such a protec-
3 tion order; or

4 “(2) if a cross or counter petition has been filed, if
5 the court did not make specific findings that each party
6 was entitled to such an order.

7 **“§ 2266. Definitions for chapter**

8 **“As used in this chapter—**

9 “(1) the term ‘spouse or intimate partner’ in-
10 cludes—

11 “(A) a present or former spouse, a person
12 who shares a child in common with the abuser,
13 and a person who cohabits or has cohabited with
14 the abuser as a spouse; and

15 “(B) any other person similarly situated to a
16 spouse, other than a child, who is protected by
17 the domestic or family violence laws of the State
18 in which the injury occurred or where the victim
19 resides;

20 “(2) the term ‘protection order’ includes any in-
21 junction or other order issued for the purpose of pre-
22 venting violent or threatening acts by one spouse
23 against his or her spouse or intimate partner, including
24 temporary and final orders issued by civil and criminal
25 courts (other than support or child custody orders)

1 whether obtained by filing an independent action or as
 2 a pendente lite order in another proceeding so long as
 3 any civil order was issued in response to a complaint,
 4 petition or motion of an abused spouse or intimate
 5 partner;

6 “(3) the term ‘act that injures’ includes any act,
 7 except those done in self-defense, that results in physi-
 8 cal injury or sexual abuse; and

9 “(4) the term ‘State’ includes a State of the
 10 United States, the District of Columbia, and any
 11 Indian tribe, commonwealth, territory, or possession of
 12 the United States.”.

13 (b) TABLE OF CHAPTERS.—The table of chapters for
 14 part 1 of title 18, United States Code, is amended by insert-
 15 ing after the item for chapter 110 the following:

“110A. Violence against spouses 2261.”.

16 **Subtitle B—Arrest in Spousal Abuse**
 17 **Cases**

18 **SEC. 221. ENCOURAGING ARREST POLICIES.**

19 The Family Violence Prevention and Services Act (42
 20 U.S.C. 10400) is amended by adding after section 311 the
 21 following:

22 **“SEC. 312. ENCOURAGING ARREST POLICIES.**

23 **“(a) PURPOSE.—**To encourage States, Indian tribes and
 24 localities to treat spousal violence as a serious violation of
 25 criminal law, the Secretary is authorized to make grants to

1 eligible States, Indian tribes, municipalities, or local govern-
2 ment entities for the following purposes:

3 “(1) to implement pro-arrest programs and poli-
4 cies in police departments and to improve tracking of
5 cases involving spousal abuse;

6 “(2) to centralize and coordinate police enforce-
7 ment, prosecution, or judicial responsibility for, spousal
8 abuse cases in one group or unit of police officers,
9 prosecutors, or judges;

10 “(3) to educate judges in criminal and other
11 courts about spousal abuse and to improve judicial han-
12 dling of such cases.

13 “(b) **ELIGIBILITY.**—(1) Eligible grantees are those
14 States, Indian tribes, municipalities or other local govern-
15 ment entities that—

16 “(A) demonstrate, through arrest and conviction
17 statistics, that their laws or policies have been effective
18 in significantly increasing the number of arrests made
19 of spouse abusers; and

20 “(B) certify that their laws or official policies—

21 “(i) mandate arrest of spouse abusers based
22 on probable cause that violence has been commit-
23 ted or mandate arrest of spouses violating the
24 terms of a valid and outstanding protection order;

25 or

1 “(ii) permit warrantless misdemeanor arrests
2 of spouse abusers and encourage the use of that
3 authority; and

4 “(C) demonstrate that their laws and policies dis-
5 courage ‘dual’ arrests of abused and abuser and the in-
6 crease in arrest rates demonstrated pursuant to para-
7 graph (1)(A) is not the result of increased dual arrests.

8 “(2) For purposes of this section, the term ‘protection
9 order’ includes any injunction issued for the purpose of pre-
10 venting violent or threatening acts of spouse abuse, including
11 temporary and final orders issued by civil and criminal courts
12 (other than support or child custody orders) whether obtained
13 by filing an independent action or as a pendente lite order in
14 another proceeding.

15 “(3) For purposes of this section, the term ‘spousal or
16 spouse abuse’ includes abuse of a current or former spouse, a
17 person who shares a child in common with the abuser, and a
18 person who cohabits with or has cohabited with the abuser as
19 a spouse.

20 “(4) The eligibility requirements provided in this section
21 shall take effect one year after the date of enactment of this
22 section.

23 “(c) DELEGATION AND AUTHORIZATION.—The Secre-
24 tary shall delegate to the Attorney General of the United
25 States the Secretary’s responsibilities for carrying out this

1 section to the Attorney General. There are authorized to be
2 appropriated not in excess of \$25,000,000 for each fiscal
3 year to be used for the purpose of making grants under this
4 section.

5 “(d) APPLICATION.—An eligible grantee shall submit
6 an application to the Secretary. Such application shall—

7 “(1) contain a certification by the chief executive
8 officer of the State, Indian tribes, municipality, or local
9 government entity that the conditions of subsection (b)
10 are met;

11 “(2) describe the entity’s plans to further the pur-
12 poses listed in subsection (a);

13 “(3) identify the agency or office or groups of
14 agencies or offices responsible for carrying out the pro-
15 gram; and

16 “(4) identify the nonprofit nongovernmental victim
17 services programs that will be consulted in developing,
18 and implementing, the program.

19 “(e) PRIORITY.—In awarding grants under this section,
20 the Secretary shall give priority to a grantee that—

21 “(1) does not currently provide for centralized
22 handling of cases involving spousal or family violence
23 in any one of the areas listed in this subsection—
24 police, prosecutors, and courts; and

1 “(2) demonstrates a commitment to strong en-
2 forcement of laws, and prosecution of cases, involving
3 spousal or family violence.

4 “(f) REPORTING.—Each grantee receiving funds under
5 this section shall submit a report to the Secretary evaluating
6 the effectiveness of the plan described in subsection (d)(2) and
7 containing such additional information as the Secretary may
8 prescribe.

9 “(g) REGULATIONS.—No later than 45 days after the
10 date of enactment of this section, the Secretary shall publish
11 proposed regulations implementing this section. No later than
12 120 days after such date, the Secretary shall publish final
13 regulations implementing this section.”.

14 **Subtitle C—Funding for Shelters**

15 SEC. 231. AUTHORIZATION.

16 Section 310 of the Family Violence Prevention and
17 Services Act (42 U.S.C. 10409) is amended to read as
18 follows:

19 “SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

20 “(a) There are authorized to be appropriated to carry
21 out the provisions of this title, \$85,000,000 for fiscal year
22 1992, \$100,000,000, for fiscal year 1993, and \$125,000,000
23 for fiscal year 1994.

24 “(b) Of the sums authorized to be appropriated under
25 subsection (a) of this section for any fiscal year, not less than

1 85 percent shall be used by the Secretary for making grants
2 under section 303.

3 “(c) Of the sums authorized to be appropriated under
4 subsection (a) of this section for any fiscal year, not more
5 than 5 percent shall be used by the Secretary for making
6 grants under section 314.”.

7 **Subtitle D—Family Violence Preven-** 8 **tion and Services Act Amendments**

9 **SEC. 241. EXPANSION OF PURPOSE.**

10 Section 302(1) of the Family Violence Prevention and
11 Services Act (42 U.S.C. 10401(1)) is amended by striking
12 “to prevent” and inserting “to increase public awareness
13 about and prevent”.

14 **SEC. 242. EXPANSION OF STATE DEMONSTRATION GRANT** 15 **PROGRAM.**

16 Section 303(a)(1) of the Family Violence Prevention and
17 Services Act (42 U.S.C. 10402(a)(1)) is amended by striking
18 “to prevent” and inserting “to increase public awareness
19 about and prevent”.

20 **SEC. 243. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.**

21 The Family Violence Prevention and Services Act is
22 amended by adding at the end thereof the following new
23 section:

24 “GRANTS FOR PUBLIC INFORMATION CAMPAIGNS

25 “SEC. 314. (a) The Secretary may make grants to
26 public or private nonprofit entities to provide public informa-

1 tion campaigns regarding domestic violence through the use
2 of public service announcements and informative materials
3 that are designed for print media, billboards, public transit
4 advertising, electronic broadcast media, and other vehicles
5 for information that shall inform the public concerning do-
6 mestic violence.

7 “(b) No grant, contract, or cooperative agreement shall
8 be made or entered into under this section unless an applica-
9 tion that meets the requirements of subsection (c) has been
10 approved by the Secretary.

11 “(c) An application submitted under subsection (b)
12 shall—

13 “(1) provide such agreements, assurances, and in-
14 formation, be in such form and be submitted in such
15 manner as the Secretary shall prescribe through notice
16 in the Federal Register, including a description of how
17 the proposed public information campaign will target
18 the population at risk, including pregnant women;

19 “(2) include a complete description of the plan of
20 the application for the development of a public informa-
21 tion campaign;

22 “(3) identify the specific audiences that will be
23 educated, including communities and groups with the
24 highest prevalence of domestic violence;

1 “(4) identify the media to be used in the campaign
2 and the geographic distribution of the campaign;

3 “(5) describe plans to test market a development
4 plan with a relevant population group and in a relevant
5 geographic area and give assurance that effectiveness
6 criteria will be implemented prior to the completion of
7 the final plan that will include an evaluation compo-
8 nent to measure the overall effectiveness of the cam-
9 paign;

10 “(6) describe the kind, amount, distribution, and
11 timing of informational messages and such other infor-
12 mation as the Secretary may require, with assurances
13 that media organizations and other groups with which
14 such messages are placed will not lower the current
15 frequency of public service announcements; and

16 “(7) contain such other information as the Secre-
17 tary may require.

18 “(d) A grant, contract, or agreement made or entered
19 into under this section shall be used for the development of a
20 public information campaign that may include public service
21 announcements, paid educational messages for print media,
22 public transit advertising, electronic broadcast media, and
23 any other mode of conveying information that the Secretary
24 determines to be appropriate.

1 “(e) The criteria for awarding grants shall ensure that
2 an applicant—

3 “(1) will conduct activities that educate communi-
4 ties and groups at greatest risk;

5 “(2) has a record of high quality campaigns of a
6 comparable type; and

7 “(3) has a record of high quality campaigns that
8 educate the population groups identified as most at
9 risk.”.

10 **SEC. 244. STATE COMMISSIONS ON DOMESTIC VIOLENCE.**

11 Section 303(a)(2) of the Family Violence Prevention and
12 Services Act (42 U.S.C. 10402(a)(2)) is amended—

13 (1) by striking “and” at the end of subparagraph
14 (F);

15 (2) by redesignating subparagraph (G) as subpara-
16 graph (H); and

17 (3) by inserting after subparagraph (F) the follow-
18 ing new subparagraph:

19 “(G) provides assurances that, not later than
20 1 year after receipt of funds, the State shall have
21 established a Commission on Domestic Violence
22 to examine issues including—

23 “(i) the use of mandatory arrest of ac-
24 cused offenders;

- 1 “(ii) the adoption of ‘no-drop’ or vertical
2 prosecution policies;
- 3 “(iii) the use of mandatory requirements
4 for presentencing investigations;
- 5 “(iv) the length of time taken to pros-
6 ecute cases or reach plea agreements;
- 7 “(v) the use of plea agreements;
- 8 “(vi) the testifying by victims at post-
9 conviction sentencing and release hearings;
- 10 “(vii) the consistency of sentencing
11 practices;
- 12 “(viii) restitution of victims;
- 13 “(ix) the reporting practices of and sig-
14 nificance to be accorded to prior convictions
15 (both felonies and misdemeanors); and
- 16 “(x) such other matters as the Commis-
17 sion believes merit investigation.
- 18 In implementing this requirement, State grantees must certi-
19 fy to the Secretary that—
- 20 “(aa) no less than one-third of Commission mem-
21 bers be victim advocates associated with nonprofit shel-
22 ters; and
- 23 “(bb) no more than 2 percent of the grant monies
24 awarded shall be used to support the required Commis-
25 sion.”.

1 **SEC. 245. INDIAN TRIBES.**

2 Section 303(b)(1) of the Family Violence Prevention and
3 Services Act (42 U.S.C. 10402(b)(1)) is amended by striking
4 "is authorized" and inserting "from sums appropriated shall
5 make no less than 10 percent available for".

6 **SEC. 246. FUNDING LIMITATIONS.**

7 Section 303(c) of the Family Violence Prevention and
8 Services Act (42 U.S.C. 10402(c)) is amended by striking "
9 and" and all that follows through "fiscal years".

10 **SEC. 247. GRANTS TO ENTITIES OTHER THAN STATES; LOCAL**
11 **SHARE.**

12 The first sentence of section 303(f) of the Family Vio-
13 lence Prevention and Services Act (42 U.S.C. 10402(f)) is
14 amended to read as follows: "No demonstration grant may be
15 made under this section to an entity other than a State or
16 Indian tribe unless the entity provides 50 percent of the fund-
17 ing of the program or project funded by the grant."

18 **SEC. 248. SHELTER AND RELATED ASSISTANCE.**

19 Section 303(g) of the Family Violence Prevention and
20 Services Act (42 U.S.C. 10402(g)) is amended by—

21 (1) striking "not less than 60 percent" and insert-
22 ing "not less than 75 percent"; and

23 (2) striking "immediate shelter and related assist-
24 ance to victims of family violence and their depend-
25 ents" and inserting "shelter and related assistance to

1 victims of family violence and their dependents, includ-
2 ing any, but not requiring all of the following—

3 “(1) food, shelter, medical services, and counsel-
4 ing with respect to family violence, including counsel-
5 ing by peers individually or in groups;

6 “(2) transportation, legal assistance, referrals, and
7 technical assistance with respect to obtaining financial
8 assistance under Federal and State programs;

9 “(3) comprehensive counseling about parenting,
10 preventive health (including nutrition, exercise, and
11 prevention of substance abuse), educational services,
12 employment training, social skills (including communi-
13 cation skills), home management, and assertiveness
14 training; and

15 “(4) day care services for children who are
16 victims of family violence or the dependents of such
17 victims.”.

18 **SEC. 249. LAW ENFORCEMENT TRAINING AND TECHNICAL AS-**
19 **SISTANCE GRANTS.**

20 Section 311(b) of the Family Violence Protection and
21 Services Act (42 U.S.C. 10410(b)) is amended by adding at
22 the end thereof the following new subparagraph:

23 “(d) Training grants may be made under this section
24 only to private nonprofit organizations that have experience

1 in providing training and technical assistance to law enforce-
2 ment personnel on a national or regional basis.”.

3 **SEC. 250. REPORT ON RECORDKEEPING.**

4 Not later than 120 days after the date of enactment of
5 this Act, the Government Accounting Office shall complete a
6 study of, and shall submit to Congress a report and recom-
7 mendations on, problems of recordkeeping of criminal com-
8 plaints involving domestic violence. The study and report
9 shall examine efforts to date of the FBI and Justice Depart-
10 ment to collect statistics on domestic violence and the feasi-
11 bility of, including a suggested timetable for, requiring that
12 the relationship between an offender and victim be reported
13 in Federal and State records of crimes of assault, aggravated
14 assault, rape, and other violent crimes.

15 **SEC. 251. MODEL STATE LEADERSHIP INCENTIVE GRANTS**
16 **FOR DOMESTIC VIOLENCE INTERVENTION.**

17 The Family Violence Prevention Services Act, as
18 amended by section 103 of this Act, is amended by adding at
19 the end thereof the following new section:

20 “MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC
21 VIOLENCE INTERVENTION

22 “SEC. 315. (a) The Secretary, in cooperation with the
23 Attorney General, shall award grants to not less than 10
24 States to assist in becoming model demonstration States and
25 in meeting the costs of improving State leadership concerning
26 activities that will—

1 “(1) increase the number of prosecutions for do-
2 mestic violence crimes;

3 “(2) encourage the reporting of incidences of do-
4 mestic violence; and

5 “(3) facilitate ‘arrests and aggressive’ prosecution
6 policies.

7 “(b) To be designated as a model State under subsection
8 (a), a State shall have in effect—

9 “(1) a law that requires mandatory arrest of a
10 person that police have probable cause to believe has
11 committed an act of domestic violence or probable
12 cause to believe has violated an outstanding civil pro-
13 tection order;

14 “(2) a law or policy that discourages ‘dual’ ar-
15 rests;

16 “(3) statewide prosecution policies that—

17 “(A) authorize and encourage prosecutors to
18 pursue cases where a criminal case can be proved,
19 including proceeding without the active involve-
20 ment of the victim if necessary; and

21 “(B) implement model projects that include
22 either—

23 “(i) a ‘no-drop’ prosecution policy; or

24 “(ii) a vertical prosecution policy; and

1 “(C) limit diversion to extraordinary cases,
2 and then only after an admission before a judicial
3 officer has been entered;

4 “(4) statewide guidelines for judges that—

5 “(A) reduce the automatic issuance of mutual
6 restraining or protective orders in cases where
7 only one spouse has sought a restraining or pro-
8 tective order;

9 “(B) discourage custody or joint custody
10 orders by spouse abusers; and

11 “(C) encourage the understanding of domes-
12 tic violence as a serious criminal offense and not a
13 trivial dispute;

14 “(5) develop and disseminate methods to improve
15 the criminal justice system’s response to domestic vio-
16 lence to make existing remedies as easily available as
17 possible to victims of domestic violence, including re-
18 ducing delay, eliminating court fees, and providing
19 easily understandable court forms.

20 “(c)(1) In addition to the funds authorized to be appro-
21 priated under section 310, there are authorized to be appro-
22 priated to make grants under this section \$25,000,000 for
23 fiscal year 1992 and such sums as may be necessary for each
24 of the fiscal years 1993 and 1994.

1 “(2) Funds shall be distributed under this section so that
2 no State shall receive more than \$2,500,000 in each fiscal
3 year under this section.

4 “(3) The Secretary shall delegate to the Attorney Gen-
5 eral the Secretary’s responsibilities for carrying out this sec-
6 tion and shall transfer to the Attorney General the funds ap-
7 propriated under this section for the purpose of making
8 grants under this section.”

9 **SEC. 252. FUNDING FOR TECHNICAL ASSISTANCE CENTERS.**

10 The Family Violence Prevention and Services Act is
11 amended by inserting after section 308 the following:

12 **“SEC. 308A. TECHNICAL ASSISTANCE CENTERS.**

13 “(a) **PURPOSE.**—The purpose of this section is to pro-
14 vide training and technical assistance to State, Indian tribal,
15 and local domestic violence programs and to other profession-
16 als who provide services to victims of domestic violence.
17 From the sums authorized under this title, the Secretary
18 shall provide grants or contracts with public or private non-
19 profit organizations, for the establishment and maintenance of
20 six national resource centers serving defined geographic
21 areas. One national resource center shall offer resource,
22 policy, and/or training assistance to Federal, State, Indian
23 tribal, and local government agencies on issues pertaining to
24 domestic violence and serve a coordinating and resource-
25 sharing function among domestic violence service providers,

1 and maintain a central resource library. The other national
2 resource centers shall provide information, training and tech-
3 nical assistance to State, tribal and local domestic violence
4 service providers. In addition, each national center shall spe-
5 cialize in one of the following areas of domestic violence serv-
6 ice, prevention or law:

7 “(1) Public awareness and prevention education;

8 “(2) Criminal justice response to domestic vio-
9 lence, including court-mandated abuser treatment;

10 “(3) Child abuse and domestic violence, including
11 domestic violence and child custody issues;

12 “(4) Domestic violence victim self-defense;

13 “(5) Medical personnel training; and

14 “(6) Enhancing victims’ access to effective legal
15 assistance.

16 “(b) ELIGIBILITY.—Eligible grantees are private non-
17 profit organizations that—

18 “(1) focus primarily on domestic violence;

19 “(2) provide documentation to the Secretary dem-
20 onstrating experience with issues of domestic violence,
21 particularly in the specific area for which it is applying;

22 “(3) include on its advisory boards representatives
23 from domestic violence programs in the region who are
24 geographically and culturally diverse; and

1 “(4) demonstrate strong support from domestic vi-
2 olence advocates in the region for their designation as
3 the regional resource center.

4 “(c) REPORTING.—Each grantee receiving funds under
5 this section shall submit a report to the Secretary evaluating
6 the effectiveness of the plan described and containing such
7 additional information as the Secretary may prescribe.

8 “(d) REGULATIONS.—No later than 45 days after the
9 date of enactment of this section, the Secretary shall publish
10 proposed regulations implementing this section.

11 “(e) FUNDING.—From the sums appropriated under sec-
12 tion 310 of this title, not in excess of \$2,000,000 for each
13 fiscal year shall be used for the purpose of making grants
14 under this section.”.

15 **Subtitle E—Youth Education and** 16 **Domestic Violence**

17 SEC. 261. EDUCATING YOUTH ABOUT DOMESTIC VIOLENCE.

18 “(a) GENERAL PURPOSE.—For purposes of this section,
19 the Secretary shall delegate his powers to the Secretary of
20 Education, hereinafter referred to as the “Secretary”. The
21 Secretary shall develop model programs for education of
22 young people about domestic violence and violence among
23 intimate partners.

24 “(b) NATURE OF PROGRAM.—The Secretary shall devel-
25 op three separate programs for three different audiences: pri-

1 mary and middle schools, secondary schools, and institutions
2 of higher education. These model programs shall be devel-
3 oped with the input of educational experts, law enforcement
4 personnel, legal and psychological experts on battering, and
5 victim advocate organizations such as battered women's shel-
6 ters. The participation of each of these groups or individual
7 consultants from such groups is essential to the development
8 of a program that meets both the needs of educational institu-
9 tions and the needs of the domestic violence problem.

10 (c) REVIEW AND DISSEMINATION.—Not later than 9
11 months after the date of enactment of this Act, the Secretary
12 shall transmit the model programs, along with a plan and
13 cost estimate for nationwide distribution, to the relevant com-
14 mittees of Congress for review.

15 (d) AUTHORIZATION.—There are authorized to be ap-
16 propriated under this section for fiscal year 1992, \$200,000
17 to carry out the purposes of this section.

18 **Subtitle F—Confidentiality for Abused** 19 **Persons**

20 SEC. 271. CONFIDENTIALITY OF ABUSED PERSON'S ADDRESS.

21 No later than 90 days after the enactment of this Act,
22 the Postmaster General shall promulgate regulations to
23 secure the confidentiality of abused persons' addresses or oth-
24 erwise prohibit the disclosure of an abused person's address
25 consistent with the following guidelines:

1 (1) confidentiality shall be provided upon the pres-
2 entation to an appropriate postal official of an existing
3 and valid court order for the protection of an abused
4 spouse;

5 (2) disclosure of addresses to State or Federal
6 agencies for legitimate law enforcement or other gov-
7 ernmental purposes shall not be prohibited; and

8 (3) compilations of addresses existing at the time
9 the order is presented to an appropriate postal official
10 shall be excluded from the scope of the proposed regu-
11 lations.

12 **TITLE III—CIVIL RIGHTS**

13 **SEC. 361. CIVIL RIGHTS.**

14 (a) **FINDINGS.**—The Congress finds that—

15 (1) crimes motivated by the victim's gender con-
16 stitute bias crimes in violation of the victim's right to
17 be free from discrimination on the basis of gender;

18 (2) current law provides a civil rights remedy for
19 gender crimes committed in the workplace, but not for
20 gender crimes committed on the street or in the home;
21 and

22 (3) State and Federal criminal laws do not ade-
23 quately protect against the bias element of gender
24 crimes, which separates these crimes from acts of

1 random violence, nor do they adequately provide vic-
2 tims the opportunity to vindicate their interests.

3 (b) RIGHTS, PRIVILEGES AND IMMUNITIES.—All per-
4 sons within the United States shall have the same rights,
5 privileges and immunities in every State as is enjoyed by all
6 other persons to be free from crimes of violence motivated by
7 the victim's gender, as defined in subsection (d).

8 (c) CAUSE OF ACTION.—Any person, including a
9 person who acts under color of any statute, ordinance, regu-
10 lation, custom, or usage of any State, who deprives another
11 of the rights, privileges or immunities secured by the Consti-
12 tution and laws as enumerated in subsection (b) shall be liable
13 to the party injured, in an action for the recovery of compen-
14 satory and punitive damages, injunctive or declaratory relief,
15 or such other relief as the court may deem appropriate.

16 (d) DEFINITIONS.—For purposes of this section—

17 (1) the term "crime of violence motivated by
18 gender" means any crime of violence, as defined in this
19 section, including rape, sexual assault, sexual abuse,
20 abusive sexual contact, or any other crime of violence
21 committed because of gender or on the basis of gender;
22 and

23 (2) the term "crime of violence" means an act or
24 series of acts that would come within the meaning of
25 State or Federal offenses described in section 16 of

1 title 18, United States Code, whether or not those acts
2 have actually resulted in criminal charges, prosecution,
3 or conviction and whether or not those acts were com-
4 mitted in the special maritime, territorial, or prison ju-
5 risdiction of the United States.

6 (e) **LIMITATION AND PROCEDURES.—**

7 (1) **LIMITATION.**—Nothing in this section entitles
8 a person to a cause of action under subsection (c) for
9 random acts of violence unrelated to gender or for acts
10 that cannot be demonstrated, by a preponderance of
11 the evidence, to be “motivated by gender” as defined
12 in subsection (d).

13 (2) **NO PRIOR CRIMINAL ACTION.**—Nothing in
14 this section requires a prior criminal complaint, pros-
15 ecution, or conviction to establish the necessary ele-
16 ments of a cause of action under subsection (c).

17 **SEC. 302. CONFORMING AMENDMENT.**

18 The Civil Rights Attorney’s Fees Awards Act of 1976
19 (42 U.S.C. 1988) is amended—

20 (1) in the last sentence, by striking “or” after
21 “Public Law 92-318,”; and

22 (2) by adding after “1964,” the following: “, or
23 title III of the Violence Against Women Act of
24 1991,”.

1 **TITLE IV—SAFE CAMPUSES FOR**
2 **WOMEN**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Safe Campuses for
5 Women Act of 1990”.

6 **SEC. 402. FINDINGS.**

7 The Congress finds that—

8 (1) rape prevention and education programs are
9 essential to an educational environment free of fear for
10 students’ personal safety;

11 (2) sexual assault on campus, whether by fellow
12 students or not, is widespread among the Nation’s
13 higher education institutions: experts estimate that 1 in
14 7 of the women now in college have been raped and
15 over half of college rape victims know their attackers;

16 (3) sexual assault poses a grave threat to the
17 physical and mental well-being of students and may
18 significantly impair the learning process; and

19 (4) action by schools to educate students may
20 make substantial inroads on the incidence of rape, in-
21 cluding the incidence of acquaintance rape on campus.

22 **SEC. 403. GRANTS FOR CAMPUS RAPE EDUCATION.**

23 Title X of the Higher Education Act of 1965 is amend-
24 ed to add at the end thereof the following:

1 **"PART D—GRANTS FOR CAMPUS RAPE**
2 **EDUCATION."**

3 **SEC. 1071. GRANTS FOR CAMPUS RAPE EDUCATION.**

4 **"(a) IN GENERAL.—(1) The Secretary of Education is**
5 authorized to make grants to or enter into contracts with
6 institutions of higher education for rape education and pre-
7 vention programs under this section.

8 **"(2) The Secretary shall make financial assistance avail-**
9 able on a competitive basis under this section. An institution
10 of higher education or consortium of such institutions which
11 desires to receive a grant or enter into a contract under this
12 section shall submit an application to the Secretary at such
13 time, in such manner, and containing or accompanied by such
14 information as the Secretary may reasonably require in ac-
15 cordance with regulations.

16 **"(3) The Secretary shall make every effort to ensure the**
17 equitable participation of private and public institutions of
18 higher education and to ensure the equitable geographic par-
19 ticipation of such institutions. In the award of grants and
20 contracts under this section, the Secretary shall give priority
21 to institutions who show the greatest need for the sums
22 requested.

23 **"(4) Not less than 50 percent of sums available for the**
24 purposes of this section shall be used to make grants under
25 subsection (c) of this section.

1 “(b) GENERAL RAPE PREVENTION AND EDUCATION
2 GRANTS.—Grants under this section shall be used to educate
3 and provide support services to student victims of rape or
4 sexual assault. Grants may be used for the following pur-
5 poses:

6 “(1) to provide training for campus security and
7 college personnel, including campus disciplinary or ju-
8 dicial boards, that address the issues of rape, sexual as-
9 sault, and other gender-motivated crimes;

10 “(2) to develop, disseminate, or implement
11 campus security and student disciplinary policies to
12 prevent and discipline rape, sexual assault and other
13 gender-motivated crimes;

14 “(3) to develop, enlarge or strengthen support
15 services programs including medical or psychological
16 counseling to assist victims’ recovery from rape, sexual
17 assault, or other gender-motivated crimes;

18 “(4) to create, disseminate, or otherwise provide
19 assistance and information about victims’ options on
20 and off campus to bring disciplinary or other legal
21 action; and

22 “(5) to implement, operate, or improve rape edu-
23 cation and prevention programs, including programs
24 making use of peer-to-peer education.

1 “(c) **MODEL GRANTS.**—Not less than 25 percent of the
2 funds authorized under this section shall be available for
3 grants for model demonstration programs to be coordinated
4 with local rape crisis centers for the development and imple-
5 mentation of quality rape prevention and education curricula
6 and for local programs to provide services to student rape
7 victims.

8 “(d) **ELIGIBILITY.**—No institution of higher education
9 or consortium of such institutions shall be eligible for a grant
10 under this section unless—

11 “(1) its student code of conduct, or other written
12 policy governing student behavior, explicitly prohibits
13 not only rape but all forms of sexual assault; and

14 “(2) it has in effect and implements a written
15 policy requiring the disclosure to the victim of any
16 sexual assault the outcome of any investigation by
17 campus police or campus disciplinary proceedings
18 brought pursuant to the victim’s complaint against the
19 alleged perpetrator of the sexual assault: *Provided,*
20 That nothing in this section shall be interpreted to au-
21 thorize disclosure to any person other than the victim.

22 “(e) **APPLICATIONS.**—(1) In order to be eligible to re-
23 ceive a grant under this section for any fiscal year, an institu-
24 tion of higher education, or consortium of such institutions,

1 shall submit an application to the Secretary at such time and
2 in such manner as the Secretary shall prescribe.

3 “(2) Each such application shall—

4 “(A) set forth the activities and programs to be
5 carried out with funds granted under this part;

6 “(B) contain an estimate of the cost for the estab-
7 lishment and operation of such programs;

8 “(C) explain how the program intends to address
9 the issue of acquaintance rape;

10 “(D) provide assurances that the Federal funds
11 made available under this section shall be used to sup-
12 plement and, to the extent practical, to increase the
13 level of funds that would, in the absence of such Fed-
14 eral funds, be made available by the applicant for the
15 purpose described in this part, and in no case to sup-
16 plant such funds; and

17 “(E) include such other information and assur-
18 ances as the Secretary reasonably determines to be
19 necessary.

20 “(e) GRANTEE REPORTING.—Upon completion of the
21 grant period under this section, the grantee institution or
22 consortium of institutions shall file a performance report with
23 the Secretary explaining the activities carried out together
24 with an assessment of the effectiveness of those activities in
25 achieving the purposes of this section. The Secretary shall

1 suspend funding for an approved application if an applicant
2 fails to submit an annual performance report.

3 “(f) DEFINITIONS.—(1) Except as otherwise provided,
4 the terms used in this part shall have the meaning provided
5 under section 2981 of this title.

6 “(2) For purposes of this subchapter, the following
7 terms have the following meanings:

8 “(A) The term ‘rape education and prevention’ in-
9 cludes programs that provide educational seminars,
10 peer-to-peer counseling, operation of hotlines, self-de-
11 fense courses, the preparation of informational materi-
12 als, and any other effort to increase campus awareness
13 of the facts about, or to help prevent, sexual assault.

14 “(B) The term ‘Secretary’ means the Secretary of
15 Education.

16 “(g) GENERAL TERMS AND CONDITIONS.—(1) REGU-
17 LATIONS.—No later than 45 days after the date of enact-
18 ment of this section, the Secretary shall publish proposed
19 regulations implementing this section. No later than 120 days
20 after such date, the Secretary shall publish final regulations
21 implementing this section.

22 “(2) No later than 180 days after the end of each fiscal
23 year for which grants are made under this section, the Secre-
24 tary shall submit to the committees of the House of Repre-

1 sentatives and the Senate responsible for issues relating to
2 higher education and to crime, a report that includes—

3 “(A) the amount of grants made under this
4 section;

5 “(B) a summary of the purposes for which those
6 grants were provided and an evaluation of their
7 progress; and

8 “(C) a copy of each grantee report filed pursuant
9 to subsection (e) of this section.

10 “(3) For the purpose of carrying out this subchapter,
11 there are authorized to be appropriated \$20,000,000 for the
12 fiscal year 1992, and such sums as may be necessary for each
13 of the fiscal years 1993, 1994, and 1995.”

14 **SEC. 404. REQUIRED CAMPUS REPORTING OF SEXUAL AS-**
15 **SAULT.**

16 Section 204(f) of the Crime Awareness and Campus Se-
17 curity Act of 1990 is amended to read as follows:

18 “(F) Statistics concerning the occurrence on
19 campus, during the most recent school year, and
20 during the 2 preceding school years for which data are
21 available, of the following criminal offenses reported to
22 campus security authorities or local police agencies—

23 “(i) murder;

24 “(ii) rape or sexual assault;

25 “(iii) robbery;

1 “(iv) aggravated assault;

2 “(v) burglary; and

3 “(vi) motor vehicle theft.

4 **TITLE V—EQUAL JUSTICE FOR**
5 **WOMEN IN THE COURTS ACT**
6 **OF 1990**

7 **SECTION 501. SHORT TITLE.**

8 This title may be cited as the “Equal Justice for
9 Women in the Courts Act of 1991”.

10 **Subtitle A—Education and Training**
11 **for Judges and Court Personnel in**
12 **State Courts**

13 **SEC. 511. GRANTS AUTHORIZED.**

14 The State Justice Institute is authorized to award
15 grants for the purpose of developing, testing, presenting, and
16 disseminating model programs to be used by States in train-
17 ing judges and court personnel in the laws of the States on
18 rape, sexual assault, domestic violence, and other crimes of
19 violence motivated by the victim’s gender.

20 **SEC. 512. TRAINING PROVIDED BY GRANTS.**

21 Training provided pursuant to grants made under this
22 subtitle may include current information, existing studies, or
23 current data on—

1 (1) the nature and incidence of rape and sexual
2 assault by strangers and nonstrangers, marital rape,
3 and incest;

4 (2) the underreporting of rape, sexual assault, and
5 child sexual abuse;

6 (3) the physical, psychological, and economic
7 impact of rape and sexual assault on the victim, the
8 costs to society, and the implications for sentencing;

9 (4) the psychology of sex offenders, their high rate
10 of recidivism, and the implications for sentencing;

11 (5) the historical evolution of laws and attitudes
12 on rape and sexual assault;

13 (6) sex stereotyping of female and male victims of
14 rape and sexual assault, racial stereotyping of rape vic-
15 tims and defendants, and the impact of such stereo-
16 types on credibility of witnesses, sentencing, and other
17 aspects of the administration of justice;

18 (7) application of rape shield laws and other limits
19 on introduction of evidence that may subject victims to
20 improper sex stereotyping and harassment in both rape
21 and nonrape cases, including the need for sua sponte
22 judicial intervention in inappropriate cross-examination;

23 (8) the use of expert witness testimony on rape
24 trauma syndrome, child sexual abuse accommodation

1 syndrome, post-traumatic stress syndrome, and similar
2 issues;

3 (9) the legitimate reasons why victims of rape,
4 sexual assault, and incest may refuse to testify against
5 a defendant;

6 (10) the nature and incidence of domestic vio-
7 lence;

8 (11) the physical, psychological, and economic
9 impact of domestic violence on the victim, the costs to
10 society, and the implications for court procedures and
11 sentencing;

12 (12) the psychology and self-presentation of bat-
13 terers and victims and the implications for court pro-
14 ceedings and credibility of witnesses;

15 (13) sex stereotyping of female and male victims
16 of domestic violence, myths about presence or absence
17 of domestic violence in certain racial, ethnic, religious,
18 or socioeconomic groups, and their impact on the ad-
19 ministration of justice;

20 (14) historical evolution of laws and attitudes on
21 domestic violence;

22 (15) proper and improper interpretations of the
23 defenses of self-defense and provocation, and the use of
24 expert witness testimony on battered woman syn-
25 drome;

1 (16) the likelihood of retaliation, recidivism, and
2 escalation of violence by batterers, and the potential
3 impact of incarceration and other meaningful sanctions
4 for acts of domestic violence including violations of
5 orders of protection;

6 (17) economic, psychological, social and institu-
7 tional reasons for victims' inability to leave the bat-
8 terer, to report domestic violence or to follow through
9 on complaints, including the influence of lack of sup-
10 port from police, judges, and court personnel, and the
11 legitimate reasons why victims of domestic violence
12 may refuse to testify against a defendant;

13 (18) the need for orders of protection, and the im-
14 plications of mutual orders of protection, dual arrest
15 policies, and mediation in domestic violence cases;

16 (19) recognition of and response to gender-moti-
17 vated crimes of violence other than rape, sexual assault
18 and domestic violence, such as mass or serial murder
19 motivated by the gender of the victims; and

20 (20) current information on the impact of pornog-
21 raphy on crimes against women, or data on other ac-
22 tivities that tend to degrade women.

1 **SEC. 513. COOPERATION IN DEVELOPING PROGRAMS IN**
2 **MAKING GRANTS UNDER THIS TITLE.**

3 The State Justice Institute shall ensure that model pro-
4 grams carried out pursuant to grants made under this subtitle
5 are developed with the participation of law enforcement offi-
6 cials, public and private nonprofit victim advocates, legal ex-
7 perts, prosecutors, defense attorneys, and recognized experts
8 on gender bias in the courts.

9 **SEC. 514. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated for fiscal year
11 1992, \$600,000 to carry out the purposes of this subtitle. Of
12 amounts appropriated under this section, the State Justice
13 Institute shall expend no less than 40 percent on model pro-
14 grams regarding domestic violence and no less than 40 per-
15 cent on model programs regarding rape and sexual assault.

16 **Subtitle B—Education and Training**
17 **for Judges and Court Personnel in**
18 **Federal Courts**

19 **SEC. 521. EDUCATION AND TRAINING GRANTS.**

20 (a) **STUDY.**—The Federal Judicial Center shall conduct
21 a study of the nature and extent of gender bias in the Federal
22 courts, including in proceedings involving rape, sexual as-
23 sault, domestic violence, and other crimes of violence moti-
24 vated by gender. The study shall be conducted by the use of
25 data collection techniques such as reviews of trial and appel-
26 late opinions and transcripts, public hearings, and inquiries to

1 attorneys practicing in the Federal courts. The Federal Judi-
2 cial Center shall publicly issue a final report containing a
3 detailed description of the findings and conclusions of the
4 study, including such recommendations for legislative, admin-
5 istrative, and judicial action as it considers appropriate.

6 (b) MODEL PROGRAMS.—(1) The Federal Judicial
7 Center shall develop, test, present, and disseminate model
8 programs to be used in training Federal judges and court
9 personnel in the laws on rape, sexual assault, domestic vio-
10 lence, and other crimes of violence motivated by the victim's
11 gender.

12 (2) The training programs developed under this subsec-
13 tion shall include—

14 (A) all of the topics listed in section 512 of sub-
15 title A; and

16 (B) all procedural and substantive aspects of the
17 legal rights and remedies for violent crime motivated
18 by gender including such areas as the Federal penalties
19 for sex crimes, interstate enforcement of laws against
20 domestic violence and civil rights remedies for violent
21 crimes motivated by gender.

22 SEC. 522. COOPERATION IN DEVELOPING PROGRAMS.

23 In implementing this subtitle, the Federal Judicial
24 Center shall ensure that the study and model programs are
25 developed with the participation of law enforcement officials,

1 public and private nonprofit victim advocates, legal experts,
2 prosecutors, defense attorneys, and recognized experts on
3 gender bias in the courts.

4 **SEC. 523. AUTHORIZATION OF APPROPRIATIONS.**

5 There is authorized to be appropriated for fiscal year
6 1992, \$400,000 to carry out the purposes of this subtitle. Of
7 amounts appropriated under this section, no less than 25 per-
8 cent and no more than 40 percent shall be expended by the
9 Federal Judicial Center on the study required by section
10 521(a) of this subtitle.

○

February 21, 1991

THE WOMEN'S EQUAL OPPORTUNITY ACT OF 1991
SECTION-BY-SECTION ANALYSIS

Introduced by Senators Dole, Simpson, Roth, Kasten, D'Amato, McCain, Murkowski, Burns, Thurmond, Cochran, Warner, Stevens, Lugar, and Seymour

SECTION 1 -- SHORT TITLE

The legislation may be cited as the "Women's Equal Opportunity Act of 1991."

TITLE I -- FEDERAL CIVIL RIGHTS REMEDIES

SUBTITLE A -- Federal Remedies for Sexual Harassment in the Workplace

Section 101. Statement of Findings.

Section 102. Enhanced Remedies for Sexual Harassment. Title VII currently prohibits intentional discrimination in the terms and conditions of employment, but provides inadequate remedies for certain unlawful practices, including sexual harassment in the workplace, which the Supreme Court has recognized as actionable under Title VII. See Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986). Such harassment will frequently not be so intolerable that an employee subjected to it immediately leaves the job. In such circumstances, the only remedy that the victim of harassment can obtain under Title VII's current remedial scheme is declaratory and injunctive relief against the harassment.

Additional remedies for this situation are clearly appropriate and warranted. The mere threat of an injunctive order requiring the employer to stop engaging in acts of sexual harassment is clearly insufficient to deter this type of misconduct.

To deter harassment on the basis of sex, Section 102 provides that the court shall be empowered, upon pleading and proof that such practice was intentionally engaged in, to award the plaintiff an amount not to exceed \$100,000 for the first offense and an amount not to exceed \$150,000 for each subsequent offense.

Because of the equitable nature of the relief to be awarded under this section, the courts should find a judge-ordered remedy consistent with the Seventh Amendment. See Local No. 391 v.

Terry, 110 S. Ct. 1339 (1990); Tull v. United States, 107 S. Ct. 1831 (1987). This provision is important in maintaining to the greatest extent possible the current structure of Title VII's remedies provisions and preventing it from being replaced with a tort-like approach. Because the question of constitutionality is not entirely free from doubt, however, section 102 also provides that should a court hold that a jury trial with respect to issues of liability is constitutionally required, it may empanel a jury to hear those issues and no others. This ensures that the additional relief this scheme makes available will not become a dead letter should a court find that the Seventh Amendment requires a jury trial on liability.

In determining the appropriateness and magnitude of an award under this section, the court shall consider whether a) the plaintiff has incurred any medical bills or suffered any monetary or other out-of-pocket loss as a result of the respondent's unlawful conduct and b) such relief is necessary to make injunctive relief ordered by the court meaningful. The court shall also consider a) the financial resources and employment history of the respondent, b) whether the respondent has initiated compliance programs designed to ensure that the employment practices of the respondent are lawful, and c) whether the respondent has instituted programs or policies designed to prevent, and resolve complaints of, harassment on the basis of sex in the workplace.

For purposes of this title, the term "harassment on the basis of sex" is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where 1) submission to such conduct is made explicitly or implicitly a term or condition of employment of an individual, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of creating a working environment that a reasonable person would consider intimidating, hostile, or abusive." This definition of "harassment on the basis of sex" is taken largely from an EEOC regulation at 29 CFR Section 1604.11(a).

Section 103. Expedited Injunctive Relief for Sexual Harassment. Prolonged exposure to sexual harassment in the workplace can have serious and lasting detrimental effects on the victim. As a result, persons claiming sexual harassment on-the-job should be entitled to expedited relief through the court system.

Section 103 allows an individual alleging sexual harassment to seek temporary or preliminary injunctive relief, without regard to any period of time following the filing of a charge of unlawful discrimination and without obtaining a right-to-sue letter from the EEOC. Prior to obtaining permanent injunctive

relief, the charging party must first demonstrate that he or she 1) has submitted the charge of sexual harassment to any grievance procedure established by the employer, and 2) has obtained a determination from the grievance procedure, or establishes that the grievance procedure is inappropriate for resolution of sexual harassment complaints or that its use has resulted in an unreasonable delay in resolving the grievance. The purpose of this provision is to ensure that lawsuits seeking injunctive relief do not become a substitute for employer-established grievance procedures.

Finally, Section 103 directs the courts to assign sexual harassment cases at the earliest practicable date and to cause such cases to be expedited in every way practicable.

Section 104. Technical Assistance. Section 104 directs the Chairman of the EEOC, acting through the Directors of the EEOC's district offices, to establish programs to provide technical assistance on the law of sexual harassment to small employers with fewer than 50 employees. Unlike large corporations, most small employers cannot afford the cost of compliance advice from private law firms. An EEOC technical assistance program for small employers will help reduce the instances of sexual harassment in the workplace and the quantity of litigation for an already over-burdened court system.

For these technical assistance efforts, Section 104 authorizes an additional \$500,000 in funding for the EEOC for each of fiscal years 1992, 1993, and 1994.

SUBTITLE B -- Expansion of Other Federal Civil Rights.

Section 111. Expansion of Protections against All Racial Discrimination in the Making of Contracts. Section 111 would overrule the Supreme Court's decision in Patterson v. McLean Credit Union, 109 S. Ct. 2363 (1989). In Patterson, an employee sued under 42 U.S.C. 1981, alleging that her employer had harassed her on the job, failed to promote her, and ultimately discharged her, all because of her race. The Court held that Section 1981 is limited by its terms to prohibiting discrimination in "mak[ing] and enforc[ing] contracts," and does not extend to "problems that may arise later from the conditions of continuing employment." Patterson, 109 S. Ct. at 2372. Thus, the Court held, the statute prohibits discrimination -- whether governmental or private -- only in the formation of a contract and in the right of access to a legal process that will enforce established contract obligations without regard to race. While the plaintiff's allegation that she had been discriminatorily denied promotion might fall within the prohibition against discrimination in making contracts, her allegations of harassment on the job addressed only conditions of employment.

The law as interpreted in Patterson leaves a significant gap in Section 1981 coverage that should be filled. This section would also remove any possible ambiguity for future cases by codifying the holding in Runyon v. McCrary, 427 U.S. 160 (1976), that Section 1981 prohibits private, as well as governmental, discrimination.

Section 112. Expansion of Right to Challenge Discriminatory Seniority Systems. Section 112 would overrule the Supreme Court's ruling in Lorance v. AT&T Technologies, Inc., 109 S.Ct. 2261 (1989). In Lorance, a group of female employees challenged a seniority system under Title VII, claiming that the system was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly-situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority system intentionally to alter their contract rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for the plaintiffs to file their complaint began to run when the employer adopted an allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which the plaintiffs suffered the diminution in employment status about which they complained.

The Lorance holding is contrary to the position taken by the Justice Department and the EEOC. It would shield existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary litigation. Employees will be forced to challenge the system before it has produced any concrete impact or forever remain silent. Given such a choice, employees who might never suffer harm from the seniority system may be forced to file a charge -- an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if the lawsuit is not clearly necessary.

Section 113. Congressional Coverage. Section 113 extends the protections of Title VII to all employees of Congress. The means of enforcing Title VII shall be determined by each House of Congress.

Section 114. Effective Date. Section 114 specifies that

the provisions of Title I shall take effect upon enactment.

TITLE II -- DOMESTIC AND STREET CRIME VIOLENCE AGAINST WOMEN

SUBTITLE A -- Safety on College and University Campuses

Section 201. Amendments to the Higher Education Act of 1965. Last year, the 101st Congress passed, and President Bush signed into a law, a bill called the "Crime Awareness and Campus Security Act of 1990." This legislation amended the Higher Education Act of 1965 to require colleges and universities to establish and disclose campus security policies and to inform students and employees of campus crime statistics.

Section 201 would require colleges and universities to disclose and specify crimes involving sexual contact, sexual assault, and rape. It would also require the disclosure of this information to (a) local and state police authorities and (b) the parents of students.

SUBTITLE B -- Stronger Penalties for Federal Sex Offenses

Section 211. Capital Punishment for Murders in Connection with Sexual Assaults and Child Molestations. Section 211 authorizes capital punishment for murders committed in connection with sex crimes that occur in the course of federal offenses. For example, in a case in which a kidnapping was committed in violation of 18 U.S.C. 1201, and the kidnapper raped and murdered the victim, the death penalty could be imposed pursuant to the provisions of this section.

This section adds a new section 1118 to the criminal code (title 18). Subsections (a)-(b) generally provide federal jurisdiction to prosecute murders committed in the course of other federal offenses. The basic definition of murder in subsection (a) -- causing death intentionally, knowingly, or through recklessness manifesting extreme indifference to human life -- is similar to the corresponding definition in the Model Penal Code (MPC section 210.2) and various state codes. See, e.g., Ala. Code section 13A-6-2(a)(1)-(2); N.D. Cent. Code section 12.1-16-01(1)(a)-(b).

Subsection (a) also covers deaths resulting from the intentional infliction of serious injury. This is substantially the same as a clause in the definition of capital murder in title I of S. 1970, as passed by the Senate in the 101st Congress. There is also support in state law for the inclusion of this category of homicides in potentially capital murders. See Ill. Ann. Stat., ch. 38, section 9-1; N.S. Stat. Ann. section 2C:11-3.

Under subsection (c), murders in violation of proposed section 1118 would be Class A felonies, punishable by up to life

imprisonment. The death penalty could be imposed for a subcategory of these murders as provided in subsections (d)-(1).

Subsection (e) identifies the classes of murders for which the death penalty would be available. Under the procedures of the section, a finding of at least one of the aggravating factors specified in subsection (e) would be a prerequisite to the jury's consideration of capital punishment. These aggravating factors are as follows:

First, under paragraph (1) of subsection (e), the death penalty could be considered if the conduct resulting in death occurred in the course of an offense defined in chapters 109A, 110, or 117 of the criminal code. Chapter 109A defines the federal crimes of sexual abuse, including the crimes within federal jurisdiction that would commonly be characterized as rape or child molestation. Chapter 110 defines the federal crimes relating to sexual exploitation of children, including crimes involved in the production of child pornography. Chapter 117 includes crimes involved in the management of interstate prostitution, "white slavery" and child prostitution operations.

Second, under paragraph (2), the death penalty could be considered if the conduct resulting in death occurred in the course of a federal offense, and the defendant committed a crime of sexual assault or child molestation in the course of the same offense. For example, as noted above, if the victim were kidnapped in violation of 18 U.S.C. 1201, and the kidnapper raped and murdered the victim, the death penalty would be available under this paragraph.

Third, under paragraph (3), the death penalty could be considered if a defendant committing a murder in violation of this section had a prior conviction for sexual assault or child molestation. Subsection (x) defines the terms "sexual assault" and "child molestation" for purposes of this paragraph and paragraph (2).

If the jury found that at least one of the aggravating factors specified in subsection (e) existed, and further found that there were no mitigating factors or that the aggravating factors outweighed any mitigating factors, then the death penalty would be imposed pursuant to subsections (j) and (1).

The remaining provisions of the section set out the general procedures required for conducting a capital sentencing hearing, and for reviewing and carrying out the death penalty in cases in which it is imposed. These procedural provisions take the same approach as the Administration's death penalty legislation of the 101st Congress. They are substantially the same in almost all respects as the death penalty procedures passed by the House of Representatives in title II of H.R. 5269 in the 101st Congress,

and the death penalty procedures passed by the Senate in title XIV of S. 1970 in the 101st Congress. They are also the same or similar in many respects to the death penalty procedures passed by the Senate in title I of S. 1970.

Section 212. Increased Penalties for Recidivist Sex Offenders. Section 212 amends the penalties applicable under the sexual abuse chapter (chapter 109A) of title 18 of the United States Code by providing that second or subsequent offenses are punishable by a term of imprisonment of up to twice that otherwise authorized. The prior conviction may be either a violation of the chapter or a violation of state law involving a type of conduct proscribed by chapter 109A. This amendment, which was passed by the Senate in S.1970 (section 2425), is designed to correct the inadequacy of current penalties with respect to recidivist sex offenders.

Section 213. Definition of Sexual Act for Victims below the Age of 16. Section 213 amends the definitional section for federal sexual abuse offenses to provide greater protection for victims below the age of 16. Recently, the maximum penalty for engaging in a sexual act with a minor between the ages of 12 and 16 (by a person at least 4 years older than the victim) was raised from five to fifteen years' imprisonment (section 322 of the Crime Control Act of 1990). Both the original Senate-passed and House-passed versions of this legislation -- section 2425 of S. 1970 and section 2919 of H.R. 5269 -- also contained amendments addressing deficiencies in the definition of the term "sexual act" in relation to victims below the age of 16. However, the enacted bill did not contain these amendments, presumably because of other differences in the sections in which they appeared.

Section 213 is the same as the corresponding amendments to the definition of "sexual act" in S. 1970 and H.R. 5269. It would extend the definition of "sexual act" to include intentional touching, not through the clothing, of the genitals of a person who is less than 16 years of age, provided the intent element common to the other touching offenses is present. This form of molestation can be as detrimental to a young teenager or child as the conduct currently covered by the term sexual act.

The current definitions of sexual act and sexual contact also involve a gender-based imbalance that effectively tends to give more lenient treatment to cases in which the victim is a boy. Under the current definitions, sexual touching that involves even a slight degree of penetration of a genital or anal opening constitutes a sexual act, rather than just sexual contact, and the former is punished more severely than the latter under the existing statutory scheme. Since penetration is more likely with female than male victims, such conduct would more likely constitute sexual acts when committed with females than

with males.

The amendment corrects this gender-based imbalance by treating all direct genital touching of children under the age of 16, with intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person as sexual acts, regardless of whether penetration has occurred. Moreover, it eliminates the difficulties of proving penetration for many sexual abuse offenses against children -- both boys and girls -- in which there are typically no adult witnesses.

Section 214. Drug Distribution to Pregnant Women. 21 U.S.C. 845 prescribes enhanced penalties for the distribution of controlled substances to persons below the age of twenty-one. Section 214 amends 21 U.S.C. 845 to make the same enhanced penalties apply to the distribution of controlled substances to pregnant women.

Conduct covered by this amendment frequently involves exploitation by the drug dealer of the pregnant mother's drug dependency or addiction to facilitate conduct on her part that carries a grave risk to her child of pre-natal injury and permanent impairment following birth. Such conduct by a trafficker in controlled substances is among the most serious forms of drug-related child abuse and plainly merits the enhanced penalties provided by 21 U.S.C. 845.

SUBTITLE C -- Enhanced Restitution for Victims of Sex Crimes

Sections 221-224. Pornography Victims Restitution. Sections 221-224 create a federal cause of action against a producer, distributor, exhibitor, or seller of sexually explicit material by a victim of a rape, sexual assault, or sexual crime. Section 222 conditions recovery of damages on proof by a preponderance of the evidence that: a) the victim was a victim of a sexual crime, as defined by State or federal law, whether or not such crime has been prosecuted or proven in a separate criminal proceeding; b) the material is either obscene, child pornography, or sexually explicit and violent; c) the defendant knew or should have known the nature and character of the contents of the material; and d) the material was a proximate cause of the offense, by inciting the sexual offender to commit the offense against the victim.

The Pornography Victims Compensation Act was originally introduced by Senator Mitch McConnell in the 101st Congress.

Section 225. Restitution in Sex Offense Cases. Section 225 amends the restitution statute, 18 U.S.C. 3663, to provide for restitution by offenders to the victims of sexual abuse crimes defined in chapter 109A of Title 18 and crimes involving sexual exploitation of children defined in chapter 110 of Title 18.

Section 3663(b)(2) of Title 18 currently authorizes restitution covering medical and therapeutic costs and lost income in cases involving "bodily injury" to a victim. However, the sex crimes defined in chapters 109A and 110 do not necessarily involve physical damage to the body of the victim. For example, there may not be such physical damage where rape against an adult victim is committed through the threat of force, but without the actual use of force, or where a child molestation or exploitation offense is committed without physically injurious violence.

This section would add a new paragraph (3) to 18 U.S.C. 3663(b) which makes it clear that restitution is authorized in all federal sex offense cases, whether or not the offense involved "bodily injury" on a narrow interpretation of that phrase. Subparagraphs (A)-(C) of the new paragraph track the authorization in current paragraph (2) for restitution covering necessary medical and therapeutic costs and lost income.

Subparagraph (D) of proposed paragraph (3) provides that the medical and therapeutic costs and lost income for which restitution is awarded may include costs and losses related to a disease that was transmitted to the victim through the commission associated with sex offenses. While restitution for costs and losses related to such a disease could be independently based on current 18 U.S.C. 3663(b)(2) or subparagraphs (A)-(C) of proposed new paragraph (3), the explicit authorization of proposed subparagraph (D) forecloses any argument that such costs and losses are too remote a result of the offense to be included in an order of restitution.

Subparagraph (E) of proposed paragraph (3) recognizes child care, transportation, and other costs to the victim from involvement in the investigation and prosecution of the crime as resultant costs of the crime for which the offender may properly be required to make restitution.

Finally, section 226 makes a conforming amendment in the second-to-last paragraph of 18 U.S.C. 3663(b), which currently provides for restitution of funeral expenses in "bodily injury" cases in which death also results.

SUBTITLE D -- Reform of Procedure and Evidentiary Requirements in Sex Offense and Other Cases

Section 231. Admissibility of Evidence of Similar Crimes in Sexual Assault and Child Molestation Cases. In cases where the defendant is accused of committing an offense of sexual assault or child molestation, courts in the United States have traditionally favored the broad admission at trial of evidence of the defendant's prior commission of similar crimes. The contemporary edition of Wigmore's treatise describes this

tendency as follows (IA Wigmore's Evidence sec. 62.2 (Tillers rev. 1983)):

[T]here is a strong tendency in prosecutions for sex offenses to admit evidence of the accused's sexual proclivities. Do such decisions show that the general rule against the use of propensity evidence against an accused is not honored in sex offense prosecutions? We think so.

[S]ome states and courts have forthrightly and expressly recogniz[ed] a "lustful disposition" or sexual proclivity exception to the general rule barring the use of character evidence against an accused [J]urisdictions that do not expressly recognize a lustful disposition exception may effectively recognize such an exception by expansively interpreting in prosecutions for sex offenses various well-established exceptions to the character evidence rule. The exception for common scheme or design is frequently used, but other exceptions are also used.

More succinctly, the Supreme Court of Wyoming observed in Elliot v. State, 600 P. 2d 1044, 1047-48 (1979):

[I]n recent years a preponderance of the courts have sustained the admissibility of the testimony of third persons as to prior or subsequent similar crimes, wrongs or acts in cases involving sexual offenses . . . [I]n cases involving sexual assaults, such as incest, and statutory rape with family members as the victims, the courts in recent years have almost uniformly admitted such testimony.

The willingness of the courts to admit similar crimes evidence in prosecutions for serious sex crimes is of great importance to effective prosecution in this area, and hence to the public's security against dangerous sex offenders. In a rape prosecution, for example, disclosure of the fact that the defendant has previously committed other rapes is frequently critical to the jury's informed assessment of the credibility of a claim by the defense that the victim consented and that the defendant is being falsely accused.

The importance of admitting this type of evidence is still greater in child molestation cases. Such cases regularly present the need to rely on the testimony of child victim-witnesses whose credibility can readily be attacked in the absence of substantial corroboration. In such cases, the public interest in admitting all significant evidence that will illumine the credibility of the charge and any denial by the defense is truly compelling.

Notwithstanding the salutary tendency of the courts to admit

evidence of other offenses by the defendant in such cases, the current state of the law in this area is not satisfactory. The approach of the courts has been characterized by considerable uncertainty and inconsistency. Not all courts have recognized the area of sex offense prosecutions as one requiring special standards of treatment, and those which have, have adopted admission rules of varying scope and rationale.

Moreover, even where the courts have traditionally favored admission of "similar crimes evidence" in sex offense prosecutions, the continuation of this approach has been jeopardized by recent developments. These developments include the widespread adoption by the states of codified rules of evidence modeled on the Federal Rules of Evidence, which make no special allowance for admitting similar crimes evidence in sex offense cases.

Section 231 would amend the Federal Rules of Evidence to ensure an appropriate scope of admission for evidence of similar crimes by defendants accused of serious sex crimes. The section adds three new Rules (proposed Rules 413, 414, and 415), which state general rules of admissibility for such evidence. The proposed new rules would apply directly in federal cases, and would have broader significance as a potential model for state reforms.

Proposed Rule 413 relates to criminal prosecutions for sexual assault. Paragraph (a) provides that evidence of the defendant's commission of other sexual assaults is admissible in such cases. If such evidence were admitted under the Rule, it could be considered for its bearing on any matter to which it is relevant. For example, it could be considered as evidence that the defendant has the motivation or disposition to commit sexual assaults, and a lack of effective inhibitions against acting on such impulses, and as evidence bearing on the probability or improbability that the defendant was falsely implicated in the offense of which he is presently accused.

Paragraph (b) of proposed Rule 413 generally requires pretrial disclosure of evidence to be offered under the Rule. This is designed to provide the defendant with notice of the evidence that will be offered, and a fair opportunity to develop a response. The Rule sets a normal minimum period of 15 days notice, but the court could allow notice at a later time for good cause, such as later discovery of evidence admissible under the rule. In such a case, it would, of course, be within the court's authority to grant a continuance if the defense needed additional time for preparation.

Paragraph (c) makes clear that proposed Rule 413 is not meant to be the exclusive avenue for introducing evidence of other crimes by the defendant in sexual assault prosecutions, and

that the admission and consideration of such evidence under other rules will not be limited or impaired. For example, evidence that could be offered under proposed Rule 413 will often be independently admissible for certain purposes under Rule 404(b) (evidence of matters other than "character").

Paragraph (d) defines the term "offense of sexual assault." The definition would apply both in determining whether a currently charged federal offense is an offense of sexual assault for purposes of the Rule, and in determining whether an uncharged offense qualifies as an offense of sexual assault for purposes of admitting evidence of its commission under the Rule. The definition covers federal and State offenses involving conduct proscribed by the chapter of the criminal code relating to sexual abuse (chapter 109A of title 18, U.S. Code) in light of subparagraph (1), and other federal and state offenses that satisfy the general criteria set out in subparagraphs (2)-(5).

Rule 414 concerns criminal prosecutions for child molestation. Its provisions are parallel to those of the sexual assault rule (Rule 413), and should be understood in the same sense, except that the relevant class of offenses is child molestations rather than sexual assaults. The definition of child molestation offenses set out in paragraph (d) of this Rule differs from the corresponding definition of sexual assault offenses in Rule 413 in that (1) it provides that the offense must be committed in relation to a child, defined as a person below the age of fourteen, (2) it includes the child exploitation offenses of chapter 110 of the criminal code within the relevant category, and (3) it does not condition coverage of such offenses on a lack of consent by the child-victim.

Rule 415 applies the same rules to civil actions in which a claim for damages or other relief is predicated on the defendant's alleged commission of an offense of sexual assault or child molestation. Evidence of the defendant's commission of other offenses of the same type would be admissible, and could be considered for its bearing on any matter to which it is relevant.

Background of Section 231 in the Law of Evidence

The common law has traditionally limited the admission of evidence of a defendant's commission of offenses other than the particular crime for which he is on trial. This limitation, however, has never been absolute. The Supreme Court has summarized the general position of the common law on this issue as follows:

Alongside the general principle that prior offenses are inadmissible, despite their relevance to guilt . . . the common law developed broad, vaguely defined exceptions -- such as proof of intent, identity, malice, motive, and plan

-- whose application is left largely to the discretion of the trial judge In short, the common law, like our decision in [Spencer v. Texas], implicitly recognized that any unfairness resulting from admitting prior convictions was more often than not balanced by its probative value and permitted the prosecution to introduce such evidence without demanding any particularly strong justification. (Marshall v. Lonberger, 459 U.S. 422, 438-39 n.6 (1983)).

The Federal Rules of Evidence -- which went into effect in 1975 -- follow the general pattern of traditional evidence rules, in that they reflect a general presumption against admitting evidence of uncharged offenses, but recognize various exceptions to this principle. One exception is set out in Rule 609. Rule 609 incorporates a restricted version of the traditional rule admitting, for purposes of impeachment, evidence of a witness's prior conviction for felonies or crimes involving dishonesty or false statement. The other major provision under which evidence of uncharged offenses may be admitted is Rule 404(b). That rule provides that such evidence is not admissible for the purpose of proving the "character" of the accused, but that it may be admitted as proof concerning any non-character issue:

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 404(b), however, makes no special allowance for admission of evidence of other "crimes, wrongs, or acts" in sex offense prosecutions. There was perhaps little reason for the framers of the Federal Rules of Evidence to focus on this issue, since sex offense prosecutions were not a significant category of federal criminal jurisdiction.

This omission has been widely reproduced in codified state rules of evidence, whose formulation has been strongly influenced by the Federal Rules. The practical effect of this development is that the authority of the courts to admit evidence of uncharged offenses in prosecutions for sexual assaults and child molestations has been clouded, even in states that have traditionally favored a broad approach to admission in this area.

The actual responses of the courts to this development have varied. For example, in State v. McKay, 787 P. 2d 479 (Or. 1990), in which the defendant was accused of molesting his stepdaughter, the court admitted evidence of prior acts of molestation against the girl. The court reached this result by stipulating that evidence of a predisposition to commit sex

crimes against the victim of the charged offense was not evidence of "character" for purposes of the state's version of Rule 404(b), although it apparently would have regarded evidence of a general disposition to commit sex crimes as impermissible "character" evidence.

In Elliot v. State, 600 P. 2d 1044 (1979), the Supreme Court of Wyoming reached a broader result supporting admission, despite a state rule that was essentially the same as Federal Rule 404(b). This was also a prosecution for child molestation. Evidence was admitted that the defendant had attempted to molest the older sister of the victim of the charged offense on a number of previous occasions. The court reconciled this result with Rule 404(b) by indicating that proof of prior acts of molestation would generally be admissible as evidence of "motive" -- one of the traditional "exception" categories that is explicitly mentioned in Rule 404(b). Id. at 1048-49.

In contrast, in Getz v. State, 538 A.2d 726 (1988), the Supreme Court of Delaware overturned the defendant's conviction for raping his 11-year old daughter because evidence that he had also molested her on other occasions was admitted. The court stated that "a lustful disposition or sexual propensity exception to [Rule] 404(b)'s general prohibitions . . . is almost universally recognized in cases involving proof of prior incestuous relations between the defendant and the complaining victim," but that "courts which have rejected this blanket exception have noted that in the absence of a materiality nexus such propensity evidence is difficult to reconcile with the restrictive language of [Rule] 404(b)." The court went on to hold that the disputed evidence in the case was impermissible evidence of character and could not be admitted under the state's Rule 404(b).

The foregoing decisions illustrate the increased jeopardy that the current formulation of the Federal Rules of Evidence has created for effective prosecution in sex offense cases. While the law in this area has never been a model of clarity and consistency, the widespread adoption of codified state rules based on the Federal Rules has aggravated its shortcomings. In jurisdictions that have such codified rules, the courts are no longer free to recognize straightforwardly the need for rules of admission tailored to the distinctive characteristics of sex offense cases or other distinctive categories of crimes. Important evidence of guilt may consequently be excluded in such cases.

Where the courts do admit such evidence, it may require a forced effort to work around the language and standard interpretation of codified rules that restrict admission, or may depend on unpredictable decisions by individual trial judges to allow admission under other "exception" categories. The

establishment of clear, general rules of admission, as set out in proposed Rules 413-415, would resolve these problems under current law in federal proceedings, and would provide a model for comparable reforms in state rules of evidence.

Section 232. Right of the Victim to an Impartial Jury. Section 232 contains provisions to protect the right of crime victims and the public to an impartial jury. Subsection (a) amends Fed. R. Crim. P. 24(b) to equalize the number of peremptory challenges that may be exercised by the defense and the prosecution in jury selection. Currently, the Rule gives the prosecution and defense 3 challenges each in misdemeanor cases and 20 challenges each in capital cases. However, in felony cases -- including rape cases and other felony cases involving violence against women -- the defense is given 10 peremptory challenges and the prosecution is only given 6.

This means that the selection process in felony cases is skewed in the direction of enabling the defense to select a jury that is biased in favor of the defendant and against the victim. Section 232 corrects this imbalance by equalizing the number of peremptory challenges provided to each side in felony cases at 6. A provision equalizing the number of peremptories for the defense and prosecution has previously been passed by the Senate as part of S. 1970 in the 101st Congress.

Subsection (b) of Section 232 amends 18 U.S.C. 243 to prohibit invidious discrimination by the defense in using peremptory challenges. Under the decision in Batson v. Kentucky, 476 U.S. 79 (1986), a prosecutor is barred from using peremptory challenges to exclude potential jurors on the basis of race. However, courts have not generally adopted a like rule for defense attorneys. This means, for example, that a defense attorney could use his peremptories to obtain an all-white jury in a case in which white racists were charged with murdering blacks, and there would be nothing the government could do about it.

Further concerns arise from the possibility that the Batson Rule will be applied -- but only one-sidedly -- to exclusion of jurors on the basis of gender. This would mean, for example, that a defense attorney could use his peremptories to get an all-male or nearly all-male jury in a rape case, and the prosecutor would potentially be barred from using his peremptories to strike male jurors in order to obtain a more balanced jury. In general, crime victims are victimized by rules that leave the defense free to choose an unrepresentative jury, while barring the prosecutor from attempting to redress the imbalance by striking jurors from the complementary population group.

Section 232 resolves this problem by providing that a defense attorney cannot exercise peremptories on the basis of

race or other grounds that would be prohibited to a prosecutor, and by giving the prosecutor the same right to challenge such misconduct by the defense that the defense has in relation to the government.

Section 233. Rules of Professional Conduct for Lawyers in Federal Cases. Section 233 proposes new standards of professional conduct for lawyers involved in federal litigation. The proposed rules are of fundamental importance in preventing abuse by lawyers of victims of crime and civil misconduct, including rape victims and other women victimized by criminal violence, and victims of sexual harassment and discrimination.

Existing standards of professional conduct for lawyers are usually modeled on the American Bar Association Model Rules of Professional Conduct. These existing rules are highly tolerant of practices by lawyers that thwart the search for truth and subject victims and witnesses to gratuitous humiliation and traumatization.

For example, the current rules prohibit a lawyer from offering evidence that he knows to be false, but they contain no corresponding prohibition of attempting to discredit evidence that the lawyer knows to be true. In other words, the current rules countenance deliberate efforts by a lawyer to deceive a tribunal by making it appear that a witness is lying or mistaken, when the lawyer knows that the witness is telling the truth.

The concerns raised by this practice go beyond its inconsistency with "the very nature of a trial as a search for truth." Nix v. Whiteside, 475 U.S. 157, 166 (1986). Victims of rape and other highly serious crimes frequently report that the traumatic effect of their abuse by the criminal justice system is comparable to the traumatic effect of the crime committed against them. The efforts of defense counsel to portray the victim as a liar and perjuring criminal figure prominently in the accounts of why this is so.

No rational justification exists for permitting such conduct by a lawyer if the lawyer knows that the victim is telling the truth because his client has admitted to him that the allegations are true, and the lawyer's investigation of the case shows no grounds to doubt the veracity of the client's admissions. In such a case, the lawyer's effort to discredit the victim is calculated to thwart the search for truth.

The Rules proposed in this section would bar this abuse by prohibiting efforts to discredit evidence that the lawyer knows to be true, as well as perpetuating the existing prohibition of offering evidence that the lawyer knows to be false. This would establish as a standard of professional conduct the principle that was once -- but is no longer -- endorsed by the ABA, that a

lawyer "should not misuse the power of cross-examination or impeachment by employing it to discredit or undermine a witness if he knows the witness is testifying truthfully." ABA Standards, The Defense Function Section 7.6(b) (1974); ABA Standards, The Prosecution Function Section 7(b) (1974).

Another area of concern is the inadequacy of the current rules to curb unjustified delay and other litigation tactics that are designed to make litigation more burdensome or expensive. In rape cases and other criminal cases, for example, lawyers can and do make efforts to slow down the progress of litigation in the hope that witnesses favorable to the other side will become unavailable, that the memories of such witnesses will become less certain or more subject to impeachment by the time of trial, or that the victim will be sufficiently frustrated and traumatized by repeated delays that the case will be dropped.

These abuses are antithetical to the search for truth. Their impact on the lives of crime victims, particularly sex crime victims, are an equally grave concern: "victims... are burdened by irresolution and the realization that they will be called upon to relive their victimization when the case is finally tried. The healing process cannot truly begin until the case can be put behind them. This is especially so for children and victims of sexual assault or any other case involving violence." Report of the President's Task Force on Victims of Crime 75 (1982).

The rules proposed in this section address effectively the litigation abuse that flourishes under the current standards. They make it unequivocally clear that a lawyer is not permitted to pursue such objectives as increasing the expense of litigation for another party, bringing about the loss or deterioration of another party's evidence through delay, or gaining some other advantage over another party as a result of the distress or hardship caused by prolonged proceedings.

A third area of concern is the inadequacy of the ABA Model Rules to permit and require disclosure of information received from clients where such disclosure is necessary to prevent the commission of serious crimes. In this connection, the ABA Model Rules only qualify the requirement of attorney-client confidentiality to the extent of providing that a lawyer "may" reveal information "to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm."

In other words, a lawyer is not permitted under the current ABA standards to make disclosures necessary to prevent the commission of such crimes as child molestation, arson, espionage, blackmail, or defrauding a person of his life's savings, so long as the lawyer does not believe that the offense threatens

imminent death or bodily injury. Moreover, under these standards a lawyer is never required to make such a disclosure to prevent the commission of a crime, regardless of its seriousness -- even such crimes as rape or murder.

The current position of the ABA rules on this issue is regressive in comparison with the earlier ABA Model Code of Professional Responsibility, which permitted disclosure of the client's intention to commit any crime. Not surprisingly, most states have rejected the current ABA position and provide substantially broader authorizations or requirements for disclosure of client confidences to prevent crime. The rules proposed in this section likewise take a broader approach, authorizing disclosure to prevent crimes or other unlawful acts, and requiring disclosure to prevent the commission of violent crimes and serious sex offenses.

The proposed rules are important both for their direct effect in federal litigation, and as a model for reforms by the states in their standards of attorney conduct. These rules are not meant to be an exhaustive statement of the professional responsibilities of lawyers. Rather, they focus on the areas where there is a clear need for reform. Government attorneys will continue to be subject to additional standards and requirements under the policies of their employing agencies, and private attorneys will continue to be subject to additional standards and requirements under the bar disciplinary rules of the States in which they are admitted to practice. The specific provisions of the rules are as follows:

Rule 1

Rule 1 sets out the general scope of the Rules, which apply to representation of clients in relation to federal proceedings. The Rules apply both to government attorneys and to private attorneys in federal practice. Representation in litigation before the federal courts and representation before federal administrative agencies are both covered.

Rule 2

Rule 2 prohibits various abusive practices. Paragraph (a) generally prohibits engaging in any action or course of conduct for the purpose of increasing the expense of litigation to another person. In other words, the fact that proceeding in a particular manner will make litigation more costly for an adversary cannot count as a positive consideration in a lawyer's decision whether to proceed in that manner. Paragraph (b) generally prohibits malicious or petty acts whose only substantial purpose is to hurt others or make life more difficult for them. It is partially comparable to ABA Model Rule 4.4's strictures against acts having no substantial purpose other than

to embarrass or burden a third person, but it adds explicit strictures against pointlessly distressing, harassing, and inconveniencing others.

ABA Model Rule 3.3(a)(4) prohibits a lawyer from offering evidence that he knows to be false. Paragraph (c) of the proposed Rule goes beyond this standard by also prohibiting a lawyer from attempting to discredit evidence that the lawyer knows to be true. This bars both efforts to discredit particular assertions in adverse testimony that the lawyer knows to be true, and efforts at general impeachment of the credibility of an adverse witness who the lawyer knows is telling the truth.

Standards of this type have sometimes been opposed on the view that a lawyer cannot assess or pass judgment on the truth or falsity of matters affecting the interest of his client, and should simply present the best case in favor of the client's position. However, this view, if valid, would be equally fatal to the current prohibition of presenting testimony or other evidence that the lawyer knows to be false. This existing prohibition also presupposes that a lawyer may know matters to be true or false, and may be ethically constrained on the basis of such knowledge.

Realistically, a lawyer often does know facts that implicate the standards of this rule. The client may admit facts adverse to his interest to the lawyer, and the lawyer's investigation of the case may show no grounds to doubt the veracity of the client's admissions. Or prior consultation with the client and the lawyer's investigation may foreclose any genuine doubt that certain damaging facts exist, and show that the client's contrary assertions represent an effort to fabricate a failed claim or defense. See, e.g., Nix v. Whiteside, 475 U.S. 157 (1986).

In such circumstances, presenting evidence that denies these known facts, or attempting to discredit evidence that confirms them, would constitute a deliberate effort to deceive the tribunal. Conduct of this type by a lawyer impedes the search for truth without furthering any legitimate function of advocacy, and frequently involves gratuitous defamation and traumatization of truthful witnesses, particularly in sex offense cases. Paragraph (c) prohibits such actions by lawyers as unprofessional conduct.

The ABA has taken inconsistent positions at different times concerning the propriety of attempting to discredit evidence that a lawyer knows to be true. The original ABA Standards Relating to the Defense Function (section 7.6(b)) and to the Prosecution Function (section 5.7(b)), which were adopted by the ABA House of Delegates in 1971, stated that a lawyer should not misuse the power of cross-examination "to discredit or undermine a witness if he knows that the witness is testifying truthfully." However,

the revised ABA Criminal Justice Standard, adopted by the House of Delegates in 1979, retained this standard for prosecutors, but declined to state a corresponding standard for defense lawyers. Paragraph (c) reflects the view that justice is due to victims and the public as well as defendants, and evenhandedly prohibits this abuse by all lawyers.

Rule 3

Paragraph (a) of Rule 3 states the general principle that a lawyer should seek to expedite the conduct and conclusion of litigation.

Paragraph (b) of Rule 3 specifically prohibits efforts to delay or prolong litigation for illegitimate purposes. Subparagraphs (1) and (2) preclude such efforts where, for example, they are motivated by the hope or expectation that witnesses helpful to an adverse party will become unavailable, or that such witnesses' memories will become less certain or more subject to impeachment if proceedings are delayed. Subparagraph (3) prohibits efforts to secure other advantages arising from the expense, frustration, distress, or other hardship that is caused by prolonged or delayed proceedings -- for example, trying to win by depleting an adverse party's financial resources for litigation, or attempting to wear down an adverse party or secure a favorable settlement through the distress or hardship caused by prolonged litigation.

Rule 4

Lawyers must normally maintain the confidentiality of information received from clients. In some circumstances, however, this presumption must give way to overriding considerations of fidelity to the law or respect for the rights of others: Rule 4 identifies a number of situations in which disclosure of such information is permitted or required. Paragraph (a) permits disclosure to the extent necessary to prevent violent crimes, crimes involving a substantial risk of death or serious injury, and crimes of sexual assault or child molestation.

Section 234. Statutory Presumption against Child Custody. Section 234 provides that it is the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

Section 235. Full Faith and Credit for Protective Orders. Section 235 requires the States to give full faith and credit to valid protective orders of other States.

Section 236. Mandatory HIV-Testing and Penalty Enhancement in Sexual Abuse. The trauma of victims of sex crimes may be greatly magnified by the fear of contracting AIDS as a result of the attack. Section 1804 of the Crime Control Act of 1990 created a funding incentive for the States to require HIV testing of sex offenders and disclosure of the test results to the victim. There is, however, no comparable requirement or authorization for federal sex offense cases.

Section 236 remedies this omission by requiring HIV testing in federal cases involving a risk of HIV transmission. It also requires enhanced penalties for federal sex offenders who risk HIV infection of their victims.

Section 236 would add a new section (proposed section 2247) to the chapter of Title 18 of the United States Code that defines the federal crimes of sexual abuse (chapter 109A). Subsection (a) of proposed section 2247 would require HIV testing of a person charged with an offense under chapter 109A, at the time of the pre-trial release determination for the person, unless the judicial officer determines that the person's conduct created no risk of transmission of the virus to the victim. The test would be conducted within 24 hours or as soon thereafter as feasible, and in any event before the person is released. Two follow-up tests would also be required (six and twelve months following the initial test) for persons testing negative. Under subsection (d), the results of the HIV test would be disclosed to the person tested, to the attorney for the government, and -- most importantly -- the victim or the victim's parent or guardian.

In some instances testing may not be ordered pursuant to proposed 18 U.S.C. 2247(a) because the information available at the time of the pre-trial release determination indicated that the person's conduct created no risk of HIV transmission, but in light of information developed at a later time it may subsequently appear to the court that the person's conduct may have risked transmission of the virus to the victim. Subsection (b) of proposed section 2247 accordingly authorizes the court to order testing at a later time if testing did not occur at the time of the pre-trial release determination.

Subsection (c) of proposed section 2247 provides that a requirement of follow-up HIV testing is canceled if the person tests positive -- in which case further testing would be superfluous -- or if the person is acquitted or all charges under chapter 109A are dismissed.

Subsection (e) of proposed section 2247 directs the Sentencing Commission to provide enhanced penalties for offenders who know or have reason to know that they are HIV-positive and who engage or attempt to engage in criminal conduct that creates a risk of transmission of the virus to the victim. This

requirement reflects the higher degree of moral reprehensibility and depravity involved in the commission of a crime when it risks transmission of a lethal illness to the victim, and the exceptional dangerousness of sex offenders who create such a risk to the victims of their crimes.

Section 237. Payment of Cost of HIV Testing for Victim. Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990, enacted as part of the Crime Control Act of 1990, currently provides that a federal government agency investigating a sexual assault shall pay the costs of a physical examination of the victim, if the examination is necessary or useful for investigative purposes. Section 237 in this title extends this provision to require payment for a) up to two HIV tests for the victim in the twelve months following the sexual assault, and b) the cost of a counselling session by a medically trained professional on the accuracy of such tests and the risk of transmission of the human immunodeficiency virus to the victim as a result of the assault.

SUBTITLE E -- National Task Force on Violence against Women. This subtitle establishes a "National Task Force on Violence against Women." The general purpose of the task force is to develop a uniform federal, State, and local law enforcement strategy aimed at protecting women against violent crime, punishing persons who commit such crimes, and enhancing the rights of victims.

The task force shall consist of up to 10 persons, who shall be appointed by the Attorney General not later than 60 days after the date of enactment. Not later than 1 year after the date that the task force is fully constituted, the Attorney General shall submit a detailed report to Congress on the findings and recommendations of the task force.

SUBTITLE F -- Prevention of Sexual Assault. This subtitle authorizes \$25 million for each of fiscal years 1992, 1993, and 1994 to establish a grant program under the Victims of Crime Act of 1984 for rape prevention and education.

Grants under this subtitle may be used to support rape prevention and education programs conducted by rape crisis centers or similar nongovernmental nonprofit entities, including programs that a) conduct educational seminars, b) operate hotlines, c) conduct training programs for professionals, d) prepare informational materials, and e) undertake other efforts to increase awareness of the facts about, or help prevent, sexual assault.

To be eligible to receive a grant under this subtitle, a State must assure the Attorney General that a) the State will use at least 15 percent of the grant money to support education

programs targeted for junior high school and high school students, and b) the State will pay for the full cost of forensic medical examinations for the victims of sexual assault.

SUBTITLE G -- Domestic Violence; Funding for Shelters; Amendments to the Family Violence Prevention and Services Act. Many of the provisions of this subtitle are modelled after the provisions contained in S. 3134, the "Domestic Violence Prevention Act of 1990," which was introduced last year by Senator Dan Coats.

Section 261. Short Title. Section 261 sets forth the short title of the subtitle, The "Domestic Violence Prevention Act of 1991."

Section 262. Expansion of Purpose. Section 262 expands the purpose of the Family Violence Prevention and Services Act to increase public awareness about, and prevention of, domestic violence.

Sections 263-264. Expansion of State Demonstration Grant Program. Sections 263 and Section 264 authorize the Secretary of HHS to make grants for public information campaigns about domestic violence.

Section 265. State Commissions on Domestic Violence. Section 265 requires states to provide assurances, as a condition of receiving Family Violence funds, that they will establish a Commission on Domestic Violence to examine a variety of issues including the use of mandatory arrest of accused offenders, the adoption of "no-drop" prosecution policies, the consistency of sentencing practices, and the testifying by victims at post-conviction and release hearings.

Section 266. Indian Tribes. Section 266 authorizes a minimum grant of \$1,000,000 for Family Violence grants to Indian tribes.

Section 267. Funding Limitations. Section 267 eliminates the \$150,000 cumulative grant limitation for states.

Section 268. Grants to Entities other than States; Local Share. Section 268 reduces the match required for grants to entities other than States to 50%.

Section 269. Shelter and Related Assistance; Rural Areas. Section 269 provides a list of services that should be provided by shelters and safe homes receiving assistance under the Family Violence Prevention and Services Act. Section 269 also provides that not less than 20% of the funds available under Section 303 of the Family Violence Prevention and Services Act must be distributed to entities in rural areas.

Section 270. Law Enforcement Training and Technical Assistance Grants. Section 270 requires that law enforcement training grants go to those with experience providing training and technical assistance to law enforcement personnel on a national or regional basis.

Section 271. Authorization of Appropriations. Section 271 authorizes an additional \$75 million for each of fiscal years 1991, 1992, and 1993 to provide grants under the Family Violence Prevention and Services Act.

Section 272. Report on Recordkeeping. Section 272 requires the Attorney General to complete a study of problems associated with recordkeeping of criminal complaints involving domestic violence. Report is to be completed within 120 days.

TITLE III -- EMPLOYMENT OPPORTUNITIES

SUBTITLE A -- Glass Ceiling Commission

Section 301. Short Title. Section 301 sets forth the short title of the subtitle, the "Glass Ceiling Act of 1991".

Section 302. Findings and Purpose. Section 302 sets forth the findings and purpose of the subtitle.

Section 303. Establishment of Glass Ceiling Commission. Section 303 establishes the "Glass Ceiling Commission" and authorizes the appointment of 17 persons, five of whom are appointed by the President, three of whom are appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate, one of whom is appointed by the Majority Leader of the House of Representatives, one of whom is appointed by the Minority Leader of the House of Representatives, one of whom is appointed by the Majority Leader of the Senate, one of whom is appointed by the Minority Leader of the Senate, two of whom are Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives, two of whom are Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate, and one of whom is the Secretary of Labor who is also the Chairperson of the Commission. This section also specifies that in making their appointments, the Speaker of the House of Representatives and the Majority Leader of the Senate, in connection with their jointly-made appointments, and the President should consider the background of each appointee, including individuals from business and from organizations representing women and minorities, as well as individuals with academic expertise or other recognized ability regarding employment and discrimination issues. Appointment is for the life of the Commission.

This section also specifies rates of pay for members who are not public officials, authorizes payment for travel costs, fixes a quorum for meetings, and requires that the Commission hold a minimum of five meetings prior to the completion of its report and once a year thereafter.

Section 304. Research on Advancement of Women and Minorities to Executive Management and Senior Decisionmaking Positions in Business. Section 304 requires the Commission to conduct a comprehensive study concerning opportunities for, and artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business, including the preparedness of women and minorities to advance to upper-level decisionmaking positions, businesses in which women and minorities are promoted to such positions and those in which they do not receive advancement opportunities, practices and policies which result in a diverse workforce and the successful promotion of women and minorities to senior management positions, and other matters related to the glass ceiling. This section also requires that the report contain recommendations relating to the promotion of opportunities for, and the elimination of artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business. This section further provides that the report of the Commission must be completed within 15 months after the date of enactment and identifies to whom it is to be sent. Finally, this section provides that the Commission may conduct such additional research and study relating to the glass ceiling as a majority of its members determines to be necessary upon the completion and dissemination of its report.

Section 305. Establishment of the National Award for Diversity and Excellence in American Executive Management. Section 305 establishes the "National Award for Diversity and Excellence in American Executive Management" to be presented on an annual basis by the President or the designated representative of the President to a business which has made substantial efforts to promote the opportunities and developmental experiences of women and minorities to foster their advancement to executive management and senior decisionmaking positions (including the elimination of artificial barriers to such advancement) and is deserving special recognition as a consequence.

Section 306. Powers of the Commission. Section 306 prescribes the powers of the Commission, including conducting hearings, taking testimony, entering into contracts, making expenditures, and receiving voluntary service, gifts and donations.

Section 307. Confidentiality of Information. Section 307 requires that all information acquired by the Commission in

carrying out its duties relating to the employment practices and procedures of individual businesses and regarding employees of the business shall be kept confidential unless the prior written consent of the particular business or employee, as the case may be, is obtained. Information concerning the aggregate employment practices and procedures of a class or group of businesses or the employees of such businesses is not subject to this confidentiality restriction.

Section 308. Staff and Consultants. Section 308 authorizes the Commission to appoint staff and employ experts and consultants and sets out rates of pay for such individuals. This section also authorizes the Commission to obtain materials, personnel, or other support from Federal agencies.

Section 309. Authorization of Appropriations. Section 309 authorizes the appropriation of such sums as are necessary to carry out the provisions of the subtitle which sums are to remain available until spent, without fiscal year limitation.

Section 310. Termination. Section 310 provides that the Commission and the authority to make the award will terminate four years after the date of enactment.

SUBTITLE B -- Opportunities in Apprenticeship

Section 321. Short Title. Section 321 sets forth the short title of the subtitle, the "Opportunities in Apprenticeship Act of 1991".

Section 322. Findings and Purpose. Section 322 sets forth the findings and purpose of the subtitle.

Section 323. Outreach and Education Program. Section 323 directs the Secretary of Labor to establish an outreach and education program designed to expand the opportunities for women and minorities in apprenticeship programs registered with the Department of Labor. Such outreach and education program shall include the development and dissemination of information on apprenticeship programs, the provision of technical assistance, and the establishment and promotion of model preapprenticeship and apprenticeship programs directed at women and minorities. The Secretary's program shall include assistance to such groups and entities as educational institutions, employers, employer associations, unions, state apprenticeship councils, sponsors of apprenticeship programs, and organizations representing and assisting women and minorities.

This section also provides that the Secretary is authorized to award grants from appropriated funds to the foregoing groups and entities as part of the education and outreach program. Such grants shall be based on an application for assistance pursuant

to standards set by the Secretary, with the grant amount equaling up to 75 percent of the costs of the outreach activities undertaken by the recipient.

Section 324. Preapprenticeship Training Grant Program.

Section 324 directs the Secretary of Labor to establish a program of grants to sponsors of registered apprenticeship programs in connection with the provision of preapprenticeship training and related support services to women and minorities. Sponsors of eligible preapprenticeship training programs must indicate that positions are available in the apprenticeship program for which the preapprenticeship training is provided and use all reasonable efforts to place eligible participants in the apprenticeship program following completion of such preparatory training. Such grants shall be based on an application for assistance pursuant to standards set by the Secretary, with the grant amount equaling up to 75 percent of the costs of the preapprenticeship and supportive service activities undertaken by the recipient.

Section 325. Study of Participation of Women and Minorities in Apprenticeship. Section 325 requires the Secretary to conduct a comprehensive study relating to the participation of women and minorities in registered apprenticeship programs, including barriers to participation in such programs, recruitment, retention in such programs, preapprenticeship training, employment success following completion of the apprenticeship program, model apprenticeship programs, and other relevant issues affecting the participation of women and minorities in registered apprenticeship programs. This Section also requires that the report of the Secretary be completed within two years after the date of enactment and identifies to whom it is to be sent.

Section 326. Authorization of Appropriations. Section 326 authorizes the appropriation of \$8 million for fiscal year 1992 for the education and outreach grants pursuant to section 323(e) and \$2 million for the activities of the Department of Labor in connection with its outreach and education program and the completion of the study. This section further authorizes the appropriation of \$15 million for fiscal year 1992 for the preapprenticeship grants pursuant to section 324. Finally, this section provides that the Secretary may reserve not more than five percent of such appropriated funds to carry out the enforcement of nondiscrimination and affirmative action requirements relating to registered apprenticeship programs, including the training of Department of Labor personnel for such enforcement purposes.

SUBTITLE C -- Opportunities for Alternative Work Arrangements

This subtitle expresses the sense of the Congress that the Office of Personnel Management has made commendable efforts to develop alternative work arrangements through flexible scheduling

and job sharing programs and that such efforts should be continued. Alternative work arrangements assist federal workers in meeting family responsibilities, and through OPM's efforts, such programs serve as a model for state and local governments and private sector employers and their respective employees.

