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CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON JUDICIARY

PUBLIC HEARING

ON

LEGAL PROBLEMS OF RAPE

NCJRS

MAY 10 1988

ACQUISITIONS

October 30, 1987
9:30 a.m. - 1:30 p.m.
State Building, Oakland, California

CHAIRMAN: HONORABLE BILL LOCKYER

MEMBERS:

Ed Davis, Vice Chairman
John Doolittle
Barry Keene
Milton Marks
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CHAIRMAN BILL LOCKYER: I think I'd like to begin. Good morning. My name is Bill Lockyer. I'm the State Senator from Southern Alameda County and chair the Judiciary Committee.

The impetus for today's discussion is to try to develop a record addressing the issue of rape in our society, and particularly California, hoping to focus not just on the dramatic and alarming statistics which we've heard many times that detail the extraordinary incidence of rape in our country and the trauma and dreadful experiences associated with that particular assault but to try to push us into thinking about potential legislative solutions. It's always, it seems, harder to figure out what to do about a problem than it is to state that there is a problem. I hope that there isn't significant disagreement about the existence of the problem, but I am personally unclear about what might improve the situation, particularly from the point of view of a lawmaker that would like to know what can state government do to more aggressively address this problem.

We've asked a variety of people and organizations to share their thoughts with us. I hope that some of my colleagues will join us shortly. If not, that's okay with me too. I'm interested in the issue and happy to hear what each of you have to say.

So let's start. I guess the main rule is one that you're generally familiar with, that we try to keep people focused and non-redundant. That's a basic rule to alleviate a common problem.

Susan Mooney, do you want to begin, please?

MS. SUSAN MOONEY: Do I have to talk to the microphone?

CHAIRMAN LOCKYER: You can do it any way you want it. We'd like -- I mean partly what we do when it's a situation where it's just me or a small number is to try to create a record so that we can circulate it among the staff and interested groups. So that's the only point of the microphone, is to have you heard by more than just me.

MS. MOONEY: Okay. Well, first of all, I'd like to thank you for holding these hearings. I think that we're all enthusiastic about what the possible outcome of it can be.

My name is Susan Mooney and I'm representing National Action Against Rape. We are a membership organization in California with about 30,000 members. I also am chair of the Legislative Caucus for the California State Coalition of Rape Crisis Centers and chair of the Legislative Committee for the National Coalition Against Sexual Assault.

As we look at sexual assault and its effects on both victims and perpetrators, it's important that we remember that sexual assault is more than a crime. It is a symptom of a society that values power more than equality. It condones violence as a tool to gain power. Sexual assault does not exist in isolation from any other social dilemmas that this country is facing.

As we examine the criminal justice system and consider legislative changes, I hope that we can create a system that will reflect the social attitudes that we want reinforced rather than perpetuate lies about sexual assault and the effects of this kind of victimization.

As we slowly change our society and how we behave toward each other, we must have a system that is responsive to the needs of victims of sexual assault. We've made progress but we have to

follow through. We must be cognizant of the fact that making legislative changes may not be enough. There must be systems to follow the implementation and application of new laws. This has not always been the practice thus far. We have all fallen down on our responsibility to ensure that the needs of victims of sexual assault are a primary consideration when working with the criminal justice system. For instance, in 1985, Senator Torres sponsored SB 46 to allow children 10 and under to testify via two-way closed-circuit TV. Penal Code Section 1347(b) requires the prosecuting attorney or the court to request that this practice be used. According to rape crisis centers and child advocates, this method of allowing a child to testify is never used.

I am contacted regularly by both advocates and parents of child victims on how they can make sure that this happens. Unfortunately, my only suggestion is to work with the District Attorney to encourage them to protect the child from further harm by using closed-circuit TV. I have never gotten a call saying that the DA had decided to use Section 1347 to benefit the child. Typically, the parent or the advocate says the DA is reluctant because they are afraid that if they win the case, it will be overturned by the Appellate Court. Judicial Counsel is to report to the Legislature on or before January 1st, 1988, on the experience of courts when using closed-circuit TV. I'm certain that we will all learn a great deal from whatever they have to report. But additionally, I hope that we have already learned that waiting for methods to be implemented is not enough. We must encourage implementation.

Added to the parents' and advocates' frustration of the nonuse of capabilities like closed-circuit TV is the fact that victims do not have legal representation to ensure that all of their rights are upheld. We must rely on the integrity of the DA whose job is to represent the state, not the victim; this paradox for prosecuting attorneys is a major failing of the criminal justice system. The days of assuming that the only role of the system is to fairly try and punish criminals is gone. The system must also be fair and compassionate to victims of violent crimes, sexual assault in particular.

Is the system compassionate and fair at this time? I don't think so. How can we even begin to imagine that this is true when most rapes are not reported because of victims' perception of the system? Are the victims wrong? I don't think so. Most reports of acquaintance rape are met with disbelief by the investigating officer and are not charged by the DA. Were the victims treated with sensitivity on the part of police officers and DAs? I believe that we cannot assume that police officers and district attorneys are aware of the realities of sexual assault or immune from believing all the misconceptions that surround these assaults. We can't assume that all professionals who work within the criminal justice system would benefit from education under special circumstances and effects of sexual assault. I'm talking about mandatory training for all police officers and DAs. There is no reason why a victim of sexual assault should have to cope with a police officer who is uncomfortable or embarrassed to talk to her about her victimization or perhaps even believe that all women who are raped asked for it.

These interviews are sensitive and embarrassing for the victim. They should not sense reluctance on the part of the officer to deal with her victimization. It takes training and practice to be able to ask victims the types of questions that must be asked in a sensitive and compassionate

way. Beyond asking the right questions the right way, officers must be able to avoid asking the wrong questions; they must avoid statements of judgment or disbelief. This system in society as a whole must come around to the reality that a person's victimization is not their fault. How can we expect society to accept this belief if we do not think it as enough of a priority to teach figures of authority that? And what of district attorneys?

In 1980, the Legislature mandated the formation of the Sexual Assault Advisory Committee to be established by the Office of Criminal Justice Planning. One of the functions of this committee was to develop the course of training for district attorneys in the investigation and prosecution of sexual assault cases. This training has been developed, but was the implementation of the training program effective? The legislation does not make it mandatory for district attorneys to receive this training to either charge or prosecute these cases. If this were mandatory, I believe that the sensitivity for victims of sexual assault would not vary as greatly from county to county as it does now. It is a tragedy that in some counties we have DAs that are terrific at working with sexual assault victims and prosecuting new cases, while in others, the opposite is true. The caliber of the DAs who charge and prosecute sexual assault cases within a single county may not be consistent either, particularly since most counties rotate the responsibilities of DAs on a regular basis. Mandatory training for district attorneys is the only logical answer.

My final remark regarding the responsibility of district attorneys in handling rape cases is that it is not acceptable to refuse to charge cases under the guise of protecting the victim. Too often we hear that a DA does not want to charge because they do not think they can win the case, and that would be more traumatic to the victim than no trial at all. This is a classic example of a lack of victim's sensitivity and a need for training. One of the most important factors in the recovery from sexual assault is to regain control over one's own life. To have a DA make this type of decision under these pretenses is adverse to the recovery process. DAs must learn that a woman who has been assaulted has the right to know the truth. If a DA does not think there is a good case, then work with the victim and the rape crisis counselor on that issue. I have never understood why, if DAs base charging on whether or not they can win a case; we have a jury system. Charges must be filed whenever there is a sexual assault if we expect society to believe that we take the crime of sexual assault and the victimization of women and children seriously.

When I look at our system and try to find possible answers to the problems that victims face, I always find myself turning to my colleagues in the anti-rape movement. They are the reason we know what we do about the effects of sexual assault and the needs of victims. We can toss around all the legal mumbo jumbo we want and realize that money is always short and there are a million reasons why we can't have the criminal justice system evolve into one that serves everyone's needs. But the bottom line is that rape crisis counselors know that what we are talking about is people's lives. They have been confidants to victims for over 15 years. They know the devastations that victims face from the inexcusable re-victimization by the system. The system must reflect their expertise and accept their guidance when it comes to the needs of sexual assault victims.

Because of rape crisis counselors, we know that victims of sexual assault need the support of

someone who is not part of the legal system to talk to about their feelings and fears. Sexual assault victims must be able to maintain some part of their emotional healing process that is not open to public scrutiny and question. They must also be able to express their feelings about the assault, whatever they may be, so that they can work through their dealing from victimization and come to some understanding in their lives that it was not their fault.

We also know that the traumatic effects of sexual assault are intensified when a victim participates in the criminal justice system, giving testimony about their assault as if you had to ask them to relive the terror, goes on on the stand and during the period between the assault and the trial.

The general public, juries in particular, are not versed on the effects of sexual assault rape trauma syndrome. They cannot be expected to understand a victim's reaction to the assault without being educated. District attorneys should be utilizing expert witnesses to do this education. They should be using experienced rape crisis counselors to make juries understand what happens to a victim when they are sexually assaulted. Effects of victimization and socialization must be brought up in trials. How else can we be sure that a group of 12 people all have some awareness of the reasons why a woman may wait several days before reporting the assault? Why would two people know each other and it is still rape when the woman refuses? Why women often blame themselves for their own victimization; and most of all, why the perpetrator most often is going to use the defense that the victim consented. These are all major factors in society's reluctance to believe women and children when they report their victimization.

Sexual assault most often is not a random crime. It is not a crime committed in the heat of anger or passion. It does not always leave physical scars. What sexual assault does do is devastate the victim emotionally and serve as a barrier in many areas for the rest of her life. This is not by accident. It is an integral part of the social structure we are here to talk about. This society sets us all up — men to fail unless they are what society would consider the master of their worlds, and women to be abused or to spend their lives in fear of abuse. None of us is safe from the effects of sexual assault.

We are especially unsafe because we know of no proven treatment program for offenders. There is no proof that longer sentences deter individuals from committing sexual assault. It makes little or no sense to assume that when an offender spends time in prison that he will somehow have magically overcome a lifetime of socialization. We would like for them to be kept off the streets for as long as possible.

I believe that the Legislature, and this committee in particular, has done a great deal to facilitate that. Those convicted of serious felonies should now be serving much longer sentences than in the past since the installment of enhancements. We also support Senator Davis' concept of eliminating work time credit for serious felons. Legislation such as this must be in conjunction with supportive prevention programs. The real answers of creating a world without sexual assault is not treating those who have already been socialized into unacceptable behavior. It is in our future generations. It's training young people about inner-personal dynamics, teaching them that racism,

homophobia, ablism, sexism, and all forms of oppression are destructive. We must support programs in this country which are working with children and young adults to prevent them from being victims of sexual assault and teaching them how to grow up not to be perpetrators.

The testimony that will be heard today will give us reason to be hopeful. Much work is being done. But the phenomenon of sexual assault is pervasive in all segments of our society. We have a long road to travel.

I would like to reiterate the most pressing changes that we think need to be made. One, mandatory training for police and DAs must be instituted. Again, we cannot assume that these representatives of the criminal justice system have the necessary knowledge, skills, and sensitivity to make the system work for sexual assault victims. Two, the system that we devise together to help victims of sexual assault must be followed through with implementation. When a law is passed to make the system more sensitive, it must not just sit on the books. It has to be used. The criminal justice system must be used to devise a monitoring schedule, a system, to ensure that this happens. Three, rape crisis centers are our most valuable asset in understanding sexual assault. Their input should be sought whenever designing and implementing programs. This state has an active coalition of experts in the field of services, survivors of sexual assault; they can offer that invaluable experience and knowledge.

In conclusion, National Action Against Rape supports this committee's commitment to examining the issue of sexual assault and how our system responds to both victims and perpetrators. We must remember that ending the sexual assault of women and children in this country will only happen when we change the attitudes which foster and condone sexual assault. We must have a judicial system which reflects an attitude of punishing offenders and empowering victims.

Again, I thank you for the opportunity to talk.

CHAIRMAN LOCKYER: Thank you, Ms. Mooney. Very thoughtful comments.

MS. MOONEY: Thank you.

CHAIRMAN LOCKYER: I mainly just listen; unless something provokes me, I will not interrupt your testimony and maybe just try to put the pieces of the testimony puzzle together as the testimony goes on. I guess Mr. Howenstein is next.

MR. ALBERT HOWENSTEIN: As Mrs. Mooney just said, I would like to reiterate our expression of appreciation to the Senator and to the committee for continuing to look at the issues surrounding the vicious crime of rape as a crime of violence and recognize that it is not a crime of passion.

For the past 15 years, I think the State of California has been making steady progress in improving both the system's attitude as it relates to rape and taking a more responsible attitude but also supporting the constant support systems that facilitate the recovery of the victim and recognize the tremendous trauma that a victim experiences. But also on behalf of the office, I want to express our appreciation to the Legislature for allowing us in recent years to have the availability of more funds toward the expansion of our rape crisis programs -- I mean our support for the rape crises programs -- and their service to rape victims in this state and for their prevention activities which are very, very critical. During the same time, we have -- and I think as Susan addressed very

critically -- we do use the technical advisory committee from rape crisis practitioners to assist us in the development of the programs to be sure that they are on target and responsive to the needs that victims experience.

I appreciated also hearing your comments, if it's okay for me to digress briefly, as it relates to the training for district attorneys. And we have been able to work with the DA's association with special funding to enhance that training. And I think it's something that needs to be continued and supported. And also in the area of treatment programs for offenders, we also have the privilege of working with several pilot projects in identifying what kind of treatment programs may be effective in dealing with this type of violent perpetrator. And it gives us a well-rounded approach, I think, at the office, the ability to deal with the victimization as well as the criminal offense, so that we can continue to strengthen the system. We look forward to continue to work in those areas.

We realize that the problem of sexual assault in California is a tremendous magnitude with an average of around 15,000 reported rapes annually and over 20,000 annually reported cases of child sexual abuse. The realization that probably -- I think the standard figures are probably 1 in 10 of the assaults that are actually reported which then identifies that we do have a very significant problem in this state as Susan, I think, very adequately addressed.

I believe it was encouraged that we kind of hold our comments today to the new medical protocol for the examination of rape victims, male victims of sexual assault as well as children who have been victimized in this same area. I'll try to do that as briefly as I can.

In 19 ...

CHAIRMAN LOCKYER: I don't want to restrict you to do that.

MR. HOWENSTEIN: Oh, okay.

CHAIRMAN LOCKYER: That seems to be -- I mean I don't want to put you in a way in which you haven't had a chance to think about some testimony. We'll have a substantive hearing in L.A., as I mentioned, specifically or mainly on rape protocol issue. But I'd be interested in hearing any thoughts that might be constructive.

MR. HOWENSTEIN: Okay. Then I'll try to briefly hit on the medical protocol issues since it has taken a great deal of my time over the last two months, specifically right over the last three years.

The medical protocol was, I think, an effort when it was first adopted in 1978, to assist the victim and to responsibly treat the victim at the time of the assault when they are gathering evidence to assist in the court preparation and in prosecution of the perpetrators of the crime. Knowing that victims have not historically been treated well through the justice system, this was a great opportunity, I think, to give cooperation and collaboration for the victim and to give more substance to the prosecution activities.

The protocol that was first adopted in 1978 had a few problems with it. It was under Title 22; it was adopted by the Health Services with their statutory authority; and the Department of Justice, it had the responsibility to develop a reporting forum. Though we feel, that since it did not mandate statewide utilization of the protocol nor the examination, we were not still treating victims as consistently and as fairly and as thoroughly as we should.

In 1982, Assemblywoman Waters introduced legislation and directed our office to then review the existing protocol and to establish a committee for the review and refinement of the protocol. That committee met and looked over the protocol as was existing and found that there was a great deal more work that needed to be done. Senator John Seymour's bill in 1986 codified more responsibility and codified the findings of the protocol and gave us more enforcement both in the development and the evolution of it.

What we did in the review of the old protocol versus the new protocol was find that certain kinds of things were not consistent and the safety examinations were not consistent, that the prosecutors were not getting consistent information; and more seriously than anything else, there was not always the sensitivity to the impact of the sexual assault on the victim.

The new protocol is very, very, very similar to the existing protocol. The only difference that we really ran into was that the new protocol required a referral or a utilization of the 505 acute care hospitals in the state, that when a victim was brought to the hospital, that they either have the trained staff or the adopted referral protocol. The previous protocol was rather moot on that. It did not speak to the issue which then went to the inconsistent application of the utilization of the previous protocol.

Part of the provision of the referral aspect too, which became very controversial in Southern California for the crime, is on the road to, I think, significant revision and resolution, was adopted into law at the encouragement of the hospital association. As we were looking at the mandatory utilization of the protocol statewide, there was concern by the hospitals in relation to appropriate training and qualifying staff to conduct the exams. And so they encouraged -- or actually, they were opposed to the legislation until such time as the referral aspect was adopted.

During the development of the new protocol, we established a ...

CHAIRMAN LOCKYER: How was the legislation changed?

MR. HOWENSTEIN: It changed as a result of the opinion or the efforts of the Hospital Association. They were opposed to the implementation of the protocol when it mandated that all -- a few care hospitals in the state to utilize the new protocol. And they suggested that there be a referral aspect so that every hospital having implemented the protocol or referred to a participating hospital with the caveat that they must notify the prosecutor in that county, the law enforcement agency, and the victim service programs.

CHAIRMAN LOCKYER: Are they in the hospital associations?

MR. HOWENSTEIN: Withdrew -- they withdrew their opposition and supported the bill at that time.

During the development of the protocol, as I was indicating, we established a 20-member advisory committee: physicians, criminalists, prosecutors, nurses, all the practitioners who would be involved in a protocol utilization and case preparation. Also during the development of it, and during nearly a two-year period of intensified work on the part of this committee, we field tested the protocol in nine different hospitals. We held public hearings in relation to the content of the protocol. We also accepted recommendations in writing and responded to everyone who presented

ideas and concepts so that we can be sure that the protocol did meet, though, the needs of the victim, the needs of the law enforcement agencies, and many of the prosecutors so that we could support that victim during the prosecutorial stages in these kinds of cases.

The interesting aspect of one of the new issues that came up on the protocol was the change in format. Under the old format, the form that was used, the old Department of Justice form, was about two pages and it relied upon narrative writing. And our prosecutors found that they were not getting good histories, that they were not able to see the collection of the evidence; they weren't able to facilitate their key presentation.

In talking with the medical professionals as well as the prosecutors, they recommended the new format that we adopted, which was to check-box very careful and thorough, step-by-step examination procedures that allow the practitioners — I was talking with the nurse yesterday. It was the hospitals that opted out in every conversation or opted back in, her comment was that if she could give that in that form to any medical professional, that even without training, that it was so thorough and so straightforward, that they could follow it right through and do a very comprehensive and complete exam. And as the prosecutor indicated at one of our other hearings that it was a godsend because it gave them all of the information that they needed to collaborate and cooperate, the evidence, collection, and the thoroughness of the collection. And also in doing it in the way we did, there was one other change in the protocol that required the air drying of the swabs that were taken in order to be sure that the evidence that was collected was properly preserved. The problem in the past had been that maybe a swab that was taken was collected and maybe packaged when it was wet which then caused the deterioration of the materials which then destroyed any evidentiary value. The new air drying allows for the preservation of the genetic markers that are so critical to helping in the identification of suspects in cases of this nature. So the change was actually rather minimal in the new protocol aspect.

As we worked with the implementation of the protocol, it is also apparent to me as we finalize the protocol and the guidelines. And the guidelines that went with the protocol were designed to increase the sensitivity of the medical professionals as to the importance of the sensitive reaction to the victim. We have found years ago that one of the most critical factors in the recovery of a rape victim was sensitive and timely response by the first professionals who dealt with that victim. That's both the law enforcement professional as well as the medical professional. A good, sensitive response set the tenor for the recovery and helped that victim through the rest of that very traumatic process.

In the implementation of the protocol, as the medical professionals responded, they found it effective; we found it to meet their needs. We did identify during the process some preexisting problems in Los Angeles that subsequently got a great deal of attention. And that was the payment and compensation aspects for the examination. The state law was very clear on that and it has been for years. And the two points that I thought were very critical was whether there's been a prohibition for the billing of a victim for the evidence gathering process. Historically, there had been bills to the victim for the exam. That is corrected by state law.

Then there was also legislation that identified how the examinations would be paid; that if it

was conducted in a county hospital, regardless of jurisdiction or boards, that the bill would be paid by the county; if the exam was conducted in a private hospital or in a physician's office, that the bill would be then submitted to the local law enforcement agency for payment.

Also, there's the historic factor that law enforcement agencies do pay for all the costs for the law enforcement exam -- investigations, both forensics as well as all efforts in the investigation of criminal conduct in criminal cases. And so we need to be sure that that problem was kind of resolved. They kept working on that in Southern California, worked it out well. But the issue of payment did come up during the hearings or during the development of the protocol. We did it for an ad hoc committee strictly on the impetus of Los Angeles representatives to review the compensation aspects. They came up with several suggestions.

Senator Watson last year introduced Senate Bill 180 that would allow for a third-party billing. On certain of these cases and certain aspects, that would fit into a two-year bill because of resistance of the, I think it was, the insurance industry. And that kind of, I think, addressed that.

CHAIRMAN LOCKYER: Do you think the financial issue has been resolved?

MR. HOWENSTEIN: I can't say that they've been totally resolved, Senator. I do know that the City of Los Angeles has agreed to begin paying \$200 as opposed to \$16.85, which was the negotiated fee that they established, I think, about ten years earlier. And reportedly, as of yesterday, at another subcommittee meeting that we were at in Los Angeles, that the Sheriff's Office is prepared to leave that same compensation level. And the Hospital Association in Los Angeles has encouraged their hospitals to continue to participate in the rape examination to make it easier on the victims and cut out the re-traumatization that had been occurring because of the shuttling of victims from place to place.

With those problems first, the committee got out of, with the subcommittee working on the compensation issue and Senator Watson's involvement with SB 180, the compensation aspect no longer seemed to be an issue for the protocol's committee, in the development of it. It was in August of this year that Gail Abarbanel of the rape crisis center in Santa Monica gave me a call and indicated that the problems were first beginning in Los Angeles. And she set up the meeting for me with representatives of Los Angeles Police Department, city officials to discuss big compensation issues. We had that meeting in late August. As the problem continued, I met with the chairman of the board of supervisors of Los Angeles and encouraged their involvement in similar activities that we had commenced with the city officials in Los Angeles to attempt to do some resolution of this. And we had been meeting, and then they formed a very large committee to do a thorough analysis of the protocol and of its effectiveness and of its efficacy and deal with the compensations issues. And that has been working well; we've had several meetings broken into subcommittees. And I was at one of the subcommittee meetings yesterday where they addressed the compensation issue, and the Sheriff's Office came up with a different perspective.

We had met with our -- with the nine rape crisis centers that our office is privileged to support financially in Los Angeles to encourage their support of the elected officials in resolving the local issues, around the compensation issue. And my concern in relation to that meeting that happened to

take place in one of our trainings was what was occurring, in my estimation, was that we had lost the 15 years of progress that I earlier alluded to; that we've been working so diligently to raise the consciousness of the public in relation to the viciousness of the crime of rape, that we've been working with and the rape crisis centers have been working on educational programs and support programs for rape victims and encouraging them to get assistance from counseling; it is critical to the recovery after the incidence of rape and then supporting them through the prosecution process if they would choose to do that. And law enforcement has been making its progress and prosecutors have been making their progress.

But when the controversy began to foment in the press, the information I was receiving from the centers in Los Angeles is they were receiving less calls, that fewer victims were feeling the support that we've worked so hard to gain in the system. We haven't accomplished everything that we need to do but we have made some great strides. But when fewer victims were reporting, when fewer victims were seeking assistance, it was quite obvious to me that we have taken a tremendous backslide and it just -- it frightened me significantly and just reinforced the fact that we needed to campaign more diligently than ever to ensure that victims knew that support systems were there, that the system was responsive to their needs, and that services were available and hoped that they would utilize it. And we're going to continue to work on that.

I met yesterday with the incoming chairman of the board of supervisors. He told me about continuing to lead and to encourage those kinds of -- nice to see you, sir.

SENATOR MILTON MARKS: How you doing?

MR. HOWENSTEIN: Good. That we work publicly on the campaign to ensure that victims are aware that those support services are out there. And I think they were on a resolution. We still have a lot of work to do. There will be some long-term issues that will be resolved.

CHAIRMAN LOCKYER: Are you going to mention what those are?

MR. HOWENSTEIN: It's my understanding that the Hospital Association has agreed to the \$200 compensation level through June of this year.

CHAIRMAN LOCKYER: You mean 1988?

MR. HOWENSTEIN: 1988, sir, right.

Right after the city had announced its agreement to \$200 level, the hospitals had indicated they felt that they should be compensated at the \$450 level. I talked with some hospital folks and intended -- I threw some ideas out. I had no idea whether they took or not. But I did suggest that since the city had come up with the 2,000 percent increase in that budget year, which is going to be a significant amount of dollars, that maybe they can find ways to work incrementally to achieve an appropriate compensation level. And I think the hospitals in response to those, the needs of rape victims, as well as certain other recognition of economics, it can show; and with their leadership and their sensitivity, they responded very, very positively by opting back into it. But I think they still have to work on, the issue of determining what the long-term levels of compensation will be.

And the levels of compensation for these do vary throughout the state. In some areas, the full cost of the exam is paid by the law enforcement agencies with little or no problems; there are no

problems, actually. In other areas, the compensation ranges from \$100 to \$400, depending upon whatever agreements have been struck between the law enforcement agencies and the medical service providers, and so those are the only area where we found significant problems. There were a number of implementing problems throughout the state, but the only significant place was in Los Angeles.

We get back on the implementation of the new protocol, and I think I digressed from where I wanted to go to, was with the training aspect. Once we've had ...

CHAIRMAN LOCKYER: Then could I return to the topic of --

MR. HOWENSTEIN: Sure.

CHAIRMAN LOCKYER: -- financing just for moment.

MR. HOWENSTEIN: Yes, please.

CHAIRMAN LOCKYER: Perhaps least significant of the issues, but it's still relevant and important.

Is there any persuasive, legal opinion as to whether there is or isn't the reimbursable state mandate involved?

MR. HOWENSTEIN: I don't know those that are persuasive arguments, Senator. I'm sure that at some point there will probably be a test case, and I think at that point that that will be decided. The interesting aspects ...

CHAIRMAN LOCKYER: We don't have other, like an Attorney General's opinion? Have you addressed it or anything that would be faster?

MR. HOWENSTEIN: We -- well, we have been preparing some, some preparation along those lines, because of our concerns. But the interesting -- not an interesting aspect, but an aspect, is that the first protocol was established in 1978. And its design was to ensure appropriate collection and preservation of the evidence. The new protocol is not too dissimilar from the existing protocol. It just requires the air drying of the swabs and two other slight different procedures in relation to preparing wet slides as opposed to some dry slides. Those of an adult, we can just codify with the previous protocol status. There isn't a lot of difference. And I think that may raise part of the issue as to whether or not it gets the state mandate's grants issues and so that ...

CHAIRMAN LOCKYER: Who -- how's that -- is there a board or control mechanism to make that determination? Is that the preliminary definition?

MR. HOWENSTEIN: There is the state's mandates claims board.

CHAIRMAN LOCKYER: Oh, it's that ...

MR. HOWENSTEIN: Yeah.

CHAIRMAN LOCKYER: Who's that?

MR. HOWENSTEIN: I'm sorry. I can't tell you.

CHAIRMAN LOCKYER: Somebody?

MR. HOWENSTEIN: Yes, it's somebody. We just had some dealings with them, yeah.

(Laughter)

CHAIRMAN LOCKYER: I hear about them, you know.

MR. HOWENSTEIN: Yeah.

CHAIRMAN LOCKYER: It's sort of like this mysterious whatever.

MR. HOWENSTEIN: We had just finished some views with them subsequent or relating to domestic violence issues and the new law enforcement reporting aspects where they did make a finding for local law enforcement as it relates to the special reporting departments that were mandated by recent legislation and they must have been most appropriately made by recent legislation.

CHAIRMAN LOCKYER: If you need a member's assistance in requesting an Attorney General's opinion, I'd be happy to be of help.

MR. HOWENSTEIN: Thank you very much.

CHAIRMAN LOCKYER: Sorry. Go back to your ...

MR. HOWENSTEIN: Okay. On the protocol implementation, after we had developed it, there was a realization that if we went ahead and probably gave that without training, that we would be creating serious apprehension on the part of medical practitioners in the field. We prepared and submitted a budget augmentation request and which authorized that it gave us a little over \$90,000 to prepare 12 trainings throughout the state for medical practitioners on the implementation of the protocol.

We invited all of the acute care hospitals in California to participate in those 12 demographically distributed trainings. Three of them took place in Los Angeles. We've had nearly 1,500 medical practitioners attend those two and a half day training periods. There were some 372 different hospitals and counties that were represented in the training. The comments there were all very positive as it related to the protocol. We also distributed the protocol to 650 hospitals in California, the 458 law enforcement agencies of the state, the 58 district attorneys' offices, and the 100 rape crisis and victim-witness centers that our office supports.

I must admit I had an early on apprehension when the issues began in Los Angeles, that the protocol appeared to be the genesis of the problem. We've reconvened our Medical Protocol Advisory Committee, reviewed the medical protocol on the form. We were reinforced by the medical practitioners and law enforcement professionals and prosecutors, one of whom identified the new protocol, the new procedures, as a godsend to serve the victims as well as support for prosecutors for effective prosecution. I must admit that that gave some solace to my disturbed part at that point because I was afraid we had gone far afield, and I felt good that we stayed on infield and on the track and had probably gave them something that would serve the system ...

CHAIRMAN LOCKYER: Are there any critics of the substance of the protocol?

MR. HOWENSTEIN: Not that we have found, sir.

CHAIRMAN LOCKYER: Okay.

MR. HOWENSTEIN: And I've made some personal visits to hospitals. I received a letter last week from one hospital that said we ought to have it. And it was the first hospital that had written me directly. So in other meetings I had, I stopped by to see the head of nursing and I asked her what was the cause. And she said, "Well, I looked at the form and it seemed to be overwhelming; and I

looked at the mandatory equipment and it seemed to be, you know, too oppressive; and it just seemed to be more than what a little hospital like ours was prepared to do."

CHAIRMAN LOCKYER: How do you air dry the swabs?

MR. HOWENSTEIN: Active air drying.

CHAIRMAN LOCKYER: You have your hair dryer?

MR. HOWENSTEIN: Well, not -- they want cool air, not hot air.

CHAIRMAN LOCKYER: Yeah, but those things ...

MR. HOWENSTEIN: Yeah, they have -- there are several ways of doing it. They have a little box with a small fan that keeps ...

CHAIRMAN LOCKYER: Fairly technical equipment?

MR. HOWENSTEIN: Yeah. (Chuckle)

CHAIRMAN LOCKYER: I'd like to know the procedure.

MR. HOWENSTEIN: This particular head nurse, when we reviewed the form, she -- her comment was, "Well, it is very simple; it is very thorough; it is very straightforward. Gee, it doesn't seem to be as effective as we thought." I did, as a result of my conversation with her, I have now begun planning for more training that we will provide, specifically in Los Angeles, for medical practitioners. The Hospital Association is going to work with us in doing the trainings and facilitating the trainings. Also, we developed a one-hour videotape to assist medical professionals in the utilization of the protocol. They're going to assist us in making copies of it and distributing it to the hospitals in Los Angeles.

So we have a real, I think, a collaborative and cooperative effort on the part of the service providers of Los Angeles to be sure that the system continues to be appropriately responsive to the needs of rape victims. We've gone on quite a bit on that issue. So we feel -- we feel very good in relation to sum and substance of the form and the protocol and the guidance system. And as we indicated, the concept behind the protocol was to ensure, that when a medical examination and evidence examination was conducted, that it was done thoroughly, that the evidence that was gathered was legally admissible in court to sustain the victim and support that and to be sure that right from the beginning we're going to have sensitive response to that victim's trauma. And so ...

CHAIRMAN LOCKYER: We need good evidence to get convictions.

MR. HOWENSTEIN: That's correct, sir.

CHAIRMAN LOCKYER: And hopefully, collected in a humane way.

MR. HOWENSTEIN: And this is what the protocol is designed to do: To be sensitive to the extra traumatization that can occur. And I think Susan spoke to it very eloquently that there's one horrible trauma when the victim is raped; and then the more each time the case is discussed, the more that it has to be repeated, that re-traumatization takes place.

CHAIRMAN LOCKYER: Let me, if I may ...

MR. HOWENSTEIN: Please.

CHAIRMAN LOCKYER: I'll just make sure to acknowledge -- you did -- thank you, Senator Marks -- who, of course, is a former judge, former lawyer, current senator.

SENATOR MARKS: I'm a current lawyer.

CHAIRMAN LOCKYER: Oh, current lawyer, yes.

SENATOR MARKS: I don't practice, but I'm a current lawyer. (Laughter)

CHAIRMAN LOCKYER: I'm sorry. That's sort of like a Texas ranger. Once you're one ...

Anyhow, thank you, Senator Marks, who, of course, represents San Francisco and Marin Counties and ...

MR. HOWENSTEIN: That's kind of important to be, being a resident of Marin, before moving to Sacramento.

SENATOR MARKS: Being a what?

MR. HOWENSTEIN: Being a resident of Marin before moving to Sacramento.

SENATOR MARKS: Very good district.

MR. HOWENSTEIN: The other interesting thing, Senator, is that we've been approached by the military officials in Sacramento area that was very impressed by the protocol and are considering adopting it for the military hospitals because of the thoroughness of this healthy procedure. So I think we've kind of whipped on that long enough, unless you have other questions.

CHAIRMAN LOCKYER: Well, Al, can you comment on what sort of preliminary evidence you either helped to develop or know of from other efforts relevant to effective treatment programs and what may or may not be effective?

MR. HOWENSTEIN: The two current pilot projects we have — one for adult sex offenders and one for juvenile sex offenders — we're just about a year and a half into each one. So preliminary information is very strong. And probably the most impressive aspect is that a sex offender is not too dissimilar than — and I'm going to use the analogy between the offender and an alcoholic or to someone else who has those kinds of emotional disturbances that there is not an automatic cure, that it's the kind of a problem that needs ongoing supervision and ongoing involvement. There is no magic cure; there is no cure by going to jail. Of course, I agree with Susan: The longer the person of that ilk spends in prison, the safer society is. And that's appropriate justice. But it is — I think we were identifying that they need ongoing supervision not too inconsistent with the registration requirements for sex offenders that are in existence in this state. And I think that whatever we might be able to look at as far as ongoing parole is within the parameters of the justice system to be sure that they continue counseling, that there is supervision over the behavior so that there isn't regression and return to good behavior. And here, we're talking about not only the proper phrase but the other molestations and other offenses that occur within that ...

CHAIRMAN LOCKYER: When were those pilots due to report?

MR. HOWENSTEIN: The adult is a — one's a two-year pilot and one's a four-year. And I'm sorry that it's tenuous. I'm not ...

CHAIRMAN LOCKYER: But still ...

MR. HOWENSTEIN: They're still — they're still a ways off, but we're getting close to them. And I've been very impressed by the practitioners who have been involved in the training. And we do have a consultant who's doing an evaluation for us. He is part of a group of professionals doing

evaluation of both of them, so that if we do come up with anything that is showing levels of efficacy, that we'll be able to present that to the Legislature.

CHAIRMAN LOCKYER: Okay. Thank you.

MR. HOWENSTEIN: Thank you, sir.

SENATOR MARKS: Thank you.

MR. HOWENSTEIN: As I stand up, as I've looked at the list of people who were invited to speak today, I was very pleased to recognize that I didn't mean to talk about many of the programs that were involved in it because you have people who are testifying specifically are doing that. Susan is one of the primary ones.

MS. SUSAN AGUILAR: Thank you. Good morning, Senator. I guess there are a variety of topics that I'd like to talk about, hopefully briefly, on each; and if you have any specific questions about them, please stop me.

I thought it might be helpful or interesting to you if I started off with an offender profile. I took a look at the cases that we have prosecuted in our vertical prosecution program in Sacramento County to see what do we find out about or what do we know about those people who are prosecuted for forcible sex crimes and what does it tell us about the criminal justice system. And then I wanted to speak a little bit about some very key problems I see in terms of the public and victim perception of the criminal justice system and what can be done about that. I'd also like to speak to some ideas that have surfaced in the past few years about changes in the law or where the law is and should be going.

I could speak to the medical protocol. I think you've probably heard as much as you want to. The only thing I will say about that, and I will leave that topic, is I think that the medical protocol really needs to be seen and supported as a pro-victim document and a pro-victim effort. And that is to make certain that victims are treated more sensitively and appropriately at the time of the medical exam but also that they get a more thorough and complete medical evaluation and exam than what they may have been getting in the past. And for that reason, I, as a prosecutor, and I, as someone who works very closely with victims and is somebody who sees myself as very pro-victim, am very supportive of the whole concept of the medical protocol.

Turning to an offender profile, we have a vertical prosecution program in Sacramento County for adult sexual assault victims. We define that as anybody over the age of 14 who is a victim of sexual assault, be they male or female, be it what someone might stereotypically think of as a forcible rape or other forms of sexual exploitation. And we made that cutoff because we also have a vertical child victim prosecution programs for the victims under the age of 14. That arbitrary age is picked because that's the cutoff that exists in the law. We have different laws that child molest laws governing victims under the age of 14.

During calendar year 1986, the entire year 1986, and up through August of 1987, so about one and three-quarters years, we actually prosecuted -- well, we actually filed 127 cases. Of those, 56 actually were prosecuted through, to either a final resolution in court of guilty/not guilty or by plea. That means that the remainder of those cases were dismissed. Why were they dismissed? It turned

out that the majority of cases in which we needed to dismiss prior to a final disposition were because of the victim indicating that they were unwilling or unable to go any further with their case. And I think that that's a very telling statistic in that we do have vertical prosecutors. We do a lot of work with our victims. And yet, a very large percentage of the cases, the victims either simply came to us and said, "I'm not willing to go further with this," or disappeared. We were unable to locate them somewhere through the course of the case.

SENATOR MARKS: How many -- what percentage of people or what ...

MS. AGUILAR: About 44 percent of the cases had to be dismissed. And of that -- I don't have a breakdown of that 44 percent, but I can simply say ...

(Cross talking)

MS. AGUILAR: No, no, 56 percent are prosecuted.

CHAIRMAN LOCKYER: Are these the percentages?

MS. AGUILAR: Yes. 44 percent that had to be dismissed.

CHAIRMAN LOCKYER: Okay.

MS. AGUILAR: And I don't have a breakdown as to exactly what percentage of those were because the victim was unavailable or unwilling to go forward. I can simply tell you it's a clear majority of those cases. In very few cases do we have a situation where it's dismissed because there's a legal ruling, for example, dismissing the case.

What do we find out about the ...

CHAIRMAN LOCKYER: Now that's 127 filed out of how many brought to your attention?

MS. AGUILAR: 223 were referred to us. So we have 127 filed out of 223 referred to us. The vast majority of these are single defendant, single victim cases; about 89 percent of them are. A much smaller percentage of multiple defendants with single victims -- in other words, like a gang rape case -- that's about 7 percent of the cases. Single defendant with multiple victims -- and those typically were series rape cases where they are in one instance raped a particular victim, went either another day or a few weeks later and raped another. But we were able to identify the series of attacks, were approximately 3 percent of our cases. And the cases in which there were multiple defendants and multiple victims were only 1 percent of the cases, very, very small. So the cases that we received, the vast majority are single victim, single defendant cases.

The average age of the offenders is 29. It's evenly divided between black and white defendants; 41 percent black, 41 percent white, 15 percent Hispanic, and 3 percent other ethnic backgrounds. As one would stereotypically think, the majority of offenders were male. We had 99 percent male. But we did have 1 percent of female defendants.

The criminal record, I think, was very interesting. I'm looking at our defendants. And that is that 66 percent of our defendants have a criminal record. Of that 66 percent, 51 percent of them had prior sex offenses. 55 percent had general prior felonies. So what we are seeing or we are not -- we aren't seeing, with the most part, first-time offenders. We are seeing people who either have general felony priors or who have those and sex priors or just sex priors. But a significant portion, 51 percent, had sex priors.

And the average age of the victim is 26. The, in terms of ethnic or racial background, 60 percent were white, 31 percent black, 7 percent Hispanic; 2 percent were other ethnic backgrounds. 94 percent of our victims were female; 6 percent were male. And so there is clearly a recognizable group of victims who are male, often a victim group, I think, that is ignored or overlooked or forgotten about.

What happened when we prosecuted these cases through and we obtained convictions on them were that 50 percent, 50.9 percent actually, of the cases went to prison. Not all convictions resulted in a prison commitment, which I think is one of the misapprehensions or misbeliefs about the system. And the average prison stay was 20 years. 49.1 percent received probation, and their average commitment for jail, as a condition of probation, was 6.4 months. So there's obviously a very, very stark dichotomy between those people who get probation and those people who go to prison. If you go to prison, it's more likely that you are going to go for a significant portion of time. But almost half of our convicted offenders did not go to prison and they received very minimal amounts of time in county jail as a condition of probation.

Just briefly, in terms of treatment programs, our concern ...

CHAIRMAN LOCKYER: Are you able to -- is the data pool large enough to examine those who were placed on probation and appeared at some short time in jail, as to re-offense statistics or anything ...

MS. AGUILAR: The problem with that is, that because we've only had our vertical prosecution unit for a relatively brief period of time, I don't think we have probably statistically valid enough information about that.

What I can tell you is typically what happens is an additional condition of probation is that they seek and maintain professional counseling. The reality of that, however, is that our mental health system is in such a state, that if an offender goes and says, "They told me to come here, but I don't need help; I'm okay," they will be told, "Fine, goodbye." If they are disinclined to continue with counseling once they start, they will be dropped from counseling. Probation will not file a violation of probation on people who do not keep up their counseling. And therefore, to say that a viable option for offenders who commit violent sex crimes is to put them on probation and have them maintain counseling is somewhat illusory because we both seem not to have the resources in the mental health system, nor does there seem to be a perception or a commitment, that that is, in fact, an important condition of probation and that one does not continue with that one ought to be violated on probation.

SENATOR MARKS: Let me say that I am -- ask you a question because I am -- a member of my family was raped. And so I know something about the situation and I'm very much concerned with the situation that has occurred. I find it very hard to believe that people do not have to go on probation.

Are you telling me, that if a person is convicted of a bank robbery, that person is sentenced to probation and part of the requirement is that the person have counseling; and if they don't go, they don't have to go?

MS. AGUILAR: That's basically the way it works out.

SENATOR MARKS: In every crime?

MS. AGUILAR: No. What I'm saying is, that first of all, the mental health system is such that it is swamped; and therefore, they have people who are either there unwillingly or who don't want to continue. They tend to simply allow those people to leave. They simply say, "Okay. Fine. Don't come back."

SENATOR MARKS: And other crimes too?

MS. AGUILAR: Yes. I mean that happens across the board.

SENATOR MARKS: In other words, if you're convicted of embezzlement, and part of your sentence is that you shall go to probation, to be counseled, and if you don't go, that's okay?

MS. AGUILAR: No. No, I want to make that clear. We're not talking about people who fail to report to the probation department. We're talking about people who, as a condition of their probation, they are ordered to seek and maintain some type of psychiatric or psychological counseling, separate and apart from the probation department. So they are told, for example, to report to either a private practitioner or to their mental health facility, county-based mental health facility. And those entities are separate from the probation department.

SENATOR MARKS: Well, there must be other crimes -- there must be other crimes -- I cannot think of what they are. There must be other crimes where people have to have psychological studies.

MS. AGUILAR: Yes.

SENATOR MARKS: And that's for other crimes other than rape.

MS. AGUILAR: Yes, a number of them.

SENATOR MARKS: And you're telling me that those people who have psychological requirements in other crimes and don't go there, or go there and then say, "I don't want to spend any time," that's okay?

MS. AGUILAR: I'm not saying that's okay. I'm saying that ...

SENATOR MARKS: I mean that works out that way?

MS. AGUILAR: There tend to be no ramifications for them when that happens.

SENATOR MARKS: Other crimes?

MS. AGUILAR: Yes. That seems to be a problem that is ongoing in the criminal justice system in terms of that requirement, as a condition of probation, of seeking and maintaining counseling, tends to be somewhat illusory.

SENATOR MARKS: But if a person then goes -- I'm sorry. I won't take much of your time.

CHAIRMAN LOCKYER: Oh, take your time.

SENATOR MARKS: But if a person goes there and doesn't show up and says, "I don't need to go there," there is no penalty reassessed? I mean they're the people who do not go to prison that they ...

MS. AGUILAR: That depends entirely upon the probation officer. If the probation officer is monitoring that case closely enough and says, "Oh, wait a second, you didn't do this," and then makes the decision, "I'm going to file a violation of probation on you," then there can be ramifications for it and the judge then will determine what to do. But unless or until the probation officer files that

violation of probation -- for example, we as prosecutors won't even know about it because we won't know whether or not people are maintaining their conditions of probation. That's truly a role within the probation department for their monitoring of their caseloads.

SENATOR MARKS: Mr. Chairman, I think this is an area that we ought to look at very carefully, because I think if a person violates their probation or doesn't agree with their probation, that we can have some way to make certain that if they don't do what they were asked to do, that they get another felony.

CHAIRMAN LOCKYER: I think it's a very, very good point. I'd like to get it if we can. We are somewhat surprised at the disparity in criminal outcome.

MS. AGUILAR: Sure.

CHAIRMAN LOCKYER: That is, convictions that you can curtail going to state prison for 20 years, or convictions that are similar for the same crime, involving probation, a very modest county jail and this inadequate counseling that's been county run, is there a -- can you generically distinguish between those two kinds of convictions? Is there some ...

MS. AGUILAR: Well, I can tell you that obviously it depends in large part as to what crime, for which crime the defendant was actually convicted.

In California, if you are, in fact, convicted of one of the forcible sex crimes for which state prison is mandated, then you will, in fact, go to state prison. You may go for a low term, middle term, upper term; you may have enhancements; you may have priors. I mean that would take another two interims to go through the entire sentencing structures ...

CHAIRMAN LOCKYER: Do you have computer programs for those too? (Laughter)

MS. AGUILAR: We have a multi -- actually, I just saw the latest handbook, sentencing handbook, for judges. It has 24 steps to go through. And at the end, it says, "If this is a sex case, please turn to another place to go through all of the ramifications of sentencing." It's not a very simple task.

CHAIRMAN LOCKYER: I know I -- I don't know if this is also true, conditions under sexual offenses. But 23 percent of the appellate reversals are based on error in sentencing -- 23 percent. So we obviously have created a -- well, either judges aren't doing adequate homework relative to sentencing -- and I think they're by and large competent of somewhat of a mechanical process -- or we have created such a haze of complexity around all these sentencing provisions that it's making it difficult to do it accurately and without successful appeals as a consequence.

MS. AGUILAR: Quite frankly, Mr. Chairman, I think we would have to say we've created a monster.

CHAIRMAN LOCKYER: Okay.

MS. AGUILAR: In terms of the sentencing law. It really is very rare that even practicing attorneys who are in criminal court every day are aware of all the sentencing ramifications and all of the applicable enhancements and not probationary statutes. But the ...

CHAIRMAN LOCKYER: We need to figure out how to simplify it without either radically increasing or radically decreasing sentences so that maybe the people on both sides of those

controversies won't be exercised and that mainly is a requisite to get any legislation through both houses, as you know.

MS. AGUILAR: I think so.

CHAIRMAN LOCKYER: But maybe there's a way we can try to simplify some of those things.

MS. AGUILAR: To that end, you might be interested in knowing that the California District Attorneys Association appointed a special subcommittee -- I happen to sit on that subcommittee -- to review sentencing laws. We've spent the past year doing that. We are now in the process of writing our proposal as to what the law is and ways in which we think it could be simplified. And we took as our mandate, when we sat down and said, "What do we want to do," we do not want to increase sentences and we do not want, you know, to make those kinds of changes that people might suspect we want but that we realize they're not going to behoove anyone anything. But how can we make it simpler and more user friendly, if nothing else? And so we are hoping that -- you're looking at the editor of it. So we're hoping that it will be done sometime this winter.

CHAIRMAN LOCKYER: User friendly, huh?

MS. AGUILAR: Yes, user friendly. It's a big hope. I'm not certain we can achieve it, but we're trying to at least simplify it so it's a little bit more internally consistent.

CHAIRMAN LOCKYER: Well, on the ones that -- the half that wind up with the short jail term and probation --

MS. AGUILAR: What are they convicted of?

CHAIRMAN LOCKYER: -- who are -- yeah.

MS. AGUILAR: They might be convicted of assault crimes that are not an actual forcible sex crime or a completed sex act. For example, they may be convicted of section 220 of the Penal Code, assault with intent to commit rape, assault with intent to commit sodomy, oral copulation, any of the other range of sexual offenses but it was not a completed act, for whatever reason that it was not a completed act.

CHAIRMAN LOCKYER: So completion is really what ...

MS. AGUILAR: Completion is what triggers a man to stay in state prison. If there is presumptive no probation for a section 220 crime, all that means is it says that probation shall not be granted unless unusual circumstances apply, unless the interest of justice, sentencing rules of court to find those things like no prior record, relative youth of the defendant, apparent amenability to rehabilitation and the like.

SENATOR MARKS: Can I ask one more question, because I am interested in the subject matter. Maybe you're not going to come to this point. But are you concerned with the fact that many times the victim of a crime is made the defendant?

MS. AGUILAR: I am going to reach that point. And I will simply say right now, yes, I mean without a doubt, I am not only concerned about that, I abhor the fact that that takes place. I abhor the fact that it is the perception of the community's mind that that takes place. And I think that that is one of the principal reasons for victims' reluctance to become involved in the criminal justice system. And I would like to speak to that a little bit more in just a moment. And actually, I suppose

now will be as good a time as any to move on to that area of my remarks, and that is, the public and victims' perception of the criminal justice system. I am not going to say -- I would never say that we have, you know, an excellent or perfect system or anything else.

I think there are two principal areas of concern: One is, are there improvements that we can make; and secondly is that some of the improvements that have been made in recent years have not been communicated to the public. We hear again and again a victim's concern, "I don't want my entire sexual history paraded before the jury." We've had the Robbins Rape Act now for some ten years in this state. But somehow, we have never gotten information to the community at large that we have made some substantial changes in California procedure and law regarding victims.

We have never gotten word out to victims somehow. But you no longer can have a Ballard hearing. That used to be a real tool of defense attorneys to make victims -- I mean basically the threatened victims -- to say, "Judge, I want you to order a court-ordered psychiatric evaluation of this victim because we believe that this is all a figment of her imagination, that she's really simply a vindictive, hysterical, and delusional person and we want a psychiatric examination." That's incredibly insulting, incredibly intrusive. And we attorneys now are not allowed to do that. I mean defense attorneys cannot do that. There would be an extremely, extremely miniscule number.

In the past -- I've been a prosecutor for nine years. In the past seven of those nine years, I have never seen a Ballard motion. I mean it's just not even made by the defense anymore. Yet, I don't think that the community as a whole is aware of some of those things. The move towards vertical prosecution is a very important step for victims because it means, that when you come in and you meet an attorney who's going to handle your case in court, it is -- you can expect that that attorney is going to stay with you. You're not going to, each time you come to court, have to tell your story to a different attorney. Nor, when you wake up at night and you're panicked and you have a question or a concern or you're simply going through a panic attack, you have to call the office and say, "I don't know who's handling the case; it was this person last week; I don't know who it is; I need to talk to somebody. What's going to happen?" Or, "I'm afraid of the defendant. I'm afraid of threats by the defendant's family." It's important that a victim feel that there is someone that they can contact and deal with that is a consistent person. Vertical prosecution is very important for that.

There has been a move towards vertical prosecution throughout California. Unfortunately, not all offices have that; not all offices have the funding and resources for that. But it is another example of things that are being done that the community, I don't think, knows about. And therefore, there is a lot of fear on the part of the victims.

The other part is that there are problems in the criminal justice system. There are problems with the law. I think that there are three or four areas in which there are some real problems. One, we have -- we still have inconsistencies in the definitions of crimes and their enhancements and probation and the like and sentences between the sex crimes. Every year, it seems we have, someone sponsors a bill and someone authors a bill to clean it up but we never get all of it. And one of the biggest remaining areas of inconsistency and having been overlooked is the area of section 289, penetration with a foreign object. It is not treated the same as other sex crimes.

We currently in Sacramento County have a case, for example, in which a offender took a young boy, and as part of the molestation of that boy, had the boy insert his foot up the defendant's anus as far as he could do it. That was not only very traumatic for the child — it's fairly horrifying when you think about it and it rather shocks the conscience of most people: It isn't a crime.

Imagine one of us sitting down with that child's parents and explaining that we're not going to be able to prosecute it because it's not a crime because the way the 289 is worded, it only applies as a crime when the offender penetrates the victim, not when the victim penetrates the offender. It's just simply another example of one of the oversights and mistakes that has been made in the definition of these crimes. But it's also an instance that comes up fairly frequently.

CHAIRMAN LOCKYER: Presumably, there would be some other crimes associated with that act that might be a basis for prosecution. I mean false imprisonment, if nothing else. I assume there may be ...

MS. AGUILAR: Hopefully that there would be. I had a case of a doctor who contracted with board and care homes in the Sacramento area to provide podiatry services to mentally retarded men. In addition to clipping their toenails, he decided that they would be very useful in sexually gratifying him. And so what he did is he would persuade them to insert their hands into his anus, and he got great sexual pleasure out of this happening. Again, it wasn't a crime. I could not prosecute him for those acts because it was not a crime.

I can tell you that my office will be seeking to sponsor legislation to try and clean up that inconsistency in 289. But I'm not using this as a forum to push that. What I'm saying is that there still are those kinds of inconsistencies in the law.

We have, especially in California, we have increasingly a multi-cultural society with very, with varied cultural backgrounds. And we, I don't believe, have done a very good job in dealing with the variety of cultures and cultural expectations and problems that victims have when they are not from a middle class white family. If you are a middle class white victim, and you are the victim of a forcible sex crime, you've got pretty good chances. You've got pretty good chances the police will pay attention to you, pretty good chances your case will get filed, pretty good chances you'll survive court.

If you are not a middle class white victim of a stereotypical forcible sex assault, your chances dwindle because of the preconceived stereotypes of what a victim should be, of what a rape is, and whatever cultural expectations you bring to whether or not it was your fault, whether or not you ought to testify against the offender, things like that. And that presents an ongoing problem in California.

The entire area of sexual exploitation of the handicapped is one in which the law is frankly schizophrenic. We, on the one hand, want to protect, for example, the developmentally disabled. On the other hand, our law does not adequately address the realities of what happens to them in sexual exploitation. There is an ongoing controversy if, when you prosecute or convict somebody for having sex with a person, a rape, because they were incapable of giving consent, have you made a legal finding then that that victim is incapable of giving consent and can never consent to sexual relations

again in their lives? Are we best denying that ever having access to sexual behavior in any way? And does that mean that anybody in the future who has sex with that developmentally disabled person automatically commits a crime? In an effort to try and define a particular area, we have done it very clumsily and created more problems.

I've spoken to the problems regarding the complexities of sentencing. And that leaves the area of date or acquaintance rape, which is clearly a serious matter of concern in California. It's a matter of concern, not only because it happens with great frequency, it is a matter of concern because of the response with which it is meant, when a victim says, "I was raped; this is what happened to me." The question arises regularly as to whether or not we need to have new definitions in the law regarding date rape. My answer to that is that the current definition of rape clearly covers date rape and acquaintance rape situations. It is not a question of needing to redefine the law of rape. It is a matter, however, of finding how those victims are going to have better access into the criminal justice system and better services on the part of all of law enforcement, the criminal justice system, and any other service providers.

The comment was made that there are laws on the books that aren't being used. And the example was made of SB 46 and that prosecutors don't use it. I can tell you that we tried to use it in Sacramento County. And the reason we couldn't is because it is now, in its final version as passed, was so narrowly drawn, that it will probably apply to a fraction of 1 percent of the cases that are prosecuted in court. It is not a law for child molest victims. It is a law for a very narrow subclass, subgroup of child molest victims because the predicates for being able to use it are so numerous and so narrowly drawn, that it's really a very, very small subgroup of child molest cases that would ever apply too.

What do we do about these areas and what kinds of reforms could be made? While, I think, sometimes people think that it is a way of avoiding the issue — I don't intend at all for these suggestions to be that. When I say that I don't think that the law of rape needs to be changed, I think that, for example, other things need to be done. That's not to just shine on the issue of what do we do or to say let's have somebody study it. What I think does need to be done, though, very clearly, especially in the area of acquaintance and/or date rape, however you wish to define that phenomena, is that there has to be education in the community at large. I mean, as I was explaining to somebody the other day who called and talked to me about this, when we as prosecutors take one of these cases into court, you've got to remember that the people sitting on the jury are the same people who date rape. I mean that is a phenomena of our culture; it is a phenomena of how people find their relationships; it is a problem of the kind of confusion that we feel as a society about sexual matters and whether "no" means yes or "no" means talk me into it; what degree of persuasion or coercion is acceptable in a relationship or a dating situation. And those are attitudes that are not rapists' attitudes per se. Those are attitudes that are endemic to our society. And therefore, education of the community at large, I think, is crucial. And there are educational programs that have been begun by various groups in which they go into areas such as junior high and high school; and they do role playing and they talk about various scenarios — when you're in the car, you know, and he puts his hand

on your leg, what do you feel; what do you want to do; what is your reaction?

Interestingly enough, Psychology Today, about three years ago, ran a survey in which they took a group of men and took a group of women and presented the same scenario to them. And it went through a variety of hypotheticals to parking in the car on through to intercourse. And they asked a group of men and they asked a group of women: At which point do you think this is starting to be coercive behavior or threatening behavior? The women as a group saw that behavior as being coercive far earlier than men did. I mean that is indicative, I think, of simply saying that there is a difference in perception in terms of relationships, in terms of issues about power and strength and the like that need to be worked on in our communities as a whole, not to identify these as rapists do this but rather that men and women need to think about how they relate to one another. And that covers a wide range of issues and problems, both for men and for women. But I think that until we do that and until we seek to have community education on those issues, we're not going to change the problem of date rape at all. I believe that we need specific training on the part of the judiciary, on the part of attorneys regarding issues such as multi-cultural victims, date rape, and acquaintance rape, and those kinds of issues, issues of exploitation and abuse of the handicapped.

If, in fact, you are going to mandate training that no, for example, no prosecutor can prosecute this type of case until they have had a required amount of training, then we're going to need a massive influx of money to do that because it means that we're going to need to have those people at training while other functions and cases are going on in the office. I am not saying that that is not an appropriate idea. I think we need to recognize the fact that we can't mandate it without paying for it. I think it is something worthwhile for the State of California to pay for, that the judiciary and that attorneys dealing in the criminal justice system be trained and be made aware of that there are issues in this area.

I would like to see more money come into offices to be able to allow for vertical prosecution. It increases the success rate of prosecutions immensely when you have vertical prosecution, but more importantly than that, or just as importantly than that, it increases the value and the level of services to victims. That alone is a very important issue.

And finally, the last issue as to where I would like to see money go, and I realize money is not a pleasant or popular topic in our current fiscal situation, but I think it is a realistic one. I sit as chair of the statewide Sexual Assault Advisory Committee, and we are responsible for parceling out money to rape crisis centers. I want you to know that every year when we do that, those of us who sit on the committee don't feel very good. We develop ulcers because we know that there are going to be -- over 50 rape crisis centers are going to come to us and say, "We have volunteer staffs; we have 24-hour hotlines; we don't pay our people minimum wage; we exist on the services of volunteers. We have to argue with you whether or not we can justify the purchase of a typewriter or not." And we have to sit there and say, "You get money; you don't get money."

CHAIRMAN LOCKYER: How much are we spending, in aggregate, state and local, on rape crisis efforts, that is, public funds?

MS. AGUILAR: I don't know. I'm sorry I cannot give you -- Al might be able to do that.

MR. HOWENSTEIN: We have from the victim-witness fund penalty assessments of about \$2.8 million to support the rape crisis centers.

CHAIRMAN LOCKYER: That's state — the state money ...

MR. HOWENSTEIN: That's the state's contribution.

CHAIRMAN LOCKYER: What would you estimate or ...

MR. HOWENSTEIN: This probably, as it works out to be, with the 56 centers that we're able to fund with those dollars through the Advisory Committee, maybe like one-fourth of their local budgets. They, through their own efforts and a variety of other things, raise the other dollars that are so critical through their support.

MS. AGUILAR: One of the problems that we face with that is we face a continuing controversy as to whether or not to continue funding rape crisis centers in urban areas who can show us that they have a huge percentage of rape per population; or do we take some of their money away and try and give it to rural centers who don't have any money at all and may only — may see a fewer number of victims but they've got no resources to be able to provide services for them. We would really like to see — I would like to see — more money available for rape crisis centers. You heard from one of their spokespeople today, that as a matter of fact, they provide, I mean the first, the first services to a number of our sexual assault victims. They provide very good services. If we didn't have the rape crisis centers, the state services to victims who suffer sexual assault would be in a real ugly situation today in California.

SENATOR MARKS: What do the rape crisis centers do?

MS. AGUILAR: They provide a variety of services. They provide, for example, 24-hour hotlines, which means that at any time of the day or night, if you have been victimized, you can call up and say, "I've been hurt; I've been raped. What do I do?" They will have somebody available to talk with you. They provide accompaniment services, meaning that they will either accompany you to or respond to the hospital when you receive the rape crisis exam. They provide counseling services, not only initial counseling services to help you through those first few days or when you immediately report, but ongoing counseling services, both on one-on-one bases, and on ongoing group and peer group bases. Basically, they provide all the kinds of things we would want rape victims to have, but would not have any place else if we didn't have rape crisis centers. The vast majority of our victims do not have access, either because they don't exist or because they don't have the money to go and seek private practitioners, even if private practitioners were willing to deal with victims of sexual assault. Rape crisis centers also, in many communities, provide the bulk of public education programs in terms of media campaigns, in terms of being able to go out to schools or to organizations, to speak to them to help educate them about sexual assault and victimization issues. They really provide ongoing services for sexual assault victims that would not be obtained any place else in our society.

CHAIRMAN LOCKYER: A couple of ...

MS. AGUILAR: ... but for them.

CHAIRMAN LOCKYER: A couple of representatives from centers will be here to comment.

MS. AGUILAR: And I think that they can probably speak much more eloquently than I can about that. But those are areas in which I think that some real attention ought to be made.

CHAIRMAN LOCKYER: They're obviously under, significantly under-funded in our state, especially if you consider the gross criminal justice budget. It doesn't make -- it's a horrible mis-allocation of existing resources separate from the need to spend some additional money in this area, as is also true of safe houses for domestic violence victims and sort of interacting problems. I hope someone will -- maybe Al will -- or if the Association hasn't done this -- help generate some fairly hard statistics on physical need. I think that would be -- now maybe that's already happened at the Budget Committee year after year. I'm not serving on that. I don't see that. But I think that would be perhaps one of several things that would be constructive suggestions coming from our interim activity.

MS. AGUILAR: One of the things, I think, in closing, unless you have any further questions, is one of the things that I'm hoping in seeking that we can do with that Advisory Committee is to begin to do some really hard research into what the state of services are to sexual assault victims and what do we know about them; what is the state of the art now that we know what are the best means of services that can be provided to people. Hopefully, we'll be able to do that and be able to then, when these issues arise before the Legislature, be able to speak to them, saying, that you know, we've taken a look at this information.

Other than that, I guess those really are the comments that I have as to the state of the system and the state of the law right now, unless anyone has any specific questions which I would be glad to respond to.

SENATOR BARRY KEENE: Yes. Maybe more in the nature of a comment. Just so the public, and particularly the activists in this area, won't be misled, the issues no longer are revolving around whether these are good programs. I think there's a lot of support for enhancing the activities of, and the role of, rape crisis centers, public education, and student education in particular with respect to the issues that you describe.

The certification of district attorneys in a limited process is appropriate funds for training. But the problem is that the public has adopted a no-governmental growth philosophy. And these programs did not exist, or the perception of the need for them did not exist so much in 1978 when we adopted the Gann Initiative in California. And we're going to be met with the argument that these are good programs but the funds just aren't there. And that's really where the battle ground is, much more than support for these programs. I think -- I don't know of anybody in the Legislature who would not support most of these programs and suggestions and the funding for them.

What we can't do anymore is cut back on education when we've got the largest class sizes in the country or cut back on transportation when you have the kind of gridlock that you have around here or cut back on health care funding when the system is about to collapse for the working poor. So that's where the crunch comes in. It's not ...

MS. AGUILAR: I understand and appreciate your comments, Senator Keene, and I think that everything you say is true.

One of the things I would point out is the rape crisis movement started as a grass-roots community movement without a lot of financial support from any area. And if it had to, it would most likely continue that way because you have very, very committed people working in that. They are not about to close their doors and go away dependent upon when they get X or so amount of money. They will find a way, maybe at a lower level, maybe with reduced services or the like. They would find a way to continue working because they have that commitment to the communities they serve and to their victims. But we've been really lucky because we have people who are willing to do that, irrespective of the amount of funds that are pumped into them.

I wish that we could spend some time -- we had some awfully bright people concerned about this area. I wish we could spend some time finding creative ways in which we could do things like community education; we could get training for various groups without necessarily having to pump in state monies. I would like to see that happen because for two reasons: Money helps; and two, it also signifies the state's commitment to providing those services. But, you know, some kind of -- I don't even know how you would do it. But it occurs to me, that if you had various groups who are willing to provide services, if they were able to get some kind of cost rate on other things that they do, if there's some kind of a balancing that could be done that way so that there's some type of incentive for people to be able to provide services or training in necessary areas, I think that that would be really helpful. And it would be interesting to see if we could get some people to sit down and think about ways in which that could take place.

SENATOR MARKS: It would seem to me -- and I'm not trying to put the blame upon anybody -- it would seem to me that those who are representatives of this administration ought to go into the budget committees or when they're preparing the budget and ask for more money. That's one way to do it.

CHAIRMAN LOCKYER: There you go, Al. (Laughter)

SENATOR MARKS: No, I'm serious. I'm not trying to put blame upon you. But I do think that those who are close to the administration have the ability, the opportunity, and I think the requirement of trying to get additional funds. We can't do it. We in the Legislature cannot do it if the Governor isn't for it. But if we -- if the Governor proposes additional funds, we can do it.

CHAIRMAN LOCKYER: Mr. Howenstein, come forward, if you would, for a moment.

MR. HOWENSTEIN: Sure.

CHAIRMAN LOCKYER: Thank you, Senator Marks. Let's talk about this specific budgetary process.

As I understand the budget cycle process, you have internally submitted to the Department of Finance sometime in the last couple of months, I guess --

MR. HOWENSTEIN: Budget.

CHAIRMAN LOCKYER: -- recommendations for budgets for next year are to be submitted. Can you provide us with any enlightenment as to what you requested in this sort of area?

MR. HOWENSTEIN: The money for the rape crisis programs comes from the victim-witness fund. They get 10 percent of the penalty assessments in the state.

In the last four years, we've increased the support from \$800,000 to the \$2.8 million we're at now. And I did fail to include also, with the federal victim of crime monies we add to that overall program, nearly another \$1 million to support the center. So that sum matters to move up significantly.

CHAIRMAN LOCKYER: And that's just because that fund has, the victims of crime fund through penalty assessments, has grown?

MR. HOWENSTEIN: Well, we've included ...

CHAIRMAN LOCKYER: Not General Fund?

MR. HOWENSTEIN: No, there's no General Fund money in that program, either for the victim-witness centers or for the rape crisis programs. That particular fund last year experienced a 4.5 percent reduction inflow of dollars into it. And we were only able to maintain the budget level because of previous years' excesses. And this year, it's about at a zero-out level.

We've also, for the last ...

CHAIRMAN LOCKYER: Why did it go down?

MR. HOWENSTEIN: There are a variety of reasons, Senator. We had found several things, some, there were some problems with remittances in how they were recorded. We've been working with the State Comptroller's Office to clarify and clean those up. We've been working with an ad hoc advisory committee from our rape crisis programs and the victim-witness programs to work with the individual counties to heighten the awareness about the penalty assessments fund to encourage judges to award the funds as well as to collect the funds and be sure that they get into the state for support of the programs.

There are some other issues of that, some additional attitudes in relation to it. We've been working with that on educational programs. An ad hoc committee of the California DA's Association and the chief probation officers are working with their local judiciary and others to heighten the importance of the programs. So if there's -- if we get more money into the fund, then we would have it available for support of the centers.

For this year, the constraints I think that Senator Keene talked about is what the General Fund dollars are. The directions that we got from Finance is we're operating on things like budgets this year because we've hit the Prop. 4 limitations. And even though there may be more money in some fund, there's no way to expend it at this point so ...

CHAIRMAN LOCKYER: I think we've got a General Fund expenditure here.

MR. HOWENSTEIN: It's the -- these programs, as we're just talking about earlier, I get the real privilege of visiting these centers and seeing the level of effort in working with the directors of the committees and the kinds of things that they're doing -- the education program, the prevention programs. They've just developed a wonderful film here in Oakland as one of our special emphasis activities for prevention awareness. They work with law enforcement agencies. It was in '72 when I thought I was a young progressive police officer who was visited by our local rape crisis center. And in 15 minutes, they made such a modification in my attitude as far as the service that they offer to law enforcement and to victims to be where we are today. Without their leadership, sir, we would

not have made the progress we've made in the last 15 years.

SENATOR MARKS: Perhaps another question. I'm really not trying to put people on the spot. But if we in the Legislature were to appropriate additional General Fund money, is it your opinion that the administration would favor it? I mean you can't answer it. I know you personally can't answer it. But the problem we have on many of these things is we appropriate money; and for one reason or another, those appropriations are not approved.

MR. HOWENSTEIN: I can -- maybe the best answer I can give you, Senator, is that I have been a very strong advocate for all victim services --

SENATOR MARKS: I know you have.

MR. HOWENSTEIN: -- since I've had this office and I'm proud of what we've been able to accomplish with the support of the Legislature in expanding our building to serve all victims' needs in our study and with particular emphasis in the area of sexual assault and rape. And I can only just kind of answer that I am an advocate and have been taken an advocacy in all aspects of what I do.

SENATOR MARKS: I appreciate that. Go ahead.

SENATOR KEENE: Yeah, just a -- it's more rhetorical, Al.

MR. HOWENSTEIN: That's all right.

SENATOR KEENE: So I won't hold you to answer it. But you know and I know that higher sentences do not an anti-crime program make. I guess the rhetorical question is how can the Governor and Paul Gann claim that they are against crime and poor victims and at the same time be against funding for the activities which can prevent crimes and assist its victims? That's what some of us don't understand. Like I say, I'm not asking you for an answer. But maybe take the question back, say that you can rationalize it in some fashion and maybe come forth with support for some of these programs for the General Funding for some of these programs.

MR. HOWENSTEIN: I can answer the aspect of the prevention because that is such a major component of everything that we do at the office in all of our project areas. And I think the efficacy of what the rape crisis centers have done in the prevention area speaks very, very well for itself, particularly the in-school programs. And we've done some private projects on the date rape and acquaintance rape issues that have made significant impact, I believe, on the attitudes of, particularly burgeoning young males on this issue. So prevention is there, and I appreciate the rhetorical question, Senator. Thank you.

CHAIRMAN LOCKYER: Take it back to the people in that "F" office ...

MR. HOWENSTEIN: Yes, sir.

CHAIRMAN LOCKYER: That's the Department of Finance.

MR. HOWENSTEIN: Yes. They hear from me quite -- they hear from me quite often on that on these Gann Initiatives. I've been known to stand on desks and do my yelling and screaming.

CHAIRMAN LOCKYER: Good.

SENATOR MARKS: Good.

CHAIRMAN LOCKYER: Okay. Thank you.

MR. HOWENSTEIN: Thank you.

CHAIRMAN LOCKYER: Because the witnesses need to be in two places at the same time, I may call Sergeant Hughes out of order. I think he's here, assuming he's still with us. Yes. And then we'll just go right back here.

SGT. GREG HUGHES: Thank you, Senator. I appreciate it.

Although I work the homicide section of the Oakland Police Department now, I did spend quite a few years in the sexual assault as the senior investigator. And as a reference to the questions that were asked of me, I made it a point to phone most of the investigators in Alameda County. And pretty much all of us reached a consensus as far as some of the things that could be addressed and tools that would really help us. For example, one question that was asked was: What can be done legislatively to prevent or deter individuals from committing rape?

One of the things as a whole that we consider to be extremely important is our ability to strengthen the tool of 290(b) of the Penal Code, which is a sex registrant's failure, more or less, to register as a sex offender. And what happened, that we indicated, was that we'd like to see the section 290(b), the compliance to register as a sex offender, be amended in the sense so that a violation of this section would also be used as possibly an enhancement or result in a state prison sentence when the person was charged or convicted of a separate offense. For example, if this individual is a sex offender, a registered sex offender, and he's charged with a burglary, we found that oftentimes for failing to register as a sex offender is more or less dropped in lieu of that higher felony section. And unfortunately, what happens is that it loses a lot of its strength and its teeth as a result of doing this.

As a prior sexual assault investigator, the senior one in Oakland, out of 2,500 registered sex offenders in the City of Oakland, I saw 290(b), the section for failing to register, charged one time. And that was only as a result of an individual being arrested three times for it and totally just more or less telling the officers that he didn't feel he needed to register and wasn't charged by our District Attorney's office until the third time. It's a really good tool for us as investigators because a lot of our work, unfortunately, with serial rapists is reactive and backtracking individuals.

One of the things that we would indicate as far as addressing the issue of the 290(b) section would be updating addresses for the sex registrants. For example, maybe possibly putting a flag on their drivers' licenses or vehicle registrations where the Department of Justice could be notified when these individuals change residences and notifying the proper police agency.

Also, that as a reactive way of targeting these individuals, we make it a point -- we utilize the Department of Justice files frequently to be able to track these individuals. And one of the things that isn't collected is additional information regarding sex offenders.

Some information that should be included as the registration of a sex offender is, for example, was the attack directed towards a stranger or was it an acquaintance attack? Did the offender attack in a residence, a building, a street, or in a vehicle? A summary of the offender's most recent offenses, including the victim's race, sex, and age; and the information could be provided to the Department of Justice by State Parole or the County Probation Department.

Additional information like this is extremely important to us as investigators because sex

offenders will often commit additional assaults the same way using the same modus operandi. It's just really important to us in strengthening and improving sex registration laws, more or less as a meaningful step to reducing the frequency of sexual assault.

CHAIRMAN LOCKYER: How would you estimate the percentage of re-offenses that are similar to victim characteristics or similar methods -- place, time, and so on? Could you guess how ...

SGT. HUGHES: I would put it at higher, much higher than 50 percent, that it's extremely similar in nature.

SENATOR MARKS: I'm in favor of your doing what you want to do, but I want to be sure that these statutes are not used to stigmatize gay or lesbian people. Have you used that purpose?

SGT. HUGHES: Not to my knowledge, Senator.

SENATOR MARKS: Because I don't want sexual offense -- sexual practices -- putting aside the question of AIDS, which is a very serious problem -- I don't want sexual practices which may be offensive to some people, a purpose of registration.

SGT. HUGHES: What I'm talking about is ...

SENATOR MARKS: It may not be.

SGT. HUGHES: Right. These are individuals that have been convicted for a prior sexual offense. And because of the nature of the crime and the fact that it does reoccur with high frequency in the same manner, oftentimes the same victims, similar victims in similar locales, it's extremely important to us.

SENATOR MARKS: But the point I'm trying to make is I don't want -- and this may not have anything to do with this -- I don't want practices which involve people who are gay or lesbian which, from their standpoint, are appropriate. I'm not saying they are appropriate as far as I'm concerned. But they are appropriate. I don't want those made a matter of sexual registration to harass them.

SGT. HUGHES: I don't think that's contemplated, Senator.

SENATOR MARKS: Okay.

SGT. HUGHES: Only criminal behavior would be a basis for reporting any offender.

Oftentimes too, and it has been addressed, the other topic, just briefly, I want to indicate to you also is the difficulties in charging the crime of rape and how can they be overcome? A lot of times that, through training of our investigators, training is extremely important to develop an expertise, because it is an extremely critical investigation because oftentimes it has to be extremely thorough to corroborate testimony, corroborate any evidence that's available and, in interviewing and re-interviewing witnesses oftentimes. So it's extremely critical.

And the other problem is oftentimes, with the sensitivity of the district attorney as well. Vertical prosecution is extremely important and it's been a great leap in the ability to convict a lot of the sex offenders. Oftentimes it -- the district attorneys as well have to be extremely motivated and willing to receive the specialized training in order to be able to charge and to convict these sex offenders as well. So the importance that I place on that is also in the ability of the investigators and the police officers to receive, you know, basic training and education.

That's all I have.

CHAIRMAN LOCKYER: Thank you.

SGT. HUGHES: Thank you.

CHAIRMAN LOCKYER: Ms. Hiatt. Jill's not here. Okay. How about Ms. Sawyer?

MS. SUSAN SAWYER: I've been a public defender for about 12 years. And although I'm currently in charge of the Fremont office, I've tried about 40 felony trials. So I come here, I suppose, with a little bit different perspective than some of the other witnesses.

And when I received your letter, I have to admit that I was disturbed by what I perceived as its one-sidedness because the questions you asked which focused on your concerns. For example, you asked not are present criminal penalties fair but how can we increase them. You asked not how can or is charging done in an evenhanded or a fair manner but how can we do more of it.

And one question is that you also asked not what is the most distressing aspect of the criminal justice system when we discussed the crime of rape but what is the most distressing aspect to the victims.

And I guess that the attitude of the letter, which disturbs me, is that it seems to presume that the person charged has already been adjudicated guilty. And, of course, there's certain ramifications, if that is your belief. And those ramifications are that the trial and cross-examination and all those things that go with the criminal justice system are kind of fluff on the way to sentencing. Obviously, I don't believe that.

SENATOR KEENE: Could you be specific about which of the six questions you read to say that because I'm looking over them now, and I don't know that I can find that could be the case.

MS. SAWYER: Okay.

SENATOR KEENE: Are present criminal penalties adequate? I suppose one answer to that is yes, they're adequate or their excessive or they're inadequate.

MS. SAWYER: "Adequate" to me means: Are they enough? And I guess that another way I would have said it is: Are they fair; are they correct? As opposed to: Are they high enough?

SENATOR KEENE: I suppose they may be inadequate if they're too high. I don't want to quibble with the terms.

MS. SAWYER: Yes, okay.

SENATOR KEENE: But I don't see a --

MS. SAWYER: All right.

SENATOR KEENE: -- major -- I don't see any major slant in the way the questions were asked. I certainly didn't interpret them that way.

MS. SAWYER: Okay.

SENATOR KEENE: They may be subject to that interpretation.

CHAIRMAN LOCKYER: Your perspective doesn't surprise me and it's why you lack credibility as a general matter with elected officials.

MS. SAWYER: Okay.

CHAIRMAN LOCKYER: Okay.

MS. SAWYER: Well, let me put it this way: Any person who makes a charge, I think, is going to have, whether that is a rape case or a robbery or a theft, is going to have to be tested, I think, by the criminal justice system if there is a dispute about the facts. Anyone who might be charged mistakenly would want that.

What I see sometimes, and I think by very well-meaning people, is an insulation of a complaining witness in a rape case, that she should not have to do what every other complaining witness in a case does. And if you are disturbed about, and justifiably, I think, things which lead to frustration by people who make charges of rape, I think one thing is that the criminal justice system is not explained to them.

SENATOR MARKS: Can I just say one thing, please?

MS. SAWYER: Sure.

SENATOR MARKS: I think I'm a person who's always voted -- I probably voted with the public defender more than I voted with the prosecution. I think they all -- everybody will say that.

CHAIRMAN LOCKYER: Yes. (Laughter)

SENATOR MARKS: Because I'm concerned about the fairness of trials. What we're looking for here is not a question of whether or not you should defend your clients, which you should do, and appropriately I'll give you any money you need to do that. But we were trying to make certain that the way in which it's done is fair. That's basically what we're trying -- at least I'm trying to do that. I want to make certain that it's fair.

MS. SAWYER: Me too.

SENATOR MARKS: I don't think a defendant -- a rape victim, a person who's been raped -- should necessarily be made the defendant. I find that offensive.

MS. SAWYER: I agree.

SENATOR MARKS: I think it's perfectly fine to get some information about prior sexual practices and things of that kind. I don't think it's appropriate at all ...

MS. SAWYER: I totally agree.

SENATOR MARKS: But I'm not so sure that's being done that way.

CHAIRMAN LOCKYER: Well, why don't you tell us, rather than your general gestalt, which I respect but disagree with, other than I agree that there's a very important preponderance of innocence; if you want to remind us of that, fine; that's an appropriate thing to do.

What in your view are -- who is suggesting that victims of rape not have to produce evidence or be treated in a way different from victims of other crimes?

MS. SAWYER: I think one of the ...

CHAIRMAN LOCKYER: What are the specific suggestions and how does that impact the criminal justice system?

MS. SAWYER: I guess maybe I'm trying to head it off with the past in that some of the initial limitations on cross-examination, and we've seen one discussed here in terms of ...

CHAIRMAN LOCKYER: In crimes of rape, prior sexual history?

MS. SAWYER: Well, no. I agree that that is not relevant. In terms of having a young witness

put into another room.

CHAIRMAN LOCKYER: Okay.

MS. SAWYER: I think one of the most important parts of cross-examination is the demeanor of the witness which I think is quite, well ...

CHAIRMAN LOCKYER: Okay. Let's just make note of that point. The three ...

SENATOR MARKS: I'm against the idea of having to put in a separate room.

CHAIRMAN LOCKYER: The three senators present did not vote for that legislation --

MS. SAWYER: I understand.

CHAIRMAN LOCKYER: -- until it was significantly narrowed, probably narrowed to the point, as Ms. Aguilar mentioned, where it doesn't have any practical value. But anyhow, just -- I mean, you know, well, okay -- the right of cross-examination.

MS. SAWYER: Okay.

CHAIRMAN LOCKYER: Okay.

MS. SAWYER: Let me get to another point I would like to make since, I think, made this one.

I think that I'm going against the grain here. But it seems to me that the crime of forcible rape -- and I'll just limit it to that for the moment -- is carries -- the circumstances of that crime are as least as varied as the circumstance of homicide in the sense of the kinds of degrees that lead one person to cause the death of another. And you have a whole range of penalties from probation to death. In the crime of forcible rape, you have very limited options by the judge. It must be a felony; it must be prison and you have three-year options.

It seems to me that in spousal rape, for example, under Penal Code 262, you have greater option. And that Penal Code section, I think, recognizes that there are certain things going on in a spousal situation that cloud the issue. I think there is a category of crimes which are equally capable of -- where issues are clouded and where the moral culpability of someone, even if you decide that there was some kind of force used, do not merit a mandatory prison sentence.

CHAIRMAN LOCKYER: So you would stretch the range of sentences?

MS. SAWYER: That's correct.

CHAIRMAN LOCKYER: I think I agree with that but in a different respect. I'm mulling over and giving serious thought to introducing legislation that would allow for the death penalty in forcible rapes. So I would stretch the penalties without ...

SENATOR MARKS: I would be against that.

CHAIRMAN LOCKYER: I know you would -- without the victim having to die. It seems to me, in my mind, the impact on the victim is often almost death. And we ought to permit juries that breadth of discretion. That will be a very controversial suggestion, not just by those who oppose the death penalty, which Senator Marks does on every death penalty issue, but for allowing, for getting away from the reckless death of victim standard.

But anyhow, since I agree with you about the flexible sentences ...

MS. SAWYER: Well, let me give you the low category perhaps.

CHAIRMAN LOCKYER: Oh, you want to go down.

MS. SAWYER: Yeah.

CHAIRMAN LOCKYER: Not up? I see.

MS. SAWYER: And it's a category -- it's a -- in which I actually see a fair number. It's a category in which the man and woman are going out, either a date or a pickup or whatever, and sex is admittedly on the mind of both. That's the idea. And the question -- what happens is, if the guy had been a little smoother or had a little better line of patter or was a little more patient, there wouldn't have been a problem. But he wasn't patient. And the moral culpability in that case seems far less to me -- and I understand that there are probably a lot of people that disagree in this room -- than to jump-out-of-the-bushes kind of situation.

CHAIRMAN LOCKYER: Okay. I understand your point.

MS. SAWYER: Thank you.

CHAIRMAN LOCKYER: Do you think there's any -- well, go ahead.

MS. SAWYER: Actually, I was going on to another point.

CHAIRMAN LOCKYER: Yeah, go ahead, please.

MS. SAWYER: Okay. And I would just -- actually, I was going to go on to Senator Marks' point about the probation. I thought maybe I could offer a comment on that.

SENATOR MARKS: I'd like to hear that.

MS. SAWYER: I think that perhaps what the speaker was indicating was not that the person was refusing to go to counseling but that the counselor, because he or she was overworked, was allowing the person to say, "I don't need to come." And the counselor was saying, "Hey, that's great with me. I've got nine other people to see today," and the counselor wasn't requiring the person to come. That occasionally happens in our jurisdiction. So the counselor isn't saying, "No, the guy didn't refuse." "I didn't think anything more was necessary."

SENATOR MARKS: But you do think, that if a person is ordered to go to probation and ordered to go to a counselor, that the counselor wants that person to go, they should go?

MS. SAWYER: Yes, sure. And certainly, in our county, if the person refused to go, there would be a probation violation. I think it's the question of when you have an overworked counselor and a client that is inevitable.

SENATOR MARKS: Okay.

MS. SAWYER: And I guess that's all I have to say.

SENATOR KEENE: In your judgment, are people being convicted of rape where -- in a number of cases, a substantial number of cases, are people being convicted of rapes where the -- where in your judgment the basis for it is mis-communication of the sort that you described? I mean I would ...

MS. SAWYER: People are, yes.

SENATOR KEENE: Okay. I would think, that with the jury sitting there and the defense able to make a case and the reasonable doubt instruction being given to the jury, that there wouldn't be people slipping into the cracks.

MS. SAWYER: I wish I could say that's true. The jury system is an imperfect one. I mean there

are guilty people who go free; there are innocent people who are convicted. That's in every, every situation. I think we generally hit it right but that happens. And I can never tell a client -- this might be a wonderful case -- I can never tell someone it's so good that I can guarantee a jury would agree with me.

SENATOR KEENE: So you wind up having to plea the client to some lesser included in order to avoid the risk of going to the jury?

MS. SAWYER: That's always the client's decision. It's a harder decision because of the penalties involved in forcible rape, for example, that he would have to go to prison if he were convicted.

SENATOR KEENE: Have you discussed this issue with prosecutors, and do they agree or disagree with you?

MS. SAWYER: Depends. Some are in agreement that -- some agree with me. Yes, that's the short ends of ...

CHAIRMAN LOCKYER: Thank you.

MS. SAWYER: Actually, I did have one more point and I just wanted to commend the new protocol. Often that is the only way we have to show that someone is not the perpetrator. And so we, I think, anecdotally have approximately one to two cases dismissed in this county a year because they have the wrong person and we're able to show it through the test.

CHAIRMAN LOCKYER: Thank you, Ms. Sawyer. Jill Hiatt? (Pause) Elizabeth Ross?

MS. ELIZABETH ROSS: My name is Elizabeth Ross and I want to thank you for this opportunity. I think that my testimony will be a little different than the words that you've heard before in the last witness' testimony.

And my knowledge doesn't come from a traditional, professional status. It comes through a very difficult but different expertise. And I want to -- this is not an apology but certainly an acknowledgement that I'm not an attorney and so there may be --

CHAIRMAN LOCKYER: Neither am I.

MS. ROSS: -- gaps and pluses as well as minuses to what I'm about to say.

When I was six years old, I was kidnapped and I was raped. And I was threatened with murder and rescued. As a consequence of that, I spent a number of years in the mid '70s doing a lot of work concerning the area of violence against women. I was one of the founding Madres of La Casa De Las Madres, a shelter for battered women, for those of you who don't know. And I also was -- worked as a staff member for San Francisco women's centers. I conducted a grant from the Council on the Humanities on violence against women which was conducted for 1,400 women and the documentation and materials that came out of that. I was on the Commission on the Status of Women, Subcommittee on Violent Crimes. And I was informed; I was well versed. And I eventually suffered from all too common burnout. And I moved away to Mendocino County where I presently reside as a professional artist. And I can't say that any woman is ever safe from rape.

CHAIRMAN LOCKYER: Do you make jewelry?

MS. ROSS: Do I what?

CHAIRMAN LOCKYER: Do you make jewelry?

MS. ROSS: No, I don't; I don't, but I make ...

CHAIRMAN LOCKYER: Oh, I really like your jewelry; I thought you made it.

MS. ROSS: Furniture. (Laughter)

I'm a performer and so ... despite the fact that Mendocino County is a rural population, I had certainly hoped that I would be safer or never to be visited so intimately again from what had happened to me, until September 21st of 1986 when my mother was raped and savagely, brutally beaten to death. And I'm not going to describe the incredible, phenomenal pain that I have lived with or that I will live with. I'll save that for another audience as well as testimony regarding the incredible experience that I had regarding plaintiff rights. I hope I'll find an audience; there is another time for that.

But my credentials are based on Penal Codes and Coroners' offices, district attorneys and public defenders more intimately; and I did learn more than I ever wanted to know or hope to know. And even in reviewing the materials to come here, it was unbearable to reread some of the -- some of the things that really happened in this case that other people have testified to, of the years of court-ordered counseling that this defendant had been required and never attended, to the autopsy ...

CHAIRMAN LOCKYER: Was that yours or your mother's?

MS. ROSS: My mother's murder. That -- to the autopsy, that I had coroners tell me that, "Well, you know, it was 50 percent bruise and laceration but it wasn't really a very bad murder."

I don't want to generalize about rape and the victims because I think that that is inappropriate and not judicious and not useful. I really want to just talk about this case and hope that there are some pieces of information that are valuable to you.

And my mother -- I want to talk briefly about this. She was killed before dawn on a Sunday morning. The murderer was 19 years old at the time -- this is just over a year ago. He was someone that she and I had known for 12 years, since childhood. And she had ended a friendship with him as he progressed from a disturbed youth to an increasingly disturbed adult who stole from everyone in the neighborhood and used drugs.

The murder was premeditated. This is from a confession. And he was committed six weeks after a violation of probation on 22 counts of breaking and entering that was never followed up by the police.

Prior to the first hearing in Municipal Court, which is very early for those of you who don't know, very early in the legal system, a guilty plea of Murder 2 was offered and accepted against my will, but, of course, I didn't have any say in it, and no rape charge was ever brought. Now this is despite the fact that he had a lengthy history of sexual assault including numerous, over many years, sexual assaults against his younger sisters. He does not have one sexual assault charge against him. And I want to say why the district attorneys ...

CHAIRMAN LOCKYER: But wait a minute, he doesn't have a charge or a conviction for sexual assault?

MS. ROSS: That's right.

CHAIRMAN LOCKYER: Or ...

MS. ROSS: No charge, no conviction.

CHAIRMAN LOCKYER: There were complaints made ...

MS. ROSS: CSP investigated and the parents intervened.

CHAIRMAN LOCKYER: Okay.

MS. ROSS: Okay. And I wanted ...

CHAIRMAN LOCKYER: Were those the only complaints from family members or were there ...

MS. ROSS: Yes, two sisters.

And I want to explain a little bit what the district attorney's reasoning is because we heard a lot of, you know, you hear a lot of theory and here's the application. Murder 1 was not pressed because in special circumstances penetration with a foreign object is not considered a special circumstance, as it was explained to me. It must be with the penis, sodomy, or oral copulation. Well, there was no ejaculation, which is certainly common in rape. But because there was no confession, and because my mother is dead, and because of the confession of rape was to his sister, who wasn't ever going to be subpoenaed for court, there was some proof. And this was at the same time in this particular county that a case of this kind was handled by the PD's office as penetration of a foreign object. So it was qualified as a special circumstance.

I have to interrupt myself and say I'm vehemently opposed to the death penalty. I know a lot of victims are in support of it; I am not. I do believe, as Santiana said, that, "True morality is the lessening of suffering, another world on a hold, murder in my heart, and become the person I loathe." And that is the vision of society that I have and I'd be crazy opposed.

Let me move to another ...

CHAIRMAN LOCKYER: If you do a quantum, my view would be -- if you do a quantum analysis of how much suffering you're alleviating because of the execution, it turns out significantly less in this society because of that penalty, in my view. But in life, that's a matter about which there are deeply held convictions. I'm lucky that Senator Marks isn't here right now. (Laughter) He'd want to re-debate the matter.

SENATOR KEENE: But I am and I share your view.

MS. ROSS: And I hope that you will take it into consideration that I have probably been tested more severely regarding this law than most people in the room --

CHAIRMAN LOCKYER: Yes, yes.

MS. ROSS: -- whether I will still stay with my original principles, and indeed I do.

CHAIRMAN LOCKYER: Well, then I mean obviously, with a special circumstance, it doesn't just mean that somebody's executed.

MS. ROSS: Right.

CHAIRMAN LOCKYER: There is the potential for life without possibility of parole and you would probably not disagree with that particular punishment.

MS. ROSS: Not in this circumstance.

CHAIRMAN LOCKYER: Yeah.

MS. ROSS: But I did want to make that point because I do think it's an agenda that comes up around the issue and needs to be spoken to.

In the case of Murder 2, no rape was charged. And I want to remind you I had two district -- three district attorneys -- that worked on this case with me. And they sat in the room and said, "Well, you know, we're going to go for Murder 2." Or, "We're going to accept this. It's the dominant crime." I said, "Dominant for whom? You know, what is this, that you're going to create a hierarchy around what my mother's experience was?" They said, "It's irrelevant; it's irrelevant." And I said, "You know, you have lost the whole ability to observe this person as a sex offender because there's no charge against him."

But, you know, especially given the fact that this person was 19, he'll be eligible for parole when he's 29 years old. He'll never be eligible for a treatment program because he has no charge against him. And, you know, I know -- we know -- that this is a chronic illness. It's pernicious. If it's not treated, it will just get worse. Perhaps my life will be in danger. I did listen to the sheriffs tell me that he knew where I lived and I should move. And I don't want to suffer any more for what someone else did.

I do want to say, that because I was really involved in this case, much more involved, not only because I knew the assailant, but because I am one of those aggressively involved personalities, that I went to the Governor's Conference in April of 1986. And this is -- for those of you who don't know, this was labeled as a forum for prevention and for survivors. But I had the eerie sense of *deja vu* that I had when I was in the criminal justice system as a victim. I felt like a pariah; I felt like no one wanted to deal with me because of what I represented, whether it was because I was so forward or because I represented their worst fear: It happened; it does happen; people are, you know, women are raped and murdered savagely; or because I kept on presenting the huge gaps between what truth and justice was in this case and what was going to happen and what had happened.

And I sat at the Governor's Conference in a very crowded room. The first thing that happened to me when I was there, and I listened to the head of the Atascadero program, which is the sex offender program in California, I listened to him talk about how 82 percent of all rapists lack victim empathy and all of them believe that women are less than equal to men. And then he quoted the April issue of Playboy Magazine on an issue on drugs and said, "There are other good reasons for looking at this magazine." And I was filled with the same feeling that I had when I sat in the lieutenant's office. And I listened to him say, "Yes, your mother was raped; she was savagely raped. And there are major lacerations in her vagina." And I looked up at the wall and I saw a centerfold pinup on the wall. Now I don't want to get into a discussion of First Amendment rights because I support the First Amendment. But I really want to present to you that I do think that there is a correlation between not viewing women as equals and looking at them and physically trivializing their bodies. These are the people who are supposed to be on the solution side of the problem. This is frightening.

I know too that to challenge the foundation of this is to challenge and suggest dismantling a time-honored tradition of dominance and violence and misogyny -- and misogyny is the hatred of

women. And I know that this is to say unravel a major part of our social fabric. I'm saying it.

You know, this can only happen when rapists really take it seriously and outside of this room, I'm sure he was not. You know this. And you've heard the speech before; I'm here to make it again because it isn't any better; maybe that's the service I provide, you know. It has to be charged seriously; it has to be treated seriously. And regardless of the statistics, it wasn't in this case. And it wasn't to many others.

You know, I do want to have an image of respect and safety. I want that to be replaced with this incredible injustice that exists in our social thread. All-aged peoples must be re-educated, from children to district attorneys, counselors, about the issue of women and about the issue of dominance and violence. You know, sexual assault charges must be made. But when I asked the district attorney if it would have been more difficult for her to charge rape in addition to her, she said, "But it's not necessary. It has to be made legally necessary. It has to be made legally essential for both the defendant and the plaintiff. And I don't want the issue of dominant crime to overshadow sexual assault." I think this is just thinking that has to be thrown out the window. And I don't want the whims of DAs to be acceptable. And as you know, there is no recourse for plaintiffs once the DA makes the decision. I tried. I hired my own attorney. I took it the best I could. I called the Attorney General. I didn't have anywhere to go.

I'm in favor for lengthy sentences for sexual assault, and I do support the Attorney General's March ruling on two-thirds of the minimum time served for Murder 1 and 2. And I think that sexual assault should be included in that. But I don't want you to mistake why I believe that. I don't believe that is a solution to the problem. I don't see adequate treatment programs that exist. And I don't — you know, I think that removing rapists from society at the moment is one of the only things that we understand about how to protect women from known assailants. And I value this. But I don't — I don't see that coming from anger and vengeance and, you know, excessive sentencing goes to the root of the problem. It deals with the symptom of the problem. And, you know, it isn't an answer in and of itself because rape is an illness of the society that is acceptable. It's acceptable to such a huge degree that punishment is inherently a contradiction when you have something that is acceptable. It doesn't unravel the complexity of the problem to put people away forever. So I want you to know, that although I support the lengthy sentences, I see this only as a superficial issue. But when you have a systemic illness, you can't treat it locally. You have to treat it systemically and we have to begin to do that more, you know. We need more than \$2.8 million for the rape crisis programs. And we need money for education to get to the kids, to get to the adults who live in this, you know, masked hue of 82 percent thinking, you know, lacking victim empathy.

And I am not an expert on treatment models. But I spent many years working in the battered women's shelter movement. And it's true that the most profound information and models did not come from mainstream psychiatry, the people that work in the prisons. And I don't support the cognitive behavior mode that is at Atascadero. I think it's just absolutely not functional. But I know that grass-roots groups, like in the battered women's movement, rather use women's services, has a really excellent program for male batterers. It's run by men who identify the problems not only with

men but in themselves. And that's the kind of, I think, grass-roots program that will really, could take on educating a lot of people.

Of course, this is poor treatment for victims, because not only should we -- do we deserve the medical care and the legal care and the follow-up care but we're the barometers of change. And we suffer with the worst images in our minds and on our bodies.

And I want to add something that will make some people really uncomfortable in this audience but here it is: I found that victim-witness assistance was not only of absolutely no help to me, but it was injurious in its illusion that it was going to help me. I think there must be a program of this kind, but something about it was very off track in my particular situation; and certainly, I was in a very difficult situation. And I'll be pleased to submit some written materials on this.

CHAIRMAN LOCKYER: You might be more specific.

MS. ROSS: Would you like me to go on about this?

CHAIRMAN LOCKYER: Well, just -- if it wasn't helpful, what would have been or why wasn't it?

MS. ROSS: I think I'm really out of character in the room because I wasn't a rape victim; I was the family member of a raped/murdered woman. And for five months, I did not receive any of the applied funding that I had needed, and remember that, and that I also assumed someone else's bills. And it was a terrible time period for me. It was a murder investigation. And I was very lucky that I could have the therapy in which no one sent me a bill for the thousands of dollars worth of counseling that I was receiving. I received a sum of insurance money. And when that came in, I didn't know it existed. I was told that I should -- I called victim-witness and they refused to give me any money. And this is despite the fact that the sum of money that I received was significantly less than, for example, my sister's annual income, who did receive all the counseling she needed in Los Angeles. But that was because her services, you know, I mean because her income was not considered but just the insurance money was considered. So I got the insurance; I had to pay for the counseling myself. This is despite the fact that my annual income is probably a tenth of hers. And I fought with them about this. And they said, "Write your legislator." And I said (laughter) -- but I said, "You write my legislator, you know. I am a woman in distress. You have this responsibility to me. What are you talking about?" And they said, "No, you write your legislator." And I think that is -- I don't want to go on about that because there are much more severe abuses. But clearly, it's ridiculous to tell a victim that they have to lobby when this is a person who is paid who should be doing the lobbying as an advocate for me. What's wrong with this picture?

I want to -- so I do want to say that I didn't have -- that was one. But that's, that was not a helpful thing to me. And I didn't -- you know, it is very irritating to be treated by people who are in the profession of helping victims as though you are indeed a lunatic. Of course, I was in incredible grief. Can you imagine for a minute -- can you imagine reading the autopsy of the person you most loved? But I'm not a lunatic, and I'm worthy of respect. And I have credentials that no school can give to any person in this room. And I wasn't treated right away and I resent it.

There are going to be a lot of statistics today. And I guess this is something that you're going

to get a lot of hours around listening to figures. And, of course, we all know that while I've been speaking, a number of women have been raped; and 1 one out of every 4 women is beaten by their husbands; 1 out of every 7 of the women is raped by their husbands; 25 percent of the women in this room have been raped or will be raped before they die. It's a tribute to them that they can win with these injuries. But I want our courage to be put to a better use. And I will look forward to a day when that can happen.

I have really learned an incredible amount from this situation as well as the professional work I did in the '70s. And if there is anything I can tell this group at any point in time, I would be more than pleased.

Thank you. (Applause)

CHAIRMAN LOCKYER: Except for, besides the valuable and important perspective of, as one who loves the language, I would just like to express some appreciation for your taste for better words.

MS. ROSS: Thank you.

CHAIRMAN LOCKYER: Let's see. Ms. Hiat, can we find her? No, okay. Where are we on our list? Mary Beth Wadding?

MS. MARY BETH WADDING: Chairman Lockyer and the Committee Members, thank you very much for the opportunity to speak today. I also want to say thank you to Elizabeth. It's very difficult to do what she did. And it's also the voices that have created this movement that I feel privileged to have the opportunity to work in.

My name is Mary Beth Wadding and currently I'm the executive director of Riverside Area Rape Crisis Center. I've been in that position for 15 months. I have also been the one near a victim-witness advocate in the County of Riverside. And for three and a half years, I coordinated the University of California Rape Prevention Education Program.

Before Senator Marks left, I thought maybe I would start off with, if he had any questions about rape crisis centers and begin with addressing those questions. That is not specifically the remarks that I prepared for today. And I can certainly begin with your questions if you'd like or answer any specific questions that you may have about rape crisis centers.

None? Okay.

In taking a look at some of your questions, what I want to do is start with reading from a publication called "Freeing Our Lives," a feminist's analysis of rape prevention. It was written by the Women Against Rape in Columbus, Ohio.

"Many people view rape as a crime which can be effectively combated with the criminal justice system. They encourage stiff penalties to deter potential rapists and incarceration to remove dangerous offenders from the community. They confuse prosecution with prevention despite the fact that police and courts enter the scene after a rape has already occurred. Prosecution is intended to redress, not prevent, injustice.

"In the case of rape, it not only fails to prevent injustice, it cannot redress the full extent of the injury. The prosecution of a few rapists cannot correct the daily injustice to women who may never be raped whose lives — whose lives are damaged by fear.

"There is little evidence that punishment serves as a deterrent or that imprisonment includes re-education of rapists. Society has punished rapists for centuries. Yet sexual assault against women remains a serious problem. Even if the criminal justice system could work optimally, it would only detain some rapists, not eliminate rape."

And I think, that from working with respect to the Rape Crisis Center, where we see many victims who do not report the sexual assault, that this true, that it's a problem that continues. So in regards to, legislatively, can we do anything to prevent or deter individuals from committing rape, I don't think so. But what we can do legislatively, which is something to my great surprise, you've talked about it today, is legislatively commit dollars, not only to services but to prevention.

In regards to the second question, "Are present penalties adequate -- how can they be improved," I don't believe that the penalties are adequate. But I do, having worked in the criminal justice system as a victim-witness advocate, understand the limitations of that and that we have a system that we must work with. And thus, that happens.

One of the things that I find so alarming, that when we talk about rape, proving Penal Code Section 261, with penalties of 3, 6, or 8 years, it doesn't seem to make much sense, for a rapist to have to go to prison for a longer period time than that, you must do other horrendous things to that woman. So for a woman to feel that justice had been served in her case -- that she must be battered or a weapon must be used; she must be kidnapped; there must be a robbery, breaking into her home; other things -- created so that she can feel safe after this has occurred. It doesn't seem to make much sense to me.

Another thing that has been addressed too that I want to support is this idea of good-time credits and taking it away for serious felons. And I think that is something that should be applied to sexual assault convictions.

In regards to treatment, treatment programs to deal with the societal problems of sexual assault, have to be prevented and it has to be massive prevention of all society. Certainly, the focus that we have in the state currently in regards to children is one to be commended and I think that we will eventually see some changes but it's only a beginning; and that prevention dollars need to be much greater so that all people can receive some form of education and prevention.

One thing that hasn't been brought up today that I do want to talk about is drug therapy or the use of Depro provera in some states. That is something that is used in regards to treating sex offenders. And I think that that -- I believe, first of all, that it does not work; and secondly, that it reinforces misconceptions, misconceptions that rape is a sexually motivated crime and that it reduces the sexual drive of the offender, that you're reducing his likelihood to offend. And I think that that is not true. I think that rapists are motivated by the need to humiliate, to degrade, to take their anger out on a human being and that it has very little to do with sexual satisfaction. Studies show that rapists, convicted rapists, have very normal sexual activities with consenting individuals yet they have a need to also commit sex offenses.

CHAIRMAN LOCKYER: Where do you think they get that?

MS. WADDING: Where did they get their ...

CHAIRMAN LOCKYER: Their anger.

MS. WADDING: Where did they get their anger? Well, anger can be motivated from many, many different places. But I think that it's the same kind of anger that motivates people to perform other types of violence in our society and that their form of violence that they're choosing to vent their anger is through sexually assaulting women.

CHAIRMAN LOCKYER: Okay. I mean, my point is, I think, if we're going to genuinely correct the problem, we're going to have to eventually figure out how to deal with that anger.

MS. WADDING: Exactly.

CHAIRMAN LOCKYER: And where it comes from, and how do you -- how do you not allow it to happen in the first place, if that can be done? And especially with limited resources available to spend, you have to figure out how to spend it efficaciously in some targeted way. So I mean I'm really interested in how that might be done.

MS. WADDING: I think addressing the problem of how people manifest their anger, and especially a man as one that's massive ...

CHAIRMAN LOCKYER: Well, I'm one who can relate to that, having a good gob of it in my own system, not expressed in this way, is fortunate. But anyhow, we need to figure that out.

MS. WADDING: Yes.

CHAIRMAN LOCKYER: And with some rigor and discipline.

MS. WADDING: And I think -- I think that it is being done. I mean I think that there are studies done with very limited numbers of individuals who have committed sexual assaults and that there are some programs that may work for some people. Certainly, you know, I'm not here to even discuss or advocate some of those programs because I don't believe that there is a cure for rapists. But I think that there are some people who can be helped, and there are places in this country that that's happening. I don't see that happening in the State of California, and I don't recommend any of the current treatment programs or that treatment is a possibility at this point in time.

What I do, in fact, support is longer sentences; longer sentences so that victims can feel safer, if that's a concept. Dealing with a woman when she receives the knowledge that the person who has committed rape against her is being let out of prison is something that is -- it's re-victimizing her of the potential for that person to come back and re-assault her is there. Statistics show that that is not likely, but that does not change her fear and her psychological state of having to deal with that. And not only longer sentences so that victims can feel safe but so that potential victims can feel safer.

The next thing that I want to talk about is the single most distressing aspect of the legal system. And it was hard for me to focus on the single most distressing aspect. I don't think there is one single issue. I think the issue that we do need to deal with is the lack of reports. It's surprising in some ways in 1987, with all of the work that has been done in regards to educating society about sexual assault, that reporting rapes are increasing. In fact, they are decreasing. And later, when I talk about the medical protocol, I'll talk about some correlations in regards to that.

But, well, the first -- one of the problems is that the lack of reports and what can we do to

encourage women to go save the report so that, in fact, possibly we can get more convictions.

The second thing is the training of law enforcement officers. We have come a very, very long way. There are some very excellent training patrol officers and detectives; that there are also some who are not.

This last week, at our Rape Crisis Center, we had a woman who was sexually assaulted who was from a Scandinavian country. And the law enforcement officer felt it necessary to make comment on the gross stereotypes and misconceptions about people from Scandinavian countries related to sexuality. And it is, for one, not something that our volunteer advocate needed to deal with; but two, the victim needed to have her treatment by that law enforcement officer hazed with his attitude; and three, it's completely unacceptable to be making generalizations about people from certain backgrounds. And it happens in 1987.

In addition, law enforcement officers manage unbelievably large caseloads. Detectives, sex crime detectives, manage incredibly large caseloads. It could be that if a woman is raped, she won't have a detective contact her for a week or two later because he has that many other sexual assault cases that he needs to get to, meaning that rapist is on the street, you know, a week or two longer and they're possibly raping other individuals. Something needs to be done about that.

In addition, the paper trail that must be created. I understand the reasons for that. I know it is a necessity. But very often, people that are able to make bail, et cetera, et cetera because there are not enough staff able to do the paper work they need to do to keep someone in prison or to make the time lines that are set up by the criminal justice system.

In regards to working with the District Attorney's office, again, the caseload is one that's phenomenal and there's not always enough time to prepare. There's a lack of dollars for vertical prosecution. I think that's something that's been dealt with today. I think vertical prosecution is something that will make changes in the system for the people who make it that far in the system.

Another thing in regards to the criminal justice system is preliminary hearings. I'm surprised that hasn't been addressed today. Preliminary hearings now are being used as mini trials. They are not being used as the vehicle for what they've been set up for in the criminal justice system.

Sexual assaults are difficult for victims to testify at -- victims at preliminary hearings are put through experiences that I believe are unnecessary. Facts of the case need to be presented in preliminary hearings, not complete and total psychological damage of sexual assault survivors. No wonder they don't come back and want to participate at the trial time because what goes on in preliminary hearings, it is unbelievable. And I hope that that's something that the Judiciary Committee will take a look at because I know that it's a place where we can make changes.

One thing that I do want to address when the woman from the Public Defender's Office was talking is that the criminal justice system also has a way of creating a language that distances the sexual assault survivor from her experience. We call her a complaining witness; we call her the witness. We don't call her for what she is, someone who has experienced the situation, and this makes her very different than other witnesses in other kinds of criminal cases. And I would like to see some changes being made in that area.

In regards to talking about difficulties in charging the crime of rape, what I think I want to talk about is acquaintance rape. And it's been brought up in many different ways today. Reality is acquaintance rape is not a part of the system. Women who are being victimized in acquaintance situations are not becoming a part of the system. The system is not set up to be dealing with women if, in fact, they do find the strength and support to become a part of the system. I propose that there should be some thought to very possibly writing new statutes that deals specifically with acquaintance rape.

Susan Aguilar's comments that very possibly we can work with what we have -- maybe we can with some drastic retraining, but I don't see it happening. I don't have in my mind what the statutes would be. Certainly people with more legal background than I could possibly create them. But it's not happening here, not getting convictions of people who are rapists, who have committed felonies. It just happens to be they were clever enough to rape someone that they knew, in situations that were very difficult to prove. I think that's where we need to put our focus, certainly in the prevention movement that rape crisis centers are involved with as well as many other groups. That is our focus because that's what happens most often. The survivor is known to the offender, that they are pre-planned and that -- you know, this idea, talking about coercive sexuality and talking about seduction and talking about convincing the woman to participate in the sexual activity, I'm sorry. When a woman says no, she has that right in this society under current law to say "no" and that when someone violates that they've created a felony. And I think that most people don't believe that; people on juries don't understand that. And that's why those cases are not being entered into the system and that women are not being treated fairly who have experienced that.

SENATOR KEENE: Do you believe there are such things as close and unclear cases? I mean we have clear cases as one category.

MS. WADDING: I certainly understand the difficulty in proving what happened. And what we're talking about very often is one person's analysis of the situation compared to another person's. But as you have heard, the position of women in society is one that is not equal. So very often, their opinions about a situation are not taken as seriously as a man's. If the man is doing the raping and his opinion is one that's more valued, he is going to be believed as opposed to that woman. And certainly, it even was brought up here today, that how credible a witness is makes a difference in that prosecution. And that doesn't change what she's experienced, how credibly she's able to re-tell what's happened to her.

SENATOR KEENE: How much of that is the presumption of male correctness over female correctness in any given interpretation of facts, and how much of it is the presumption of innocence? Because I'm willing to work very hard to change the former, but I start to be concerned about changing the latter. I mean criminal cases are tough to prove.

MS. WADDING: Right.

SENATOR KEENE: If you've got a grey-area case, the presumption of innocence usually dominates. In this, you have a similar situation but you also have something different; you have an added ingredient, this willingness to believe a man, if that exists, more than a woman. And I presume

that it does. Law enforcement is dominated by man and so forth, I've seen in all cases. But that's the tough part for us.

MS. WADDING: Right.

SENATOR KEENE: Is to figure out where the lines are.

MS. WADDING: Well, and they're very difficult. The lines are all different for everyone. In one case, the seduction may lead to a very pleasurable sexual experience; in another case, the seduction may lead to a sexual assault. And you're right; it's very, very difficult to prove that.

CHAIRMAN LOCKYER: Well, we have presumptions of the innocence and the requirement of proof beyond a reasonable doubt. I don't think anyone wants to change either of those standards. I mean very few people seem to have that as their --

MS. WADDING: Right.

CHAIRMAN LOCKYER: -- legal objective. But okay. Go ahead.

MS. WADDING: But the women are the ones who are made to feel guilty in the acquaintance rape situations because they let it happen, quote, "let" it happen; and they didn't let it happen. And we're not choosing to have the situation occur. And I certainly do understand the difficulties in prosecuting it. And that's why it's not successfully prosecuted. But I think that there are some elements, certainly in the creation of marital rape laws and the change in marital rape laws, extending the time of recording from 30 days to 90 days. Those kinds of things, I believe, need to be applied to what happens in acquaintance rape, the same way laws have been adjusted in regards to domestic violence. But we don't know everything. We don't have a perfect system. And I think that it can be changed.

Lastly, when you're talking about the medical protocol, I think that, as I stated before, it is taking a step backwards. I think it is helping tremendously. It is something that I support. It's just unfortunate that through its implementation it has gotten some bad media, that now, people are -- well, and, in fact, some bad situations have happened because of it. People are going to be less likely to report because of their misconceptions about the medical protocol and what is happening.

Some alarming things to me that had happened in Riverside County is that we're now finding law enforcement agencies calling us, the Rape Crisis Center, and say, "Could you please come talk to this victim so we can figure out whether or not it's rape so we can determine whether or not we need to take her to the hospital so she can be treated with this medical protocol?" That makes no sense. A woman tells us she was raped; we believe her, and that we advise them in that way.

Another thing in regards to the medical protocol, which has to do with evidence improving the case, that evidence is usually not evidence that is necessary in regards to proving acquaintance rape case. So that in focusing our attention on that, I think it is fostering a system that we will see the benefits from in the future. But in regards to addressing acquaintance rape which, as we know, happens most often, it's not touching that; and so that we are continuing to not address that large gap.

And the last thing that I wanted to talk about has to do with the funding. And I want to commend you for your comments in regards to that. Speaking from dealing with the daily pressures

of having to manage the money at our Rape Crisis Center, what we need to see is a stabilization with the dollars, that we can depend on it: How can you do planning; how can you staff the centers; how can you operate effective programs without being able to depend on dollars to do that? Where, in fact, the statistic -- I think it was at least close in our case -- that the state funds are about one-fourth of our budget. But ...

CHAIRMAN LOCKYER: Is that true in your ...

MS. WADDING: That's true, yes, in our center. But I think what we're missing and what hasn't been addressed here is, that in the State of California and throughout the country, the major work in the anti-rape movement and the people who are giving the service to sexual assault survivors are volunteers. And so what we're talking about is an unpaid work force who are effectively making social change and that it would be wonderful to see more money put into that so that we can do -- give better support to those volunteers who are doing all of the work.

And lastly, I want to make just a few short comments on the fact why these hearings need to happen. And I think that it's very important and that you address very serious issues. But what it does tell me is that there is a great lack of knowledge of child sexual assaults in our society. And I want to commend you to beginning to open that door and dealing with some of those issues because it is very important and does affect all the women and people in the women's lives who have been victims, who are potential victims.

CHAIRMAN LOCKYER: Thank you.

SENATOR KEENE: It's been mentioned by a number of witnesses that we have a tendency to treat symptoms and not causes. I don't think it's so bad to treat symptoms until you know what the causes are; and then you've got to get about the business of treating the causes. I don't think there's any great mystery as to some of the substantial causes. Violence, explosive behavior, and macho sex is taught; it's established; it's reinforced as normal, attractive, exciting, fulfilling behavior by the most powerful institutions in our society, the media. It's in the movies; it's in the soap operas, watched mainly by women, incidentally. It's in the newspapers; there's no great mystery. It's easy to be outraged at rapists; it's easy to be outraged at the faceless bureaucracy in the system. It's not so easy to be outraged at ourselves. I don't know fully what the answers are. I'm concerned about the values that are being injected into our society that include the kind of behavior that we then prosecute. I don't know how to change that; I don't know how to change it without violating the free flow of information. I know that our educational system lags way behind and we don't have the certain people in our society, sufficient to certain people, who reject that sort of thing or the Nielson ratings wouldn't promote those kinds of programs on television.

But I think we need some proposals and some solutions offered to some of these problems because that's where the root of it lies, I'm convinced. And I certainly would like to hear differently if you people feel differently. And that's what I feel very, very strongly.

MS. WADDING: No, I think that you're, you know, accurate in your assessment that certainly the media and popular culture that supports this rape culture, you know, if you may; and that it is something that certainly people are trying their best to combat and that it's naked. You know, one

step at a time because there is so much but resources are limited in what we can do. And the more and more sexual assault survivors there are, the more and more work that's created. And if the same people who were working with the survivors are also needing to combat the system and to re-educate society, it's almost impossible.

SENATOR KEENE: I'm suggesting something more than that. Maybe it's much more than a weighty issue; maybe it's a values issue and maybe we're promoting and reinforcing a lot of values. And generally, the violence that rape engenders -- that engenders rape -- is found in a lot of other areas as well.

MS. WADDING: Exactly. And, in fact, rape is in many ways institutionalized into very many parts of our society. And if we historically look back at times of war and, you know certain ways of attacking a country or an enemy may be by raping the women and we need to go back through that time and document that. I mean it certainly is a tool and that rape does not lie alone but that it is a part of a greater violence that we all live with.

One thing I do want to say, though, that you are definitely on the right track in that women, through the women's movement, and through the anti-rape movement, have been able to educate and re-educate and support each other and that we do need the other side, that we need the men to be working with each other and re-educating. And I do believe that in a very small way that that is happening. And I know that there is someone on the agenda who will be addressing that. But it's a small scale compared to what we need. But you definitely have identified the problem accurately, in my opinion.

CHAIRMAN LOCKYER: As usual, I'm always pleased by my seatmate's thoughtfulness. And he always provokes me to kind of join in the discussion. Let me do that in this respect: Barry, you mentioned -- what were your three cultural phenomena? Sexual, macho attitudes, fallacies ...

SENATOR KEENE: Violence, explosive behavior ...

CHAIRMAN LOCKYER: I would, I think, maybe add to the list, in a society that extols the virtues of competition almost more than any other single good thing, competition is easily misdirected in the form of aggressiveness which, if it gets bent, expresses it in a sort of way and in numerous other ways that I think are socially dysfunctional. I'm sad that Tom Payne and the people that wanted to talk about love and cooperation lost the argument 200 years ago to those that thought we were basically a species of greedheads, that we have to control people as a fundamental, institutional framework in the country.

So I wanted to just add that to this, maybe colleagues thinking that each other is offensive; and add, though, what makes me optimistic is I think we are in the midst of an enormous revolution in this country regarding male/female relationships. And that makes me optimistic. It's going to be troublesome and difficult. And I just wonder, for example, what would happen if you had a candidate, the first female candidate for -- a female candidate -- for president who had been raped sometime in her background? How would that play out, the new politics of the discussion?

Well, I noticed, if I remember what happened to Senator Eagleton in his discussion on mental health issues. But there is that fundamental change going on in our society and we need to, I think,

figure out how to speed it up. And that's partly how I see my role as a legislator, is how do we accelerate those good changes that are occurring. And hopefully, if not the elected officials, rape crisis centers, and others that are perhaps the front line catalysts for some of these changes, we can help do that job better.

MS. WADDING: If I may make one more comment. Women grow up with the same socialization as men and so that we live with these same attitudes. And I think that that's where the difficulty comes in with believing in these same attitudes. In regards to acquaintance rape, a woman may not identify her experience at a certain time as having been, when sexually assaulted, because she too believes that what occurred, even though it was against her will, is what's acceptable in society. And so it isn't that just the men have these attitudes but that the women do too. And certainly when they experience the victimization, it is ajar and it is very difficult to get through that victimization to becoming a survivor.

CHAIRMAN LOCKYER: Thank you.

Mr. Radetsky, is he here? Michael Radetsky?

Let's see here, yes, Marcia Servedio.

DR. MARCIA SERVEDIO: Good afternoon. I'd like to, first off, associate myself with all of those who have already commended you for holding these hearings and it's tremendous that you're here.

CHAIRMAN LOCKYER: We're going to do something it, really.

DR. SERVEDIO: All right. Well, that's what I hear ...

CHAIRMAN LOCKYER: We're going to do something -- we're going to do something about it, really.

DR. SERVEDIO: Okay. I think that, as I was listening to all the testimony and the comments that have been made have been very impressive and very enlightening.

CHAIRMAN LOCKYER: Good witnesses today, very good witnesses.

DR. SERVEDIO: And also you're responsive and very supportive. I too agree, however, that unfortunately these do not represent the communities at large.

CHAIRMAN LOCKYER: How do we know that? Are there -- is there a poll -- I mean I heard four or five witnesses say, well, a majority or most of the public don't believe this is really a crime. Do we know that? I mean are there poll data that -- could somebody just send that first for the record at some point that you know some actual -- I'm not -- I spend a fair amount of time looking at poll data and I've not seen that so I'm very interested in seeing that data.

DR. SERVEDIO: Let me formally introduce myself --

CHAIRMAN LOCKYER: Yes.

DR. SERVEDIO: -- first, if I may. I am Dr. Marcia Servedio and I direct adolescent education with the Santa Barbara Crisis Center. I'm responsible for having to go up and implementing the Adolescent Sexual Assault Prevention Program in the Santa Barbara Schools. I have over 15 years' experience in education, teacher training, value-based curriculum, development, innovative program development, and residential treatment programming for high-risk teen populations.

I have -- I have prepared remarks with me which I'm going to set aside and submit along with a compilation of our most recent curriculum materials to be associated with the record and for your examination.

CHAIRMAN LOCKYER: Okay.

DR. SERVEDIO: Basically much more detail here in terms of specifics that we can cover.

What I would -- what I would like to do is to be responsive to some of the discussions that have already occurred, first, after just briefly introducing the program to you and then being open to dialogue on some of these points.

The Adolescent Sexual Assault Prevention Program, which we refer to in abbreviated fashion as ASAPP, for obvious reasons, was born in 1984 with innovative monies, innovative rape prevention monies, from the Office of Criminal Justice Planning. I'm happy to say that we have fulfilled our mandate and produced a program in which we have a full, in which we have a strong, track record. We had presented -- what was it -- 8,000 students within the Santa Barbara school community and have influenced programs throughout the state and nationally as well.

We receive accolades from OCJP. Unfortunatley, we can no longer receive any monies that will allow us special rape prevention monies, that will allow us to continue on an ongoing basis. We have made application with OCJP's encouragement and we're awaiting final approval for a technical assistance project where we can share what we have learned with others throughout the state. The irony is that we're not certain that we will be able to continue a program. So as I represent anything here, it's a concrete example of a program that has been born, has demonstrated success. And I would be glad to elaborate into what I mean by that. And yet is at risk of withering ...

CHAIRMAN LOCKYER: OCJP funds pilots basically; is that what happens?

MR. HOWENSTEIN: That was the concept used for the prevention program, was develop pilot projects, develop curriculum that could be distributed and utilized throughout the state, not just ...

CHAIRMAN LOCKYER: The technical assistance branch would be who -- who decides that?

DR. SERVEDIO: It's presently under consideration with OCJP, yes.

CHAIRMAN LOCKYER: Is OCJP likely to decide to continue funding?

DR. SERVEDIO: I don't know. Maybe I'll ...

MR. HOWENSTEIN: As she indicated, it was with our encouragement because it is such an outstanding curriculum that we are looking forward to the potential for ...

CHAIRMAN LOCKYER: Is there a deadline on that?

DR. SERVEDIO: We should be hearing sometime soon. But clearly, this is a successful program. Our program is unique -- and I'll be very brief on this because I want to go onto other issues -- in that it is team taught; it is designed to be team taught by male and female facilitators because of the importance of modeling by both genders and also a demonstration of communication and cooperation and all of that. Our program is a five-class-day program, but this has been designed to be flexible. So what you'll find in here are what we call instructional modules that specifically target key concepts, key important distinctions, that are explored by students in an interactive discovery way.

I would like to point out that our discussion of root cause is essentially what we deal with on a day-to-day basis from high schools. We get to see the inception of many of the styles of communication that we would make a reference to. The issue of date and acquaintance rape is the issue primarily that we focus on. We provide an overall discussion that's focused on rape by an acquaintance. But we focus on the ingredients and it's been well articulated here. We all hear and know what we're talking about.

What I would like to address are some of the points that came up, for example, with respect to male anger. We have a very strong commitment — and, in fact, there are other modules on the drawing board that, with more money, we will be able to more fully develop — a very strong commitment to work with young men. In the five days, typically — and I say typically because we're very flexible, typically — Monday, Wednesday, and Friday we've been mixed with groups. But Tuesday and Thursday, the young men and women are separated. And it's at that time when these kinds of issues, the intra-gender issues, can be explored. And we deal with that.

We have one module in particular which, which we explore empathizing with the victim. And young men are exposed to dealing with the issue of male rape. The idea is to connect the feelings that they experience, those human feelings, with the feelings that young women experience. So what we find coming out of this exercise is the byproduct of the socialization process. The immediate response to the prospect of male rape is not surprisingly anger, very quick, very bold anger. You have an opportunity to reflect on that. What is that about? What's underneath the anger? So we unpacked the anger and we talk about the difficulty and the burden that young men experienced on having to appear tough, that the acceptable emotion is anger. It's not acceptable, really, to have much of any other emotion. You've got to be cool and it's okay to be angry. Being sad, being afraid, it is not okay to have some emotion.

Now what we get to discovering the process in the classroom is hey, of course it's okay; it's human. So we're able not only to go in and impart information; we're to assess — although it's important to be able to assess where young people are because we can see danger signs and we can respond to them. But it's the giving and the opportunity to process those feelings. But you're dealing still at the age level when they can — they can make life choices; they can change; they can develop their ability to reflect upon their own behavior. And I think that's what makes a program, programs like this, in the high school so valuable.

Talking about — oh, and I might also add there are many, many things we've been saying about this dynamic that there really is a distribution. There are those young men who are solidified in their anger. There's a lot of that. But the vast, vast majority of young men are increasingly open to being willing to show their vulnerability; they're relieved, this tremendous sense of relief. And I really believe, that if we can continue this kind of program, that we can begin to head off some of this inappropriate behavior.

The topic that we focus on — as I say, this acquaintance rape has been discussed here. We do that because this very strongly suggests that upwards of 80 percent of the risks of young women in that age category, college age, I would say, latter teens or the 20s, is a category. We walk in two

worlds. We talk about the law. The law plays an important role in the program and it plays an important role — well, in one way because these young men are assessing the law and their limits. The law — they look at the law to see what the limits are. And that's one example; that's one clear example why we must be clear ourselves. But we go beyond that. We talk about how the law sets a limit but cannot regulate all of our conduct, the question of the unclear case that you mentioned when you discussed the presumption of innocence. Simple. There are unclear cases.

It is my belief — and we see it happening in the dynamics of the classroom and I'll say we see it happening amongst ourselves and go through when I leave — went through initially the facilitator training. We discovered that there's more clarity there than we thought, that if we can at least reduce the number of unclear cases by clarifying our own lives, what it is we're talking about, I think I was struck. I jotted down with impatience that Ms. Sawyer brought up in connection with what I would be led to believe, sounded like an acquaintance rape, that if you had just been a little more patient — is this a minor issue of timing somehow because sex was on their minds? Well, going out to dinner and eating could be on one's mind. But if he had force-fed her, that would have been an assault. It's just, that in time, she would have eaten anyway. (Laughter)

And I think, if we can use those kinds of models, I think that helps to clarify it for me because I think when I look at it, what's going on there. But if you really can apply some yardsticks, we can begin to separate the good behavior from the bad.

We — in this program, we have an expanse of over 60-term vocabulary roster where we have worked very hard at defining of terms. We've made some distinctions that we can use in a course of the program that helps to separate out some of these issues. So, for example, defining the distinction between sexual assault and sexuality. I'd like to share this with you because it's a lesson I learned that's very telling.

When we began the program, we started out with a very strong statement. We said, "Rape is not about sex." We knew what we meant. It became apparent to me, and anyone else who observed it, that particularly in the case of young men, that they just got violent; they just get violent. The question was, "What are they hearing? What is it that we think we're saying that we're not?" And through that analysis, it became apparent that what they were hearing was, if I pressure a girl, they're telling me it has nothing to do with feeling sexually aroused. Well, that's just wrong, in their experience. In their experience, sexual arousal is part of that process.

What we thought we were saying was that rape is not about sexuality. Well, that's the term that we chose to use, that is, it can be the case. And I realize that there's a range of experiences and up to 40 percent, and particularly stranger-related rapes, may not result in ejaculation. But remember, we're dealing primarily with a little different phenomenon here. But what became apparent here was, that to their experience, they were engaging in sex. That's what sex was about. So we included our important distinctions about that.

Let's look at sexual assault and let's look at something called sexuality. See, we assume the frame of reference that they read about is our frame of reference. Okay. Sexual assault. Let's say there is sex, and by sex we mean a physiological event, a particular experience. Well, you know, just

power, pressure, violence; it all falls out. Okay. Fine. Well, let's look at something called sexuality, and let's say we've got sex there too. What else is there? Well, it's caring, communication, friendship, love, et cetera. So they get to discover what sexual assault or rape is about. So did we, in terms of clarifying it for ourselves. So these are the kinds of distinctions that help to separate things out. But we're not talking about mechanics here; we're talking about context and so they can relate that to their lives.

Other distinctions like flirtation and street harassment, that's a little confusion. They're just flirting. Let's sit it down. What's going on? You know, what happens in a catcall situation? Who's the person doing the catcalling? What is he thinking now? They're probably confused in what they see and, you know, what their peers think and all this sort of — are they thinking about how the other person feels? So we allow them to unpackage that. And they get to discover that flirtation is a form of communication, that is, you put out a signal and you wait to see what comes back. Some of the distinctions between assertiveness and aggressiveness and others as well, which you'll find in here. But, you see, it's a language-based program. (Noise) We see it — already? (Laughter) We see it demonstrated time and again, that by systematic use of language in the classroom, we can touch some of these root causes. We can see changes occur. We also have recent data on attitude shifts, hard data. I did not include it here. I can forward it to you if you wish.

But I'll tell you, the things that really make a difference is when we observe what's happening in the classroom; we talk to teachers; we talk to other people; and we see the results. Not to belabor the point, but clearly, the issue is, hey, if we're all convinced that this is what we need, are we going to let it die? And that's really the dilemma, and have to face it.

They're certainly conservative in the college age level to the point where, at least, our UC president is so upset with our phased-in educational process that sex education is down. And I think that's great. It's being done at a level that is age appropriate.

We have been in the junior high schools. It's a different dynamic. We're doing it developmentally. Different situations. I'm inclined to address groups more separately than together. Plenty of virtue in having them together. And I know that there's some debate here. But the developmental differences between genders at the junior high school level where you have girls ranging from those who are children to those who are already getting involved in some of the issues at the high school level. And you have males — I'd like to readdress that issue around males and anger and all of that.

What you find at the junior high school level is the phenomenon of bullying; bullying; homo-social, same-sexed bullying activity. And it doesn't take long in observing that to realize that this is the practice for not only the kinds of same-sex bullying that gets to be abstracted, but it's also the training ground for what becomes sexually bullying in having sexual relationships. So that when we deal, when we deal at the junior high school level with young men, we're dealing with the same issues, even though they may not yet be in dating situations. The area is rich. It's vast. It's really untapped. We have so many things that we can still do that will really address at the root cause, so much of what we talked about here today.

The ingredient is, unless we continue to preach the legal burden, is leadership. We need leadership desperately. It's clear in the classroom that the young people are looking out there for that leadership. Some of us older folks are too. And I realize that, you know, our Legislature has its limitations in that regard. But I just want to support you all for taking a high profile for the thing that is happening here. I'd like to see -- I'd like to see much more of high -- I'd like to see some public statements. I'd like to see -- I'd like to see the public involved in this process of struggling to deal with the issue so that we don't keep it under wraps, this rape that's going on here. Let's spread it around.

Well, I'm going to stop. (Laughter) And I'm more than happy to respond if you have any comments or questions.

CHAIRMAN LOCKYER: Thank you. And I think we'll be hearing how your technical assistance grant goes.

One of the things I obviously hope we can do is figure out how to communicate successful efforts to address this very critical social issue.

DR. SERVEDIO: Yes, I'd be very happy to forward that information to you.

CHAIRMAN LOCKYER: Let me just double -- thank you -- let me double check -- we have three witnesses scheduled: Ms. Tobin, Ms. -- she's not. I'm not sure I'll pronounce this correctly, Hooger -- ...

MS. ENGE HOOGERHUIS: Hoogerhuis.

CHAIRMAN LOCKYER: -- -huis? And Laura X. So we have two present. I have to apologize to those next two witnesses. I have to leave immediately in order to make a hospital visit, just a very, very important matter. And I have read Laura X's written testimony who's with us. If you can stay for the next two witnesses, that would be nice. And I will -- Enge, Enge?

MS. HOOGERHUIS: Enge.

CHAIRMAN LOCKYER: Enge? I'll be happy to read anything or if there's transcript or whatever to make sure that I -- I apologize for the -- it just is important. I would like to make this concluding comment: I've been moved and informed and motivated by all of the witnesses.

I didn't say at the outset -- I guess I might as well share this -- that my 20 year old daughter made me think about this issue, not because it was necessarily some personal experience of hers that was unpleasant. But she just said, "Dad, you have to do something real about this." And I tried to say, "Oh, yeah, yeah." And she said, "Sit down. We're going to keep talking about this." And I said, "Oh, yeah. Okay." She said, "Sit down. We're going to talk about this." And I said, "Okay. You've got me. I'll do some serious listening and try to see what's out there in the ways of legislative solutions."

I'm always frustrated that there are a lot of problems that we don't know how to direct solutions to. And I think there have been some very good suggestions made today. And so I'm, I'm determined, as 1 of the 120 legislators, to address or seriously follow up upon them. And I have a feeling that there's going to be a family lobbyist who kind of bugs me on a regular basis about the matter.

So thank you for those who already have testified; for the two I am unfortunately going to miss, I apologize. There will be other hearings. And I maybe want to mention one other specific thing which is all altogether too often overlooked with respect to the discussions of these issues in the past. It seemed to me, when we were talking about rapist anger and that general problem and manner in our society that there was sort of an equal and opposite anger that I got communicated from those concerned about the issue. And it was a turnoff. I haven't heard any of that today and I'm pleased because I don't think that's the -- while totally justifiable and understandable, I don't think that's the right way to persuade people to make changes in the law or policies or programs or funding. I'm really pleased by what I heard and learned today and want to continue working with you. Hold us accountable. Keep us working on the issue. It's okay to do that. Thanks for taking over the mike, Senator Keene.

SENATOR KEENE: Ms. Hoogerhuis. Why don't you identify yourself more fully for the record.

MS. HOOGERHUIS: Yes. My name is Enge Hoogerhuis and I'm a court advocate at the Rape Crisis Center of West Contra Costa, located in San Pablo. My work involves going to court with children and adults who have been sexually assaulted and be a resource and support person for the victim and family as well.

Now during my average day, I talk with many victims of sexual assault, the majority being children under the age of 16. I developed an incredible respect for the women and children I work with. It takes strength for victims to go through the legal process, to tell their story again and again, to face their assailant in the courtroom, to wait in fear and anxiety for the legal process to come to a conclusion. I'm humbled to watch the survivors heal themselves of wounds that will never go away completely, to put their lives back together, and to have faith in themselves once again.

I also see how important rape crisis centers are. Although rape crisis centers have been in existence for only 15 years, they have done an amazing amount of work in helping change the society's attitude towards rape and rape victims and provide extensive services in helping women and children heal themselves. At our center alone, we have a service area of 206,000. And last year, we had 400 initial contacts with victims; we saw 150 victims in therapy; we helped 100 women and children through the court process. And our Child Abuse Prevention Project saw over 20,000 children in the schools, not including parents and teachers.

It is so vital for victims to have a safe person to talk to or listen to who will help them find and get the resources they need. In my job, I never asked victims to tell me what happened. But frequently, they go -- they end up in telling me anyway, for they have no one else in their lives who can hear with an open heart and open ears. Often, I am the only support person for a victim in the courtroom because the rape victim -- the rape has split the family allegiances or it's too painful for the family to deal with or the family simply doesn't care.

When I work with children, I often sit next to them, right by them on the witness stand. And I try to help them through the fear of court, of judges, lawyers, and their assailant sitting right there in front of them. Imagine what it would be like if your only support person, the rape crisis worker, wasn't safe, that what they said couldn't be guaranteed to be kept confidential.

I think the wealthy in the United States have a choice of seeing a therapist who is already guaranteed confidentiality. But the less privileged must seek the help of counseling from rape crisis workers. To not give rape crisis workers the same guarantees of confidentiality as therapists robs the victim of a desperately needed safety net; it puts the rape crisis worker in a compromising position and is discriminatory.

I value the fact that I'm helping women and children heal. It takes such dedication, I think, for a rape crisis worker to do this job, that no matter difficult it is, to listen to painful and dramatic stories every day; and we are doing honorable and necessary work. But for myself, most of the --part of the job isn't listening to the really painful and traumatic stories but watching the system, that it helps the victim rather than works against him or her.

Now I've seen our criminal justice system work. I've seen it work well. I've watched a child of 12 who was raped repeatedly, over several years, by her father, take the stand and tell her story honestly and with strength. Her district attorney spent hours, long sessions with her, getting the facts, establishing trust and friendship. The public defender asked questions with respect for the victim. And the judge was fair and considerate. The mother was in the courtroom and was supportive of the child. And the girl left feeling relieved, supported, and good about herself. But the majority of the cases I see and I work with don't go that well. I wait with victims long hours outside the courtroom after the preliminary hearing was scheduled and watched their anxiety and their nervousness increase. This type of waiting occurs frequently, and you can imagine how damaging this would be for the district attorney's case of a child victim.

I watch women being treated more like a criminal than her assailants, asked a never-ending list of questions meant to tire and confuse her. And I watch victims being, so to speak, raked over the coals by a public defender who had to stoop to questioning the victim's moral character because the public defender's case wasn't strong enough. I see children being confused by questions coming too fast and the demeanor of the public defender is terrifying.

Think of a child whose relative is the assailant, who looks out from the witness stand onto the courtroom and sees her family split right in the middle because they are torn over who to believe; the victim's mother not allowed in the courtroom because she is a potential witness; and her assailant, who could be her father, her uncle, or her brother, and has threatened her life and often the life of her mother, sitting in front of her. And the court advocate, myself, was accused by the public defender for influencing the child's testimony because I put my hand on her shoulder. This child, I can tell you, is scared to death, is frightened and alone and blaming herself for splitting her family up, for putting her relative in prison. And this type of case happens often. It's just like being raped again. I try to prepare victims for what might happen in the courtroom. But who could believe that our own justice system would be so unfair?

When I started studying the criminal justice system in college, I thought these horror stories would have changed; but they haven't. This is how our system works most often, and it isn't working. There is not a balance, I feel, between a defendant's rights and the victim's needs. A system depends on people to defend it. And those people presently involved in seeing justice is done are not being

just. Perhaps all district attorneys, public defenders, private lawyers, and judges need to go through an awareness training, such as all volunteers and staff at our Rape Crisis Center.

Let's deal with the facts, that there are very, very few false reports made by women of rape, that young children do not lie about sexual assault, that victims feel victimized in the courtroom. Is it fair to add more trauma to an already traumatized child, to guarantee that a defendant's rights are upheld? Is there something wrong when a district attorney would rather plea bargain than go to trial because the victim refuses to go through that experience, like the preliminary hearing, again? Treatment of victims, I find, varies from courtroom to courtroom, obviously showing that the awareness of the individuals involved makes all the difference in how the victim testifies and feels afterwards.

I think it's time that the needs, the rights of victims be addressed: Confidentiality of rape crisis workers, whether children should have to testify in front of their assailant, whether defense attorneys should be allowed so much leeway in questioning the "moral character" of the victim, how sensitive those working in the courtroom are to the experiences of rape victims, and how rape victims not getting enough police protection, and being harassed by their assailant, and often his family or friends, before the trial.

I feel a lot of these needs would be met if our present system, if our present culture, was more educated as to the causes of rape. But those in the Legislature and in a courtroom need to set an example for others to follow. I hope you'll address these issues when you return to the Legislature. And I thank you for your time and attentiveness. And I'll answer any questions that you have.

SENATOR KEENE: I appreciate your testimony. I don't want to make a big thing out of one of the many, many points you've made. But there's one that I don't like to let go by, and that's the conclusion that people appear to reach that young people do not fabricate when it comes to allegations of sexual misconduct by an adult. I know of no empirical evidence to support that fact. And all of the experience appears to be to the contrary -- that children do fabricate, and they do fabricate about everything. That doesn't mean that all children fabricate and all children fabricate about all things. But it does mean that there's a great deal of fabrication involved and sorting out the truth is very, very difficult, at least in my judgment. And I think it's -- I think it is illusory in assuming that every child is sufficiently innocent or the charge would not have been made. The children do have a difficulty in conceptualizing to the reality in separate stages in many instances.

That's the only quarrel I take from your testimony. You may -- I mean I'm sure you deal feel differently about it because you've had different experiences with rape.

MS. HOOGERHUIS: Well, if you don't mind, I would like to address that for a minute.

SENATOR KEENE: Sure.

MS. HOOGERHUIS: I agree with you that children fabricate lies. But I know, that when I sit in the district attorney's office with the child and the district attorney, that before the preliminary hearing comes up, before the trial comes up, that attorney makes painstakingly sure that that child is telling the truth; because I feel that most district attorneys, or the ones that I've worked with, are not going to go into court to lose. They're going to be presenting their, you know, their side,

obviously. And, of course, the defendant has their right to show what they -- what they feel. But it seems to me, that in the case this guy worked with, it's very clear, soon, even from when I've sit in with the detective, that they start to weed out, okay, what is true here? Did this happen or did this happen? And it seems that, that I think a lot of, from what I can see, that the general feeling that sometimes happens when a kid walks into the courtroom is that the general feeling is that this is a kid and that this kid and kids make up stories, right? And the general feeling of a victim, often from the judge and from the other people involved, is that, you know, their first -- their first impetus is not to believe the child. And I think that that needs to be done away with because I think the evidence is there, that children do not lie about sexual assault. And you can tell very quickly from their language, from the child trauma syndrome, and other child ...

SENATOR KEENE: If the evidence is there, why doesn't somebody bring it forward? Because I don't think it is there.

MS. HOOGERHUIS: I think it is there. I sure would do my best to find it for you.

SENATOR KEENE: Well, this is an opportunity.

MS. HOOGERHUIS: Okay.

SENATOR KEENE: A future opportunity. And I'm willing to be convinced. But my experience is not to disbelieve -- I don't arrive at the conclusion to disbelieve children because they said something.

MS. HOOGERHUIS: Um-hmm.

SENATOR KEENE: But I certainly don't arrive at the opposite conclusion, that because it's a child that's making the allegation, that it's most probably true because children -- part of becoming an adult is being able to distinguish between fantasy and reality to the extent that's possible for all. But that's part of becoming an adult, it seems to me; and kids are kids, and they do make things up.

MS. HOOGERHUIS: I agree.

SENATOR KEENE: I assure you that; they do make things up.

MS. HOOGERHUIS: I know. I mean I deal with children every day. And I just -- I think we have this -- I think we need a change of a, I think, a general feeling in this country with people who work with children, with the legislators, with teachers, with parents, that when a child says something about sexual assault, that they are to be believed, that before a child reaches the courtroom, they have talked often to the teacher in the school who's questioning them, to a CAP worker, a child abuse prevention project worker who have sat down with them, to a police detective, to then an attorney, before it ever reaches preliminary hearing.

And I just want to say that the general attitude sometimes towards children in the courtroom is that this is a kid. This is a kid, and this kid makes up stories.

SENATOR KEENE: I don't want to carry this to eternity. But two observations: One is, that you don't counteract a bias by creating an opposite bias.

MS. HOOGERHUIS: Right, I agree.

SENATOR KEENE: And the second, the second is that the criminal justice process does not begin and end with all the various people you've mentioned, including the district attorneys making

the decision. If it did, and many individuals would have it that way, the criminal justice process, once you're charged with a crime, it's all over; you're guilty. But there's another part of the criminal justice process that's very important. And I agree with you about most children. And we'd all like to do our best to believe that.

I agree with most of your testimony, almost all of it, but that one point.

MS. HOOGERHUIS: Okay.

SENATOR KEENE: Laura X.

MS. LAURA X: Do we close at 1:30?

SENATOR KEENE: Fairly close. Is there a problem with that?

MS. X: Well, if we're going to close at 1:30, then probably what I should just do is submit the testimony that I wrote on marital rape and respond to some of the things I've already heard in terms of, to update the statistics in my role as librarian. I was going to do this whole impassionate plea. It is, you know, it's time for 15 minutes and that's about all we've got. And there are things that I did not write, folks, because I want to respond to some of the things earlier; and I also had a specific message from a police officer in San Diego on date rape that I didn't write down yet. So perhaps I should just do that part.

SENATOR KEENE: Well, let me suggest a possible course of compromise, if it appeals to you, and that's to let us put all of your written testimony into the record. Why don't you allude to it and summarize it as briefly as possible and then do the remainder that you would like to do, refer, respond to various issues that ...

MS. X: You know, the other reason I wanted to do this is to have you ask any questions because often in dialogue things become subject to discussion too. So I want to leave time for that.

SENATOR KEENE: Okay.

MS. X: So I'll be as brief as I can.

The first thing I want to say is that I was deeply disturbed by the public defender's comments -- I think her name was Susan Sawyer -- this morning. There were various things that she said that have been alluded to that I was upset about. But one of the things is the idea that the moral culpability will be less if the person knew the person and it was just a matter of bad technique.

One of the things that is very well known since 1972, which I mentioned in my testimony, is the rape trauma syndrome and, that in that definition, they say very clearly, that the closer the relationship, the more extensive the trauma. So it isn't that it's worse -- I mean -- excuse me. It isn't that it's less of a crime; it should be more a crime if you're going to use that kind of a ridiculous argument.

Now one of the things that I want to say about that also is that I really gasped when she asked for people to be put on probation for rape and not have it be considered a felony. California is, as I say in my testimony, the only state in the country, to the best of my knowledge -- and I am constantly teased about this by prosecutors that I work with nationally on a day-to-day basis with them -- cases in martial rape is the only state where rape is considered a misdemeanor. It can be a wobbler, as you know, in this state, for spousal rape. And the notion that something like that, which

is so embarrassing and disgraceful and barbaric would be extended to what is, quote, "a voluntary social companion," in the other two states that we have remaining where there is a lesser penalty for date rape.

We've just spent 12 years trying to get rid of the five states where there were lesser penalties for date rape. We've got it down now to two states -- Delaware and West Virginia. And we moved from California, which was the fifth state, for marital raping, a crime, to now having 30 states -- 35 states where marital rape is a crime. So for California to go backward -- we keep having these nightmare situations -- is the only state in the country that has created exemptions regularly or at all in the past decade for husbands who were exempted from prosecution. And then to say that we're going to now extend that to date rape is just terrifying to me. So I have to say that for the record. I'm not saying that you said that. I'm just saying that the notion would even be brought up really was very frightening to me.

I also wanted to update in my librarian role the statistic that Elizabeth Ross used. I was terribly moved by her testimony. This is not a correction; it is just an underscoring. In Diana Russell's survey in San Francisco, in 1978, of all forms of sexual assault against women, she found that 44 percent of us will be raped in our lifetime; 38 percent of us before we're 18. So it's worse than the 25, just to be cheerful for Halloween.

Also, there's the statistic from the New England Journal of Medicine from very early, I believe, in the '70s, where 83 percent of rapes do not end in ejaculation. And their point in that article was to show that it was a power/dominating thing, not just a matter of somebody's medical problem running amok with it.

I also want to say something good about a public defender because I felt, in behalf of Susan, that there were some hostility towards her profession, and that is, that I think that the star of our marital rape hearing here in the Senate in 1979 was a public defender. He came up against the whole defense bar of the State of California and said, "I have just had a situation where I have had to defend in trial three times the same woman. She killed her husband in self defense and I couldn't get a jury to understand how she had a right to defend herself against something that was not even considered long enough to be a crime in this state. Therefore, marital rape has to be a crime." He was absolutely marvelous. And so it isn't -- it isn't just, you know, the prosecution versus the public defender but, should we say, the enlightened people on whichever side that are understanding this.

I also don't have in my testimony -- because I thought it was minor but I want to underscore what Greg Hughes said -- one of the many problems of the different kinds of exemptions for husbands in California is that they don't have to register as a sex offender. Now that, as I say, was -- I thought it was so minor because there were other ones that are so terrible. But it is a statement, to echo what you were saying, that it's okay in some way; rape is okay in some way and that it is not considered serious. Really, what that was about, along with some of the rest of the exemptions that we have, is that rape of a spouse is not a real rape and that the man is not an offender against society and he's not going to rape anybody else. So really, there's a lot of victim blaming going on by innuendo in that part of the statutes as well as some of the others. And I think that it's important to

understand, that if you do have any form of exemption from prosecution from a criminal act, that it's a real message to people, to young people in terms of educating them, that people are not taking rape seriously. And I think that that's the most important thing that I've heard from this hearing of today, is that we are acknowledging that there aren't enough people. And I agree with the people who say that most people don't take rape very seriously.

So the other thing I wanted to say, Senator, to do with date rape is that there's a police officer from San Diego State College that I met a year ago in a National Conference on Campus Violence. And she was very distressed, and I think rightfully so, because of a part of the statute in which the woman was — had — her drink was spiked at a fraternity party. This was a routine event all over the country now that the Association of American Woman Colleges has blown the whistle on these fraternity gang rapes. It's understood to be routine. And the spiking of the women's drinks and then they pass out and then the men have sex with them and they just line up. And I'm having a lot of trouble around the country trying to get it across to these guys, and in some cases to the women, as a person from Riverside Mansion, that there's something wrong with this.

Now we have in our law a situation where it has to be administered by or with the knowledge of the accused, before somebody can be accused. So let's say that Joe administers the spike into the drink and somebody else takes advantage of her; he can't be prosecuted. So what they had in San Diego was like 30 witnesses saying that, you know, that they didn't do it kind of thing. And there was no way that anybody got charged at all for this horrendous event. She is suing the university civilly but — and I believe the sorority and the fraternity as well. But I am concerned about this limitation, that only the person who administers the liquor or the spike, or the liquor, or who is aware of her being that kind of, impaired judgment or legally unable to consent, basically be the one to be prosecutable and everybody else gets off scot-free. I found that very offensive in our law.

Now, of course, in the spousal rape situation, the woman has no protection whatsoever. That's one of the things that happened to us in 1979, is that we went for a total repeal of all the exemptions and we only got any protection under the Force and Fear provisions of the law basically. And I didn't put this in my testimony because I didn't have the nerve at the time, but that was because I was writing it in isolation on an airplane. (Chuckle) But the strength of this hearing, I will tell you what we were told.

There were several legislative aides who told us — and they did not do this in collusion with one another — that the reason that we could not have all of the provisions for protection of rape, both Force and Fear and the Legally Unable to Consent provisions, was because there was this joke running through the Legislature, that if, quote, if I went out with my wife partying on Saturday night and we woke up the next morning, and we had both been drinking the night before, and she said, you didn't ask me last night, and we're going to the cops, therefore we cannot extend the full protection of the law to the wives of California. And that's what happened. That was in the Assembly, by the way, as I say, the testimony of it, not what happened in the Senate Judiciary.

SENATOR KEENE: Which we don't have much of a sense of humor in the Senate. (Laughter) I don't recall it having gone through the Senate.

MS. X: Well, actually, you do have a sense of humor, which I did have the nerve to put in my testimony. On the Senate Judiciary Committee, the infamous joke, he called it, "But if you can't rape your wife, who can you rape?" That was a gentleman on your committee, Bob Wilson, who allegedly said this. And it has put California on the map and to the point where all over the world people think we don't even have a spousal rape law of any kind here. And I hope to rectify that as soon as possible.

He did at the end of the hearing, after this happened, as the bill was introduced at the beginning of the year. But months and months later over much work, at the end of the hearing, he and everyone else voted for the spousal rape bill after it had been butchered in the Assembly. But he hasn't had that credit so I want to put that on the record too, and also because he did -- he did galvanize a lot of emotions and a lot of press on the issue, I think, inadvertently, by making that remark. But I think, as I said in the testimony, the thing that is most horrifying is that most people at that point, that all of us encountered, thought he was serious because there was a prevalent belief. People were very, very indignant that male privileges of that sort were being threatened.

And, in fact, to be even more poignant on the subject, in New York, in the case that I write up, and I give you a little summary of, the Roberta case, the mother of the rapist said she did not believe there should be any laws against marital rape because, after all, that's what men get married for. This was 1984, Christmas, just before Christmas. So again, the socialization operates as a setup for both genders.

I'm trying to think if there is anything else that I should add. Or I think I've alluded to enough -- did you happen to look also at my testimony? Did you have any questions?

SENATOR KEENE: Yeah, I perused parts of it. I didn't have any questions, but I hadn't looked at it through a microscope.

MS. X: (Chuckle) Well, maybe that's why we could have made it capital letters so you wouldn't have to.

SENATOR KEENE: Well, you also handed a lot of ...

MS. X: Right. What the other documents are -- one is a report with a deputy prosecutor about a man who raped his wife and his stepdaughter in the space of approximately 15 minutes.

SENATOR KEENE: I did read that.

MS. X: Right.

SENATOR KEENE: A very shocking case.

MS. X: And you flip that over and you see his letter, after he saw us on television about how nobody cares about the poor husband. That is quite, I think, a document.

I think it's important to understand that the men who are raping their children often are raping their wives and vice versa, and also of a case in California where a man was acquitted for raping his wife. And a week later, he raped another woman and killed his wife. This was in Fresno. So it is important to understand that these people are violent criminals and are not, you know, just having a marital tiff and that they are a crime; they are committing a crime against society.

Let's assume, just for a second, that they only committed a crime against their wife. I think

that the idea of having the name of a case, the People of the State of California against such and such a defendant is because a crime to one person is a crime to all of us, that it's supposed to be. That's what a crime against society means. It doesn't mean that there has to be a second person. And so it's important that that one person counts as a crime against society because it's important that person counts even if she's a wife.

SENATOR KEENE: Thank you very much, Laura. I appreciate your testimony.

Is there anyone else in the audience who would like to get on the record briefly? If not, on behalf -- I'm sorry.

MS. PAMELA WILLIAMS: Wait. I actually --

SENATOR KEENE: We can't get you on the record unless you come up.

MS. WILLIAMS: -- have a question this morning and I don't know if ...

SENATOR KEENE: We need you to identify yourself for the record so we can put on the transcript.

MS. WILLIAMS: That's fine. I'm Pamela Williams and I'm a director of the East Victims Nurse Home for Elder Abuse Prevention. We're an Alameda/Contra Costa County coalition that's committed to prevent the abuse of the elderly.

We were asked recently by our Contra Costa County ombudsman to get involved in a situation that involves a 62-year-old developmentally disabled woman who was raped by a man over at the board and care home where she lived. And -- catch my breath here for a minute. I think that the case, in a lot of ways, demonstrates some of the difficulties with the rape laws.

This victim testified, I think, rather eloquently to what happened to her. In September of this year, the man who raped her pled guilty to raping someone who's unable to consent, attempted sodomy, sexual -- let's see, assault with intent to commit rape -- I have the other -- sexual battery and also other abuse. I think there were five or six charges he pled guilty to. He was sentenced to a one-year suspended county jail sentence for 30 days to be served under the work furlough program; four years' probation, a \$5,000 fine; and 200 hours of community service.

And I think most of us who are fairly uneducated, in terms of all the issues of rape, are really outraged that that kind of thing could happen; that this man could plead guilty to all of that and be given probation on that suspended sentence. As it were to turn out, last, day before yesterday, he was again in court because he violated his probation by being on the grounds of the board and care home where this assault occurred and was turned down by the Sheriff's Department for the work furlough program. And so he is currently serving a 30-day jail sentence.

But I think what Susan Aguilar pointed out this morning, that wide discrepancy in the sentencing of rape, I think, is just a real -- it's a crime; it really is. And for this kind of a situation to occur, I pray to God -- nobody speaks to what real problems are here that you've heard about today.

SENATOR KEENE: Was there a problem of proof in that particular case because of the condition of the victim that she was developmentally disabled?

MS. WILLIAMS: As I say, she testified very eloquently. In fact, the defense attorney, I think, attempted to confuse her; said, you know, this happened in the crime and this happened and then later

on would ask her the question in the reverse way and the victim said very clearly, no, this happened first and then this happened ...

SENATOR KEENE: It was at the preliminary hearing?

MS. WILLIAMS: Right, the preliminary hearing. And at the subsequent hearing, this man didn't plead guilty. I mean I wasn't -- I'm not a lawyer and so I don't know where, you know, but the attorney, the district attorney, felt like they couldn't let this go to trial and offer him some kind of deal. I don't all the things that had happened. I don't know all the court procedures, the ways in which the new deals get cut or what happened in this case.

I think those who are familiar with the case have said very clearly that there's -- this woman testified and there shouldn't have been a problem with her, in her testimony of the evidence in this case.

SENATOR KEENE: Thank you for bringing that to our attention.

MS. WILLIAMS: I did leave a copy of an article in the back table from the Contra Costa Times that harped on this case. And if you want to enter that in the record, maybe call people's attention to it ...

SENATOR KEENE: I'd like to do it perhaps in summary ...

Anything further? I'd like to thank you all on behalf of the chairman -- yes.

MS. LINDA FRATEROLLI: I do have something further.

SENATOR KEENE: Again, we need you at the microphone so that we can get you for all time.

MS. FRATEROLLI: Thank you. I'll be very brief. My name is Linda Fraterolli and I'm from Sexual Trauma Services, Rape Treatment Center in San Francisco. And I just wanted to comment on some of the talking that has come up around me, acquaintance rape. And I sort of want to go back to something I heard Marcia Servedio say. And I think sometimes we lose the concepts that we're talking about.

Over and over, what comes up about acquaintance rape or date rape is that it sounds like it's some kind of misunderstanding. And I think, for most of us who work in the rape crisis centers, what we know is we're not seeing misunderstandings. And the best example I can give you of that is yes, sometimes both parties may have sex on their minds. I saw a woman last year who had met a man at a bar and was going to her apartment with him. I believe that they were both mutually going to have sex. However, when she got into the car with him, he started to beat her up. He broke her jaw and he forced sex on her in the car. It was a date rape situation. But I don't believe that it was a misunderstanding. And I think the public has a lot of misconceptions about what that phrase really means. And it's true, I think, even for victims themselves, there's some kind of confusion as to what their collusion is because they were on the date or because they knew the person and that we have to be careful how we bandy these terms around.

The other issue that comes up for me is that I think Senator Lockyer wanted to know about how do we know that most people don't really see rape as a problem, that many of us see it. For me, that's not only evident in the criminal justice system, but it's also evident when people get in the criminal justice system and are witnesses in trials where the jury is someone technically of their

peers and the peer of the defendant.

In San Francisco, we had a sexual assault case of a young woman who was sexually assaulted while walking down the street, grabbed into a car. Her screams brought on the neighbors to calling the police. The police arrived on the scene and pulled the assailant off this woman. The case did go to court, which as we all know working in this field, is very difficult.

The case went to court; the defendant was found guilty of aggravated assault, of robbery, of attempted kidnapping. But the jury did not find him guilty of the sexual assault. When asked afterwards why this was so, some of the jurors said that they questioned what she was doing out at that time of night; they questioned, you know, what her involvement was, although they were very clear about some of the other issues in the case. This is a woman who had all the things necessary for a court case: documented injuries, evidence, all the things that the criminal justice system has told us is imperative to prosecuting this case. And I think that a case like this isn't unusual. It underscores some of the beliefs that people have in terms of why sexual assault happens and how difficult it is for victims to prove and to get validation when they do come forward regarding assaults.

When you asked what legislators can do, I think that the whole issue of money and funding is very important. We've talked about education a lot here today, and I think that's also important. But there's an area of education that happens county by county in terms of many of the victims' programs. But there's nothing that really happens on a statewide level.

If we talk about the kinds of images that the media gives us and what effect this may have on people, what about the funding for alternative images? Or what about alternative messages for young people to see in terms of what is considered acceptable behavior and unacceptable behavior? That just creates another dimension and role model. It's not going to be the answer, but many of us -- our programs need the kind of support, the moral support, the kind of messages that we're getting now. And it's not fair sometimes when that support is there.

SENATOR KEENE: We need enough people to override a gubernatorial veto.

MS. FRATEROLLI: I appreciate that.

SENATOR KEENE: I would like just to thank everybody for testifying.

MS. FRATEROLLI: Thank you.

SENATOR KEENE: Laura X, you're finished. I'm sorry. Is it urgent?

MS. X: Well, I just had a chance to review my testimony, which I didn't know I wasn't going to give until I sat down and realized what time it was.

SENATOR KEENE: All right. We've already put it into the record.

MS. X: I'd like to make a couple of points that I, you know, summaries, just like three sentences, if I could.

SENATOR KEENE: We are going to put your testimony in the record. Some things have to be over at some point. I apologize. The hearing is over. Thank you all.

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STATEMENT

OF

LAURA X

DIRECTOR

NATIONAL CLEARINGHOUSE ON MARITAL AND DATE RAPE
BERKELEY, CALIFORNIA

FOR

A HEARING BEFORE THE

CALIFORNIA SENATE

COMMITTEE ON JUDICIARY

Laura X's statement is written as an individual citizen, consultant, and speaker, not representing the Clearinghouse which is an activity of the Women's History Research Center, a tax-exempt organization.

I'M HERE BEFORE YOU TODAY TO ASK YOU TO DO ALL IN YOUR POWER TO RIGHT THE GRAVE WRONGS DONE TO THE WIVES OF CALIFORNIA IN 1979 WHEN THE SPOUSAL RAPE BILL WAS PASSED. TO THIS COMMITTEE'S CREDIT, MOST OF THE DAMAGE WAS DONE IN THE ASSEMBLY, THE BILL'S HOUSE OF ORIGIN. OF COURSE, I ASK YOU TO DO THIS MOSTLY FOR THOSE WOMEN DENIED PROTECTION IN THE SPOUSAL RAPE LAW, AND FOR EVERYONE CONCERNED WITH GUARANTEEING THE FULL HUMAN RIGHTS OF EVERY CITIZEN. BUT I ALSO ASK YOU TO REPEAL THE EXEMPTIONS FROM PROSECUTION AS SOMEONE WHO HAS SPENT NEARLY A DECADE LECTURING NATIONALLY AND INTERNATIONALLY AND WORKING WITH OTHER STATE LEGISLATURES AND CONGRESS AND WITH PROSECUTORS ON A REGULAR BASIS.

FOR YOU
I am ALSO ASKING FOR MYSELF PERSONALLY TO LIFT THE SHAME OFF OF MY SHOULDERS SO THAT I NO LONGER HAVE TO APOLOGIZE FOR THE RESULTS OF A CAMPAIGN THAT I MYSELF RAN! IT WAS PARTICULARLY AWKWARD TO HAVE TO EXPLAIN OUR LAW IN THE MARITAL RAPE HEARING CALIFORNIA REPRESENTATIVE GEORGE MILLER HELD IN CONGRESS IN SEPT!

OUR CURRENT LAW, THE CAUSE OF MY SHAME AND EMBARRASSMENT, HAS CREATED A GREAT DEAL OF CUMULATIVE FRUSTRATION, WHICH YOU WILL NO DOUBT DETECT IN MY VOICE. I WELCOME THE OPPORTUNITY TO ASK YOU TO SHARE IN THE FRUSTRATION AND IN THE EFFORT IT WILL TAKE TO REPEAL THE DISGRACEFUL AND UNCONSTITUTIONAL EXEMPTIONS FROM PROSECUTION WHICH WIFE RAPISTS STILL ENJOY IN CALIFORNIA.

CALIFORNIA ALSO HAS THE DUBIOUS DISTINCTION OF BEING THE ONLY STATE WHICH HAS ADDED EXEMPTIONS FOR HUSBANDS FOR THESE OTHERWISE CRIMINAL ACTS OF SEXUAL ASSAULT.

THESE NEW ATTACKS ON THE DIGNITY OF CALIFORNIA WOMEN WERE GOING ON WHILE WE WERE WINNING IN 29 STATES - BOTH IN THE LEGISLATURES AND IN THE HIGHEST COURTS OF MASSACHUSETTS, NEW JERSEY, FLORIDA, NEW YORK, ALABAMA, GEORGIA AND NEBRASKA. CALIFORNIA WAS THE FIFTH STATE TO MAKE MARITAL RAPE A CRIME WHEN THE RAPE WAS COMMITTED WHILE THE COUPLE WAS LIVING TOGETHER. BUT AS YOU KNOW, IT MAKE SPOUSAL RATE A SEPARATE, UNEQUAL AND LESSER CRIME BEFITTING THE ARCHAIC ATTITUDE OF WIVES AS SECOND CLASS CITIZENS AND AS THE PROPERTY OF THEIR HUSBANDS, WHICH ATTITUDE THE BILL WAS MEANT TO ABOLISH IN THE FIRST PLACE. VIRTUALLY EVERYONE OF THE STATES BEFORE CALIFORNIA HAD SIMPLY DECLARED RAPE TO BE RAPE, AS DEFINED BY THE ACT, AND NOT BY ANY IMPLICATIONS OF PROPERTY OWNERSHIP OF A HUMAN BEING OR BY DENIAL OF THE WIFE'S RIGHT TO CONSENT TO ACCESS TO HER BODY.

LET'S LOOK AT THE STATUTE TO SEE WHAT NEEDS TO BE DONE. THE DOUBLE STANDARD LEAPS OUT AT YOU. #261 PURPORTS TO PROTECT SINGLE WOMEN, AND WOMEN RAPED BY SOMEONE OTHER THAN THEIR HUSBANDS. This is all very nice, but in the SUMMER OF 1978,

THE EMINENT SOCIOLOGIST DIANA RUSSELL, WORKING ON A FEDERAL GRANT, DISCOVERED IN HER RANDOM SAMPLE OF NEARLY 1000 SAN FRANCISCO WOMEN, INTERVIEWED IN SPANISH, CHINESE, AND ENGLISH, THAT TWICE AS MANY WOMEN WERE RAPED BY THEIR HUSBANDS THAN BY STRANGERS. SHE ALSO FOUND THAT 14% OF ALL WOMEN EVER MARRIED HAD BEEN RAPED BY THEIR HUSBANDS. THEREFORE, MANY THOUSANDS OF WOMEN WERE EXPLICITLY EXCLUDED FROM THE PROTECTION OF #261 BY THE PHRASE 'NOT THE SPOUSE OF THE PERPETRATOR'.

#262 WAS SUPPOSED TO PROTECT WIVES RAPED BY THEIR HUSBANDS, BUT IT'S DEFINED AS A LESSER CRIME WITH A LESSEK PENALTY, WHICH IS TOTALLY OUT OF SYNC WITH WHAT WE KNOW FROM THE RAPE TRAUMA SYNDROME, THE POST-TRAUMATIC STRESS DISORDER DEFINED IN 1972: THE CLOSER THE RELATIONSHIP, THE MORE SEVERE AND LONG-LASTING THE TRAUMA.

THE CRIME OF SPOUSAL RAPE IS A WOBBLER. PROSECUTORS I WORKED WITH IN OTHER STATES MERCILESSLY TEASE ME THAT WE ARE THE ONLY STATE WHERE RAPE COULD CONCEIVABLY BE CONSIDERED A MISDEMEANOR. THEY SAY, "SO WIVES DON'T COUNT FOR MUCH, OUT THERE IN THE WEST?!" FOR YEARS I TRIED TO HIDE THE FACTS OF OUR LAW, BUT BUSY LAW STUDENTS WROTE EXCELLENT LAW REVIEW ARTICLES AND A LAW PROFESSOR IN ENGLAND EVEN CORRECTED A MEMBER OF THIS COMMITTEE'S GRAMMAR BY ENTITLING HIS ARTICLE, "BUT IF YOU CAN'T RAPE YOUR WIFE, WHOM CAN YOU RAPE?" THAT QUOTE MADE CALIFORNIA INFAMOUS, AND MOST PEOPLE DON'T EVEN KNOW THAT WE HAVE ANY KIND OF A LAW

AGAINST SPOUSAL RAPE. TO BE FAIR TO SENATOR WILSON, I'VE HEARD THAT HE HAS INSISTED THAT HE WAS ONLY JOKING, AND I WAS WITNESS TO THE FACT THAT HE VOTED FOR THE BILL, ALONG WITH EVERYONE ELSE ON YOUR COMMITTEE. THE REAL PROBLEM IS THAT HE WAS VOICING THE OPINION OF SO MANY PEOPLE AT THAT TIME THAT MOST PEOPLE THOUGHT HE WAS SERIOUS.

NOWADAYS OUR VICTORIES IN CONGRESS AND IN SO MANY STATES ARE A MEASURE OF THE CHANGE IN ATTITUDES AND HOPEFULLY, BEHAVIOR. 17 STATES ARE AHEAD OF CALIFORNIA AS YOU CAN SEE ON OUR CHART. 17 ARE WITH CALIFORNIA IN COMPROMISING THE REPEAL OF THE EXEMPTIONS, AND 15 STATES ARE BEHIND US.

UNDER #262 THE WIFE HAS TO REPORT THE RAPE WITHIN 90 DAYS, WHETHER OR NOT SHE'S IN A COMA. IT USED TO BE 30 DAYS. EARLIER THIS MONTH TOURING CAMPUSES IN

PENNSYLVANIA, WHOSE LEGISLATURE HAD COPIED OUR LAW, THE STUDENTS WHERE SUCH A BIZ ARRE IDEA HAD COME FROM. IT CAME FROM THE SENATE, BUT NOT THIS COMMITTEE.

THERE WAS A CRUEL ALLEGATION THAT A WOMAN WOULD FALSELY CLAIM RAPE AGAINST HER HUSBAND IN ORDER TO GET MEDICAL FUNDING FOR AN ABORTION. THIRTY DAYS WAS PRESUMED TO BE THE TIME BEFORE SHE COULD FIND OUT IF SHE WAS PREGNANT! THIS PAYS NO ATTENTION TO THE FACT THAT SHE CERTAINLY MAY NOT WANT TO LOOSE HER HUSBAND, AND ABOVE ALL WOULD NOT WANT TO GO THROUGH THE SHAME AND HUMILIATION OF A RAPE TRIAL WHICH ACTUAL VICTIMS DON'T EVEN WANT TO DO. FURTHERMORE, WITH THE USUAL TRIAL (7/)

DATE A YEAR AFTER THE ARREST, HER ALLEGED GOAL OF PROCURING AN ABORTION WOULD HAVE LONG BEEN IMPOSSIBLE.

THERE'S A NEW AND EXCELLENT ADDITION TO #261 CONCERNING THE AUTHORITY OF A PUBLIC OFFICIAL BEING ABUSED IN ORDER TO FORCE THE VICTIM TO SUBMIT. THERE IS AN UNFORTUNATE RACIST DIMENSION IN NOT INCLUDING WIVES IN THIS PROTECTION, BECAUSE THERE IS A RESURGENCE OF MAIL ORDER BRIDES FROM ASIAN COUNTRIES BEING USED AS SEX SLAVES BY THEIR HUSBANDS. OFTEN THE MEN ARE OR WERE AMERICAN SOLDIERS AND THE WIVES HAVE NO FAMILY TO TRANSLATE FOR THEM, AND NO REAL IDEA WHAT THEIR HUSBANDS DO FOR A LIVING. THIS PROVISION IN THE LAW RIGHTFULLY INCLUDES PERPETRATORS WHO PRETEND TO BE PUBLIC OFFICIALS, BUT WRONGFULLY DENIES THAT WIVES COULD BE VICTIMS, ESPECIALLY OF THREATS OF DEPORTATION TO COUNTRIES SPECIALIZING IN KIDNAPPING WOMEN FOR SEXUAL SLAVERY RINGS ADVERTISED AS PART OF BUSINESSMEN'S TOURS. ONE OF THE YOUNG MEN ON OUR STAFF HAD A COUSIN THAT THIS HAPPENED TO WHEN SHE WAS FLEEING VIET NAM, AND HER BOAT WAS CAPTURED BY PIRATE SLAVE TRADERS FROM THAILAND. SHE WAS 14 YEARS OLD, AND IS STILL "DISAPPEARED" 2 YEARS LATER AFTER MANY INVESTIGATIONS HERE AND ABROAD.

COMES FROM BACK IN 1979. IT IS BUT CRUELIEST OF ALL THE EXEMPTIONS AND DISCRIMINATORY PROVISIONS ^ THE TOTAL IN THE RAPE STATUTE DENIAL OF ANY PROTECTION FOR ANY WIFE "INCAPABLE OF GIVING CONSENT BECAUSE OF A

TRY TO EXPLAIN TO YOUNG PEOPLE WHY IT'S OK TO RAPE YOUR
WIFE WITH IMPUNITY IF SHE'S DISABLED. THERE IS ALSO
AN EXCLUSION FROM PROSECUTION
MENTAL DISORDER OR DEVELOPMENTAL OR PHYSICAL DISABILITY" WHERE SHE IS
PREVENTED FROM RESISTING BY ANY INTOXICATING OR ANAESTHETIC SUBSTANCE ADMINISTERED BY
OR WITH THE PRIVACY OF THE ACCUSED." (THE WORDING AT THE TIME OF THE PASSAGE OF OUR
BILL INCLUDED TEMPORARY UNSOUNDNESS OF MIND AND BEING UNCONSCIOUS, INCLUDING
SIMPLY BEING ASLEEP, AS CONDITIONS WHICH HAD A DOUBLE STANDARD OF PROTECTION,
NOW WE HAVE IF THE VICTIM IS UNCONSCIOUS OF THE NATURE OF THE ACT AND IF THE
DEPENDING ON WHETHER OR NOT THE WOMAN WAS MARRIED TO THE MAN RAPING HER.) ACCUSED
KNOWS SHE IS
THIS AND ANY KIND OF A DOUBLE STANDARD WAS STRUCK DOWN AS UNCONSTITUTIONAL BY
THE HIGHEST COURT OF THE STATE OF NEW YORK. THEY STATED THAT THERE WAS NO
RATIONAL BASIS -- THAT'S THE CONSTITUTIONAL TEST THEY USED -- FOR ANY DISTINCTION
BETWEEN PROTECTION FOR WIVES AND FOR OTHER WOMEN. THEY STRUCK THE EXEMPTION OUT
OF THEIR STATUTES ON 14TH AMENDMENT EQUAL PROTECTION GROUNDS AS WELL AS THEIR OWN
EQUAL PROTECTION CLAUSE BACK
STATE CONSTITUTIONS. THIS WAS DONE IN 1984. EVEN ALABAMA'S COURTS STRUCK THE
EXEMPTION FROM THEIR STATUTES LAST FALL, SPECIFICALLY ECHOING THE N. Y. DECISION.
ALL YOU HAVE TO DO TO RESTORE DIGNITY TO CALIFORNIA WIVES AND OUR STATUTES IS TO
DELETE #262 AND THE PHRASE "NOT THE SPOUSE OF THE PERPETRATOR" IN # 261.

Men Overcoming Violence (MOVE) is a San Francisco-based organization working to end men's violence and abusiveness in relationships. MOVE provides facilitated counseling groups for men who batter, community education on a variety of issues related to domestic violence, and in-service trainings to agency staff working with violent men.

Founded in 1980, MOVE is an all-male collective that works co-operatively with local battered women's projects and the women's shelter movement. We believe that domestic violence is learned behavior, part of a continuum of abuse and violence that men are taught in the expectation that they must control the lives of those with whom they share an intimate relationship. Studies show that as many as 50 percent of all women will be battering victims at some point in their lives. Thus, we are talking, in a sense, about all of us, not some small group with psychological problems.

The hopeful part is that learned behavior can be unlearned. We believe that men can change by taking responsibility for their own behavior, breaking out of their isolation, and working together with others to stop their abuse. No one can ever be justifiably abused, and no one else can ever be justifiably blamed for one's own violent behavior. Taking responsibility is not a matter of guilt, but of empowerment. Blaming makes you feel helpless - responsibility means you can control your own actions.

This philosophy explains why MOVE believes that violent behavior can best be changed in a group setting, and that men should work on their abusiveness independently of any couple's

counseling in which they might eventually participate.

While MOVE developed its approach working with domestic violence, many of these abusive relationships involve sexual abuse and rape as well. We believe that many of the same issues of power and control are involved in both sexual and non-sexual abuse. Men's expectations in relationships, assumptions about sex roles, and issues with respect to control and power over others as a substitute for self-empowerment must be addressed in dealing with offenders and, even more importantly, in doing preventive educational work. While certainly no substitute for legal and social protections and support for victims or potential victims, such services are an essential part of an overall prevention strategy.

MOVE groups directly address the subjects of impulse control and anger management, as well as integrating these approaches into the broader problems of male socialization, sex role stereotypes, and family histories involving learned violent behavior. We have found that our approach can be successful, even with men whose initial commitment is low or primarily externally motivated, including court referred probation and pre-trial diversion cases. Working together, they develop a sense of their own interest in making changes in behavior and begin to have a stake in the group's work. For further counseling information or educational presentations, call (415) 626-MOVE or write to: Men Overcoming Violence,

3004 16th Street, #112,

San Francisco, 94103

Michael Radetsky, Community Education Coordinator, MOVE

REMARKS TO THE CALIFORNIA SENATE COMMITTEE ON JUDICIARY

by

Marcie Servedio, Ph.D.
Director, Adolescent Education
Santa Barbara Rape Crisis Center

October 30, 1987

I am Dr. Marcie Servedio, Director of Adolescent Education and I am responsible for the development and implementation of the Adolescent Sexual Assault Prevention Program at the Santa Barbara Rape Crisis Center. I am a social psychologist by training, and have over 15 years experience in education, teacher-training, values-based curriculum development, innovative program development, and residential treatment programming for high-risk teen populations.

I am pleased to have this opportunity to share with you some thoughts and specifics about the prevention of sexual assault, and about our approach to and experience in implementing prevention with teenagers in the Santa Barbara schools. The principal, though not exclusive, focus of the Adolescent Sexual Assault Prevention Program [ASAP] is sexual exploitation and acquaintance rape, a problem that looms large beginning in this age group and continuing throughout life.

The extreme extent of the problem is dramatically evidenced in a plethora of research on college age students, as well as the reports in the press revealing rape, including gang rape, to be at epidemic proportions ^{among} ~~in~~ our college ^{age population} ~~campuses~~. The problem is so severe that the President of the University system found it necessary to alert all campuses of his concern and belief that "...college men need education on the meaning of consensual sex..." To begin at college is too late. We need mandated sexual assault prevention education at the high school and junior high school levels, while there is still an opportunity to effect change. And we need sufficient funds to provide the quality programs we are capable of providing.

If we are going to talk about prevention, we need to begin by defining our terms. What does "prevention" mean, and how does it apply to the pervasive problem under consideration? Webster's tells us that to prevent means, a: to meet or satisfy in advance, b: to act ahead of, c: to keep from happening or existing. We are told that in contrast, to protect means, to cover or shield from exposure, injury, or destruction in the face of that which already exists.

For years we have been asking women to be responsible for the prevention of rape. This has been done with the best of intentions, to empower women and counter the mythology of "feminine helpless," worthy goals. Unfortunately, this well-intentioned, but naive perspective has contributed to women suffering a revictimization in the form of self-blame, and the misplaced blame of others in the event they experience assault.

It is a two edged sword, if we accept that it is women who are responsible for preventing sexual assault, then it follows they are in turn at some level to blame for it when it happens to them -- in spite of what the law may say.

The ASAP program specifically educates around this important distinction; between who has the personal responsibility for self-PROTECTION, and who has the personal responsibility for the PREVENTION of rape. We need to understand and we need to teach that only the agent of CAUSE -- THE PERPETRATOR -- can be the agent of PREVENTION. Put another way, only the rapist -- or potential rapist -- can prevent rape.

This distinction has real social, psychological, and educational consequences. Unless women are educated to understand that their responsibility, vast though it is, ends with self-protection -- where the responsibility for prevention begins, they will continue to live with the burden of being responsible for the behavior of others over which they have no real control. We must look to men to ^{assume} their responsibility in the course of social change. ^{It} will only be through the creative education and re-education of boys, that we can cultivate the development of men who will lead other men away from sexual exploitation and toward responsible sexuality.

The reality is inescapable, the imperative unequivocal. Until we embrace the challenge, take responsibility as adults to whom our youth still look, and materially support their education in this regard -- until we comprehensively provide experiences that help to empower girls toward assertive life-styles and preparedness around sexual assault, and that help boys develop sensitive, empathetic, and nurturant images of their masculinity -- until we do that, we will continue to have to pour resources into "mop-up" activities, with our only prospects being more of the same.

Unless we are willing to take statewide initiative to educate our youth about sexual assault in clear, direct, honest and respectful ways, we run the risk of passing needed laws that may add volumes to our libraries, but lay helpless and do little to effect the course of positive social change and the reduction of human suffering and waste.

The challenge we confront in the classroom is how to engage the spirited imagination, the curiosity, and the desire to learn and grow in our youth, in our young men as well as our young women,

so that they will discover and come to their own conclusion that responsible and caring sexuality is identifiable, distinguishable from sexual assault, and attainable. In the ASAP program, we create a safe, yet dynamic environment so that young men can become willing to develop communication, empathy, and delay of gratification skills; and young women can feel supported in developing clear and direct communication styles, and in resisting social pressures to comply sexually even if it means losing male attention in the short-term, for the longer-term gain of self-respect and an independent identity.

However great this challenge is in the classroom, we can meet it. It is the challenge we face outside the classroom that is greater and that still lies before us. How do we engage the courageous vision of our leaders to become allies in the process of educating the public about the irreplaceable need for ASAP-type education? The need is urgent, and that urgency must also be made apparent to the public at large. We need monies to support the use of media, so that our citizens will come understand why we need to apply resources to this prevention effort.

It would be convenient and comfortable if we could continue to believe that the problem is somehow "out there," someone else's problem, separate and apart from ourselves and our social order. That sexual assaults are perpetrated by crazy rapists attacking naive or inviting victims. However, the facts belie that myth. Men who rape are typically indistinguishable from the general population of men. Indeed, they are part of that general population. The population of women who are raped is diverse and defies generalization: young or old, rich or poor, scantily clad or bundled up. The motivation for rape does not reside in any external attributes of the victim, but in the internal mindscape of the perpetrator and the present fabric of society. We are talking about men for whom sexual exploitation and rape are a style of life, part of their relationship repertoire.

Let me concretize at least to some extent what can be meant by sexual assault prevention education. Today, in the brief amount of time that we have, I would like to share with you some specifics about the ASAP program developed at the Santa Barbara Rape Crisis Center with "innovative program" funding from the Governor's Office of Criminal Justice Planning.

I have brought for the committee's examination and for the record, a copy of the most recent edition of the curriculum materials; along with other supporting documents further describing the program and testifying to its value. These documents go into far more detail than I can in the time allowable. I invite you to examine them and will be glad to respond in writing to any questions you many have based on that examination.

I will attempt only the briefest of summaries here. Since its inception in 1984, the ASAP program has been presented to upwards of 8000 students within Santa Barbara County. In addition, I am pleased to report that many other young people throughout the state and nation have received presentations influenced by this program. At present we are awaiting final approval to launch a limited statewide Technical Assistance effort to be funded by OCJP, and intended to provide formal training to other community crisis centers; supporting them in developing or enhancing their adolescent education programs.

However, the the sexual assault prevention movement is desperately in need of funds with which to operate prevention education programs on an ongoing basis. The ASAP program in Santa Barbara is presently in need of funding since the terms of our innovative grant will have been fulfilled as of January of 1988, and such innovative monies are no longer applicable. Because of this absence of operating monies through OCJP or other public sources, ASAP is at risk. We need your initiative in making monies available through sources like the Department of Education and the Office of Criminal Justice Planning.

Our program is unique in many ways. A full-scale ASAP program presentation is lead by a team of facilitators, one female and one male. The program spans five class-days, and is usually presented to Family Health or Family Life classes. Typically, during three of the five days, males and females are together, and, alternatively, during the two remaining days they are in separate groups. This provides a positive dynamic for both inter-gender and intra-gender exploration of the issue.

Our curriculum is designed flexibly, into separate and complementary exercises we call instructional modules. Anywhere from a one class-day to more than five class-days of programing can be constructed by combining these modules according to specific needs. Each of the modules is referenced according to the appropriate group (male, female, mixed), amount of time, materials needed, key vocabulary, key concepts, follow-up exercises, companion modules, as well as including a step-by-step description of the exercise.

These materials are intended to be used in conjunction with the larger facilitator training program. Facilitator-training must be rigorous and comprehensive, because the quality of facilitation is critical to the success of the program.

The almost twenty instructional modules, most of which are included in your compilation, have been created to maximize student participation using interactive discovery techniques. Examples of instructional modules include, (1) the "Myth Story," used to stimulate discussion around commonly held misconceptions about rape, (2) the "Sexual Assault Continuum," where students construct a scale of specific behaviors that represent the range of sexual assault. All behaviors follow the definition of sexual

assault: Any unwanted verbal sexual attention or physical sexual contact, (3) "Visitor From Another Planet," giving students an opportunity to generate and reflect on gender stereotypes and the limitations and conflict they can produce, (4) "Empathizing With The Victim: Men and Male Rape," giving the young men an opportunity to reflect upon their own feelings about sexual violation, and using those feelings to better understand the feelings of women, (5) "I Want You To Take Me Seriously," a self-esteem and assertiveness training exercise for young women used to complement, (6) "Meeting Force With Force," a physical self-defense introduction for the young women, and (7) "Cross-Messages," an opportunity for males and females as a group to exchange messages about their feelings, opinions, and needs.

You will also find four appendices in the compilation I am submitting. The first, entitled "Vocabulary Glossary," includes over sixty definitions of most frequently used terms. This curriculum was developed with extreme sensitivity and commitment to the accuracy and consistency of language usage, and with an acknowledgement that educators, in particular, are guardians of language integrity. We hope hereby to contribute to a cohesiveness of the language base in this area, where the spontaneous generation of emotionally charged vocabulary has been the rule.

We have developed a number of distinctions based on this vocabulary that assist in clarifying long-standing confusions; distinctions, for example, between "sexual assault" and "sexuality," between "sexual harassment," and "flirtation," between "aggressiveness" and "assertiveness," between "giving-in" and truly "consenting," between "coercion" and "persuasion," between "leading-on" and "setting limits," and between "sexual activity" and "intimacy." Relevant vocabulary and distinctions are specifically referenced in each instructional module and help to comprise the theme of the exercise.

Appendix II entitled, "Myth-Conceptions: Separating Myths From Facts," is a compilation of over twenty commonly encountered cultural misconceptions about sexual assault, along with concise rejoinders that can help form the basis for classroom response and discussion. Myths like, "Only very attractive women get raped," "Victims of rape ask for it by leading men on," "Secretly, every woman wants to be raped."

"Example Dialogues: Communication Module," is used in modeling and role-play exercises comprising the Communication Module. This exercise supports the development of positive alternative communication styles and content, and is indispensable to the prevention effort.

The final appendix, "Anonymous Questions and Answers," backs-up the Anonymous Questions and Answer activity in which students are supported in submitting written questions anonymously, to be answered by the facilitators during the course of the program.

commonly asked

Included here are the most ^{commonly asked} challenging, important questions compiled since the inception of the ASAP program.

Not included in these materials, but available upon request, is a summary of our various pre- and post-test results that demonstrate significant positive shifts in expressed attitudes and beliefs as a result of program presentations. Even more impressive than numbers, however, is the ample and even overwhelming evidence apparent to all who observe, that on balance, programs like this make a difference to young people's lives. Feedback from teachers and others who interact with students consistently confirm this observation. The results are exhilarating, there are sound reasons for optimism.

Let us also remember that sexual assault can be a covariant with substance and alcohol abuse, and relationship violence. If we are to quell the lethal threat of AIDS and the perpetuating effects of teen pregnancy, we need to reinforce at every opportunity the importance of sexual responsibility.

Finally, let me summarize what the sexual assault prevention education movement needs from you. (1) We need any and all public statements from you demonstrating your personal commitment to seek material support for prevention efforts. (2) We need you to formalize in legislation an acknowledgement that sexual exploitation and acquaintance rape is a social problem of significant proportions and one related to other social problems involving our youth. (3) We need a comprehensive plan and clear priorities guiding a campaign of sexual assault prevention targeted toward our youth. (4) We need mandated requirements for formal sexual assault prevention education in all public high schools, with an age-appropriate version available in all public junior high schools in California. Finally, (5) we need adequate funds to be made available so we can continue to develop and implement ASAP-based programs throughout the state.

Rape is expensive. Not only in human terms, but in taxpayer terms, as well. Research on the economic costs of crime by Dr. Llad Phillips from the University of California, Santa Barbara conservatively estimates a price tag of \$600,000 1981 taxpayer-dollars for each rape conviction.

We must act decisively, and admittedly in the face of controversy, lest we fall into the trap of cynical resignation and accept a false inevitability -- that "Boys will be boys" and that "Girls just have to learn to stay out of trouble." I know we can offer our young people more than that.