

The Women's Legal Defense and Education Fund

January 21, 2015

President's Task Force on Policing in the 21st Century
Office of Community Oriented Policing Services
U.S. Department of Justice
145 N Street, N.E. 11th Floor
Washington, DC 20530

Re: Legal Momentum's Comments on "Building Trust and Legitimacy"
Listening Session

Dear Commissioner Ramsey and Members of the Task Force:

Legal Momentum was founded in 1970 as the NOW Legal Defense and Education Fund, and is the oldest women's rights advocacy group in the United States. We have significant expertise in the areas of sexual assault, domestic violence, bias in the justice system, civil rights, and the intersection of gender and race. Notably, Legal Momentum worked closely with Vice President Biden to draft, pass, and enact the Violence Against Women Act in 1994.

We submit Legal Momentum's recommendations for the Task Force in the areas covered by your first listening session: "Building Trust and Legitimacy in Policing in the 21st Century." Legal Momentum believes that it is crucial that the Task Force study and address the many ways in which women and girls, particularly in communities of color, are adversely impacted by actions taken by law enforcement. We also ask the Task Force to keep in mind that the overpolicing of communities of color may make women of color reluctant to seek law enforcement intervention, even when it is desperately needed.¹

Legal Momentum was pleased to see that some of these issues were addressed in the recent testimony of Assistant Attorney General Mason and Acting Assistant Attorney General Gupta. We supplement their comments by highlighting the issues listed below, and encourage the Task Force to consider these issues as it continues its investigation and prepares its report to the President.

Domestic Violence Cases Are Not Taken Seriously By Law Enforcement

In 2011, the Inter-American Commission on Human Rights found, in the matter of Jessica Gonzalez v. United States, that municipal law enforcement throughout the United States violate international law by failing to respond appropriately to domestic violence complaints. Ms. Gonzalez's



three children were kidnapped and murdered by her ex-husband. The Castle Rock, Colorado Police Department refused to enforce her valid order of protection, and dismissed the ten telephone calls Ms. Gonzalez made over a twelve hour period asking the police to enforce the order. It is well-documented that Ms. Gonzalez's experience, unfortunately, is not unique.

Sexual Assault Cases Are Often Mishandled by Law Enforcement

Police officers' biases regarding what constitutes a "real rape" and a "credible witness" can affect how and whether sexual assault incidents are reported and whether serious crimes are investigated.ⁱⁱ Too often, law enforcement officials are not adequately trained to investigate sexual assault complaints. For example, law enforcement officers do not receive adequate instruction on interviewing sexual assault survivors, and the impact of trauma on them.ⁱⁱⁱ Officers are unfamiliar with matters such as fear-induced psychophysical states that literally paralyze the victim so she cannot express resistance either verbally or physically. This, unfortunately, is wrongly perceived as consent.

Moreover, traumatic memories are often recalled in fragmented accounts that officers wrongly perceive as inconsistent statements. Because of poor training, interviews are conducted like interrogations and cause victims to re-live sexual assaults, and withdraw. This is often perceived as a failure to cooperate.

The examples below highlight the need for better training of police officers investigating sexual assault cases:

- In November 2014, a New Orleans Inspector General report faulted five detectives of the New Orleans Police Department—already the subject of a DOJ/Civil Rights Division investigation—for failing to properly investigate more than 1,000 cases of child sexual abuse and sexual assault.^{iv} One detective allegedly told several people that he did not believe that rape by a perpetrator known to the victim should be considered a crime.
- In 2010, the Third Circuit Court of Appeals reinstated the lawsuit of a sexual assault victim where law enforcement refused to believe the victim's claim, and arrested and jailed her. The police subjected her to a barrage of hostile and disrespectful comments. For example, they insisted that real sexual assault victims "fight back," even at gunpoint. They also faulted the victim for using what they believed were inappropriate words in describing the rape.^v
- In 2010, the City of Baltimore reported that rates of sexual assault were falling much faster than the national average, and that the number of unfounded sexual abuse reports was rising. A subsequent study revealed that more than half of the cases investigated during that period were misclassified. The following year, rape reporting rates rose 30%.^{vi}
- When Columbia University senior Emma Sulkowicz filed a police report against a fellow student who raped her in August 2012, the police were dismissive when they learned that she had previously had consensual sex with the perpetrator. An investigating officer told the victim's friends that he did not believe Ms. Sulkowicz, and that he believed that 90% of sexual assault cases were false. He also emphasized that the investigation would be "painful."^{vii} Unsurprisingly, she decided not to pursue prosecution of her rapist.

Rapes Throughout the United States are Not Investigated and Prosecuted

In the late 1990s, NGOs and the media began reporting that in municipalities throughout the country thousands of “rape kits” containing rapists’ semen and DNA samples collected from rape victims were sitting in evidence warehouses unprocessed. The full extent of the rape kit backlog in the United States is unknown. The federal government estimates, however, that there are hundreds of thousands of untested rape kits across the country.^{viii} Major cities across the country, with significant communities of color, have not tested rape kits. In Detroit, over 11,000 rape kits have not been tested; in Dallas over 4,000 rape kits have not been tested; in Memphis over 12,000 rape kits have not been tested; and in Phoenix nearly 3,000 rape kits have not been tested.^{ix} This means that dangerous rapists continue to pose a threat to women and girls. It also means that victims are left with the false hope that the legal system will protect them.

Women and Girls of Color Are More Likely to Enter the Criminal Justice System

In at risk or poor communities, students of color are suspended or expelled for minor infractions that leave them vulnerable to charges of truancy. Additionally, schools are often too quick to call law enforcement to intervene in school-related matters. As a result, a disproportionate number of girls and young women of color are dropping out of school. They are processed by the criminal justice system, and become saddled with criminal records. This impacts negatively their ability to secure jobs, and increases the likelihood that they will receive stiffer penalties if they are arrested in the future.

We hope that the Task Force will study the issues identified above and take action to ensure that law enforcement protects women and girls. We urge you to work with the Department of Justice’s Office on Violence Against Women, leaders in impacted communities, and service providers, to develop best practices regarding programs that will improve community/law enforcement relations for women. It is critical for law enforcement to take seriously, investigate, and prosecute the crimes being committed against women and girls everywhere, including in the communities of color on which the Task Force is focusing. Legal Momentum would be happy to work with the Task Force to achieve these goals.

Respectfully submitted,



Penny Venetis
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cc: Department of Justice Office on Violence Against Women
Department of Education Office on Civil Rights

ⁱ Lisalyn Jacobs, *Black (Women's?) Lives matter: Why the Movement Must Include Violence Against Women of Color*, LEGAL MOMENTUM BLOG (January 20, 2015, 5:00 PM) <http://www.legalmomentum.org/blog/black-women%E2%80%99s-lives-matter-why-movement-must-include-violence-against-women-color>

ⁱⁱ Amanda Hess, *What Cops Are Really Thinking When a Woman Claims She Was Raped*, SLATE (January 20, 2014, 6:47 PM), http://www.slate.com/blogs/xx_factor/2014/11/18/how_cops_respond_to_rape_a_new_study_of_officers_at_one_police_department.html

ⁱⁱⁱ Rebecca Ruiz, *Why Don't Cops Believe Rape Victims?* SLATE (January 20, 2014 6:48 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2013/06/why_cops_don_t_believe_rape_victims_and_how_brain_science_can_solve_the.html

^{iv} Associated Press, *New Orleans Police Routinely Ignored Rape Cases, Scathing Report Finds* (January 20, 2014 6:50 PM), <http://www.theguardian.com/us-news/2014/nov/13/new-orleans-police-routinely-ignored-cases-report-finds>

^v *Reedy v. Evanson*, 615 F. 3d 197 (2010).

^{vi} Justin Fenton, *Coordinator Will Oversee Baltimore Sex Assault Investigation Reforms*, BALTIMORE SUN, (January 20, 2014 6:52 PM), http://articles.baltimoresun.com/2011-03-14/news/bs-md-ci-sart-coordinator-hired-20110314_1_offense-unit-sexual-assaults-sun-investigation

^{vii} Emma Bolger, *Frustrated by Columbia's Inaction, Student Reports Sexual Assault to Police*, COLUMBIA SPECTATOR (January 20, 2014, 6:55 PM), <http://columbiaspectator.com/print/129568>.

^{ix} Joyful Heart Foundation Accountability Project, *Untested Rape Kit Map, End The Backlog*, (January 20, 2015, 7:09 PM), <http://www.endthebacklog.org/backlog/where-backlog-exists>.