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THE EPIDEMIC OF INJUSTICE IN RAPE LAW: MANDATORY SENTENCING AS A PARTIAL REMEDY

Izabelle Barraquiel Reyes*

ABSTRACT

In this Comment, the author examines the final step—sentencing—in the adjudication of rape by examining the current status of sentencing schemes across jurisdictions within the rape context. The author ultimately advocates mandatory sentencing guidelines as partial remedy for lax sentencing. The author provides an abbreviated history of the development of rape in the social and legal contexts exploring social attitudes towards the crime of rape, popular myths surrounding rape victims, its development in the common law, and more recent rape law reforms. While significant advances in victims' rights have been made within the last three decades, the author's review of the current statistics reveals that injustice in the judicial system continues to exist when sentencing convicted rapists. The author argues that current sentencing schemes across jurisdictions allow too much judicial discretion and often result in inadequate and lax sentences for convicted rapists. The author concludes with an argument for mandatory sentencing guidelines as one means of ensuring an effective approach for adequately sentencing convicted rapists.

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INTRODUCTION

Shortly after midnight on August 11, Kathleen woke up to find Neal Guthreau ("Guthreau") lying naked and uninvited on her bed beside her.¹ Kathleen lived in a two-bedroom house in a suburb of San Diego, California with two roommates. Guthreau was a friend of her roommate and often visited the house. Kathleen did not like Guthreau and Guthreau was aware of this fact. When she first realized Guthreau was in the room with her, she demanded that he leave. When she realized he was naked, she tried to run from the scene dressed only in a nightshirt.

Guthreau forced her back onto the bed. When she began to scream, he covered her mouth with his hand and told her, "You are going to do what I want you to do." At this point, Kathleen was afraid that Guthreau was going to rape and hurt her. He commanded her to undress; she refused and he began to undress her himself. He commanded her to "spread [her] legs" and only after further use of brutal force and the threat of additional force did Kathleen acquiesce. Kathleen's horror, however, had only just begun. When Guthreau was unable to perform sexual intercourse because of impotence, he demanded that Kathleen help him. After continued insistence, Kathleen finally relented and succumbed to his order to orally copulate with him. Once he was physically able to enter her, Guthreau completed having sexual intercourse with Kathleen. After Guthreau left her room, Kathleen—still only clad in a nightshirt—ran into the street directly into the headlights of a neighbor's car. The neighbor brought

1. *People v. Guthreau*, 102 Cal. App. 3d 436, 439-40 (1980); JUDITH ROWLAND, *THE ULTIMATE VIOLATION* 111-15 (1985).

Kathleen to her home where she was able to report the rape to the police.

Based on these facts, a jury convicted Guthreau of forcible rape and oral copulation by force and violence. When the time came for sentencing, the judge ordered Guthreau to a year in the county jail, minus time served and “good time”—the sentence amounted to seven months for forcibly raping a woman.² When the prosecutor contacted the probation officer prior to sentencing, the probation officer was reluctant to recommend a prison sentence; the officer’s justification was that “[a]fter all, she wasn’t hurt.”³

In 1989, a Manhattan Supreme Court Justice justified a minimal sentence of a rapist with an extensive criminal record on the basis that the victim’s rape was not like her being “tortured or chopped up.”⁴ In 1991, an Indiana sentencing judge imposed a suspended sentence of a convicted rapist stating that “[she] thought it was obvious it was non-consensual sex, but [she didn’t] believe it was a violent act as most people think of rape.”⁵ A Washington Superior Court Judge sentenced the defendant in a statutory rape case to sixty-seven months for second-degree rape of a child (the victim was twelve years old); the sixty-seven months was the minimum penalty the judge could impose under Washington’s sentencing guidelines. During the sentencing proceedings, the judge indicated his unwillingness to sentence the defendant to even this minimum, that the defendant’s use of alcohol and drugs to extort sex out of the victim did not constitute pressure, and that the “law was never intended to protect a tramp.”⁶

2. ROWLAND, *supra* note 1, at 116. At the time of Guthreau’s sentence, California courts had slightly more discretion than they do now. Since the adjudication of this case, the California legislature has enacted a law that requires a prison sentence for convicted rapists, as opposed to a sentence in county jail, generally resulting in longer and/or stricter punishment. *See id.* at 117.

3. *Id.* at 116.

4. Lynn Hecht Schafran, *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, 20 *FORDHAM URB. L.J.* 439, 440 (1993) (quoting Rose Marie Arce, *Women Rap Rape Judge*, N.Y. *DAILY NEWS*, Feb. 8, 1989, at 12).

5. *Id.* (quoting Barb Albert, *Criticism of Rape Sentence Grows*, *THE INDIAN*, Nov. 9, 1991, at 1).

6. Doug Clark, *Judge’s Attitude in Child Rape Betrays Kids*, *SPOKESMAN REVIEW (SPOKANE, WASH.)*, June 11, 1997, at B1. Although beyond the scope of this Comment, the above Washington statutory rape case illustrates the archaic attitude held by some of the judiciary.

The epidemic of insufficient sentences for rape is not limited to the United States. For example, a 2001 law approved in the Mexican state of Chihuahua provided for lower penalties for rape overall and penalty reductions if the victim was determined to have been a prostitute or dressed provocatively.⁷ Chihuahua's legislature claimed that the law was designed to prevent or discourage women from falsely accusing their boyfriends of rape out of fear of telling their parents they were sexually active—a situation which they believed was a common occurrence. The legislature eventually bowed to the pressure of outraged women's groups and struck the clause in the law that provided for reduced sentences where the victim was found to have provoked the rapist.⁸

As the above cases illustrate, victims of rape often find themselves in the unique position of facing skepticism not only from society, but also from those within the legal system—mistrust of the victim's claim and doubt as to the violent nature of the crime itself. As will be further discussed in this Comment, rape victims are also often revictimized in the courtroom in the form of attacks on their credibility and past sexual history or in the form of inadequate sentencing of their attackers.

The development of rape law in the United States has been intertwined with society's changing (or stagnant) beliefs and attitudes towards the crime of rape. The prolific discussion surrounding the crime of rape reached its pinnacle with the rape law Reform Movement in the 1970s and has continued to be on the public agenda.⁹ Despite the attention the crime of rape has received, there remain cracks in the system that need to be addressed and repaired. From often-insufficient rape shield laws to the very way legislatures have chosen to define the crime of rape (along with low reporting rates, low arrest rates, low prosecution rates, and inadequate sentencing), the adjudication of rape cases continues to be a complicated morass of inequity from jurisdic-

7. *Rights Groups Decry Mexico Rape Law*, L.A. TIMES, Aug. 29, 2001, at A8. Although international law is also beyond the scope of this Comment, this recent Mexican law regarding sentencing in rape cases illustrates the unique position the crime of rape holds within society's beliefs and conscience. As will be discussed in Part I of this Comment, the fear that women may be "crying rape" is among the most common myths concerning rape and its victims. See discussion *infra* Part I.

8. *Mexican State Reverses Law Easing Rape Penalties*, L.A. TIMES, Sept. 19, 2001, at A38.

9. As discussed *infra* Part I, the rape law Reform Movement emerged as an off-shoot of the Civil Rights Movement of the 1960s and 1970s.

tion to jurisdiction and, within those jurisdictions, from courtroom to courtroom.

This Comment focuses on one of the steps, the final step, in the long legal process of bringing a defendant accused and convicted of rape to justice—the sentencing. Sentencing may be the one stage at which imposing standard guidelines (in the form of mandatory sentencing guidelines) will result in similar and equitable disposition of like cases. Thus, this comment examines the current status of sentencing schemes across U.S. jurisdictions within the rape context and ultimately advocates mandatory sentencing guidelines as a partial remedy for lax sentencing. Part I gives a brief history on the changing sociology of rape within the context of rape law. Part II focuses on the current statistics which illuminate the continuing injustice the judicial system has maintained when sentencing convicted rapists. Part III examines the current sentencing schemes already in place across jurisdictions. Finally, Part IV advances mandatory sentencing guidelines as the most effective method for adequately sentencing convicted rapists.

I. SOCIOLOGY OF RAPE AND RAPE LAW

The body of rape law first developed out of the common law system, a system in which each court's decision of a case contributed to defining the elements of the crime.¹⁰ The common law definition of rape was unlawful carnal knowledge of a woman by force and against her will. The sexual penetration by the male penis of the female vagina, no matter how slight, constituted carnal knowledge. At common law, the consent or resistance of the woman became the distinguishing factor between forcible carnal knowledge (i.e. forcible rape, a crime for which only the rapist was punished) and consensual carnal knowledge (a crime for which both participants were punished; in more puritanical times, crimes of adultery or premarital sexual relations were prosecuted as unlawful consensual carnal knowledge).¹¹

10. U.S. DEP'T OF JUSTICE, NATIONAL INSTITUTE OF LAW ENFORCEMENT & CRIMINAL JUSTICE, *FORCIBLE RAPE: AN ANALYSIS OF LEGAL ISSUES* 5 (1978) [hereinafter *FORCIBLE RAPE: AN ANALYSIS*].

11. *Id.*

A. *Traditional Rape Law*

Prior to what was later called the rape law Reform Movement, federal and state legislatures' treatment of rape law was limited to codifying their understanding of the common law in their jurisdiction. The very basic definition of the crime of rape was constant across all of the statutes: sexual penetration, no matter how slight, done "against the will" of the victim. Use of force was not necessarily a separate element of the crime and the definition of "against the will" (what amounted to lack of consent) varied across jurisdictions.

Under these early statutes, the defendant did not have to offer consent as a defense to the crime of rape; lack of consent was an element of the crime which the prosecution had to prove in order to win a conviction. Courts determining consent looked to outward resistance, "the outward manifestation of nonconsent," to determine if the act was "against her will."¹² The amount of resistance required to prove nonconsent varied across jurisdictions with some states requiring utmost resistance (requiring the victim to be subject to death or serious bodily injury) and others requiring only enough resistance so that nonconsent was reasonably manifested.¹³

Under traditional rape law, courts often included a corroboration requirement that required the prosecution to produce evidence to validate the victim's testimony in order to get a conviction.¹⁴ This requirement represented the court's adoption of esteemed British legal scholar Sir Matthew Hale's oft-quoted view that the allegation of rape is a charge "easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent."¹⁵ Absent corroborative evidence the court was prohibited in some jurisdictions from con-

12. *Id.*

13. *Id.* For an overview of the status of the law prior to the Movement, see generally SUE BESSEMER, *THE LAWS OF RAPE* (1984).

14. CASSIA SPOHN & JULIE HORNEY, *RAPE LAW REFORM: A GRASSROOTS REVOLUTION AND ITS IMPACT* 24 (1992).

15. This fear of women "crying rape" is one of the most rampant and long-held myths about the crime. See MARIA BEVACQUA, *RAPE ON THE PUBLIC AGENDA: FEMINISM AND THE POLITICS OF SEXUAL ASSAULT* 59 (2000); 2 U.S. DEP'T OF JUSTICE, NATIONAL INSTITUTE OF LAW ENFORCEMENT & CRIMINAL JUSTICE, *FORCIBLE RAPE: A MANUAL FOR FILING & TRIAL PROSECUTORS, PROSECUTORS' VOLUME 4* (1978) [hereinafter *FORCIBLE RAPE: A MANUAL FOR PROSECUTORS*]. Courts feared that their dockets would become clogged with women accusing innocent men of rape out of feelings of revenge, spite, or fear.

victing the defendant.¹⁶ Alternatively, some jurisdictions allowed the case to go to the jury without the corroborative evidence so long as the judge gave a cautionary instruction to the jury that echoed Lord Hale's words and skepticism.¹⁷

Courts also bent the evidence rules by permitting the victim's past sexual history to be admitted into evidence. This information about the victim's sexual experiences was introduced to impeach her credibility or to prove her consent.¹⁸ The predominant view was that promiscuous women were more likely to lie than their innocent counterparts.¹⁹ The underlying assumption was that chastity or, alternatively, promiscuity was a character trait and a woman (i.e., a whore) who had consented to premarital or extramarital sex in the past would be more likely to consent again (as opposed to a virgin).

The procedural deficiencies in the body of traditional rape law "resulted in pervasive skepticism of the claims of rape victims and allowed criminal justice officials to use legally irrelevant assessments of victim's character, behavior, and relationship with the defendant in making decisions regarding the processing and disposition of rape cases."²⁰ The trial of a defendant for the crime of rape would often turn into a trial of the victim and her character. This became the central criticism of traditional rape law.²¹

Other criticisms of traditional rape law centered around the strict resistance requirements in some jurisdictions (where physical resistance was the only acceptable resistance), corroboration requirements, and definitions that excluded male victims and prosecution of husbands.²²

B. *Rape Law Reform*

As an offshoot of the civil rights movement of the 1960's and 1970's, the anti-rape/rape law Reform Movement was initiated by women's rights groups and victim's rights advocates.²³ These groups lobbied for pro-victim changes to state criminal codes.

16. SPOHN & HORNEY, *supra* note 14, at 24.

17. *Id.*

18. *See id.* at 25.

19. *Id.*

20. *Id.* at 18.

21. *Id.* at 17.

22. *Id.* at 17-18.

23. *See* BEVACQUA, *supra* note 15, at 142.

These changes included: rewriting current rape statutes to expand the scope of the crime; modifying the procedural rules to eliminate the corroboration requirement and cautionary instructions; and implementing rape shield laws.²⁴

Reform legislation redefined the law to include other forms of sexual contact, assaults with objects, and assaults by a spouse.²⁵ They also rewrote statutes to be gender neutral intending to include men as possible victims of rape.²⁶

The Movement was also concerned about the high consent and resistance standards that were placed on rape victims, a requirement not placed upon victims of other crimes.²⁷ Reform legislation focused on eliminating the high consent standards that most jurisdictions imposed on the prosecution. The new laws "eliminated resistance by the victim as an element of the crime to be proved by the prosecution."²⁸ Some jurisdictions defined consent more clearly or, in eliminating resistance as an element, took the burden away from the prosecution so long as they were able to show force.²⁹

Under pre-Reform laws, many victims who actually chose to go forward with prosecuting their attacker found themselves in the unfortunate position of being "raped" again on the witness stand prior to the passage of rape shield laws and the tightening of evidence rules.³⁰ Rape shield laws advanced by the Reform Movement sought to balance the victim's rights with those of the defendant by prohibiting the introduction and use of a victim's sexual history outside of a few narrowly defined exceptions.³¹ The enactment of rape shield laws was intended to eliminate "a second brutalization" of the victim in court; reformists did not

24. *Id.* at 66-110, 142.

25. SPOHN & HORNEY, *supra* note 14, at 22.

26. *Id.* See generally Cynthia Ann Wicktom, *Focusing on the Offender's Forceful Conduct: A Proposal for the Redefinition of Rape Laws*, 56 GEO. WASH. L. REV. 399-430 (1988) (describing and advocating a revision of rape laws across jurisdictions that shifts the focus from the nonconsent of the victim to a focus on the defendant's forceful conduct).

27. SPOHN & HORNEY, *supra* note 14, at 23-24.

28. *Id.*

29. *Id.*

30. See JEANNE C. MARSH ET AL., *RAPE AND THE LIMITS OF LAW REFORM* 57, 83 (1982) (quoting a prosecutor who described how the common law prosecution of rape "prosecuted or seemed to put the victim on trial" prior to the procedural changes brought about by the new laws and describing how a Michigan law prohibiting the introduction of information regarding the victim's prior sexual history as evidence ended "revictimization in the courtroom").

31. SPOHN & HORNEY, *supra* note 14, at 26.

want victims to face an “extensive cross-examination about their personalities and sexual activities.”³² Reforms also eliminated both corroboration requirements and cautionary instructions either through acts of legislature or appellate courts.³³

C. *Social Attitudes about Rape*

The root of society’s beliefs and attitudes towards rape and rape victims can be found in the fact that society confers upon men a “right of sexual dominance” and that it espouses a “code of masculinity that confers sexual privileges upon men.”³⁴ Society has perpetuated and institutionalized myths about rape and its victims: rape is a crime of sex (not violence); there is no such thing as rape; and that women say “no” when they really mean “yes.”³⁵ For example, a Rhode Island junior high school survey reported that 80 percent of students said that a man has a right to use force on his wife; 70 percent said that force is acceptable if the couple were engaged; 61 percent said that force was acceptable if the couple had already had sexual relations; 30 percent said that force was justified where the man knew the woman had had sex with another man or if she was drunk; and 25 percent of boys said that it was okay to force sex on a girl if the boy had spent \$10 or more on her and 20 percent of young girls agreed.³⁶

Many of society’s beliefs and attitudes towards the crime of rape and rape victims are played out in the courtroom. “Underlying rape law are the assumptions that rape is difficult to distinguish from desired sexual intimacy, that offenders are motivated by sexual desires, and that female victims’ allegations must be carefully scrutinized because women have been considered to be

32. *Id.* at 27.

33. *Id.* at 25.

34. BEVACQUA, *supra* note 15, at 199. For a discussion of how culture, language, and literature have shaped society’s skepticism of rape victims and its attitude toward the crime of rape, see generally ANDREW E. TASLITZ, *RAPE AND THE CULTURE OF THE COURTROOM* (1999).

The social roles of men and women in society are invariably entangled with society’s views of rape where an overwhelming majority of rape victims are women and rapists are men. U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT 2* (1997) (reporting that overall, 91 percent of the victims of rape and sexual assault were female; over 98 percent of the offenders were male).

35. BEVACQUA, *supra* note 15, at 59.

36. *The Implementation of the Violence Against Women Act Provisions of the Violent Crime Control and Law Enforcement Act (Public Law 103-322): Hearing Before the S. Comm. on the Judiciary, 103rd Cong. 60* (1994) (Statement of Sen. Biden) [hereinafter *Violence Against Women Act Hearing*].

inherently suspect as witnesses.”³⁷ The following are examples of how these beliefs are manifested in the legal system both pre- and post-reform.

A 1978 manual for federal prosecutors of rape cases described the social discussion of forcible rape as permeated with “hearsay information, party humor and fictionalized account[s] drawn from novels, television and movies.”³⁸ In attempting to educate lawyers on the sensitive issues surrounding the prosecution of rape, the manual sought to dispel the myths society held in connection with the crime of rape. Among those listed are that a woman cannot be raped without her participation (i.e., rape is easily avoided; women secretly desire rape); that most victims fabricate the rape (most women “cry rape”); and that victims provoke the attack either through appearance (clothing that is “too sexy”) or actions.³⁹

A significant number of jurists sitting in jurisdictions across the country in the 1970s made statements about sexual assault cases that were picked up by the press and public and compounded the already growing concern about the fairness of rape trials and the insensitivity of those in the legal system.⁴⁰ Among them was Judge Archie Simonson of Madison, Wisconsin who stated that a “fifteen-year-old boy who raped a girl in a high school stairwell was reacting *normally* to relaxed cultural attitudes about sex.”⁴¹ Judge Walter Pickett Jr. of Connecticut remarked at an attempted rape trial, “you can’t blame somebody for trying.”⁴²

This mindset is not limited to members of the judiciary. Delaware Senator Joseph R. Biden, Jr. described how one unnamed senator declared, in opposition to spousal rape legislation, that sometimes “a man just has to use force with his wife.”⁴³

37. Wicktom, *supra* note 26, at 399.

38. FORCIBLE RAPE: A MANUAL FOR PROSECUTORS, *supra* note 15, at 4. These myths are not limited to American society; these same myths also play into how other cultures address the crime of rape. See, e.g., *Mexican State Reverses Law Easing Rape Penalties*, *supra* note 8 (describing a Mexican state legislature concerned about women falsifying rape allegations out of fear).

39. FORCIBLE RAPE: A MANUAL FOR PROSECUTORS, *supra* note 15, at 4; see also BEVACQUA, *supra* note 15, at 25 (listing popular rape myths).

40. BEVACQUA, *supra* note 15, at 130.

41. *Id.* at 131 (emphasis added).

42. *Id.*

43. *Violence Against Women Act Hearing*, *supra* note 36, at 38 (Statement of Sen. Biden); see also ROWLAND, *supra* note 1, at 107 (quoting a defense attorney who, in a closing argument, stated that normal sexual intercourse traditionally in-

II. RAPE AS A CURRENT ISSUE—PAST AND CURRENT SENTENCING SYSTEMS

Though some of the fervor surrounding rape law reform and the Movement has decreased since its pinnacle in the 1970's and 1980's, the interest in addressing crimes against women has not completely faded.⁴⁴ This continued concern is not unwarranted given the current statistics.⁴⁵ The crime of rape remains a current topic of substantial study and reporting. Problems associated with rape prosecution include underreporting,⁴⁶ low arrest rates,⁴⁷ high dismissal rates,⁴⁸ low conviction rates,⁴⁹ and light sentencing. Specifically with regard to light sentencing, 21 per-

volves the woman saying "no" and that "if [he] had to have sexual intercourse only when [his] wife said yes the first time," he'd have to "join the church").

44. Renewed attention has been due in large part to the Violence Against Women Act and a renewed focus on domestic violence. See, e.g., *Violence Against Women Act Hearing*, *supra* note 36.

45. "One out of every eight adult women, or at least 12.1 million American women, has been the victim of forcible rape sometime in her lifetime." NATIONAL VICTIM CENTER & CRIME VICTIM'S RESEARCH AND TREATMENT CENTER, *RAPE IN AMERICA: A REPORT TO THE NATION 2* (1992) [hereinafter *RAPE IN AMERICA REPORT*]. This study also indicates that "0.7 percent of all women surveyed had experienced a completed forcible rape in the past year. This equates to an estimated 683,000 adult American women who were raped during a twelve-month period." *Id.* Over one in five women had been "forced to do something sexual" at some time in her lifetime. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, *FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 13* (2000).

More than 2,000 women are raped every week. If unreported rapes are counted, the total may be as high as 12,000 every week. *The Response to Rape: Detours on the Road to Equal Justice: A Majority Staff Report for S. Comm. on the Judiciary*, 103 Cong. 14 (1993) [hereinafter *Response to Rape Report*].

46. Only 16 percent, or about one out of every six rapes, is ever reported to the authorities. *RAPE IN AMERICA REPORT*, *supra* note 45, at 5.

Much of the underreporting is driven by victims' fears of stigmatization. Victims of rape were far more concerned about whether their family (71 percent) or others (68 percent) would find out she had been a victim of sexual assault than about becoming pregnant (34 percent) or of contracting HIV/AIDS (10 percent). *Id.* at 4.

[R]ape victims are extremely concerned about people finding out and finding reasons to blame them for the rape. If the stigma of rape was not still a very real concern in victims' eyes, perhaps fewer rape victims in America would be concerned about invasion of their privacy and other disclosure issues.

Id.

47. Sixty-two percent of reported rape cases never result in the arrest of the perpetrator. *Response to Rape Report*, *supra* note 45, at 9.

48. Forty-eight percent of all rape cases are dismissed before trial. *Id.* at 10.

49. Less than 50 percent of arrests for rape result in convictions, as compared to 69 percent and 61 percent conviction rates for murder and robber respectively. *Id.* at 11.

cent of convicted rapists are never sentenced to imprisonment; 24 percent will typically serve less than eleven months in jail.⁵⁰ This Comment suggests that the discussion concerning the crime of rape requires renewed attention, addresses the limited context of sentencing defendants convicted of rape, and proposes minimum mandatory sentencing guidelines as a potential solution.

Attitudes that underlie society's views and the legal system's treatment of rape are all too evident in the unjustly short sentences of convicted rapists. A 1977 national survey of prosecutors reported that more than one-third (35 percent) of them "indicated that the average minimum sentence required no imprisonment for convicted rapists."⁵¹ Twenty-nine percent of prosecutors reported an average minimum sentence of between one and five years.⁵² More than 60 percent of convicted rapists were spending little or no time in prison. This same survey reported that a large majority of prosecutors (73 percent) felt that the average sentence was appropriate; those who felt the average sentence was appropriate said that the sentences "fit the crime" (67 percent) or were "adequate punishment" (21 percent).⁵³ Those prosecutors who felt that the average sentence imposed was inappropriate thought the sentence was either too lenient (55 percent) or parole/probation was used excessively (45 percent).⁵⁴

The survey's findings evidence the attitude many in the judicial system held at that time about the crime of rape—i.e., rape is not a violent act, but rather a sexual act. Those who felt such lenient sentences were "appropriate" undoubtedly did not see the rape victims as true victims or the rapists as true criminals. The profound psychological and emotional impact of the physical rape on its victims was clearly discounted in the eyes of these prosecutors who felt that little or no prison sentence was appropriate.

According to a 1993 report, a rape conviction still does not necessarily demand a lengthy rape sentence.⁵⁵ As mentioned above, a survey of States representing 50 percent of the country's

50. *Id.* at 12.

51. 1 U.S. DEP'T OF JUSTICE, NATIONAL INSTITUTE OF LAW ENFORCEMENT & CRIMINAL JUSTICE, FORCIBLE RAPE: A NATIONAL SURVEY OF THE RESPONSE BY PROSECUTORS 28 (1977).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Response to Rape Report*, *supra* note 45, at 12.

population found that 21 percent of convicted rapists are never sentenced to imprisonment; 24 percent will typically serve less than eleven months in jail.⁵⁶ These statistics mean that almost one-half of all convicted rapists are sentenced to less than one year behind bars.⁵⁷

What do these statistics mean for a rape victim who is one of the few who has summoned the courage and resolve to report her attack and see it all the way through to trial? Where her claim survives the low arrest rates, the low prosecution rates, and the low conviction rates, her trauma through the entire judicial process is for naught where the only means by which the victim can see "justice done" results in a proverbial slap on the wrist for her convicted attacker. The victim leaves the courtroom with the far-from-comforting knowledge that her rapist will be back on the street in a few months or even weeks. As a partial remedy to correct the inequity of rape case adjudication at the sentencing level, this Comment ultimately advocates the use of mandatory sentencing guidelines. Imposing standards (in the form of mandatory sentencing guidelines) at the sentencing stage will result in the just and balanced disposition of cases. As a background to this proposal, the following section discusses the sentencing schemes already in place across jurisdictions.

III. CURRENT SENTENCING SCHEMES (INDETERMINATE SENTENCING, ADVISORY GUIDELINES AND MANDATORY GUIDELINES)

Out of all United States jurisdictions (the fifty states, two territories, Federal and D.C.), twenty-one have maximum penalties of life imprisonment for rape; twenty-four have a maximum

56. *Id.*

57. *Id.* at 1. In his support for the Violence Against Women Act, Senator Biden expressed alarm at the public's general lack of outrage about the reality of the crime of rape:

Imagine the public outcry if we were to learn today that one-quarter of convicted kidnapers or bank robbers were sentenced to probation or that 54 percent of arrests for these crimes never led to conviction. We would consider such a system of justice inadequate to protect the Nation's property, yet we tolerate precisely such results when the rape of women is at issue. Where the victim knows the perpetrator, there is a tendency to consider the crime a product of a private relationship, not a matter of public injustice.

Violence Against Women Act Hearing, *supra* note 36, at 171 (Statement of Sen. Biden).

penalty of twenty years or more.⁵⁸ This data may make the penalties for rape seem more severe than they actually are in practice. Depending upon the sentencing system employed in the jurisdiction, a defendant sentenced to twenty years in a jurisdiction with a parole system may actually only serve six years. The different sentencing schemes employed across jurisdictions are discussed below.

The three broad categories—Indeterminate Sentencing, Advisory Guidelines, and Mandatory Guidelines—are not intended to be a comprehensive representation of every sentencing scheme in the United States; they do not adequately compartmentalize all sentencing schemes in practice. Some do not clearly fall into one of the three categories and should be considered “hybrids” or a combination of characteristics of several of the categories.⁵⁹

A. *Indeterminate Sentencing (or Complete Judicial Discretion)*

Some states use an indeterminate sentencing structure under which offenders generally receive a sentence range and a parole system determines actual release dates. Absent statutes requiring certain sentences for particular crimes, the sentencing court has broad discretion to sentence within the statutory limit.⁶⁰ Under this scheme, “judicial discretion in sentencing [is] wide and largely unchecked, save for legislatively specified maximums and (less commonly) minimums.”⁶¹ Parole boards work in tandem with sentencing courts to determine the actual length of time offenders spend in prison.⁶² Furthermore, decisions of sen-

58. U.S. SENTENCING COMM'N, REPORT TO CONGRESS: ANALYSIS OF PENALTIES FOR FEDERAL RAPE CASES at 7 (1995), available at http://www.uscc.gov/r_congress/FEDRAPE.PDF [hereinafter ANALYSIS OF PENALTIES REPORT].

59. For an example of a “hybrid” scheme, see the Virginia sentencing scheme, which is somewhere between mandatory sentencing guidelines and advisory guidelines. Virginia’s guidelines include mandatory imprisonment for certain offenses, but departure from the guidelines is not a valid basis for an appeal. SENTENCING COMM'N' PROFILES, STATE SENTENCING POLICY AND PRACTICE RESEARCH IN ACTION PARTNERSHIP 36-37 (1997) [hereinafter SENTENCING PROFILES]. It appears that while some provisions are “mandatory” if a court were to deviate from those guidelines, there does not seem to be any recourse for an appeal by the prosecution for an excessively lenient sentence except the traditional basis of abuse of judicial discretion.

60. FEDERAL PUBLIC AND COMMUNITY DEFENDERS, AN INTRODUCTION TO FEDERAL GUIDELINE SENTENCING (Lucien B. Campbell ed., 1991).

61. SENTENCING DIGEST: EXAMINING CURRENT SENTENCING ISSUES AND POLICIES 8 (1998), [hereinafter SENTENCING DIGEST].

62. *Id.*

tencing judges are largely insulated from appellate review.⁶³ Under this sentencing system, the exercise of the judge's sentencing authority is "virtually unreviewable: criminal sentences [are] not appealable by either side."⁶⁴

The goal of this system is "substantive rationality"—punishment that is just for each individual offender. This sentencing system is often based on the traditional idea that each offender could be rehabilitated through the judicial system.⁶⁵ States that continue to have this regime of indeterminate sentencing include California, Oklahoma, and Texas.⁶⁶

B. *Advisory Sentencing Guidelines (also known as Discretionary/Presumptive/Voluntary)*

The State of Arkansas is representative of the Advisory Sentencing Regime.⁶⁷ The Arkansas Sentencing Commission created and promulgated sentencing standards.⁶⁸ However, the courts have retained a significant amount of judicial discretion (as to whether multiple sentences are to be imposed concurrently or consecutively) where courts can deviate from the guidelines quite readily.⁶⁹

The Arkansas guidelines are similar to the federal system (discussed *infra*) in that numerical values are placed on the offense and on the defendant's criminal history; these values are then applied to a sentencing grid to arrive at a recommended sentencing range.⁷⁰ The sentencing court may deviate from the

63. FEDERAL PUBLIC AND COMMUNITY DEFENDERS, *supra* note 60, at 1.

64. KATE STITH & JOSE A. CABRANÉS, FEAR OF JUDGING: SENTENCING GUIDELINES IN THE FEDERAL COURTS 80 (1998) (referring to the traditional system in place in federal jurisdictions pre-Guidelines).

65. SENTENCING DIGEST, *supra* note 61, at 8.

66. In California, however, for the crime of rape (and certain other crimes), the sentencing parameters are to some extent defined by statute. CAL. PENAL CODE § 264 (West 2000). Rape is punishable by imprisonment in the state prison for three, six or eight years. *Id.*

The only statutory provision concerning the particular crime of rape in Oklahoma requires that convicted rapists must serve not less than 85 percent of any judicially imposed sentence of imprisonment before becoming eligible for parole. OKLA. STAT. tit. 21, § 13.1 (2000).

In Texas, one statute prevents judges from sentencing defendants convicted of aggravated assault to community supervision. TEX. CRIM. PROC. CODE ANN. §. 41.12 (Vernon 2000). This constitutes the only limitation placed on courts with regard to sentencing rapists.

67. SENTENCING PROFILES, *supra* note 59, at 4-5.

68. *Id.*

69. *Id.*

70. *Id.*

guidelines either 5 percent above or below the range without any difficulty; any further deviation constitutes a departure for which the court must give either a written justification or a stated justification on the record.⁷¹ The role of the parole board is still intact where sentences can be mitigated through the board's decisions.⁷² Parole or probation is considered an "alternative sanction" provided for on the sentencing grid.⁷³ Sentencing departures from the guideline ranges are not grounds for appellate review.⁷⁴ Other states with an Advisory Guidelines Sentencing system include Delaware,⁷⁵ Louisiana,⁷⁶ Missouri,⁷⁷ and Virginia.⁷⁸

C. *Mandatory Sentencing Guidelines*

The federal sentencing system is representative of a Mandatory Sentencing Guideline regime.⁷⁹ With the implementation of the Comprehensive Crime Control Act of 1984 (of which the Sentencing Reform Act is a part), the United States Sentencing Commission ("Commission") was created.⁸⁰ The Commission has the authority to "promulgate sentencing guidelines and policy statements, consistent with the governing statutes."⁸¹ 18 U.S.C. § 3553, Imposition of a Sentence, lays out the factors which a sentencing court must consider in imposing a penalty. These include the purpose of punishment, method of guideline application, and the standard for deviations from the

71. *Id.*

72. *Id.* However, convicted violent or sex offenders in Arkansas are barred from being eligible for such release. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 6-7 (describing Delaware system with a sentencing "pyramid" with classification levels and presumptive sentences for each level; no parole under Truth in Sentencing Act).

76. *Id.* at 12-13.

77. *Id.* at 20-21 (describing a Missouri system that can be seen as the most "advisory" where guidelines are considered advisory and judges can depart from the recommendations at their discretion).

78. *Id.* at 36-37. *See generally* SENTENCING DIGEST, *supra* note 61, at 11.

79. For an introductory orientation and a general overview of the structure of sentencing under the Federal guidelines, see FEDERAL & PUBLIC COMMUNITY DEFENDERS, *supra* note 60.

80. *Id.* at 1.

81. *Id.*

range.⁸² The federal system entails sentencing guidelines, determinate sentences, and no parole.⁸³

Under the federal Guidelines system, which guideline “box” (or range) in the sentencing table a judge must refer to in determining a defendant’s sentence is based upon the particular history of the defendant (criminal history category) and the particular crimes he has been convicted of (offense level).⁸⁴ The sentencing range in the “box” becomes the maximum and minimum limits of the sentence.⁸⁵ A court can deviate from the guideline range only where the court determines that there was a factor “not adequately considered by the Sentencing Commission [that] warrants imposition of a sentence outside the guideline range.”⁸⁶

Deviations from the guidelines cannot be made as readily as it may seem because they are discouraged through the rules of sentence appealability. Where a court decides to depart from the guideline range, the aggrieved party may appeal the sentencing decision based upon the unlawfulness or unreasonableness of the departure.⁸⁷ Where a court’s sentencing decision falls within the guideline range, neither party can appeal the decision. Furthermore, the Commission has already taken into consideration most aggravating and mitigating factors and has assigned a value for which the defendant’s offense level can be increased or reduced (thereby affecting the sentence length).⁸⁸ Ultimately, the Commission has the plenary power to determine “which grounds for departure are warranted and which grounds are not warranted.”⁸⁹

There is no parole board within the current federal system.⁹⁰ Federal sentences imposed under the guidelines are not subject to reduction through parole;⁹¹ parole constitutes a portion of the sentence as opposed to a suspension of a sentence.⁹² A sentence of probation without any time of imprisonment is permitted only

82. *Id.* at 2.

83. ANALYSIS OF PENALTIES REPORT, *supra* note 58, at 7.

84. FEDERAL PUBLIC AND COMMUNITY DEFENDERS, *supra* note 60, at 1.

85. *Id.*

86. *Id.*

87. STITH & CABRANÉS, *supra* note 64, at 72-73.

88. *Id.*

89. *Id.* at 73.

90. ANALYSIS OF PENALTIES REPORT, *supra* note 58, at 14.

91. *Id.*

92. FEDERAL PUBLIC AND COMMUNITY DEFENDERS, *supra* note 60, at 2.

where the minimum in the applicable sentencing range is zero.⁹³ Sentences are determinate where a defendant "will serve the sentence imposed by the court, less any applicable credit for satisfactory behavior."⁹⁴

In contrast to either of the above sentencing schemes, Mandatory Guideline sentences are subject to review by an appellate court.⁹⁵ Appellate courts are no longer limited to looking at sentencing decisions for an abuse of judicial discretion, but can now review these decisions for illegality, incorrect application of the guidelines, and departure from the guidelines.⁹⁶ Appellate review acts as check on the sentencing judge who may impose an inadequate sentence out of misplaced sympathy for the convicted rapist at the expense of justice for the victim.

One of the goals of Mandatory Guideline Sentencing was to reduce disparity in sentencing.⁹⁷ By imposing standards by which judges must abide, the possibility of inadequate sentences is minimized because judges must sentence convicted rapists to at least the defined minimum number of years. Other jurisdictions with a mandatory sentencing scheme include Kansas,⁹⁸ Minnesota,⁹⁹ North Carolina,¹⁰⁰ Oregon,¹⁰¹ Pennsylvania,¹⁰² and Washington.¹⁰³

IV. SENTENCING RAPE—MANDATORY SENTENCING GUIDELINES AS MOST EFFECTIVE MEANS

The options available to a court at the sentencing phase of a rape adjudication are either broad or limited depending on what sentencing regime is implemented by the jurisdiction in which the court sits. Limits on judicial discretion in an indeterminate

93. *Id.* at 1. Credit for time served because of satisfactory behavior is limited to 45 days per year.

94. *Id.* at 2.

95. *Id.* at 1.

96. *Id.*

97. SENTENCING DIGEST, *supra* note 61, at 20-21 (describing the purposes, means and effects of implementing mandatory minimum sentences).

98. SENTENCING PROFILES, *supra* note 59, at 10-11.

99. *Id.* at 18-19.

100. *Id.* at 22-23.

101. *Id.* at 28-29. Oregon also has mandatory minimum sentences for twenty different offenses. *Id.*

102. *Id.* at 30-31.

103. *Id.* at 38-39. See generally SENTENCING DIGEST, *supra* note 61, at 11 (placing different state systems on the spectrum between voluntary and mandatory guidelines).

sentencing jurisdiction are for the most part few. Under California Penal Code section 264, the crime of rape is punished “by imprisonment in the state prison for three, six, or eight years.”¹⁰⁴ Prior to this statute requiring imprisonment, a convicted rapist could have avoided prison entirely where a court decided to sentence him to probation.¹⁰⁵

Courts under an Advisory Guideline scheme also have broad discretion in sentencing for the crime of rape. Because appellate review of a sentencing court’s decision is not available based on nonconformity with the guidelines, sentencing courts retain much of their power to sentence convicted rapists to time below any stated recommendation.¹⁰⁶

Instances in which convicted rapists are punished with sentences that amount to a “slap on the wrist” are far more likely to occur under either of the two above regimes than in a system with Mandatory Guidelines. Which of the four overarching purposes¹⁰⁷ of sentencing are served when a convicted rapist is sentenced to an insignificant amount of jail time or is immediately released on probation? In the movement toward implementing Mandatory Guidelines and Determinate Sentencing, it is clear that most legislatures have concluded that criminal punishment and imprisonment are not an effective means of rehabilitation but have advocated this system as the most effective means of achieving criminal justice’s other goals of retribution, deterrence and incapacitation.

For example, under the federal system of Mandatory Guidelines, section 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) provides that convictions for aggravated sexual abuse (18 U.S.C. § 2241) carry a statutory maximum term of life imprisonment; convictions for sexual abuse (18 U.S.C. § 2242) carry a statutory maximum of 20 years imprisonment.¹⁰⁸ Aggravated sexual abuse (where among other elements the threat of death, serious bodily injury or kidnapping are involved) correlates to an offense level of 31¹⁰⁹ which carries with it a mini-

104. CAL. PENAL CODE § 264 (West 2000).

105. See ROWLAND, *supra* note 1, at 117.

106. SENTENCING PROFILES, *supra* note 59, at 4-5.

107. The four overarching purposes of sentencing are retribution, deterrence, incapacitation, and rehabilitation. STITH & CABRANÉS, *supra* note 64, at 52.

108. ANALYSIS OF PENALTIES REPORT, *supra* note 58, at 4.

109. *Id.*

imum mandatory sentence of 135 months (eleven years and three months) at the bottom of the sentencing range.¹¹⁰

Judicial Discretion is constrained through this sentencing system.¹¹¹ Situations in which judges disregard jury convictions and allow their own archaic beliefs to affect the excessively lenient sentences they hand out to convicted rapists will be minimized, if not altogether avoided, in a Mandatory Guideline jurisdiction.¹¹² Judicial Discretion is not completely eradicated from the process; the Mandatory Guidelines scheme does not lock judges out of the process of determining appropriate sentences where judges are sitting on the sentencing commission (and often hold the position of chairman) that establishes the guideline matrix and implements the sentencing system.¹¹³

The system of Mandatory Sentencing Guidelines is not without its critics and drawbacks. The arguments against Mandatory Guidelines include: unwanted increases in prosecutorial discretion; the stripping of moral judgment from the criminal justice system; and reduction of disparity as a problematic goal of the Mandatory Guidelines system.

Prior to the Guidelines, prosecutors already exercised a great deal of discretion in "deciding upon a charge, in entering into plea agreements, and in filing motions for downward departures based on cooperation with the state".¹¹⁴ Post-Guidelines, the prosecutor's decision at any of the three above stages will directly determine the sentence that will be imposed by the judge.¹¹⁵ Critics of Mandatory Sentencing Guidelines claim that

110. STITH & CABRANÉS, *supra* note 64, at 179, app. A. This figure also assumes that the offender has no criminal history.

111. Other factors in place in some jurisdictions that work to reign in judicial discretion include three strikes laws and crime specific mandatory minimum sentencing statutes.

112. *See, e.g.*, Schafran, *supra* note 4, at 452 n.72 (1993) (discussing a 1983 case where a judge, based on his impression that the defendant, who was a successful businessman, had an "excellent" background and was a "loving and caring father," sentenced the defendant who raped and sodomized his date after punching her and threatening her with a razor to minimal time); Clark, *supra* note 6.

113. SENTENCING DIGEST, *supra* note 61, at 8.

114. STITH & CABRANÉS, *supra* note 64, at 130.

115. *Id.* at 131. Limiting judicial discretion will increase the discretion held by prosecutors (in determining who is prosecuted, what crimes they are charged with, and in the plea bargaining phase of adjudication). SENTENCING DIGEST, *supra* note 61, at 9. Underlying this argument is the idea that there is a fixed amount of discretion in the criminal justice system and curtailing the amount of discretion held by the judiciary merely redistributes it to other players in the system.

this results in a situation where “prosecutorial discretion is now greater *relative* to judicial discretion in criminal sentencing.”¹¹⁶

Critics predict that criminal lawyers will devise ways to avoid or minimize the effect of mandatory minimums as played out in Mandatory Guidelines through creative charging practices, increasing dismissal rates, using delay tactics, and relying more on plea bargaining to reach a conclusion that the judge and attorneys deem as “fair” and not “overly harsh.”¹¹⁷ They view the problem as one where there is a significant amount of prosecutorial discretion but the countervailing force of judicial discretion is absent under the Guidelines—in other words, there is nothing to reign in prosecutors.¹¹⁸

However, the potential for rampant prosecutorial discretion has not escaped notice by either the Commission or the Department of Justice. In the wake of Guidelines implementation, the Attorney General in 1989 released a memorandum (known as the “Thornburgh Memorandum”) that delineated the limits of prosecutorial discretion in charging and plea bargaining.¹¹⁹ This was clearly an effort to address the concerns regarding the balance between judicial and prosecutorial discretion.

Critics of Mandatory Guidelines also claim that this type of sentencing regime has transformed the traditional sentencing process from one in which the court engages in a discretionary process of judgment and moral reasoning to one in which the court is merely the instrument of a bureaucracy that makes findings of fact that translate into a sentencing range.¹²⁰ Judges are stripped of their power to exercise mercy and forgiveness or vengeance and condemnation; the Guidelines eliminate any expression of moral judgment from the sentencing process.¹²¹ However, within the limited situation of rape cases, judges have

116. STITH & CABRANÉS, *supra* note 64, at 130.

117. SENTENCING DIGEST, *supra* note 61, at 20.

118. STITH & CABRANÉS, *supra* note 64, at 142.

119. *Id.* at 136. Stith & Cabranés quote Richard Thornburgh, *Attorney General to Federal Prosecutors, Memorandum, Plea Policy for Federal Prosecutors: Plea Bargaining Under the Sentencing Reform Act* (1989):

[A] federal prosecutor should initially charge the most serious, readily provable offense or offenses consistent with the defendant’s conduct. Charges should not be filed simply to exert leverage to induce a plea, nor should charges be abandoned in an effort to arrive at a bargain that fails to reflect the seriousness of the defendant’s conduct.

Id.

120. *Id.* at 84.

121. *Id.*

traditionally either passed moral judgment on the *victim* or have failed to recognize the moral depravity of the act itself as evidenced from the foregoing cases and statistics involving rape sentencing.¹²²

The stated objectives of the congressional bills that would ultimately be enacted as the Sentencing Reform Act of 1984 (creating the Commission and the Guidelines) included "avoiding 'unwarranted sentencing disparity' among defendants 'with similar records who have been found guilty of similar conduct' (by providing for sentencing guidelines and sentence review), and promoting 'honesty in sentencing' (by providing for the elimination of parole)."¹²³ Another argument advanced by critics is that the reduction of disparity in the elimination of judicial discretion does not necessarily ensure justice where uniform treatment does not mean equal treatment. Mandatory minimum laws do not diminish disparity (or provide for equal treatment) where you have two offenders convicted for the same crime but one has an extensive criminal history and the other is a first time offender and they are both sentenced for the same amount of time.

However, this argument would be true only where a statute imposing a mandatory minimum sentence is in place in a jurisdiction that does not utilize a guidelines system or in situations where statutory minimums for particular crimes are seen to override the guideline recommendations. Where the mandatory minimum is incorporated into the guidelines system, the bottom of the range in the guidelines is considered a mandatory minimum that cannot be deviated from. Under a Mandatory Guidelines system similar to the federal scheme, the criminal history of the offender (used in determining one of the base values that is applied to the guideline grid) is still taken into account in fashioning an equitable sentence.¹²⁴ Furthermore, under Federal guidelines, departures from the guideline range are permitted to a certain extent to allow for "real-offense sentencing" that takes into account aggravating or mitigating circumstances not adequately considered by the guidelines.¹²⁵ As opposed to statutory minimum sentences for a particular offense, Mandatory Guide-

122. For a discussion of the legal system's failure to recognize rape itself as a violent crime, see generally Schafran, *supra* note 4.

123. *Id.* at 40.

124. SENTENCING DIGEST, *supra* note 61, at 21.

125. STITH & CABRANÉS, *supra* note 64, at 72.

lines are more “just” in that they take into account the particular facts of the offense and the criminal history of the offender.

This Comment does not seek to advance the claim that Mandatory Sentencing Guidelines are the only means nor the only solution necessary to remedy the injustice felt by rape victims in the criminal justice system. Recent focus has been placed on educating the judiciary and changing social attitudes about rape, domestic violence, and violence against women in general.¹²⁶ A national report on rape in America made the following recommendation:

Rape education must be systematic: from our schools to our judicial system to all citizens of America. For only when we—as individual citizens and as a nation dedicated to liberty and justice for all—understand the brutal nature of rape and its devastating aftereffects, will we be able to erase the stigma of rape, guarantee that rape victims are treated with dignity, and offer a concerted, appropriate criminal justice response to crimes of rape and their victims.¹²⁷

CONCLUSION

In the American experience, shifts in the social consciousness have often required legal action compelled by social movements. Despite the fervor and advances the rape law Reform Movement made over three decades ago, rape remains a problematic issue on the public agenda and within the legal system.

The crime of rape has not receded into history. Based on reported acts, more than 2,000 women are raped every week. The total may be as high as 12,000 each week if unreported cases are counted. Over one in five women will be forced to perform some sexual act within her lifetime.¹²⁸

Compounding the complexity surrounding the discussion of rape are society’s beliefs and attitudes towards rape and the rape victim that underlie the unique difficulties associated with rape: underreporting, low arrest rates, low prosecution rates, low conviction rates, and inadequate sentencing.¹²⁹

126. See, e.g., *Violence Against Women Act Hearing*, *supra* note 36, at 34 (Statement of Albert L. Kramer, Presiding Judge (Ret.), Quincy, Mass. District Court); *Id.* at 36 (Statement of Sen. Biden); Wicktom, *supra* note 26; see also BEVACQUA, *supra* note 15, at 102.

127. RAPE IN AMERICA REPORT, *supra* note 45, at 14.

128. See discussion *supra* notes 44-49 and accompanying text.

129. See *supra* notes 45-54 and accompanying text.

Among the sentencing schemes employed across jurisdictions in the United States,¹³⁰ Mandatory Sentencing Guidelines are the most effective means by which injustice and inequity can be diminished or altogether eliminated from the sentencing phase of rape adjudication. The use of Mandatory Sentencing Guidelines in conjunction with the systematic education of all the players in the criminal justice system (from law enforcement and prosecutors to parole boards and the judiciary) as well as the community at large will cause a shift in social attitudes and beliefs that will result in a more appropriate response to crimes of rape and rape victims.

130. *See supra* Part III.