



February 21, 2014

**MISSOULA COUNTY ATTORNEY RESPONSE TO
DEPARTMENT OF JUSTICE LETTER DATED FEBRUARY 14, 2014**

It was with frustration, disbelief and outrage that I read the Department of Justice's (DOJ) letter dated February 14, 2014. Since May 2012, I have repeatedly requested that the DOJ provide the legal and factual basis for their actions. For more than 18 months, the DOJ steadfastly refused to provide any factual or legal support for their position.

It is no coincidence that the DOJ released this letter to the press only after I filed a federal court action seeking clarification of the DOJ's authority. The letter provided to the press is clearly retaliatory. The DOJ is trying to use the media to improperly influence public opinion about the issue of sexual assault cases. This is a politically-calculated and irresponsible move on their part.

Regarding references to specific charging decisions and alleged comments made by Deputy County Attorneys, I would like very much to have the opportunity to set the record straight as to why certain decisions were made and as to what was said or not said to individual victims. However, there are two problems in doing so. First, I don't know which specific cases the DOJ is referencing or the context of the claimed statements because the DOJ has not provided us with specific information regarding these statements. Second, Montana law specifically prohibits the disclosure of confidential criminal justice information. Thus, I would be violating the law to comment on any specific sexual assault case.

Unfortunately, the DOJ does not feel obligated to follow Montana law (or federal law for that matter). I simply ask that you keep in mind that there are always two sides to every story.

Responding generally to the DOJ's letter, it is completely false to claim the attorneys at the Missoula County Attorney's Office put women in danger, are "institutionally indifferent" or are biased against victims. The men and women who work with me at the County Attorney's Office do not deserve the DOJ's unfair treatment or the public criticism that has followed. These attorneys have names and faces. They are your friends and neighbors. They live in this community with their families. These attorneys work extremely hard every day to protect you, the citizens of Missoula County. We all care deeply about this community and about victims of crime.

There are 11 attorneys within the criminal division of the County Attorney's Office, 7 of whom are women. Each attorney is personally responsible for upwards of 125 criminal cases at any given time. It is safe to say the work load for our attorneys is high, especially in light of limited time and resources. Despite these obstacles, all criminal victims are given equal priority whether women, children or men. It is a flat out lie for the DOJ to claim sexual assault cases are given the lowest priority.

Contrary to the DOJ's unsupported finding, the attorneys at the Missoula County Attorney's Office are well trained and experienced. We communicate and collaborate well with Missoula's law enforcement agencies, which investigate crimes (the County Attorney's Office does not investigate crime). From what I understand, no law enforcement officer interviewed by the DOJ reported differently. Indeed, when the DOJ conducted its interviews, not a single, specific question was asked of any law enforcement officer related to any specific case files.

The attorneys at the County Attorney's Office, including myself, are not perfect. We are human and make mistakes. But, overall, your county attorneys are hard-working, dedicated and obtain solid results in sexual assault cases compared to the DOJ itself (consider their record in Indian country) and other communities. Over the last 18 months, we have internally reviewed 195 cases, comprising all reported cases of rape and felony sexual assault involving victims age 16 and older who obtained medical exams at First Step and made reports to law enforcement from 2007 through 2012. Investigations were completed and cases referred by law enforcement to the Missoula County Attorney's Office in 100, or approximately half, of these cases.

As part of the review, we attempted to find prosecution statistics from other jurisdictions to assist in gauging Missoula's performance. However, comprehensive national prosecution data is not available.¹ The statistics we did find suggest that the Missoula County Attorney's Office charges rape cases at a rate:

- 50% higher than the statistic asserted by the federal government just last month;²

¹ Rape and Sexual Assault: A Renewed Call to Action, p.17. White House Council on Women and Girls. January, 2014.

² Rape and Sexual Assault: A Renewed Call to Action, p.16. White House Council on Women and Girls. January, 2014.

- Over 50% higher than San Diego, CA;³
- Slightly under the statistic cited by a national advocacy organization;⁴ and
- Two times higher than a jurisdiction studied in a federally-commissioned study.⁵

The federal government recently released a report stating that 12% of reported rape cases result in prosecution.⁶ In San Diego County, CA, 11% of rape reports between 2005 and 2007 resulted in a prosecution.⁷ Statistics compiled by RAINN (Rape, Abuse & Incest National Network), state that 20% of reported rapes result in prosecution.⁸ And in a National Institute of Justice (NIJ) study of rape cases reported in Salt Lake County, UT, from 2003 through 2011, the number of cases resulting in prosecution was 9%.⁹

- In Missoula, our review revealed that 18% of the total reported cases were charged. Of the cases referred to the Missoula County Attorney's Office after an investigation was completed, 35% were charged.

The statistics we found on conviction rates suggest that the Missoula County Attorney's Office obtains convictions at a rate:

- Slightly higher than the statistic cited by a national advocacy organization;¹⁰

³ Two hundred sixty-three rape cases out of 2286 reports were prosecuted in San Diego County, CA between 2005 and 2007, according to the San Diego County District Attorney's website (sdcda.org).

⁴ "Out of every 100 rapes, 40 are reported; 10 lead to an arrest; 8 get prosecuted; and 4 lead to a felony conviction." Rape, Abuse & Incest National Network (rainn.org).

⁵ National Institute of Justice (NIJ) Sexual Assault Nurse Examiners' (SANE) Toolkit Research Findings, September 2013, for Salt Lake County, p.2, 4.

⁶ Rape and Sexual Assault: A Renewed Call to Action, p.17. White House Council on Women and Girls, January 2014.

⁷ sdcda.org.

⁸ "Out of every 100 rapes, 40 are reported; 10 lead to an arrest; 8 get prosecuted; and 4 lead to a felony conviction." Rape, Abuse & Incest National Network (rainn.org).

⁹ National Institute of Justice (NIJ) Sexual Assault Nurse Examiners' (SANE) Toolkit Research Findings, September 2013, for Salt Lake County, p.2, 4.

¹⁰ rainn.org.

- Almost twice the rate as a jurisdiction studied in a federally-commissioned study;¹¹ and on the higher end of the range of conviction rates reported by comparison urban sites.¹²

Statistics compiled by RAINN show that 10% of reported cases resulted in convictions.¹³ The NIJ study found that 6% of cases in the jurisdiction studied were “successfully prosecuted.”¹⁴ Comparison sites, all urban areas, had successful prosecution rates of 8-13% of reported cases.¹⁵

- Of the total cases referred to the Missoula County Attorney’s Office from law enforcement, 21% resulted in guilty pleas or convictions at trial. Of the cases charged by the Missoula County Attorney’s Office, 60% resulted in guilty pleas or convictions at trial.

The Missoula County Attorney’s Office is continuing its review, with the aim to better inform our community of the procedures, dynamics, and results of sexual assault prosecutions by the Missoula County Attorney’s Office. Sexual assault cases are among the most difficult cases prosecutors face. In many instances victims do not want the cases prosecuted if they are going to be subjected to unfair scrutiny. Also, and importantly, we have an ethical obligation to not file cases which are not supported by evidence that we believe is sufficient to obtain a conviction.

Our office has a long history of cooperation with the law enforcement and other community partners, such as Crime Victim Advocates, the First Step program, the YWCA and the UM SARC program. We have been a partner in a multi-disciplinary team (MDT), offering a collaborative response to child, adolescent, and adult sexual assault, for longer than my entire tenure as Missoula County Attorney. First Step also has an active Advisory Board, of which I am a member.

¹¹ National Institute of Justice (NIJ) Sexual Assault Nurse Examiners’ (SANE) Toolkit Research Findings, September 2013, for Salt Lake County, p. 4.

¹² Id.

¹³ rainn.org.

¹⁴ National Institute of Justice (NIJ) Sexual Assault Nurse Examiners’ (SANE) Toolkit Research Findings, September 2013, for Salt Lake County, p. 4.

¹⁵ Id.

Our office has played an extremely active part in the development of First Step and the MDT for over fifteen years. We have seen great progress and great success in improving trust, communication, and collaboration between agencies involved in serving sexual assault victims.

Our office has also taken many steps to improve the services provided to victims of sexual assault. Though not required to do so, the Missoula County Attorney's Office voluntarily entered into a Memorandum of Understanding with the Missoula Police Department (MPD) (to assist MPD meet its obligations with the DOJ) providing for the timely review of sexual assault cases referred to our office by the MPD for prosecution or review. This agreement provides that attorneys in our office will meet face-to-face with victims, advocates and police investigators to discuss the outcome of sexual assault case referrals from the MPD. Our attorneys have obtained further training with MPD officers regarding newly developed best practices. And, the Missoula County Attorney's Office has agreed to actively participate in the upcoming community audit, a collaborative process focused on further enhancing victim safety.

As County Attorneys, we care about and work hard to combat sexual assault. However, our prosecutors do not commit crimes; they deal with the aftermath of crimes. Preventing crime is a societal problem that starts long before cases arrive at our office. And, prosecutors do face obstacles in terms of bias, not so much within our office, but with juries. Rather than blame prosecutors, we all need to accept responsibility for preventing crime and prosecutors need your help to fight bias where it hurts prosecutors and victims the most - in the jury box.