

*Sent by First Class Mail and Email*

October 18, 2016

RE: "Improving Police Response to Sexual Assault" Report: Presumption of Innocence Under Siege

Sara Darehshori  
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Human Rights Watch  
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Dear Ms. Darehshori:

Thank you for your response to our letter of September 9. After careful consideration of your response and all of the information preceding it, we respectfully request that the Human Rights Watch remove Improving Police Response to Sexual Assault from your website, and issue a new report that appropriately balances the interests and rights of sexual assault complainants and defendants. Our rationale for this request is as follows.

The Center for Prosecutor Integrity notes the Human Rights Watch reports enumerated in your letter regarding faulty criminal justice policies and practices. CPI deplores the fact that "[b]etween 1979 and 2009, the number of prisoners in state and federal facilities increased almost 430 percent," as your Nation Behind Bars report explains. We highlight a key finding in your report, Targeting Blacks: Drug Law Enforcement and Race in the United States, which notes the disparate impact of drug laws on African-Americans. And we applaud the conclusion of your Sex Offender Laws in the US report that such laws are "ill-considered, poorly crafted, and may cause more harm than good."

These observations apply equally to "victim-centered" investigations, which are the focus of the Improving Police Response to Sexual Assault. Such investigational approaches are certain to increase the number of Americans in prison. They are likely to further disadvantage blacks in the criminal justice system who cannot afford to hire their own investigators. And we believe such investigative approaches are indeed "ill-considered, poorly crafted, and may cause more harm than good."

While CPI's previous letter touched on the presumption of innocence, it did not document how the presumption of innocence is considered to be the underpinning of a fair criminal justice system:

1. The presumption of innocence is implicit in the Fifth, Sixth, and Fourteenth amendments to the Constitution. In *Coffin v. United States*, the Supreme Court wrote, "the presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."

2. The International Declaration of Human Rights, a foundational document of the United Nations, states at Article 11, “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

Human Rights Watch has issued numerous reports calling on countries to uphold the presumption of innocence, including Saudi Arabia,<sup>1</sup> Turkey,<sup>2</sup> Uganda,<sup>3</sup> and Singapore,<sup>4</sup> to name a few. In other cases, Human Rights Watch has called for independent, impartial investigations of alleged human rights violations in the Philippines,<sup>5</sup> Ukraine,<sup>6</sup> China,<sup>7</sup> and elsewhere. One HRW report specifically highlights investigational deficiencies in one country’s criminal justice system, noting that “Unlike individuals facing criminal charges, the state has a superior array of financial and human resources, expertise, and technology to help it investigate the crimes its prosecutors refer to trial.”<sup>8</sup>

The Human Rights Watch report, *Improving Police Response to Sexual Assault*, stands in sharp contrast to the principles and recommendations enunciated above. The report:

- Biases the process by urging investigators to assume that “all sexual assault cases are valid unless established otherwise by investigative findings”
- Seeks to obviate investigative impartiality by repeatedly referring to the claimant as a “victim”
- Instructs investigators to downplay the evidentiary significance of a complainant who makes contradictory statements
- Conflates a detective’s investigative role with a social worker’s psychotherapeutic role
- Does not account for the problem of wrongful convictions of sexual assault, and
- Tellingly, avoids any mention of the presumption of innocence.

Your reply stated that sex offenders, who are a “relatively small percentage of the prison population (approximately 6.5 percent),” are not the source of over-incarceration. However, according to the Department of Justice report entitled *Prisoners in 2014*, sex offenders represented 12.5% of all inmates in our state prisons.<sup>9</sup> Beyond those individuals, over 850,000 people are under government supervision on a sex offender registry.<sup>10</sup> This is not a small percentage.

While we recognize that the general public and advocacy organizations often use the terms “victim” and “complainant” interchangeably, we expect more from an organization the caliber of Human Rights Watch. Perhaps, if we use the terms properly moving forward, we can help others

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<sup>1</sup> <https://www.hrw.org/reports/2008/saudijustice0308/>

<sup>2</sup> <https://www.hrw.org/news/2016/08/05/turkey-judges-prosecutors-unfairly-jailed>

<sup>3</sup> <https://www.hrw.org/news/2005/12/12/ugandas-electoral-commission-must-uphold-presumption-innocence>

<sup>4</sup> <https://www.hrw.org/news/2016/08/08/singapore-reject-overly-broad-contempt-law>

<sup>5</sup> <https://www.hrw.org/news/2016/09/16/philippines-independent-investigation-duterte-needed>

<sup>6</sup> <https://www.amnesty.org/en/latest/news/2016/08/ukraine-authorities-must-commit-to-a-thorough-investigation-after-13-people-released-from-secret-detention/>

<sup>7</sup> <http://www.infozine.com/news/stories/op/storiesView/sid/65437/>

<sup>8</sup> <https://www.hrw.org/reports/2008/saudijustice0308/12.htm>

<sup>9</sup> <http://www.bjs.gov/content/pub/pdf/p14.pdf>, at Table 11.

<sup>10</sup> [http://www.missingkids.com/en\\_US/documents/Sex\\_Offenders\\_Map.pdf](http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf)

understand and appreciate the importance of the presumption of innocence as a constitutionally protected right.

Discussing police response to inconsistent statements, you explained that the report was “not meant to instruct police to disregard inconsistencies, but rather to discourage police from dismissing cases without investigation solely because of their perceptions about inconsistent statements *by the victim.*” (Page 3) We agree, however, the police should not be making assumptions or acting on biases against either party. Police should be encouraged to conduct thorough, evidence-based investigations in every case rather than rushing to any preconceived judgements.

You may be aware that “victim-centered” investigations have become commonplace in campus sexual assault proceedings, and that these proceedings have given rise to dozens of lawsuits by students alleging wrongful allegations or expulsions. In four cases, judges have issued rulings favorable to the accused student, commenting specifically on the flawed investigational procedures:

John Doe v. Georgia Board of Regents:<sup>11</sup>

1. To put it bluntly, Mr. Paquette’s [Investigator] testimony at the preliminary injunction hearing about the course of the investigation and the manner in which he made certain investigatory decisions was very far from an ideal representation of due process. (Pg. 37)
2. Much remains for the Court’s consideration as to whether Mr. Paquette’s investigation veered so far from the ideal as to be unconstitutional. (Pg. 37-38)
3. The Student Sexual Misconduct Policy at Georgia Tech does not allow for a hearing and does not allow for any kind of cross-examination, but rather vests all power in one individual who both investigates and adjudicates. The other due process violations alleged by Plaintiff are also arguably more pressing in light of the single investigator/adjudicator model. The inclusion of admittedly extraneous innuendo from witnesses concerning rumors of Plaintiff’s general character and the refusal to interview certain witnesses is potentially more problematic in an investigator/adjudicator model. (Pg. 25-26)

John Doe v. University of Southern California:<sup>12</sup>

1. But it is not too heavy a burden to require that students facing disciplinary action be informed of the factual basis for the charges against them. A charge of “encouraging or permitting others to engage in misconduct” that can penalize completely different behavior based on the decision-maker (SJACS versus the Appeals Panel), without notice to the student, is indeed as standardless as the undefined “gross incompetence” in Wheeler. (Pg. 25)
2. Requiring John to request access to the evidence against him does not comply with the requirements of a fair hearing. (Pg. 29)

John Doe v. Washington and Lee University:<sup>13</sup>

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<sup>11</sup> <http://boysmeneducation.com/wp-content/uploads/2015/12/Georgia-Institute-of-Technology-Order-re-motion-for-preliminary-injunction-12-16-2015.pdf>

<sup>12</sup> <http://boysmeneducation.com/wp-content/uploads/2016/04/Decision-California-Court-of-Appeals-University-of-Southern-California-2016-4-5.pdf>

<sup>13</sup> <http://www.avoicemalestudents.com/wp-content/uploads/2014/12/john-doe-verified-complaint-washington-lee-university.pdf>

In the course of the investigation, Ms. Kozak and Mr. Rodocker ultimately interviewed at least nine people. These witnesses included two of Plaintiff's four recommended witnesses and at least eight witnesses recommended by Jane Doe, although it is unclear from the pleadings if Jane Doe recommended additional individuals who were not interviewed. When Plaintiff questioned why two of his suggested witnesses were not interviewed, Ms. Kozak stated that the interviews would not be necessary, as they already had enough facts. (Pg. 7 - Opinion)

John Doe vs. Brown University:<sup>14</sup>

[Investigator] Perkins' assessment that there was insufficient evidence to support [accused student] Doe's fabrication claim was particularly problematic given that she had refused to ask for evidence that might have proven it so and been exculpatory to Doe. ...

The problem here was that Perkins made the initial decision to include the conspiracy claim and corresponding character evidence, but then chose not to complete the evidence-gathering and went on to say that there was insufficient evidence to support Doe's fabrication claim. Because of this, her failure to request the text messages between Ann and Witness 9 was a violation of Doe's right "[t]o be given every opportunity to . . . offer evidence before the hearing body or officer."

We affirm that the HRW report does contain a number of useful recommendations, and we reiterate our belief that police should treat all complainants with courtesy, sensitivity, and respect. But such considerations should not overshadow a detective's ethical obligations to conduct their investigations with honesty, fairness, and impartiality.

For all of the above reasons, we urge the Human Rights Watch to remove *Improving Police Response to Sexual Assault* from your website and to issue a new report that appropriately balances the interests and rights of sexual assault complainants and defendants.

Sincerely,

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<sup>14</sup> [https://www.scribd.com/document/325728872/Doe-v-Brown-University#from\\_embed](https://www.scribd.com/document/325728872/Doe-v-Brown-University#from_embed)

