



Gaps and Flaws in the Crowell Analysis:

Human Rights Watch Response to the June 25, 2013 Analysis by Crowell & Moring LLP, of *Capitol Offense*

- I. **Three Key HRW Findings Are Not Addressed in Any Meaningful Way by the Crowell Analysis** 3
 - A. Many MPD investigations of sexual assault were inadequate, as demonstrated among other things by the high percentage of cases the MPD classified as “for office information only” and never fully investigated.3
 - B. The Crowell analysis fails to address the unusually low numbers of sexual assaults and the unusually high numbers of sexual assault cases the MPD has reported as solved to the FBI (its “clearance by arrest” and “exceptional clearance” rates)..... 6
 - C. The Crowell analysis largely ignores our findings on mistreatment of victims..... 8
- II. **Crowell Fails to Address Serious Problems with MPD and OVS Data Management Made Apparent in its Own Analysis**..... 9
- III. **Crowell Ignores the Limitations of its Own Approach to the Missing Cases and Misunderstands Aspects of Our Methodology**..... 12
 - A. Crowell’s Own Methodology is Flawed 12
 - B. Crowell Appears to Misunderstand Our Methodology Regarding Missing Cases 14
 - C. Crowell Distorts our Use of Victim Statements..... 15
 - D. The Few Examples Crowell Cites of “Omitted” Contextual Information Do Not Point to Information that Would Have Significantly Changed Our Conclusions 17
- IV. **Crowell’s Discussion of Police Reforms Misrepresents Our Analysis and Ignores Important Unanswered Questions**..... 20
 - A. Crowell inaccurately suggests that we based our analysis too heavily on examples that predate 2008 reforms20
 - B. Crowell Overstates MPD Reforms between 2008 and 2011 21
 - C. After Receiving HRW’s Preliminary Findings in May 2012, the MPD Announced Reforms that May Be Significant—But Crowell Has Not Thoroughly Assessed their Impact .23
- V. **Crowell’s Assessment of Data Showing a Recent Decrease in Victim Reports of Sexual Assault is Tendentious and Unscientific** 25

In Human Rights Watch’s January 24, 2013 report, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*, we found that in many cases between 2008 and 2011, victims were not getting the effective response that they deserved from the Metropolitan Police Department (MPD) of the District of Columbia.¹

Specifically, we found that during the period under examination: (1) the MPD failed adequately to investigate many cases; and (2) in multiple examples that bore many similarities, members of the MPD mistreated victims, including by questioning victims’ credibility, actively discouraging victims from reporting or undergoing a forensic exam, asking victim-blaming or other inappropriate questions, and other forms of re-traumatizing behavior. Also, when we sought to identify police case files for 480 sexual assault survivors who attended Washington Hospital Center (WHC) for a forensic examination and reported their assault to the MPD, we determined—based on documentation that the MPD provided to us, representing it as complete—that many had no case files (these were the “missing” cases).

While we recognized that the MPD had adopted a number of reforms since we began our research, we also flagged several areas in which further improvement was needed. After the release of the report, the DC City Council retained the law firm Crowell & Moring LLP (Crowell), to analyze the report and make further recommendations. On June 25, 2013, Crowell finalized its analysis (the “Crowell analysis”) of *Capitol Offense*.²

The Crowell analysis includes strong recommendations, many of which track our own, for reform of the MPD. In that respect, it is an important contribution towards ensuring that the MPD improves its handling of sexual assault investigations.

Crowell also had access to confidential information which Human Rights Watch has not seen—including case files, victim names, and other material. Specifically, Crowell reviewed documentation the MPD claimed to have located for nearly all of the dates for which Human Rights Watch had reported missing cases (i.e. those sexual assaults reported to the MPD at WHC which we could not find reflected in MPD files), and concluded

¹ Human Rights Watch, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*, January 24, 2013, <http://www.hrw.org/reports/2013/01/24/capitol-offense-o>.

² Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” June 25, 2013, <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013).

that only five cases remained missing. If most of the missing cases have in fact been found, then that is heartening news for the victims.

In its analysis of our report, Crowell also makes several pointed criticisms of our methodology and presentation of findings. We take this criticism seriously; we aspire to be objective and rigorous in all of our research. In examining Crowell's assessment, we find some valid points, as noted below, and we will take these to heart.

As explained below, however, we were disappointed to find that the Crowell analysis fails to address several key points raised by our report, includes some serious inaccuracies, and misunderstands or distorts important aspects of our research, including on the issue of the missing cases. Particularly troubling are the following aspects of the Crowell analysis:

- I. The Crowell analysis fails to meaningfully engage with three key HRW findings: inadequate MPD investigations of sexual assault (on this point, Crowell appears to conflate the existence of documentation with evidence of an adequate investigation), MPD mistreatment of victims, and the unusually high rates of sexual assault cases the MPD has reported as solved to the FBI ("clearance by arrest" and "exceptional clearance" rates).
- II. Crowell fails to address serious problems in MPD and OVS data management made apparent by Crowell's own analysis.
- III. Crowell ignores limitations of its own approach and misunderstands aspects of our methodology. As a result, it draws conclusions on the number of missing cases that its inquiry into the data does not support.
- IV. Crowell's discussion of police reforms misrepresents our analysis and ignores important unanswered questions.
- V. Crowell's assessment of data purportedly showing a decrease in victim reports of sexual assault, speculating that the decrease is due to release of *Capitol Offense*, is scientifically unsound, at best statistically naïve, and wrongly lends credence to sensationalist claims about the impact of our report.

We address each of these points below.

I. Three Key HRW Findings Are Not Addressed in Any Meaningful Way by the Crowell Analysis

More than half of Crowell's 7.5 page discussion of our 196-page report, *Capitol Offense* (Ch. V of Crowell's analysis) focuses on our claim that a number of sexual assault cases reported to the MPD at WHC were never documented (the missing cases). While we viewed this as an important finding of our report, it is one of several and is a topic addressed in just one part (13.5 pages) of one of three main findings chapters of *Capitol Offense*.

Crowell inexplicably fails to address critical HRW findings on a number of other issues or does so in a cursory fashion. As detailed below, Crowell's overly narrow focus and omissions present a distorted and inaccurate picture of our findings and undermine the urgency of Crowell's own call for independent review of how the MPD handles sexual assault cases.

Key Human Rights Watch findings that Crowell largely omitted include the following:

- A. *Many MPD investigations of sexual assault were inadequate, as demonstrated by, among other things, the high percentage of cases the MPD classified as for "office information only" and never fully investigated.*

One of the key findings in *Capitol Offense* was that from October 2008 through September 2011, the period of study, MPD did not adequately investigate many sexual assault cases. We based this finding on review of data, agency documents, and police investigative files, as well as on testimonies from victims, community advocates, and witnesses. The Crowell analysis, while it acknowledges mistakes by some MPD investigators and notes that the MPD has recently reopened some investigations, has little to say about the issue of inadequate investigations.

Specifically, we found not only that MPD had failed to document cases, but equally important, that MPD had often misclassified cases as for "office information only," meaning that the case was closed after little or no investigation. A number of other cases appeared to have been misclassified as less serious or non-sex offenses, despite clear

indications that they were serious sexual assaults.³

We also addressed this issue at length in the updated findings we issued after reviewing new documentation provided by the MPD on May 31, 2013, which revealed that 89 of the 480 WHC reports we examined matched cases that the MPD had categorized as for “office information only.”⁴

Under MPD guidelines, a complaint of sexual abuse can be deemed “office information” after preliminary investigation by a member of the Sexual Assault Unit, when it involves any of the following: “an arrest of a sex offender in another jurisdiction; a report of an offense that occurred in another jurisdiction...; sexual activity that is not a crime; and no crime was deemed to have occurred.”⁵ Categorizing a case as “office information” means, according to MPD guidelines, that it is “closed by definition.”⁶ “[I]f further investigation is needed, the case should be classified as an ‘allegation’ and handled accordingly.”⁷

In other words, the decision to classify a case as “office information” rather than as an “allegation” indicates that police detectives determined that the case was not worthy of further investigation based on their initial contact with the victim or after a minimal preliminary investigation at the time of the complaint. In practice, it means the case was not thoroughly investigated.

Crowell does not even mention the MPD’s reliance on the “office information” category during the period covered by our research, let alone discuss its implications.⁸

³ Human Rights Watch, *Capitol Offense*, pp. 47-94.

⁴ Human Rights Watch, “Analysis of Additional Documentation Provided by Metropolitan Police Department,” June 26, 2013, http://www.hrw.org/sites/default/files/reports/2013_US_AdditionalDocs.pdf.

⁵ Metropolitan Police Department, Sexual Assault Unit, “Standard Operating Procedures,” January 14, 2003, pp. 32-33.

⁶ *Ibid.*

⁷ *Ibid.*, p. 33.

⁸ In the cases we examined, the victim reported the sexual assault while at the hospital before undergoing a SANE exam, a lengthy, typically invasive, physical exam aimed at obtaining evidence of the assault. Given how difficult this is for victims, it is particularly surprising to see so many such cases closed without rigorous investigations. Also surprising regarding Crowell’s review is that during the June 27, 2013 roundtable hosted by the DC City Council, Mr. Harrison of Crowell seemed to indicate that in the cases Crowell reviewed for which no report had been prepared, arrests had been made, although he offered no details concerning in which cases this happened. Keith Harrison discussing the findings of “Analysis of Human Rights Watch Report Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia,” at 30:48, June 27, 2013, video available at http://oct.dc.gov/services/on_demand_video/channel13/june2013/06_27_13_JUDICI.aspx (accessed July 11, 2013) (“We found cases where there was no PD-251 form [an incident report] but there was complete files in which -- well, I should say files -- that reflected in-depth investigations and in some cases arrests.”). This statement is puzzling as it would be contrary to police procedure and, according to law enforcement sources in DC, is not possible, as an

The Crowell analysis at one point concedes that “in some cases, the [MPD] investigation was admittedly inadequate,” and asserts that “MPD, having reviewed all these reports in going through this matching exercise, made the decision on its own to reopen the investigations into several such cases.”⁹ And in a later email exchange with a victim who expressed surprise at a *Washington Post* newspaper article on the Crowell review, one of the authors of the Crowell analysis emphasized, “We absolutely did not conclude that the police adequately investigated most or all cases”¹⁰ [emphasis in original].

While this post-publication correction is helpful, it remains the case that in Crowell’s published report, it asserts that the “vast majority” of cases have “matching documentation,” and that there “were investigations conducted in most of those cases,” leaving the reader with the impression that Crowell’s discovery of matching documentation meant an adequate investigation occurred.¹¹ But the fact that 89 cases were categorized as “office information” should instead indicate that while documents were located, little to no investigation occurred.

In light of the evidence that Crowell must have seen of inadequate MPD investigations, including the high number of cases classified as for “office information only,” it is hard to understand why Crowell apparently chose to avoid any serious discussion of this problem.

In a positive development, Chief Lanier has indicated that “because of suggestions from HRW,” the MPD is no longer using the “office information” category, and has changed its reporting procedures so that all cases are now classified “as either a sexual allegation or a

arrest cannot be processed without an incident report. Human Rights Watch telephone interview with Kris Baumann, Chairman, Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP), Washington, DC, June 27, 2013. (Indeed, police are not even supposed to conduct an investigation without an incident report. See Human Rights Watch interview with Chief Cathy Lanier, Assistant Chief Pete Newsham, and Sergeant Ronald K. Reid, Washington D.C., June 14, 2012 (with Assistant Chief Newsham stating that an officer “would be in trouble” if he investigated without an incident report)).

⁹ It’s not clear whether Crowell is referring to office information cases here, however, or how many of them the MPD is reopening. Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 14. Elsewhere, the Crowell analysis notes that “MPD agreed that officers had misclassified eight ... cases” of those that we highlighted in the summary of the report. *Ibid.*, p. 3.

¹⁰ Email from Jody Goodman, co-leader of the Crowell Analysis, to sexual assault victim, copying Human Rights Watch, June 27, 2013, on file at Human Rights Watch.

¹¹ Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 14.

sexual abuse case.”¹² Indeed, the substantial recent rise in the MPD’s reported number of sexual assaults suggests that this is true. But as we have noted before, independent oversight remains critical to ensure that all such cases are thoroughly and appropriately investigated going forward, and that cases improperly classified in the past are reviewed.¹³

Crowell’s failure to address the adequacy of an investigation, as opposed to the existence of paperwork for a particular case, is a serious gap in its analysis. We hope the DC City Council will take up this question in the future.

B. The Crowell analysis fails to address the unusually low numbers of sexual assaults and the unusually high numbers of sexual assault cases the MPD has reported as solved to the FBI (its “clearance by arrest” and “exceptional clearance” rates).

Low reporting and high FBI “cleared by arrest”¹⁴ or “cleared by exceptional means”¹⁵ rates can indicate that cases are being disposed of improperly.¹⁶ Unusually high “clearance by arrest” or “exceptional clearance” rates, for example, might suggest either selective

¹² Letter from Chief Lanier to Human Rights Watch, December 20, 2012, http://www.hrw.org/sites/default/files/reports/2013_US_DecResponse.pdf, p. 1.

¹³ Of particular concern is the fact that for most of the “office information” files reviewed by Human Rights Watch, there was no indication that the victim’s forensic exam had been taken to the lab for analysis. This is an issue that the DC City Council should investigate further.

¹⁴ “Clearances: Cleared by arrest,” The Federal Bureau of Investigation, Uniform Crime Reports, Crime in the United States 2011, accessed July 15, 2013, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/clearances> (“An offense is cleared by arrest, or solved for crime reporting purposes, when three specific conditions have been met. The three conditions are that at least one person has been: arrested, charged with the commission of the offense, turned over to the court for prosecution (whether following arrest, court summons, or police notice)”).

¹⁵ “Clearances: Cleared by exceptional means,” The Federal Bureau of Investigation, Uniform Crime Reports, Crime in the United States 2011, accessed July 15, 2013, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/clearances> (“In certain situations, elements beyond law enforcement’s control prevent the agency from arresting and formally charging the offender.... Law enforcement agencies must meet the following four conditions in order to clear an offense by exceptional means. The agency must have: identified the offender, gathered enough evidence to support an arrest, make a charge, and turn over the offender to the court for prosecution, identified the offender’s exact location so that the suspect could be taken into custody immediately, encountered a circumstance outside the control of law enforcement that prohibits the agency from arresting, charging, and prosecuting the offender. Examples of exceptional clearances include, but are not limited to, the death of the offender (e.g., suicide or justifiably killed by police or citizen); the victim’s refusal to cooperate with the prosecution after the offender has been identified; or the denial of extradition because the offender committed a crime in another jurisdiction and is being prosecuted for that offense.”)

¹⁶ Because the FBI does not distinguish between cases cleared by arrest and cases cleared exceptionally when it publishes crime data from cities, a case closed without an arrest still appears as a case “cleared by arrest.” A 2010 National Institute of Justice study found that in places where detectives were reporting exceptionally high clearance rates, departments had found ways to “dispose” of cases that they did not like and calculated the clearance rates only on “good” cases. Martin D. Schwartz, “National Institute of Justice Visiting Fellowship: Police Investigation of Rape – Roadblocks and Solutions,” Doc. No. 232667, US Department of Justice Number 2003-IJ-CX-1027, December 2010, p.15. (cited in Human Rights Watch, *Capitol Offense*, p. 49).

documentation of cases or the possibility that many cases are being closed because of inadequate investigations, after the prosecutors determined that the arrest warrants lacked sufficient evidentiary support. Unusual numbers thus cry out for explanation. Indeed, these numbers are what prompted HRW to look at the MPD in the first place.¹⁷

In 2010, the MPD reported clearing 59.8 percent of its rape cases (110 of 184 cases), nearly 50 percent above the 40.6 percent average clearance rate for similarly sized cities.¹⁸ Yet in data it provided to Human Rights Watch, the MPD showed only 22 arrests for all sexual assaults in the District of Columbia in 2010.¹⁹

In its analysis, Crowell does not even mention this issue.

A related disturbing aspect of the Crowell analysis is its seeming acceptance of the MPD's estimate that it handled 1500 sex abuse cases in the three-year period in question.²⁰

¹⁷ Human Rights Watch, *Capitol Offense*, pp. 47-49, discussing the low number of sexual assaults reported to the FBI and the high clearance rate of those reported. As explained in *Capitol Offense*, we were also troubled to find that over two-thirds of the 66 arrest warrant affidavit requests in files we reviewed, the US Attorney's Office rejected the requests, primarily on grounds that the case presented was "weak." As a result, all these cases were counted as "administrative closures." Due to the limited number of warrant requests we reviewed, we could not draw definitive conclusions from the data on warrant refusals. But the high rate of refusal in the limited sample added to our concerns about possible improper use of exceptional or administrative clearances to close cases without conducting a thorough investigation. *Ibid.*, pp. 94-99.

¹⁸ Letter from Metropolitan Police Department to Phil Mendelson, council member, in response to February 14, 2012 correspondence in advance of performance oversight hearing, February 24, 2012,

http://dcclims1.dccouncil.us/mendelson/archive_pr/CO%20Performance%20and%20Budget%202012/Later%20Rounds/MPD%20FY12%20Performance%20Responses,%202nd%20Round,%202.24.12.pdf (accessed July 15, 2013), p. 2.

¹⁹ These included six child abuse cases (which may be included in FBI data) and possibly other sex crimes that may not be included in FBI data (such as some misdemeanors and sex crimes with male victims). In addition, for 2008 and 2009, the MPD reported 15 and 18 arrests respectively to Human Rights Watch, and "clearance" rates at the FBI of 65.1 percent and 76.7 percent. Spreadsheets on file at Human Rights Watch; letter from Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p.12.

²⁰ The Crowell analysis does not address the fact, noted in our report, that these numbers are inconsistent with public crime reports for DC. Indeed, far fewer than 1500 DC cases were listed in the FBI's Uniform Crime Reports or in the DC Index Code Crimes for those years. For each of these years, the Uniform Crime Reports list fewer than 200 reports—which (multiplied over the three years) add up to fewer than 600 (or about 40 percent) of the 1500 MPD estimates. The same is true for the DC Code Index Crimes. See Human Rights Watch, *Capitol Offense*, p. 98, footnote 310. The dramatic discrepancy between the alleged 1500 cases and the much lower numbers of cases the MPD reported publicly and to the FBI begs the question of what these 1500 cases consist of. Yet Crowell did not review them and therefore offers no comment on them. Part of the discrepancy may be explained by the fact that the FBI figures do not include some categories of sex offenses (such as misdemeanors). However, the MPD has supposedly provided us with all incident reports for sex offenses, including misdemeanors, during the relevant period. And in total those add up to only 1013 (571 we included in our original analysis, plus 353 that we excluded as they were not sexual abuse cases or involved sexual contact, often over clothing, such as groping a breast, that would not result in a forensic exam, plus 89 new cases that the MPD provided in its last document production)—still far short of 1500. Moreover, these included a significant number of office information cases, some of which had no case number or belonged in another jurisdiction. It is unclear where other cases could come from—perhaps the MPD has included in its estimate cases involving victims under the age of 18; but this would be misleading, as such cases are supposed to go to a different MPD unit. Thus, it would appear that either the MPD has still not given us all incident reports for cases during this period, or it is providing a wrong estimate of the number of cases to Crowell or to the public.

Crowell's failure to probe MPD assertions again raises concerns about the quality of its analysis.

C. The Crowell analysis largely ignores our findings on mistreatment of victims.

Capitol Offense includes scores of examples of mistreatment of victims or mishandling of sexual assault cases, drawn from at least 104 cases during the relevant time period. As documented in our report, MPD mistreatment of victims included: aggressively questioning victims' credibility in ways likely to induce further trauma, actively discouraging victims from reporting or undergoing a forensic exam, asking victim-blaming or other inappropriate questions, requiring detailed interviews at times when victims are often visibly traumatized, and failing to respond to victims' calls or requests for assistance. These findings are set out in detail from pages 119 to 168 of *Capitol Offense*.

New documents produced by the MPD after release of *Capitol Offense* contain evidence of mistreatment in an additional 24 cases, as outlined in our June 26, 2013, updated findings.²¹ Also, after the release of *Capitol Offense*, new victims came forward to us to report mistreatment, information not included in our updated findings but which we shared in detail with Crowell. (Indeed, many of these new victims were willing to speak with Crowell, and Crowell knew this, but it did not follow up with them. This was an unfortunate decision by Crowell since some of the victims' cases occurred during a time frame that would have allowed Crowell to assess the effectiveness of the latest police reforms and flag continuing problems worthy of the Council's attention.)

The Crowell analysis does not engage in a meaningful way with the findings HRW derived from victim accounts of mistreatment. Although Crowell acknowledges those accounts and says it does not contest them, it devotes far more attention in its analysis to two claims: that Human Rights Watch relied too heavily in its report on a small number of victim testimonies, and that at times we provided one-sided accounts. As we explain in Section III, while Crowell makes some valid points, it significantly overstates its criticism and misrepresents our methodology.

²¹ Human Rights Watch, "Analysis of Additional Documentation Provided by Metropolitan Police Department," http://www.hrw.org/sites/default/files/reports/2013_US_AdditionalDocs.pdf.

More importantly, by glossing over the issue of victim mistreatment rather than engaging substantively with it, Crowell undercuts the force of its recommendations to the MPD on improved communication with and treatment of victims. Crowell could have used its mandate to gather far more information on the experiences that sexual assault victims have with the MPD; in the end, as one of the Crowell investigators told us, it conducted only two last-minute interviews with victims just before its analysis was finalized. It also did not provide information from investigative files to which it had access that undoubtedly contained details about the MPD's treatment of victims. Crowell's failure to focus more on the experience of victims, whether through its own interviews or closer examination of the findings from our interviews, undercuts the force of its analysis of *Capitol Offense* and its recommendations.

II. Crowell Fails to Address Serious Problems with MPD and OVS Data Management, Which are Made Apparent in its Own Analysis

Crowell's assessment of the data issues raised by *Capitol Offense* should have led it to a much more pointed critique of MPD and OVS data management. While we cannot know what Crowell lawyers saw (victim name information remains confidential, and Crowell has indicated they saw additional police reports or documents not made available to us), we acknowledge that Crowell, via the MPD and OVS, had access to documentation not made available to us. We accept its conclusion that there were many fewer missing sexual assault cases in MPD files than we originally reported in *Capitol Offense* (though we dispute the conflation between existence of documentation and evidence of an adequate investigation, discussed above).

What Crowell neglects to say in its analysis, a conclusion that it could have and should have reached, is that the single most important reason we got the missing cases figure wrong is that the MPD provided us with manifestly incomplete data at a time when they represented it to us as complete, and at a time when they were legally obliged to have provided complete data pursuant to MPD's FOIA obligations and a FOIA litigation settlement agreement. An additional reason, indicated by the Crowell analysis, is that the data OVS provided us was inaccurate. The most charitable explanation of why the MPD did

not fully comply with its FOIA commitment, and why OVS data may have been wrong, is the inadequacy of MPD and OVS data systems.²²

As previously noted, the main focus of the Crowell analysis is the missing cases. In *Capitol Offense*, we stated that we had been unable to find police documentation for 170 of the 480 cases in which we had information that a victim had reported an assault to MPD at WHC. The Crowell analysis suggests that only five cases were truly missing. Crowell acknowledges that Human Rights Watch had much less information to work with, but faults us for drawing conclusions that we should not have attempted to draw given the incomplete information at our disposal, a critique that we address in Section III below.

Significantly, however, the most important factor accounting for the discrepancy between our number of missing cases and Crowell's number is poor data management by the MPD and OVS. Human Rights Watch went to extremes to get relevant data from the MPD, requesting data on multiple occasions in writing, filing a FOIA lawsuit when we were rebuffed, seeking additional information about missing cases—including manually going through MPD's database in person with MPD officers in June 2012—and providing the MPD with an additional six months to locate documentation for a list we gave them of missing hospital cases. This process had gone on for nearly two years at the time we released *Capitol Offense*.

We also worked extensively with a data expert to identify weaknesses in our data and analysis, and to probe the MPD for further clarification. We thus had reason to believe we had complete data when we concluded in *Capitol Offense*, released in January 2013, that MPD lacked information on some 170 sexual assaults that should have been in its files.

When the MPD surprisingly announced, after we released our report, that it had found documentation for the missing cases, we immediately asked to see those files. MPD did not turn them over, however, until we filed yet another FOIA request. When the MPD very belatedly provided a new tranche of documentation to us on May 31, 2013, we found that 106 of the missing cases were in fact reflected in police files (though most were listed as

²² An important factor, as mentioned above, may be MPD's classification of many of these cases as "office information" rather than as sex abuse cases.

“office information”).²³ Had we had complete MPD data from the start, as we had reason to assume based on our FOIA litigation settlement agreement and MPD representations to us, we would have included those 106 cases in our analysis.

In addition, Crowell states that when the MPD could not find reports in their files for dates on which we had indicated there should have been reports, the MPD returned to OVS for additional information, and examined the underlying exam files. At this time, Crowell says, OVS determined that 24 of the report dates that they had provided to both MPD and HRW for analysis were actually not dates on which cases were reported to MPD, implying errors in the original OVS data.²⁴ This is additional evidence that Crowell could have and should have used to call for independent evaluation of MPD and OVS data management systems.

Finally, while Crowell never makes the point entirely clear in its analysis, it is possible that, by using victim names, the MPD was able to locate additional police records that it never shared with us, even in its final document production on May 31. If that’s the case, it begs the question as to why prior MPD searches for these cases failed to turn up the files (whether in response to specific dates we provided or our 2011 FOIA request, the latter of which notably asked for all public records concerning sexual assault crimes, including felonies, misdemeanors, as well as all facts and circumstances alleged by victims that

²³ On May 31, the MPD provided us with 179 files, of which 89 were new. Other files included additional information that allowed us to make more matches to cases that had been excluded. See Human Rights Watch, “Analysis of Additional Documentation Provided by Metropolitan Police Department,” http://www.hrw.org/sites/default/files/reports/2013_US_AdditionalDocs.pdf.

²⁴ Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 13. Crowell also flags as a problem that “no SANE exams occurred on eight of the dates for which HRW asserted MPD was missing a report.” *Ibid.*, p. 14. However, it is not clear whether Crowell took into account that we included some cases in which the victim did not have an exam but did report a sexual assault to MPD at WHC. Because the “exam exemption forms” used by nurses show whether or not a report has been made and to what police department, we were able to determine that sexual assaults had been reported on some days, even though for various reasons an exam was not completed (e.g., because it was too long after the assault, the type of contact did not warrant an exam, or the victim became frustrated and left). Also, the Crowell analysis states, in a footnote, that in eight cases that were exam-exempt, the MPD informed Crowell that “OVS did not have the records to determine whether a report had been made to law enforcement or not”—but it does not make clear whether those are among the cases that we had counted as reports, or whether we had excluded them. Nor does it make clear whether this reflects yet another error or inconsistency in OVS’s own data. Also of note, the Crowell analysis states that “at least nine reports that HRW assumed had been made to MPD during these two time periods had in fact involved other jurisdictions.” *Ibid.*, p. 12. In fact, as Crowell notes, we did seek to exclude reports made to other jurisdictions, on the basis of data that OVS provided to us—in total, we excluded 39 cases from other jurisdictions. But if the original OVS data was inaccurate or incomplete, that of course would have affected our findings.

could indicate such a crime). Indeed, if the only way to locate the relevant case files was by painstaking tracking using victim names, it points to a serious data management deficiency at the MPD.

In short, the enormous difficulty we had in obtaining reliable data from the MPD and OVS, combined with issues Crowell encountered, as reflected in its report, point to serious data management problems at the MPD and OVS. In light of these problems, we would have expected Crowell to make recommendations to the MPD or OVS about their data management and about information transparency; it is puzzling that the Crowell analysis does not touch on this. This is an issue that the DC Council should take up.

III. Crowell Ignores the Limitations of its Own Approach to the Missing Cases and Misunderstands Aspects of Our Methodology

As noted above, a large percentage of the cases we originally reported as missing and which later turned up in MPD files can be accounted for by MPD and OVS failures in supplying accurate and complete data, reflecting data management deficiencies at those agencies. Still, Crowell's assertion that Human Rights Watch was wrong in assuming we could ever get reliable figures on police processing of sexual assault cases by comparing the dates of victims' hospital exams against dates recorded in police incident reports is a criticism we take very seriously. In retrospect, we agree that we were too confident in asserting firm conclusions based on what turned out to be incomplete and unreliable data. We believe, however, that we were as rigorous and thorough as we could have been given the difficulties we faced obtaining complete and accurate data from MPD, an effort made all the more difficult by MPD's manifestly inadequate record-keeping systems.

More importantly, as detailed below, we are not yet convinced that the remaining discrepancies identified by Crowell in the numbers of missing cases are due to flaws in our methodology as opposed to limitations in Crowell's own methodology.

A. Crowell's Own Methodology is Flawed

Crowell did not check all 480 SANE exam cases that we examined to ensure that they had matching police reports. It also did not compare the MPD's "matching" cases with ours—in other words, it did not see whether the specific police records we were counting as

“matches” to SANE exams for a particular date were the same as those the MPD counted as “matches” for that date.

Instead, the Crowell analysis apparently focused only on reviewing MPD documentation for “180+” cases that the MPD concluded “matched” SANE exam reports on the dates for which we had listed missing cases. This methodology is problematic, as it does not account for the fact that we might have matched the very same MPD records to other SANE exams that occurred on nearby dates.²⁵

In other words, because we were working without the benefit of victim names, and attempting to match MPD records to SANE exams based on proximity in dates (i.e., within a 48-hour window—not a 24-hour window as Crowell erroneously reports), we might have counted a police record as a “match” for a SANE exam on one date that in fact corresponded to an exam on the previous or the next day. If, using victim name information, the MPD was able to more precisely match that police record to a different SANE exam on a date on which we had a missing case, it is possible that the exam we had originally matched with the police record could now be without a corresponding police record and thus represent a new missing case.

Consider the following hypothetical but likely scenario:

Hospital records show that on December 7 a SANE exam was conducted. When Human Rights Watch looked in MPD files, we found no documentation of a sexual assault on that day (or the day before or after) and concluded the case was missing and in need of explanation. Crowell, using the victim's name, found a match within MPD files of the December 7 SANE exam, concluding this in fact was not a missing case.

Hospital records also show that on December 9 two SANE exams were conducted and we found documentation of two sexual assaults in MPD records for that very same day, December 9. We thus concluded that there was a match for both exams. Crowell did not look at MPD files of people

²⁵ It is worth noting that the MPD response to our April 19, 2013 FOIA request for the newly found missing cases returned 179 cases—almost the same number as the 180 cases MPD reviewed with Crowell. Of these 179 cases, 54 were duplicates of cases we had already matched. It is quite likely that a number of the 180 cases Crowell reviewed with MPD were also included in our original analysis, but without checking all 480 SANE exams, it is impossible to know.

with SANE exams on December 9 because it only looked at SANE exams for days we said there were missing cases and we had not reported a missing case on December 9.

But it is quite possible, based on what Crowell says (because it had names and could be more precise), that Crowell found in going through files that the December 7 SANE exam actually matched to one of the December 9 MPD records (one of the very records we wrongly assumed was a match with a December 9 SANE exam). If so, that would leave one of the December 9 SANE exams without a match in MPD files. The only way Crowell could have ensured there was a match in MPD records for that December 9 SANE exam is by also searching MPD files for the names of people with SANE exams on December 9. This, Crowell's description of its methodology makes clear, it did not even attempt to do.

While we do not know how many such cases there are, we know that Crowell's methodology does not allow it to conclude, as it does so confidently in its analysis, that only 5 of the 480 cases we examined were in fact missing. It drew conclusions its methodology manifestly does not support.

For this reason, if Crowell wanted to ensure an accurate analysis of the missing cases, it would have been crucial for it to examine the whole universe of 480 cases that we examined, rather than conduct a partial analysis that may ultimately have resulted in them comparing apples to oranges. Given the incomplete nature of its analysis, it is impossible to assess the validity of its findings.

Again, Crowell chose not to conduct a full analysis. We believe this is because they did not fully understand our methodology or the need to take a more careful, thorough approach to its review of our report given the limitations we were working under.

B. Crowell Appears to Misunderstand Our Methodology Regarding Missing Cases

Crowell's central critique of our methodology is its claim that "HRW's methodology rested on the assumption that HRW should be able to find a police report filed within 24 hours

after the date of a SANE exam for every SANE exam that was coded as a ‘report.’”²⁶ It then goes on to say that this raised concerns because the matching was based solely on the date of the SANE exam, did not consider the possibility that SANE exams would have occurred after the police report, and it was unclear whether we accounted for cases where a victim did not report while at WHC but later chose to report to MPD.

Crowell’s critique is valid in that despite our best efforts to identify them, in our initial analysis we apparently missed a handful of cases in which the victim reported to the MPD but chose not to get an exam until a later date.²⁷ However, in other respects this critique is misleading.

First, the dates we used were not derived solely from reported SANE exams. Instead, we relied on a number of sources of information that could lead us to conclude that a victim had—or had not—gone to the hospital on a given date.²⁸ Also, we used a 48-hour window—the day of the exam and the day after the exam—rather than a 24-hour window as Crowell states.²⁹ And we did, in fact, exclude cases in which a victim did not report while at WHC but later chose to report to the MPD.³⁰

C. Crowell Distorts our Use of Victim Statements

Crowell notes that “[t]he HRW report is replete with statements by victims who felt blamed, belittled, and not believed” by MPD detectives, and adds that “We do not challenge those

²⁶ Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p.12.

²⁷ In its May 31, 2013 document production, the MPD provided us with a very small number of cases in which the victim reported to a police station and only went to the hospital for an exam the next day. We included these as matches in our updated findings.

²⁸ These included notes from MPD investigative files in over 400 cases, which corroborated whether or not a victim actually went to a hospital and when, as well nurse’s notes on exam exempt reports.

²⁹ This determination was based on MPD’s policy, which was confirmed as in force in an interview with Commander Kucik on May 30, 2012, that all incident reports are filed on an officer’s shift. Thus if someone reported at the hospital the officer would have to file that day or the next day if it was overnight. Finally, to be thorough in our revised analysis, when a PD-251 [police incident report] did not match to an unmatched SANE exam within the prior two days, we examined whether it matched an unmatched SANE exam on the day after the police report. For these cases, we attempted to find an unmatched SANE exam within three days of the police report.

³⁰ OVS would not have marked such cases as “reports,” since no report would have occurred at the time of the exam. Accordingly, we would not have counted them as reports that needed to be matched to police records.

accounts."³¹ However, Crowell immediately undermines that statement, and gives a misleading impression of our methodology, devoting far more attention to the claim that the HRW report "makes a few complaints sound like many" and leaves "the reader with the impression that the handling of such cases and complaints represent a majority or large percentage of cases."³² Again, this claim misrepresents our report.

While we conducted many interviews with a variety of sources for *Capitol Offense*, our report is not based on extensive testimony from victims, as the number of victims willing to speak to researchers on a difficult issue like this is, of necessity, limited.³³ Crowell fails to acknowledge that our report draws heavily on the *police department's own records* of how they treated victims. Indeed, as previously noted, *Capitol Offense* drew on examples of police mistreatment of victims or mishandling of sexual assault cases in more than 104 cases for the relevant time period; after receiving a new tranche of documents from the MPD, we documented 24 additional examples of mishandling of cases in our updated findings, based on MPD's own records.

It is a valid criticism to point out, as Crowell does, that we mentioned certain victim accounts multiple times, though we did so much less often than the Crowell analysis suggests (it's unclear how Crowell reached its numbers—it seems to have simply counted the number of times each victim name appeared in the footnotes and opening quotes, not accounting for the fact that a single case name might be cited multiple times as part of a single discussion, in which it is illustrating one point).³⁴ But the repetition is largely a reflection of the organization of our report: by issue rather than by victim, with the same

³¹ Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 3.

³² Ibid.

³³ Note, however, that even here the numbers Crowell uses are misleading: the report in fact draws on at least 104 cases; and the number of firsthand victim accounts we obtained, between victim interviews (12) and victim narratives (10), was 22—not eight as Crowell states. Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 15.

³⁴ To be specific, excluding the summary and quotes at the beginning, which are explicitly repetitive, no victim's story was referenced more than 11 times in the report—the three examples Crowell uses were referenced 31 times as examples in the report in total (Maya T. (11), Susan D. (11), and Shelly G. (9)), not, as Crowell claims, at least 72 times. Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 15. (Stating: "For example, victim Maya T's story was repeated at least 29 times in the HRW Report, Susan D's story was referred to 20 times and Shelly G's story was repeated 23 times.")

victims' experiences pertinent to multiple issues. Some repetition is also due to the fact that the executive summary at the beginning of the report purposefully repeats content that appears later in the text.³⁵

Again, what was most compelling in our research was not the number of interviews but how traumatizing the experience of reporting sexual assault was for women, the similarities in the women's descriptions of police behavior and dismissive attitudes (we offer many such examples starting at page 119 of *Capitol Offense*), and the evidence of improper treatment contained in the MPD's own records. Since learning of the report, more people have come forward to tell us of similar experiences with the MPD.³⁶ And our concerns about victim treatment are further reinforced by detectives' own notes, an aspect of our report which Crowell appears to have almost entirely disregarded.

D. The Few Examples Crowell Cites of "Omitted" Contextual Information Do Not Point to Information that Would Have Significantly Changed Our Conclusions

As previously noted, the Crowell analysis does not deal with the bulk of the information we provided concerning police mistreatment. Rather, it limits itself to asserting, vaguely, that Crowell obtained additional "facts and circumstances that made many of these cases

³⁵ Crowell echoes claims we heard from the MPD when it states that "HRW relied on numerous cases in its report, but it interviewed and highlighted the stories of eight victims. These eight victims represent one-half of one percent of the 1,500 cases MPD handled between October 2008 and October 2011." Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 15. Even granting that we relied heavily on relatively few cases as illustrations, Crowell's approach seriously minimizes the scope of the problem, as it both understates the number of cases referenced in the report by a significant amount and overstates the number of sexual assault cases handled by MPD (as discussed in section I.B above, the 1500 number is highly questionable). Moreover, Crowell implies that it is reasonable to assume that survivors of sexual assaults during the period of study who were not interviewed by Human Rights Watch had no serious issues with their treatment by MPD, when in fact it conducted no sampling that could possibly lead to that conclusion. Indeed, our report was based on not only interviews and victim testimony, but also documents and a review of scores of police files that themselves contained evidence that the experiences of the victims we spoke with were not aberrations.

³⁶ These include the following: 1) In February 2012, a victim reported an assault by a masseuse to the MPD. The detective told her the case could not be reported as a crime because she was unconscious during the assault. She does not believe her kit was taken to the lab and the suspect was not interviewed. 2) When a male victim at the hospital in March 2011 asked to be interviewed later because he was too traumatized and upset following the exam, the detective became angry and told him she would just note that he had refused to cooperate. The victim has made several attempts to get MPD to follow-up on his complaint, but to no avail. 3) A victim who in 2007 was assaulted at night by a stranger who ordered her to orally copulate him woke up on her doorstep with traumatic head injuries and no recollection of events after the suspect unzipped his pants. The case was not classified as an attempted sexual assault. We also had victims come forward with serious concerns about how children who reported sexual assaults were treated (and shared this information with Crowell).

difficult to investigate and prosecute.”³⁷ We have repeatedly pointed out that sexual assault can be very difficult to investigate—indeed, that is one reason it is so important that police conduct investigations in a meticulous, thorough manner. Regardless of the merits of a case and the likelihood of a successful prosecution, police have a responsibility to treat victims in a responsive and sensitive manner that avoids victim-blaming questioning or other re-traumatizing behavior. This is important in safeguarding the welfare of the victim and in ensuring that victims are willing to cooperate with police in investigations.

Crowell asserts—though it provides very few details—that it saw information unavailable to us which, had we seen it, might have led us to draw different conclusions. We acknowledge this possibility. However, Crowell has shared so little information on this point that it is impossible to fully assess its assertion. The specific examples Crowell uses in its analysis, moreover, suggest that the information Crowell saw would not have significantly changed our conclusions.

Specifically, the Crowell analysis highlights three cases in which it says additional contextual information to which Human Rights Watch did not have access (or which they say we omitted in one case) might have led us to draw different conclusions. We address each of Crowell’s examples in turn:

* The October 2009 kidnapping and assault case: As one of several examples of misclassifications, *Capitol Offense* cited a 2009 kidnapping case in which the police incident report we reviewed clearly stated the victim was sexually assaulted but MPD files provided to us did not indicate the case was pursued as a sexual assault. Crowell notes, based on additional documentation it obtained from the MPD, that the assault occurred in Maryland and was properly recorded as a sexual assault (though not until much later) in the appropriate jurisdiction and not in the DC files. We accept Crowell’s point here, and in

³⁷ Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 16. The Crowell analysis also asserts that these are “good examples of the practical difficulties encountered in investigating and prosecuting sexual assault cases.” Ibid.

fact had acknowledged our misunderstanding of this case in our updated findings, after reviewing additional documents provided to us by the MPD.³⁸

* The “Brazilian wax” case: The Crowell analysis cites this case, used in *Capitol Offense* to illustrate insensitive police interactions with a victim, as an example of a case where police questioning was justified because the victim’s case was weak on the merits, noting that we did not have access to the police investigation of the victim’s complaint as Crowell did.

While we acknowledge that it may often be necessary to ask questions about sensitive topics that may cause offense in sexual assault investigations, Crowell’s discussion of the case misses the point we were making in the report. We mentioned this complaint not as an example of a case that should have been prosecuted, but rather to illustrate victim blaming and lack of responsiveness from police. And the case includes evidence of this. Indeed, Crowell does not mention key quotes from the victim’s complaint, including the following:

Shortly after making the report I received threatening emails from one of the parties involved. I phoned the detective and left multiple messages regarding the emails. She never returned my phone call ... In the past week I have left multiple messages for both Detective [] and her supervisor Detective Sgt. ---. I have heard nothing from the Metropolitan Police Department since filing the report, 3 months ago, despite countless phone calls.... I think that filing the report was just as traumatic as the crime, if not more.... Is it commonplace for the police to put blame on the sexual assault victims and then completely ignore them?³⁹

The MPD may well have had reason to conclude that the case was not prosecutable. We have never argued that all cases should be prosecuted. But what we have insisted upon is

³⁸ Human Rights Watch, “Analysis of Additional Documentation Provided by Metropolitan Police Department,” http://www.hrw.org/sites/default/files/reports/2013_US_AdditionalDocs.pdf. However, we also note that the classification of kidnapping, with no mention of sexual assault, had serious implications, as it resulted in the victim’s name being listed on publicly available documents, including the incident report provided to Human Rights Watch. The incident report was provided two years after the assault and there was no indication it had been reclassified during that time.

³⁹ Office of Police Complaints, Complaint Form, November 12, 2009, on file with Human Rights Watch; and letter from sexual assault victim in DC to Office of Police Complaints about her treatment by MPD detectives, November 12, 2009, as cited in Human Rights Watch, *Capitol Offense*, pp. 21 and 119.

that victims receive respectful, sensitive, responsive treatment from the police. In this case, the evidence continues to raise serious questions about problematic police behavior.

* The case of Eleanor G: In our report, we quoted a few passages of a letter Eleanor G. sent to Chief Lanier, and paraphrased other passages. Crowell says—echoing a complaint made by the MPD to the *Washington Post* on February 4, 2013⁴⁰—that we should have quoted a paragraph in which Eleanor expressed gratitude to one of the officers for his kindness. Perhaps we should have. But Crowell engages in precisely the kind of omission of relevant information that it charges Human Rights Watch with engaging in, when it fails to note that we did in fact paraphrase that section of Eleanor’s letter. Our discussion of the case expressly notes that “Eleanor was grateful that an officer stayed with her while she was at the hospital.”⁴¹ As Crowell itself acknowledges elsewhere, we took pains in the report, and in our data analysis, to give the benefit of the doubt to the MPD and to highlight positive behavior (see, e.g., page 3 of our report, where we highlight the good behavior of a number of detectives, as well as the reforms to policies).⁴²

IV. Crowell’s Discussion of Police Reforms Misrepresents Our Analysis and Ignores Important Unanswered Questions

Crowell's overall assessment is that "the situation the [HRW] report portrays is not how MPD functions today" and our report "says more about MPD’s past than its present."⁴³ Yet, in its analysis of police reforms, Crowell distorts our analysis of MPD reforms over time, and fails to address important unanswered concerns:

A. Crowell inaccurately suggests that we based our analysis too heavily on examples that predate 2008 reforms

As explained in *Capitol Offense*, the problems we are focusing on are not new. A lawsuit

⁴⁰ Peter Hermann, “D.C. police chief: Many sexual assault reports allegedly missing have been found,” *Washington Post*, February 4, 2013, http://articles.washingtonpost.com/2013-02-04/local/36744927_1_sexual-assault-police-files-197-page-report (accessed July 11, 2013).

⁴¹ Human Rights Watch, *Capitol Offense*, p. 84.

⁴² *Ibid.*, p. 3.

⁴³ Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), pp. 1, 3 and 20.

brought against MPD in 2008 revealed that MPD routinely did not document sexual assault cases when officers felt the cases were weak. Crowell seems to believe that after these problems came to light in 2008, MPD initiated important reforms that Human Rights Watch did not adequately take into account. In Crowell's words:

[*Capitol Offense*] cites numerous examples of police misconduct that predate the 2008 reforms. Specifically, HRW cited pre-reform examples of police misconduct 63 times in the Report. Moreover, HRW frequently used these negative pre-reform examples to suggest that those practices exist today.⁴⁴

This conclusion by Crowell is highly misleading. As clearly set forth in the methodology section of *Capitol Offense* and as reflected in the cases we use, the research for this report was conducted in 2011 and is based almost entirely on cases from 2009 to 2011.⁴⁵

At the same time, as described below, our analysis of the 2008 reforms indicated that they had only a minimal impact, and that problematic patterns of police behavior continued despite the reforms. Accordingly, we did cite a few cases from 2008 or earlier, in conjunction with later cases, to show a continuing pattern of behavior. We also discussed at length the 2008 lawsuit that brought about the reforms, precisely to explain the context and time-frame for the reforms, and as evidence of when the MPD first had knowledge of the problems we were describing.

B. Crowell Overstates MPD Reforms between 2008 and 2011

Crowell overstates the impact of MPD reforms carried out between 2008 and 2011, reforms which we discuss in *Capitol Offense*. These include a 2008 mentorship program, which we found to be of questionable value,⁴⁶ and an updated General Order in August 2011 that

⁴⁴ *Ibid.*, p. 20.

⁴⁵ It is unclear what Crowell is referring to when it talks about "63 times" in which we cited "pre-reform" misconduct, given that fewer than ten of the more than 104 cases we referenced in the report are from before 2009. Most of these cases are referenced fewer than three times in the report, with the sole exception being the 2008 lawsuit by "Rachel G.," which, as described above, we highlighted and referenced on several occasions because it put the MPD on notice of some of the problems we documented later and prompted some reforms. Additionally, some of the testimony coming out of the lawsuit established policies and practices of the MPD at the time, which in some cases continued during the period we reviewed.

⁴⁶ The mentorship program, described in *Capitol Offense*, involves new detectives pairing with veteran counterparts for three to four weeks of training before taking cases on their own. In a letter to Human Rights Watch, Chief Lanier described this as a "mentoring program." After the first month, the "mentor detective remains available for questions and advice to the new

largely restated existing policies.⁴⁷

Crowell also indicates that in 2011, the MPD removed detectives who did not display a victim-centered approach to investigations, following a review of investigative files and citizen complaints. But this claim appears to be inconsistent with Chief Lanier's assertions to HRW in June 2012 and the MPD's statements to the DC City Council in February 2012 that since 2008 only one complaint had ever been sustained against a detective in the Sexual Assault Unit (SAU) and that no disciplinary action had been taken against any member of SAU for inappropriate treatment of a sexual assault victim since June 2006, apart from a brief suspension of a detective who contacted a victim on Facebook inappropriately.⁴⁸ It is

detective, and also remains available for case discussion." Letter from Chief Lanier to Human Rights Watch, June 8, 2012, http://www.hrw.org/sites/default/files/reports/2013_US_JuneResponse.pdf, p. 2. (also quoted in *Capitol Offense*, p. 164). However, because the bad practices may have involved senior detectives who would then pass them on through the "mentoring," it is not clear that this was a positive or meaningful reform.

⁴⁷ Crowell highlights that: "In August 2011, MPD released an updated General Order on Adult Sexual Assault Investigations (GO-OPS-304.06). The new General Order stresses the importance of providing an unbiased investigation into all reports of sexual assault, ensuring that MPD members who investigate sexual assault complaints are sensitive to each victim's needs, and the need to provide information and assistance to the victim throughout this traumatic event."

Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 18. Indeed, we cited this order repeatedly throughout *Capitol Offense* even though it was implemented toward the end of our analysis. What Crowell fails to mention—though we noted it in our report—is that a line by line comparison of the August 2011 General Order to the December 2006 order it replaced shows it is nearly identical to the previous order. This includes language Crowell cited, which requires investigators be "sensitive to each victim's needs and the need to provide information to the victim throughout this traumatic event." See General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 6, effective December 22, 2006, p. 2, stating, "Members who investigate sexual assault complaints shall be sensitive to the needs of the victim, and provide information and assistance throughout this traumatic event." The 2011 order adds a reference to an "unbiased investigation," but that idea, too, was already reflected in the 2006 General Order. See General Order, "Adult Sexual Assault Investigations," effective December 22, 2006, p. 3, stating "During the course of the investigation, members shall not express any personal opinions regarding the alleged sexual offense."

⁴⁸ See letter from Chief Lanier to Human Rights Watch, June 8, 2012, http://www.hrw.org/sites/default/files/reports/2013_US_JuneResponse.pdf; and letter from the Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p. 15 (cited in *Capitol Offense*, p. 25-26, footnote 79). In the June 27 hearing, Mr. Harrison, the co-leader of the Crowell analysis, indicated that only two of the detectives from 2008 remained in the unit. Keith Harrison discussing the findings of "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," at 38:47, June 27, 2013, video available at http://oct.dc.gov/services/on_demand_video/channel13/June2013/06_27_13_JUDICI.aspx (accessed July 11, 2013) ("In fact, only two detectives that were with SAU in 2008 are in SAU today. So there's been a great deal of turnover."). But many of those personnel changes may well predate many of the cases of mistreatment or mishandling of sexual assault we document. More broadly, Crowell seems to also have accepted at face value the MPD's assertions that "SAU detectives who are the subject of repeated complaints are transferred out of SAU" and that "MPD is developing a more robust selection process for detectives assigned to SAU." Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013) p. 31. Human Rights Watch is not in a position to assess the accuracy of such a claim. However, in order to change the selection process for the sexual assault unit, MPD would need to first negotiate with the police union, and according to union sources, they have not been approached on this issue. Human Rights Watch telephone interview with Kris Baumann, Chairman, Fraternal Order of

unclear whether Crowell took any steps to confirm the accuracy of MPD claims about personnel changes.

Again, as we emphasized in *Capitol Offense*, the deficiencies in MPD handling of sexual assault investigations have had much more to do with police attitudes and police failure to implement policies than with the policies themselves.

C. After Receiving HRW's Preliminary Findings in May 2012, the MPD Announced Reforms that May Be Significant—But Crowell Has Not Thoroughly Assessed their Impact

Human Rights Watch welcomes the information about reforms undertaken in the past year by the MPD. However, we have concerns that Crowell may have accepted the MPD's claims of reform at face value without assessing how effectively the reforms are being implemented. This underscores the need for external oversight, which Crowell has also acknowledged.

Gathering accurate information about the impact of reforms has become extremely difficult for Human Rights Watch due to the MPD's hostile response to *Capitol Offense*. That difficulty has been compounded by OVS instructions to all nurses not to speak with Human Rights Watch and to sign confidentiality agreements, as well as the OVS decision—shortly after we sent a non-public letter to the MPD outlining our preliminary findings—to solicit for a new contractor to provide victims services (and, in October 2012, to contract with a new provider, instead of renewing their contract with the DC Rape Crisis Center (DCRCC)).⁴⁹

Nonetheless, victims who have attempted to follow up with their cases have informed us that since the report's release that they have not been satisfied with the response from detectives who still do not return their calls. A hospital source told us in October 2012 that she had not noticed any change in interview practices at the hospital four months after a new policy was implemented requiring a 24-hour sleep cycle before conducting a full

Police, Metropolitan Police Department Labor Committee (FOP), Washington, DC, June 27, 2013. Nor has the leadership of the SAU changed in the last couple of years,

⁴⁹ Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 9.

interview.⁵⁰ Similarly, another source told us that several months after new policies were implemented requiring that all calls be returned within two business days, advocates still found it difficult to get detectives to follow up with their clients.⁵¹

It is worth noting that the Crowell analysis mistakenly describes as a “draft HRW report” the non-public May 30, 2012 letter that we originally sent to the MPD.⁵² That letter was not a draft report and we never represented it as such. Crowell also disturbingly attributes OVS’s decision to change its system for providing advocacy services (and, indeed, the provider) at the end of its contract with DCRCC to that letter, stating, “The draft HRW report alerted the Office of Victims Services ... of gaps in the advocacy services being provided to sexual assault victims in D.C.”⁵³

In fact, nothing in our May 30, 2012 letter to MPD, or in *Capitol Offense*, suggested that the DC Rape Crisis Center (DCRCC) or the SANE program were providing inadequate services. On the contrary, victims we spoke with who had problems with police often praised nurses and advocates for providing support at a particularly difficult time. We received no complaints about nurses or advocates from victims. Unfortunately, from our conversations with the MPD and with former members of the Sexual Assault Response Team (which includes the MPD, prosecutors, nurses, advocates, and others), it was apparent that the MPD had concluded that the DCRCC had cooperated with our research and blamed the DCRCC for the negative publicity that would ensue. It is also a widely held perception in the victim advocacy community that DCRCC’s OVS contract was not renewed for this reason.

The statement by Crowell that OVS sought to change how it provides advocacy services as a result of our letter is therefore a serious concern, as it may impact the future willingness of service providers in DC to aggressively advocate for their sexual assault victim clients. This is also an area we believe the Council should investigate further.

⁵⁰ Human Rights Watch telephone interview with Heather DeVore, Director of the SANE Program, Washington Hospital Center, Washington, DC, October 10, 2012.

⁵¹ Human Rights Watch interview with advocate, Washington, DC, April 17, 2013.

⁵² Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), pp. 9-10. The letter was later made public by the MPD on June 8. See Human Rights Watch, *Capitol Offense*, p. 35.

⁵³ Crowell & Moring LLP, “Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*,” <http://www.tommywellsward6.com/judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 9.

V. Crowell's Assessment of Data Showing a Recent Decrease in Victim Reports of Sexual Assault is Tendentious and Unscientific

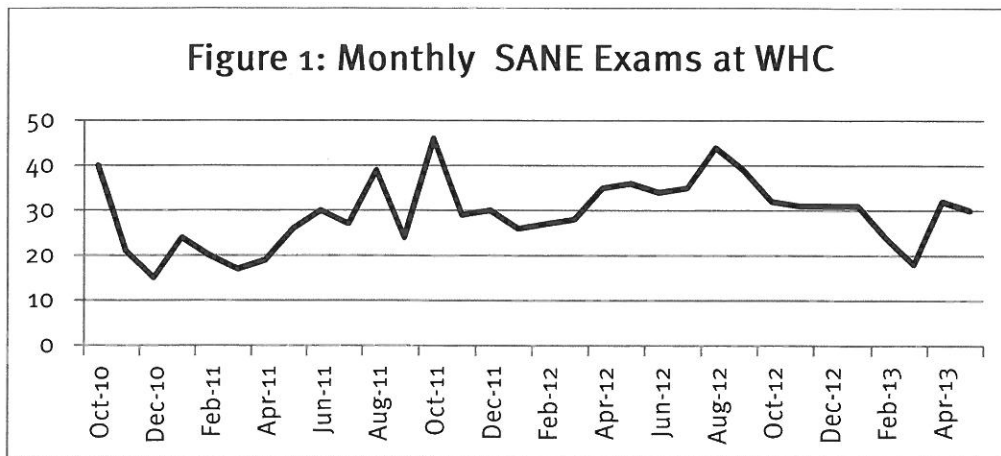
Perhaps most puzzling in the Crowell analysis is its seemingly uncritical repetition of the MPD's claim that the HRW report has resulted in a drop in the number of sexual assault victims requesting medical forensic evaluations. Its analysis of the relevant data on this point is statistically ill-informed and lends credibility to a sensationalist and tendentious picture of the possible impact of HRW's report on victims' willingness to report sexual assaults.

Crowell bases its analysis on data showing that the number of victims seeking medical forensic (SANE) exams at WHC dropped by 20 percent in February 2013 as compared to the previous month (from 31 to 24 cases), and dropped further in March 2013 (from 24 to 18 cases). Citing the SANE Program, Crowell goes on to state that the number of SANE exams dropped 11 percent between FY2012 (October 2011-September 2012) and the first eight months of FY2013 (October 2012-May 2013), describing the decline as "a fairly significant and dramatic decrease in the number of SANE exams performed since the release of the Human Rights Watch report."⁵⁴

Based on the chart Crowell provides, there does appear to have been a drop in such reports from FY2012 to FY2013, and in February 2013 as compared to January. To attribute that drop to the HRW report, however, is a huge and baseless leap.

First, to highlight the reduction in numbers between January 2013 and February and March 2013 as evidence of a "significant and dramatic decrease" is spurious and unscientific. The drop is fully consistent with natural monthly variation in the number of monthly SANE exams (see Figure 1).

⁵⁴ Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/Judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 22.



Monthly shifts in numbers of exams are a regular occurrence. The decrease of 7 exams between January and February 2013 is no more unique than the decrease of 17 exams between October and November 2011 (FY2012), or the increase of 9 exams between July and August 2012. February and March consistently have amongst the lowest numbers of monthly exams each year and we should expect to see a decrease in exams during these months. We see that in April and May of 2013, SANE exams increased as they do every April and May.

Indeed, in comparing year to year shifts at the monthly level, *the largest decrease between FY2012 and FY2013 seems to have happened in October, well before the release of the HRW report*—in October 2011 (FY2012) there were 46 exams, whereas in October 2012 (FY2013) there were only 32 exams (a drop of 14). By contrast, the difference between February 2012 and February 2013 (immediately after the release of our report), was only 3 exams (27 in Feb. 2012 and 24 in Feb. 2013). In March it was larger (a 10-case difference), but in April and May the difference was smaller again.

Second, if any sexual assault victims were indeed deterred from receiving a SANE exam during February and March 2013, neither Crowell nor the sources it cites at the SANE program offer any objective basis on which to conclude it was due to the HRW report. A substantial factor deterring victims from reporting to the police or getting SANE exams—which Crowell fails to mention—may well have been DC Police Chief Lanier’s hostile response to our report.⁵⁵ Rather than assert, as we had urged, that mistreatment of victims

⁵⁵ We note that another possible factor could involve the change in advocacy providers in October 2012, which could have temporarily affected existing exam and reporting procedures. Indeed, Crowell also repeats a statement from the SANE

was unacceptable, the Chief repeatedly minimized the problems set out in the report. Sexual assault survivor Eleanor Gourley, for example, wrote an op-ed in which she related her shock at the Chief's claim in the *Washington Post* that there was no evidence of sexual assault in her case: "If they don't believe me, bloodied and in a torn dress, with two witnesses who heard me cry rape, whom do they believe?"⁵⁶ To many other victims who are even more fearful of coming forward, such blunt statements by the Chief would understandably have been chilling.

It is surprising and disappointing to see that Crowell apparently chose, on such a weak basis, to endorse the claim that our report deterred sexual assault victims from getting exams. Its judgment in this respect casts doubt on the rigor and seriousness of its overall analysis.

program about a decrease in police reports at WHC (stating that "[t]hus far in FY2013, approximately 66% of DC SANE cases were reported to law enforcement... This represents a significant shift from FY 2012, during which 81% of SANE cases were reported to law enforcement.") Crowell & Moring LLP, "Analysis of Human Rights Watch Report *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*," <http://www.tommywellsward6.com/judiciary/2013-06-26%20%20Analysis%20of%20Human%20Rights%20Watch%20Report-c.pdf> (accessed July 8, 2013), p. 23. SANE officials cited by Crowell therefore state, "*There appears to be a trend away from reporting to law enforcement*" (emphasis in original), and according to Crowell, "SANE attributes the significant decrease in reporting of sexual assault to the publicity surrounding the HRW Report." *Ibid.* But again, even if reporting at WHC has in fact dropped (and assuming such a drop represents anything more than natural variations), then that is a puzzling development, as the MPD has in fact reported an increase in sexual assault reports overall (possibly in part due to the decision no longer to classify sexual assault cases as "office information"). It is odd that reports would particularly drop at WHC while increasing elsewhere, though we note that with the changes in advocacy providers at precisely that time, there may have been some disruption to the reporting process. Again, neither Crowell nor SANE offers any objective basis to attribute such a drop to our report.

⁵⁶ Eleanor Gourley, "In Washington, Sexual Assault Victims Find Justice Elusive," *The Daily Beast*, February 22, 2013, <http://www.thedailybeast.com/articles/2013/02/22/in-washington-sexual-assault-victims-find-justice-elusive.html> (accessed July 11, 2013).