

Justice Denied: The Rape Kit Backlog as a Failure of American Policy

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Content Warning: This essay contains mentions of rape and sexual assault, as well as direct quotes from survivors about the aftermath of sexual assault.

Every 73 seconds a woman in America is raped ("Scope of the Problem: Statistics"); and yet, 99.5% of perpetrators walk free with no felony conviction ("The Criminal Justice System: Statistics"). Although the argument that this is due to the low percentage of victims that come forward is partially true, it cannot explain rapists avoiding felony convictions even when charges are pursued in a court of law by the victim. What does, however, is the rape kit backlog.

Rape kits refer to the medical evidence gathered from survivors of rape and/or sexual assault. Immediately after being attacked, survivors are either asked to or choose to undergo a forensic examination that is physically and emotionally traumatizing. Perhaps the most well-known account of this experience comes from Chanel Miller, an unconscious victim of sexual assault who anonymously published the powerful letter she read to her attacker Brock Turner (a Stanford swimmer who was later sentenced to a mere six months in jail and released in three) in court. In her statement, she wrote of how her first moments regaining consciousness after being raped were spent having "multiple swabs inserted into [her] vagina and anus...[and] a Nikon pointed right into [her] spread legs" (qtd. in Baker). She recalled how she felt "terrified of [her body]...too empty to continue to speak," and how she would often "drive to a secluded place to scream," becoming "isolated from the ones [she] loved most" (qtd. in Baker).

Though the evidence collected comes at a tremendous cost to survivors, rape kits

are the strongest way to prove rape has occurred in a court of law, a crime otherwise challenging to show beyond reasonable doubt (Hamdan). A study published in the Vanderbilt Journal of Entertainment and Technology Law found that 26.5% of jurors “would find the defendant not guilty if there was no scientific evidence, even [if] the alleged victim testifies to the assault” (Shelton et al. 359). And, reports have shown “juries are 33 times more likely to convict when presented with DNA evidence [in sexual assault cases]” (Briody 170). Given that DNA evidence can “identify an unknown assailant...affirm the survivor’s account of the attack...[and] connect the suspect to other crime scenes” (Joyful Heart Foundation), rape kits are crucial to solve and prevent rape and sexual assault crimes.

However, despite the general consensus that rape kits are critical, experts estimate hundreds of thousands of rape kits either await testing or have yet to be submitted to crime labs—a gross miscarriage of justice (Joyful Heart Foundation). The collection of these “backlogged” kits form the rape kit backlog, the existence of which is primarily attributed to a lack of monetary resources. According to a report by the National Academy of Sciences, publicly funded crime labs are already “underfunded [and] underequipped” (National Research Council). After one considers the \$1,000 to \$1,500 cost to test a single rape kit—along with the thousands of rape kits and DNA samples already awaiting testing—it is no surprise that many crime labs can take years to send back the results of DNA and rape kit tests (Joyful Heart Foundation). Even worse, however, is the fact that the majority of rape kits sit unopened in police storage. Local prosecutors and police officers actively choose not to send them to crime labs, effectively destroying the chance that the victim will ever see justice. The federal government estimates the existence of 200,000 unopened or untested kits nationally, but the Joyful Heart Foundation notes that “there may be several hundred thousand more” given the deliberately secretive nature of cities and states when discussing the backlog (Hagerty; Joyful Heart Foundation). Each of these hundreds of thousands of kits represents a victim whose assailant walks free, a victim who has been denied justice for a crime of unfathomable emotional and physical trauma.

While ending this backlog is far from an easy task, the first step is clear: mandating the testing of backlogged and newly collected kits. In order for progress to be made in eliminating the rape kit backlog, state law must require that every untested rape kit is sent to a crime lab within 180 days and that labs complete the kit's analysis within 90 days, outsourcing testing to private laboratories if the deadline cannot be met

(Joyful Heart Foundation). Although these deadlines may seem aggressive, numerous states have successfully passed such legislation and, in turn, have ended their backlogs. For instance, in 2013, Colorado enacted H.B. 13-1020, which required law enforcement to send backlogged rape kits to crime labs within 120 days and new kits within 21 days. Only three years later, Colorado's state lab announced it had tested all of its thousands of backlogged rape kits and eliminated its backlog, bringing long overdue relief to those who were assaulted (Phillips). The untested rape kits resulted in 1,556 DNA profiles and 691 matches to profiles of convicted felons (Phillips), evidence that was of paramount importance in convicting sexual offenders and connecting them to prior crimes.

Given that rape is "the easiest violent crime to get away with" (Hagerty), unconvicted rapists often go on to commit/have committed other violent crimes, including homicide, robbery, and kidnapping. Take the case of Eric Eugene Wilkes, a man "known to Detroit police for robbery and carjacking, [but] not for rape" (Hagerty). Over the course of eleven years, Wilkes brutally assaulted and raped 11 women, "all while [his] identity was preserved in sealed containers that no one had bothered to open" (Hagerty). By failing to test the rape kits provided by numerous victims, law enforcement denied justice from at least 11 known women and allowed Wilkes to walk free and continue his brutal assaults and other crimes. Moreover, serial rapists like Wilkes are far more common than one thinks: a study by Case Western Reserve University noted over half of a random sample of backlogged rape kits were linked to serial offenders (Rothkopf). In order to bring justice to victims of rape and sexual assault across the country and prevent future violent crimes, rape kit testing cannot be reliant on an individual police officer's arbitrary decision: it must be mandatory, with accountability mechanisms in place to ensure law enforcement agencies test new and backlogged kits (Joyful Heart Foundation).

However, law enforcement agencies can only be held accountable for their actions regarding rape kit testing if there is a federal system in place to track all rape kits through the testing process. Presently, no centralized system exists, and rape kits are being unjustly destroyed in large numbers. A CNN investigation found 25 law enforcement agencies in 14 states destroyed rape kits in cases that could *still* be prosecuted, claiming it was a "routine process...to make space in evidence rooms" (Fantz et. al). Numerous other independent investigations have shown the number of rape kits destroyed per county every year to be in the hundreds (Broadwater; Stahl et.

al). The destruction of each kit directly destroys a survivor's hope to bring their attacker to justice, and, if the attacker was a serial offender, contributes to the possible assault of more victims. Therefore, in addition to the aforementioned testing mandate, an online, easily accessible federal tracking system for rape kits must be implemented. Ultimately, testing kits is not enough if those kits no longer exist. Such a system would track rape kits throughout the entire testing process: from the initial collection at medical centers, to local law enforcement, to testing laboratories, to its disposal and sending of results. In addition, legislation must ensure that victims can securely and privately access this information and have sole control over the decision to not test or destroy their rape kit (Busch-Armendariz). A Joyful Heart Foundation research study on such victim notification policies found that "access to information about the status of their cases can promote healing for survivors of sexual assault." However, it is important to note that survivors should never be forced to track their rape kits—according to a study by the Institute on Domestic Violence & Sexual Assault, requiring them to do so is often triggering and violent (Busch-Armendariz). Thus, implementing online tracking systems—which is recommended by the Department of Justice itself—enables victims to maintain autonomy over the process in a way that is safe and comfortable for them (SAFER Act Working Group). Ultimately, rape kit reform must fundamentally seek to both dole criminal justice for survivors and prioritize their healing.

Although enacting the above legislative reforms is vital, they cannot be adequately carried out without increased state funding. Presently, the most substantial federal effort to end the backlog comes in the form of the Debbie Smith Act. While the Act is certainly critical—according to the National Institute of Justice, 42% of DNA matches in CODIS (the FBI's DNA database system) are the direct result of Debbie Smith Act funding ("Critical Rape Kit Backlog Funding Passed By Congress")—there are numerous problems with federal efforts. Namely, federal funding is 1) insufficient and 2) unstable due to the politicization of funds. Currently, local law enforcement agencies are entirely dependent on the Debbie Smith Act's funding, but the amount given is often not enough to begin with (Zhou). Moreover, disseminating federal funds appropriately to local departments requires financing in and of itself, significantly detracting from the actual testing of rape kits (Reilly). Ergo, it is far more efficient for funding to be as localized as possible, which additionally helps in holding law enforcement accountable. Secondly, federal funding is frequently contingent on unrelated local policies. A prime example of this is seen in Albuquerque, New Mexico: the city was allocated one million dollars by the Department of Justice to clear their rape

kit backlog, funding which was quickly rescinded due to Albuquerque's immigration policy (Chavez). This is one of many examples of the federal government using funds critical to justice for rape and sexual assault victims as a bargaining chip. It is unconscionable for us to allow justice for rape and sexual assault to be contingent upon local leaders' political standpoints. To prevent this injustice, states must take funding into their own hands and become independent of federal politics. Though this seems impossible, to date, 21 states and Washington D.C. have taken steps to do so. While these states have made some progress, it is still imperative for all states to become fully self-sufficient and be more proactive when allocating funding towards mandating testing of rape kits.

Each day the rape kit backlog persists, hundreds of thousands of rape and sexual assault victims are forced to live under the overpowering fear that their assailant will return, and perpetrators are left free to commit more violent crimes. It is the government's duty to seek justice for all, and testing rape kits is not only a massive public safety investment, but is also fiscally beneficial to the rest of the community. This is because of the fact that rapists often commit other serious crimes, which have negative costs to the community in the forms of public safety, need for increased policing and investigation, etc. A study by Case Western Reserve University found that each kit tested resulted in an estimated net savings of \$8,893 (Lovell et al.) while a study by West Virginia University placed the return on investment at an astronomical 65,000% ("Pillar: Appropriate Funding for Reform"). Considering the number of the backlogged rape kits, eliminating the backlog has the potential of saving counties millions of dollars (Lovell et al.).

All in all, the benefits of eliminating the rape kit backlog are unquestioned and the path forward is clear. Once again calling on the words of Chanel Miller, "you cannot give me back the life I had before that night," but it is the responsibility of the justice system to ensure that "the seriousness of rape [be] communicated clearly" in its policies (qtd. in Baker). The United States cannot delay justice for survivors any longer.

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