



U.S. Department of Justice

Washington, DC 20530

MAY 15 2013

VIA EMAIL AND U.S. MAIL

Mayor John Engen
435 Ryman Street
Missoula, Montana 59802

Re: The United States' Investigation of the Missoula Police Department

Dear Mayor Engen:

The Civil Rights Division has concluded its investigation into allegations that the Missoula Police Department (“MPD”) discriminates against women in its response to sexual assault. Our investigation found that deficiencies in MPD’s response to sexual assaults compromise the effectiveness of sexual assault investigations from the outset, make it more difficult to uncover the truth, and have the effect of depriving female sexual assault victims of basic legal protections.

From the beginning, MPD pledged and provided complete cooperation with our investigation, and we thank Mayor Engen and MPD Chief Mark Muir, in particular, for that assistance. We also recognize that MPD’s investigations and detectives are excellent in many respects, and that MPD has taken a proactive approach to improving its response to sexual assault. Missoula and MPD’s solution-focused approach is reflected in the agreement the City has reached with the Civil Rights Division’s Special Litigation Section to put in place a set of measures meant to improve the safety of women in the Missoula community, enhance the ability of MPD officers to effectively investigate sexual assault crimes and increase community confidence in MPD’s response to sexual assault. This agreement is available at <http://www.justice.gov/crt/about/spl/findsettle.php#police>. We look forward to working cooperatively with the City of Missoula to implement that agreement.

At the same time, there are significant deficiencies in MPD’s investigations of sexual assault. MPD must correct these problems if it hopes to ensure that women are protected and that MPD’s sexual assault investigations reliably and consistently ascertain the truth. Given the cooperation and commitment to improvement demonstrated by MPD during the investigation, we have high confidence that MPD can correct the problems we identified quickly and effectively. MPD has the opportunity not only to better serve the women of Missoula and

improve the fairness of the criminal justice system, but also to serve as a model for police departments seeking to implement fair and effective systems for responding to and preventing sexual violence.

The Division's Special Litigation Section focused not only on the role of MPD, but also investigated the Office of Public Safety ("OPS") at the University of Montana and the Missoula County Attorney's Office in handling allegations of sexual assault against women in Missoula. Last week, the Civil Rights Division reached two agreements with the University of Montana that will improve not only the University's response to sexual assault, but also act as a model for institutions of higher education nationwide. The Civil Rights Division's findings related to the County Attorney's Office will be addressed separately. This letter only addresses the Special Litigation Section's findings related to MPD, and is offered to facilitate a fuller understanding of the need for and aims of the agreement between the City and the Department of Justice.

BACKGROUND

The Civil Rights Division's investigation was prompted by reports that Missoula law enforcement was failing to appropriately investigate reports of sexual assault, both on the University of Montana ("UM" or "University") campus and elsewhere in Missoula. There were concerns that, as a result, women reporting sexual assaults were being denied access to criminal justice, and perpetrators of sexual assault were not being held accountable. The experience of women who did report, and the widely held perception of inadequate treatment, caused many victims of sexual assault to choose not to report the crime to the police.

The Division began its investigation shortly after a series of sexual assault reports came to light and community members began questioning whether Missoula law enforcement and the University of Montana could, and should be, doing more to effectively address sexual assault. In particular, in January 2012, an independent investigator hired by the University identified a total of nine sexual assaults against women at UM in a little over a year.

That same month, sexual assault victims voiced complaints about how MPD handled their reports and interviews. Those complaints prompted members of the Missoula City Council to request a public meeting with Chief Muir.¹ At the public forum, one rape victim complained about how MPD treated her, expressed skepticism about the thoroughness of the department's investigation into her report, and called for improvements in both MPD and the Missoula County Attorney's Office. Other victims shared the same sentiment. Chief Muir acknowledged that his officers have had difficulties interviewing women victims of sexual assault and promised that MPD would "find ways to challenge our officers to become better communicators and to learn to

¹ Kelia Szpaller, "Missoula Council Members Want Forum With Police Chief Over Alleged Article," *The Missoulian* (Jan. 11, 2012), http://missoulian.com/news/local/missoula-council-members-want-forum-with-police-chief-over-alleged/article_8e396274-3c10-11e1-a870-0019bb2963f4.html.

be more accomplished at responding" to women reporting sexual violence.² He also said that MPD would implement a "better policy with respect to sexual assault" by March 15, 2012.³

Then, in February 2012, two more women at UM reported being sexually assaulted by another student on the same day. MPD first learned of these assaults when the University sent a campus-wide email alert a full week after the incidents had occurred.⁴ The alleged assailant was able to flee the country before being held accountable by UM or Missoula law enforcement. The combination of these events further raised community concerns.⁵

The Division's Special Litigation Section brought its investigation pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), which gives the United States the ability to remedy law enforcement patterns or practices that violate the Constitution or laws of the United States. More specifically, the investigation has sought to determine whether the Missoula Police Department, as well as the Missoula County Attorney's Office ("MCAO") and the University of Montana's Office of Public Safety, engage in a pattern or practice of unlawful gender discrimination in violation of the Fourteenth Amendment to the U.S. Constitution, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"), and the regulations implementing the Safe Streets Act, 28 C.F.R. §§ 42.201-215. The Civil Rights Division's Educational Opportunities Section also conducted an investigation into allegations of sex discrimination by the University pursuant to Title IV of the Civil Rights Act of 1964, 42 U.S. § 2000c-6, and Title IX of the Education Amendments of 1972, 42 U.S.C. § 2000h-2. This letter addresses exclusively the Special Litigation Section's findings relating to MPD.⁶

The Missoula Police Department, led by Chief Mark Muir, has jurisdiction within Missoula, the second largest city in Montana, with a population of approximately 67,000. MPD is the largest law enforcement agency in Missoula County, employing 102 sworn officers. MPD's Detectives Division has 18 officers, and investigates crimes including homicide, rape, assault, and robbery. MPD is the first responder to most reports of sexual assault in the City and has primary responsibility for investigating sexual assaults. It responds to women reporting sexual assault directly to MPD, and also responds to complaints of felony sexual assault first reported to OPS and then referred to MPD. Where its investigation determines prosecution

² Kelia Szpaller, "Chief Muir: Police Must Communicate Better With Sex Assault Victims," *The Missoulian* (Jan. 25, 2012), http://missoulian.com/news/local/chief-muir-police-must-communicate-better-with-sex-assault-victims/article_6008bcae-47c5-11e1-bcd8-0019bb2963f4.html.

³ *Id.*

⁴ Gwen Florio, "Saudi Student Accused of UM Rape Has Fled the U.S.," *The Missoulian* (Feb. 24, 2012), http://missoulian.com/news/local/saudi-student-accused-of-um-rape-has-fled-the-u/article_431ba1f8-5f47-11e1-b802-001871e3ce6c.html.

⁵ Gwen Florio, "Advocates: UM Failed in Response to Sexual Assaults," *The Missoulian* (Feb. 25, 2012), http://missoulian.com/news/local/advocates-um FAILED-in-response-to-sexual-assaults/article_86906914-603c-11e1-9016-001871e3ce6c.html.

⁶ In the past five years, the Special Litigation Section has investigated and publicly issued findings regarding the response to sexual assault by four other law enforcement agencies: the New Orleans (LA) Police Department, the Maricopa County (AZ) Sheriff's Office; the Puerto Rico Police Department; and, most recently, the University of Montana's Office of Public Safety.

would be appropriate, MPD is responsible for referring sexual assault cases to MCAO for prosecution and working with MCAO to help bring about successful resolution to the cases it has referred.

METHODOLOGY

The Special Litigation Section's investigation of Missoula law enforcement included interviews with law enforcement officers and with advocates, women, witnesses, and other members of the Missoula community, in person over the course of 10 days in Missoula and by telephone over the past year. Our interviews included conversations with MPD Chief Mark Muir and nine MPD detectives and officers; representatives of 11 community and university organizations that work on behalf of women and victims of sexual assault; and more than 30 women reportedly victimized by sexual assault in Missoula, or their representatives. Together with our two expert consultants, one with nearly a decade of experience supervising a police department's sex crimes unit and the other a former sex crimes prosecutor and national training consultant in sexual assault response, we reviewed policies, procedures, training materials, court filings, and other data and documentary evidence, including the case files for the more than 350 reports of sexual assault received by MPD between January 2008 and May 2012. We made every effort to confirm witness accounts, where possible, with other evidence, including police reports, transcripts, and video recordings of investigative interviews, and gave weight only to those statements we could corroborate or otherwise deem credible. We consulted with a wide range of advocates, practitioners, and academics with expertise in this field; reviewed academic studies and literature; and reviewed model sexual assault policies and procedures from law enforcement agencies across the nation.⁷

LEGAL STANDARDS

The Constitution and federal law prohibit discrimination by law enforcement, including campus law enforcement, in its response to reports of sexual assault by women. When this discrimination amounts to a pattern or practice of unlawful conduct, the United States has authority to sue for equitable and declaratory relief pursuant to 42 U.S.C. § 14141. In the context of this investigation, discriminatory law enforcement may occur in either of two ways: where law enforcement practices reflect intentional discrimination against women, or where law enforcement practices have a disparate impact on women.

When law enforcement's handling of sexual assault cases has an unnecessary disparate impact on women, it violates the Safe Streets Act and its implementing regulations. The Safe Streets Act establishes that “[n]o person in any State shall, on the ground of race, color, religion, national origin, or sex be excluded from participating in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.” 42 U.S.C. § 3789d(c)(1).

⁷ See, e.g., Int'l Ass'n of Chiefs of Police, Investigating Sexual Assaults Model Policy (May 2005), <http://www.theiacp.org/LinkClick.aspx?fileticket=yAucEKA3dU%3D&tabid=372>.

A disparate impact on women violates the Safe Streets Act and its implementing regulations, even where the discrimination is not intentional, unless the discriminatory impact is necessitated by some legitimate law enforcement or other purpose. *See* 28 C.F.R. § 42.203(e) (prohibiting recipients of federal funds made available under the Safe Streets Act from “utiliz[ing] criteria or methods of administration which *have the effect* of subjecting individuals to discrimination”) (emphasis added); *see also United States v. Virginia*, 620 F.2d 1018, 1024 (4th Cir. 1980) (Safe Streets Act requires showing that defendants’ discriminatory employment practices had an adverse impact on female job applicants, not proof of intentional discrimination, before defendants must demonstrate the challenged practices have a necessary relationship to the job). The Safe Streets Act applies to entities receiving federal funds during the time of the discriminatory acts. The Missoula Police Department has received federal funding made available under the Safe Streets Act during the period in question.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits intentional sex discrimination, including selective or discriminatory enforcement of the law. *Whren v. United States*, 517 U.S. 806, 813 (1996) (“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.”); *Elliot-Park v. Manglona*, 592 F.3d 1003, 1007 (9th Cir. 2010) (Equal Protection Clause prohibits law enforcement from intentionally discriminating in the provision of any services to any degree); *Estate of Macias v. Ihde*, 219 F.3d 1018, 1019, 1028 (9th Cir. 2000) (in case alleging “inferior police protection on account of status as a woman, a Latina, and a victim of domestic violence,” holding that there is an equal protection right to have law enforcement services administered in a nondiscriminatory manner).

In addition to affirmative discrimination against members of protected groups, a *failure* to take action on behalf of these individuals can constitute unlawful discrimination. *See Bell v. Maryland*, 378 U.S. 226, 309 (1964) (Goldberg, J. concurring) (“[D]enying the equal protection of the laws includes the omission to protect.”) (internal quotation marks omitted). The Ninth Circuit has explained specifically that the constitutional right to have law enforcement services delivered in a nondiscriminatory manner “is violated when a state actor denies such protection” to members of protected groups. *Estate of Macias*, 219 F.3d at 1028. The courts have applied this principle to police under-enforcement of the law where such deliberate under-enforcement adversely impacts women. *See, e.g., id.; Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 700-01 (9th Cir. 1990) (recognizing an Equal Protection claim based upon the discriminatory denial of police services to a victim of domestic violence because of her sex).

Law enforcement action violates the Fourteenth Amendment when a discriminatory purpose is a contributing factor; discrimination need not be the sole motivation for the discrimination to violate the Constitution. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977). Recognizing that discriminatory purpose is rarely admitted or blatant, courts look to the totality of the circumstances to evaluate whether a law enforcement activity was motivated by discriminatory intent, and will consider factors that indirectly indicate an intent to discriminate, including evidence of discriminatory impact, evidence of departures from proper procedures, and contemporaneous statements by a decision maker or by responding officers. *See id.* at 265-68; *Balistreri*, 901 F.2d at 701.

Differential treatment of women premised on sex-based stereotypes, such as stereotypes about the role women should play in society or how they should behave, also violates the Equal Protection Clause. *See, e.g., United States v. Virginia*, 518 U.S. 515, 517 (1996) (holding invalid explicit sex classification and stating that “generalizations about ‘the way women are,’ estimates of what is appropriate for *most women*, no longer justify denying opportunity to women[.]”); *Nevada Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721, 730 (2003) (“Reliance on such [invalid gender] stereotypes cannot justify the States’ gender discrimination [in employment].”); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982) (holding that denying otherwise qualified males the right to enroll in state nursing school violated the Equal Protection Clause). Thus, where a law enforcement agency’s failure to adequately respond to sexual assault is premised, at least in part, on sex-based stereotypes, that failure violates the Equal Protection Clause.

DISCUSSION OF FINDINGS

MPD bears primary responsibility for responding to and investigating most sexual assaults in Missoula. Our investigation found that some MPD investigative practices significantly compromise the quality and effectiveness of its response to sexual assault, making it more difficult to uncover the truth when sexual assault allegations are made. MPD’s inability at times to gather necessary evidence or testimony is due in part to practices that undermine its ability to fully and fairly investigate reports of sexual assault. We found practices that discourage female victims of sexual assault from cooperating with law enforcement and thereby significantly compromise the investigative process. Our investigation further showed that there is no legitimate law enforcement or other reason for these inadequacies. Rather, these investigative weaknesses appear due, at least in part, to stereotypes and misinformation about women and victims of sexual assault. Because the vast majority of victims of sexual assault are women, MPD’s failure to adequately respond to reports of sexual assault has an unjustified disparate impact on women and thus violates the Safe Streets Act. Moreover, MPD’s failures in responding to sexual assault, together with statements by MPD officers, reflect sex-based stereotypes, and thus constitute discrimination barred by the Equal Protection Clause of the Fourteenth Amendment.

We recognize that MPD has expressed a commitment to conducting high-quality investigations and improving its response to sexual assault. Further, we found that some aspects of MPD’s sexual assault investigations are generally quite good, such as its crime scene preservation and the documentation of investigative steps in MPD investigative reports. Nor does MPD have the widespread problem with underreporting, misclassifying, or downgrading reports of sexual assault that we have observed in several other law enforcement agencies. In addition, in the wake of the public attention to the issue, MPD has recently taken a number of affirmative steps to improve its response to sexual assault. For example, in March 2012, MPD implemented a policy giving additional guidance to officers on responding to sexual assault. Over the past year, MPD also has provided training on sexual assault to a number of its officers, detectives, and leadership, and requested our recommendations for further improving its response to sexual assault. Building on these efforts, and with appropriate mechanisms in place, MPD can significantly and quickly resolve the deficiencies in its response to reports of sexual assault described below.

A. MPD's Response to Sexual Assault Adversely Impacts Women

MPD's investigations are marked by practices that significantly compromise the effectiveness of MPD's response to sexual assault and contribute to the under-enforcement of sexual assault laws in Missoula. Given MPD's role as the first responder to most reports of sexual assault in Missoula, and the disproportionate threat that sexual assault poses to the safety of women in Missoula, these practices together have an unjustified adverse impact on women in violation of the Safe Streets Act.

1. MPD's Sexual Assault Investigations Have Material Deficiencies That Compromise the Search for the Truth

MPD fails to employ key investigative practices that, if properly implemented, would safeguard potential evidence, protect the rights of victims and suspects, and facilitate the search for the truth. For instance, particularly in interviews, MPD too often fails to collect evidence, and does not take proper steps to obtain timely, credible statements from suspects and witnesses. Our review revealed instances where MPD officers likely would have obtained statements and facts to support a prosecution if they had used the investigative tactics known to be effective and essential in sexual assault investigations, especially investigations of non-stranger sexual assault. These investigative deficiencies compromise the search for the truth and unnecessarily place women at an increased risk of harm. *Cf. Elliot-Park*, 592 F.3d at 1007 ("If police refuse to investigate or arrest people who commit crimes against a particular [protected class] it's safe to assume that crimes against that group will rise. Would-be criminals will act with a greater impunity if they believe they have a get out of jail free card if they commit crimes against the disfavored group.").

MPD detectives often fail to develop evidence regarding whether the victim was incapacitated by alcohol or drugs and whether the suspect knew this. Women who are intoxicated are at increased risk of sexual assault, and more than half of all non-stranger sexual assault involves alcohol use by the victim, assailant, or both.⁸ Rather than employ techniques to ensure the accuracy of investigations of drug- and alcohol-facilitated sexual assault, officers often investigate the allegations as if the victim alleged physical force had been used. We found cases in which the rape victim was apparently incapacitated when she was raped, yet MPD detectives focused interviews of suspects, witnesses, and victims on gathering evidence of force, rather than whether she had the capacity to consent. For instance, in one case in which it appears the victim was likely incapacitated by drugs and alcohol, several suspects who had sex with the victim alleged that the sex was consensual. The woman described passing in and out of consciousness and vomiting during the assault. Our review showed that the detective did not probe the suspects on how they deciphered consent despite the fact that, as acknowledged by one of the witnesses during his interviews with MPD, the woman was vomiting and "so intoxicated she eventually had to go to the hospital." The woman reported to us that, after her interview, the detective informed her that she might have had a case if she had been unconscious during the rape rather than merely incapacitated.

⁸ Jeanette Norris, "The Relationship Between Alcohol Consumption and Sexual Victimization," Nat'l Online Res. Ctr. on Violence Against Women, at 1 (Dec. 2008), http://www.vawnet.org/sexual-violence/summary.php?doc_id=1630&find_type=web_desc_AR.

Our comparison of the interview summaries included in case reports with video recordings of the same interviews further suggested to us that MPD's sexual assault investigations are at times compromised by an investigator's unwarranted gender-based assumptions and stereotypes about women. This results in detectives' reports failing to capture the evidence of force or incapacitation contained in the actual victim statements – an omission which may have a significant impact on whether the case is ultimately prosecuted. For example, in a case involving the assault of a UM student at a fraternity house, a review of the video recording of the woman's MPD interview reveals that the woman told the detective that she had repeatedly said no to her assailant, and that she had "pushed" against him while he assaulted her. The woman, who weighed less than half her assailant, and described herself as extremely intoxicated at the time of the assault, also described the assailant holding her up "like a sack of flour," and a "rag doll," in such a way that his grip was the only thing keeping her from falling forward during the assault. In her words, he did not stop assaulting her until she had pushed against him for some time, at which point she lost her balance, fell forward, and lost consciousness. The detective's case report excludes most of this detail, concludes that the assault was "mostly voluntary fueled by alcohol," and identifies the primary offense as "suspicious activity." The omission from the detective's report of relevant details about the woman's physical resistance, and the detective's apparently premature judgment about the woman's consent and the severity of the assault, suggests, at a minimum, a misunderstanding of critical principles of consent and incapacitation that are often at the center of these sensitive sexual assault investigations. These omissions could substantially influence both MPD's and, later, MCAO's determination about whether to seek criminal prosecution. Indeed, although MPD submitted a copy of the report to MCAO for review and determination of any criminal charges, MCAO ultimately declined to charge the case.

Our review also showed that MPD detectives all too often do not make sufficient efforts to obtain statements from suspects and witnesses quickly. For example, instead of conducting field interviews in sexual assault cases, MPD detectives generally call to make appointments with suspects, scheduling them sometimes weeks or more in advance. They make no attempt to conduct telephone or field interviews to obtain preliminary interviews in the interim. This practice undermines the integrity of sexual assault investigations by denying detectives the ability to compare the suspect's and victim's accounts early on in the investigation, and by allowing suspects too much time to modify or coordinate their stories.

2. MPD Investigations Discourage Participation by Victims

The deficiencies outlined above make it more difficult to ferret out the truth in sexual assault investigations, and deny women critical protections during the process. In addition, MPD investigative practices in sexual assault cases too often discourage victims from participating in investigations. Victim participation can significantly increase the ability of law enforcement to reach reliable conclusions and make meritorious prosecutions more likely.

To begin with, MPD detectives commonly ask women reporting sexual assault whether they wish to seek criminal prosecution at the outset of the investigation, even before MPD has determined whether the case may be prosecutable. As is widely understood, this practice misleads women into believing that they – and not the prosecutor – have control over whether the assailant is ultimately prosecuted. Especially when a woman may already have encountered

skepticism by responding officers and detectives, such a question may send the message that if she proceeds with her case she will be expected to be the driving force behind the prosecution; that she should already feel sufficiently well-informed and empowered to make the decision as to whether to seek prosecution; or that she should feel personally responsible for imposing serious criminal consequences on the assailant. This in turn increases the chance that the woman will decline to participate in the investigation, in some instances causing MPD to end its investigation before it has begun.

Furthermore, prior to mid-March 2012, MPD did not have a policy on responding to sexual assault. Without policy guidance, the manner in which MPD conducted its investigations of reports of sexual assault was almost entirely subject to the discretion of MPD detectives, and thus was particularly susceptible to being influenced by MPD detectives' stereotypes and assumptions about the victims of those assaults. *See Elliot-Park*, 592 F.3d at 1006 ("[W]hile the officers' discretion in deciding whom to arrest is certainly broad, it cannot be exercised in a . . . discriminatory fashion.").

Our investigation identified other MPD practices that create unnecessary barriers to building trust and rapport with women reporting sexual assault, and make the process of reporting unnecessarily burdensome for women. For example:

- MPD requires that victims and witnesses be interviewed at the police station, rather than at the location most convenient and comfortable for the victim.
- MPD generally does not invite advocates to be present during victim interviews. Instead, two MPD detectives typically interview a victim without advocate participation. This practice is more appropriate for an interrogation of a suspect than an interview of a crime victim, and sometimes keeps detectives from developing necessary rapport with women victimized by sexual assault. Moreover, under Montana law, crime victims have the right to have an advocate present when the victim is interviewed. Mont. Code. Ann. § 46-24-106.
- The process of reporting a sexual assault, including the time spent at hospitals and with MPD, can take many hours. Efforts should be made to expedite the process.
- MPD too often does not follow-up with victims to document evolving injuries, such as bruises.

This is not to say that we did not find instances of MPD detectives demonstrating recognition of the unique needs of sexual assault victims. We reviewed interviews of sexual assault victims that were appropriately sensitive to the difficulty of reporting these crimes. We also learned of officers taking seemingly small steps that are important to building rapport with sexual assault victims, such as telling a woman to bring clothes when she goes to the hospital for the sexual assault forensic exam, so that she would have her own clothes, rather than hospital garb, to wear home. Alongside these instances, however, we found a pattern of interview and investigative practices that frequently discourage victim participation in sexual assault investigations.

3. MPD Does Not Effectively Coordinate with Community Partners

Communication between police, prosecutors, and others is critical to ensure effective investigations and prosecutions. MPD engages in insufficient communication and cooperation with its law enforcement and community partners regarding their response to reports of sexual assault. This lack of collaboration weakens the efficacy of MPD's response to reports of sexual assault by inhibiting coordination and information-sharing needed to fairly and objectively discern the truth in a sexual assault investigation and compounds the other deficiencies we found in the investigative process.

We found insufficient communication and cooperation between MPD and the Missoula County Attorney's Office, both before and after MPD referred cases to MCAO for prosecution. Although MCAO ultimately determines whether a sexual assault case is prosecuted, MPD has an obligation to take affirmative steps to ensure that communication and coordination between MPD detectives and MCAO prosecutors facilitates effective law enforcement. Particularly in light of the low rate at which sexual assault has been prosecuted in Missoula over the past several years, MPD should be in constant contact with MCAO regarding the status of cases referred for prosecution, the reasons why sexual assault cases are declined for prosecution, and information about what might make MPD sexual assault investigations stronger in the future. We found MPD's efforts deficient in this area.

Although MPD has experimented with different means of improving its communication with MCAO, it must take more aggressive steps to ensure that it obtains necessary information about its sexual assault investigations from MCAO. For example, MCAO generally provides *no* information to MPD about *why* it has declined to prosecute a sexual assault case – and in our interviews with MPD officials, they acknowledged that detectives are “frustrated” with MCAO’s “lack of follow-up and prosecution” in cases of sexual assault. MPD has made efforts to obtain this information from MCAO including by providing a written referral form for MCAO to offer MPD specific reasons for its declinations of prosecution. Based on our review, MCAO attorneys rarely documented their decisions in a meaningful way, and the form stopped appearing in the files we reviewed from 2011 and later. Officers we spoke with expressed their frustration about this lack of feedback. Given this internal concern, and the ineffectiveness of this particular system of communication, MPD leadership should redouble its efforts to persuade MCAO to more effectively communicate with MPD.

Relatedly, based on our review of MPD cases referred to MCAO, it appears that MPD has not reached an internal consensus about what type of guidance or response it expects from MCAO. For example, MPD detectives often referred sexual assault cases to MCAO after having conducted only a very preliminary investigation, and where the investigation did not seem to support a recommendation to file charges of sexual assault. In these cases, although the case was forwarded to MCAO as a “referral for prosecution,” it appeared that MPD had referred the case so that the prosecutor would review the file and confirm the detectives’ decision not to further investigate the case. MPD should determine whether it is relying on MCAO to serve as an additional level of review for its investigations – and identify the cases where it is seeking such review accordingly – or refer cases to MCAO only after it has determined, after a thorough investigation, to recommend prosecution.

MPD also must improve its coordination and communication with UM and OPS to ensure appropriate responses to reports of sexual assault. During our investigation of both MPD and OPS, we found substantial confusion and inconsistency in officers' understanding of the roles and responsibilities of the two agencies in responding to reports of sexual assault on campus, and about what type of information can and should be shared between the two offices. Similarly, we found that MPD routinely fails to note whether individuals involved in sexual assault are UM students, and that MPD failed to timely share information about sexual assault involving UM students with either university officials or with OPS. In one case, MPD alerted the UM football coach of a report of sexual assault by student athletes, but did not advise high-ranking university officials or OPS. Because MPD and UM do not have a system in place for sharing information about reported sexual assaults, and because the football coach failed to take further action, neither UM officials nor OPS learned about the assault until nearly a year after it had taken place. This lack of communication between MPD, UM, and OPS significantly hinders the Missoula law enforcement community's ability to protect women from on-campus sexual assault.

We also found that MPD too frequently fails to brief forensic examiners and medical staff about reported sexual assaults prior to the forensic and medical examinations, or to follow up with them afterwards to discuss their findings. MPD detectives also too frequently fail to summarize the findings of the medical and forensic examiners in the police reports, an important step in ensuring that the findings are incorporated into a detective's investigation and a prosecutor's decision making. This lack of communication increases the possibility that MPD – and, potentially, MCAO – will overlook or misinterpret what might be probative evidence of sexual assault.

Finally, MPD does not sufficiently engage and coordinate with community advocates to support and assist its interactions with women reporting assaults and, more generally, to help it develop the strongest possible sexual assault cases. We note that MPD, in conjunction with the University and a number of community advocacy organizations, has taken steps over the past year to increase public awareness about local services available to victims of sexual assault and to encourage women to report sexual assault by calling 911. We also commend MPD for its involvement with the First Step Resource Center Multidisciplinary Team (the "MDT"), a group of local law enforcement and prosecution officials, medical and mental health professionals, social service providers, and advocates that serves as the community's sexual assault response team, and note that the MDT already has had a positive impact on MPD's sexual investigations over the past several years. MPD should build on the work it has already begun with community advocates. Improved coordination with the MDT and community stakeholders would improve the efficacy of MPD's sexual assault investigations and, by increasing the supports available to victims of sexual assault, encourage victims to cooperate with the criminal justice system.

The deficiencies in MPD's sexual assault investigations and its cooperation with law enforcement and community partners in the response to sexual assault have an unjustified disparate impact on women in violation of the Safe Streets Act. Further, the nature of these investigative deficiencies, e.g., inadequate probing of suspects' accounts of alleged assaults, and a lack of support for women who report sexual assault, is in striking contrast to the quality of its investigations more generally, and indicates that these deficiencies may be motivated at least in

part by gender-based stereotypes in violation of the Fourteenth Amendment. *See Elliot-Park*, 592 F.3d 1006-07 (officer's failure to investigate a crime where there was probable cause or to arrest a perpetrator because of victim's membership in a protected class constitutes an equal protection violation); *see also Bell*, 378 U.S. at 309 (Goldberg, J. concurring) (equal protection violation includes failure to protect); *Estate of Macias*, 219 F.3d at 1028.

B. Deficiencies in MPD's Response to Sexual Assault Reflect Reliance on Gender-Based Stereotypes

MPD's sexual assault practices, taken together with statements made by MPD officers, indicate that MPD's inadequate response to women's reports of sexual assault occurs, at least in part, because of gender-based stereotypes. *See Vill. of Arlington Heights*, 429 U.S. at 265-68 (looking to totality of circumstances to determine whether discrimination was intentional). Thus, we conclude that the discriminatory pattern we found violates the Equal Protection Clause of the Fourteenth Amendment. More importantly, this finding means that to fully address and correct the inadequacies of MPD's response to reports of sexual assault, MPD and the City must address the role that gender stereotypes play in potentially compromising the law enforcement response to sexual assault.

Based on our review of MPD case files and interviews, we found that MPD's interactions with women reporting sexual assault all too often reflect reliance on gender-based stereotypes and similar discrimination, and that this discrimination is responsible in part for the deficiencies in MPD's response to sexual assault. Statements by MPD officers, detectives, and leadership to women reporting sexual assault frequently reflect assumptions that women reporting non-stranger sexual assault are lying, and that such assaults are less severe and traumatic to victims than other serious crimes. These assumptions appear to be based at least in part on stereotypes of female victims of sexual assault and interfere with the ability of investigators to find the truth. Women reporting sexual assault are unlikely to trust or cooperate with law enforcement, or to report future crimes, if they encounter skepticism or overtly discriminatory statements from MPD officers, detectives, or leadership.

Women we interviewed reported numerous statements reflecting stereotypes and other discrimination, and our review of records allowed us to confirm many of these. In one case, an MPD detective told a woman that the gang rape she was reporting "was probably just a drunken night and a mistake," and repeatedly asked whether she had said "no" to her assailants. The detective also asked the woman to describe in detail, and then to reenact, how she had said "no," and "I don't want to," to her assailant, and then told her that it "was kind of quiet" and "c[a]me across as kinda [sic] passive." In our interview of the same woman, she described the MPD detective as "intimidating" and "rude," and told us that the detective's demeanor and statements had left her feeling not only that he did not believe her, but that the assault had been her fault.

Another woman, who reported a brutal rape by an acquaintance after he took her back to his fraternity house, reported that the MPD detective who conducted her initial interview told her after the interview "wow, that was the most detailed statement I've ever heard" in a sarcastic tone that suggested he didn't believe her account. She described follow up conversations with the same detective as having "her spirits . . . crushed daily." These women and others reported that their treatment by MPD detectives discouraged them from following through on their reports

of assault. Our review of the recordings of some of these interviews and consultation with our experts confirmed that the detectives' questions were clearly inappropriate, at odds with sound sexual assault interview practices, and apparently motivated at least in part by assumptions and stereotypes based on gender.

We also found that MPD detectives' questioning of victims reflected gender-based assumptions and stereotypes, and a corresponding lack of full understanding of the dynamics of non-stranger sexual assault. For example, in one case in which the woman reported vaginal and anal rape and the suspect described consensual sex, the MPD detective asked the woman why she had not fought or cried out, and asked her, "tell me the truth – is this something we want to go through with?" In another case, MPD detectives continued to aggressively question the woman about how she had communicated her lack of consent after she had clearly described non-consensual sex in her interview. For example, one detective reminded the woman that her friend had told her "you should have been more forceful with him," and then asked the woman, "Did you ever tell him no, use the word no? . . . Okay, how many times did you say stop?" He then asked her to "just repeat how you said it to him . . . in the volume and style you told him stop."

Further, our review of MPD case files indicated that MPD detectives improperly rely on women's sexual histories in evaluating the veracity of the sexual assault report. That reliance in turn reflects assumptions and stereotypes about women, such as assumptions that women who are sexually active are less likely to be legitimate victims of sexual assault. For example, one case narrative noted that the woman "has made out with other males while she has had a boyfriend" and that it is "common knowledge" that the woman and her female friend "make out" – suggesting that officers were asking questions about the woman's sexual history, rather than questions relevant to the reported assault. Similarly, in another case involving a woman who reported being assaulted after getting intoxicated at a UM party, MPD officers noted that she had herpes and "has had two sexual partners since breaking up with her boyfriend." These types of comments are reflective of harmful gender stereotypes implying that sexual consent on a single occasion implies future consent in all other situations. They minimize the seriousness and legitimacy of the victim's complaint, improperly turn the focus of the investigation to the victim – not the suspect – and may reduce the victim's willingness to participate in the investigation. According to our prosecutorial expert, once these attitudes are injected into an investigation, they are almost impossible to undo.

As discussed above, MPD detectives investigating sexual assault, particularly cases involving non-stranger sexual assault, relied on practices that often substantially compromised the investigation, including by demonstrating disproportionate concern for the male suspects. This apparent empathy for the suspects was often communicated to the women reporting the sexual assault. For example, a woman who reported a 2011 rape at UM said that an MPD detective had pointed out that her assailant "seemed remorseful." A second woman had a similar recollection; she said that the MPD detective had told her that the assailant had "cried and said he was sorry" during a police interview. Communicating this empathy about the suspect to the woman reporting the sexual assault conveys that investigators do not appreciate that non-stranger sexual assault, like assault by strangers, can be traumatic and devastating. Communicating

empathy for the suspect also actively, and perhaps intentionally, discourages women from continuing to seek criminal justice.

Other statements by MPD detectives indicate that detectives overemphasize the emotional toll of prosecution and minimize the seriousness of rape in their communications with women reporting sexual assault. For example, one woman reported that an MPD detective was “constantly” telling her how difficult it would be for her to testify in court and to have a defense lawyer questioning her about the assault. The woman ultimately decided not to pursue a criminal case, even though her family was supportive of her doing so.

Public meetings with the community have reflected a lack of trust in police response to sexual assault. As has been widely reported and is often cited by women in the community, Chief Muir met with victims and during at least one meeting discussed the rate of false reports and shared an article on the subject. Chief Muir told us that his statements were misunderstood and he had intended to help explain the reaction of others in the criminal justice system, not his own views. Nevertheless, great care needs to be taken to repair the relationship between the police and the community.

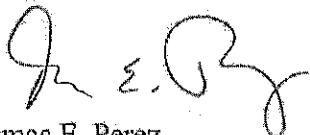
Statements by law enforcement officers can indicate sex-based stereotypes and assumptions against women sufficient to demonstrate discriminatory intent under the Fourteenth Amendment. *See Balistreri*, 901 F.2d at 701 (officer’s statement to woman severely beaten by her husband that he “did not blame plaintiff’s husband for hitting her, because of the way she was ‘carrying on’” – “strongly suggest[s] an intention to treat domestic abuse cases less seriously than other assaults, as well as an animus” against abused women). MPD’s discriminatory comments and statements in case files both reflect and perpetuate explicitly gender-based stereotypes that lead to the under-enforcement of sexual assault against women and discourage women from cooperating with law enforcement. These statements thus add to the totality of circumstances that indicate that MPD’s failure to adequately respond to reports of sexual assault is due at least in part to gender discrimination, in violation of the Fourteenth Amendment and the Safe Streets Act. *See Vill. of Arlington Heights*, 429 U.S. at 265; *Balistreri*, 901 F.2d at 701.

CONCLUSION

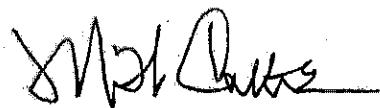
As is generally the case, in Missoula, constitutional policing and effective law enforcement go hand-in-hand: the same practices that prevent law enforcement from determining whether a sexual assault allegation is true often reflect or perpetuate gender discrimination. Discrimination in law enforcement’s response to reports of sexual assault erodes public confidence in the criminal justice system, places women in Missoula at increased risk of harm, and reinforces ingrained stereotypes about women. We look forward to working cooperatively with the City and MPD to develop durable and comprehensive remedies to address these problems, as set forth in the settlement agreement announced today between the City and the Civil Rights Division.

Given MPD's cooperation and proactive efforts to improve the response to sexual assault throughout our investigation, we are confident it will quickly and effectively implement the measures described in the settlement agreement, and that these developments will both improve public safety and increase the community's confidence in MPD. Please note that this letter is a public document and will be posted on the Civil Rights Division's website. If you have any questions, please contact Jonathan Smith, Chief of the Special Litigation Section, at (202) 514-6255.

Sincerely,



Thomas E. Perez
Assistant Attorney General
Civil Rights Division



Michael W. Cotter
United States Attorney
District of Montana

cc: Mr. Mark Muir
Chief of Police
Missoula Police Department

Attachment