Investigating Sex Crimes in Non-Stranger Cases

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"Where a vigorous woman alleges ravishment it is to be expected that signs of violence such as wounds, bruises and scratches will be present and their absence should induce a moderate degree of skepticism unless the girl avers that she fainted from fear, became panic stricken or was otherwise rendered incapable of physical resistance. The acts and demeanor of the female immediately after the alleged commission should be subjected to very critical investigation in these cases."
Fundamentals of Criminal Investigation, O'Hara 1970

"Generally, the actions and the appearance of a legitimate rape victim leave little doubt that a crime has been committed. Under such circumstances, the victim is highly agitated, emotionally distraught, often in a state of hysteria and may have sustained injuries, cuts, bruises or wounds. The victim's clothing is often ripped or torn off as evidence that it was forcibly removed and if the rape occurred outdoors, the victim is generally thrown to the ground and her outer garments stained or soiled."

International Association of Chiefs of Police, 1995

Small Group Exercise

- What do you believe are the unique challenges that officers face when they investigate non-stranger rape cases?
- What problems do officers have with sexual assault crimes that they do not have with other kinds of cases?

Realities of Sexual Assault

- Most sexual assault victims are female (85%)
- Most sexual assault perpetrators are male
- Most victims are sexually assaulted by someone they know.
  - 17% by a stranger
  - 62% by an intimate partner
  - 21% by an acquaintance
- Most sexual assaults do not result in visible physical injury
  - 1 in 3 female victims report visible physical injuries
  - 1 in 6 male victims report visible physical injuries

Realities of Sexual Assault

- Most rape victims do not report to police
  - 16% reported to police (of these, only 25% reported within the first 24 hours.
  - Asked why they didn't report, victims stated:
    - 43% felt nothing would be done
    - 27% felt it a private matter
    - 12% afraid of police response
    - 125 felt it not important enough to report to police
- Most rapes do not involve a weapon
  - Weapon used in 30% of stranger rapes
  - Weapon used in 15% of rapes committed by someone known to the victim

Realities of Sexual Assault

- Most rapes involve alcohol and/or drug use
  - 75% of men and 50% of women involved in a sexual assault had been drinking.
  - Alcohol carries a double standard in sexual assault:
    - For men, it is used as an excuse for their behavior
    - For women, it is held against her as a reason for the assault.

Victim Perspective

Officer/Victim Video

Victims of Sexual Assault

The officer can expect to witness a range of emotions in the victim when responding to a call:

- Victims may feel guilt and self-blame:
  - For having caused the assault- “if only I hadn’t done/ said that...”
  - For not having fought back; for fighting back
  - For being “stupid” enough to get into that situation
  - For having care for him; still caring about him

Victims of Sexual Assault

- Victims may feel shame and embarrassment
  - Feeling dirty, “damaged goods”
  - Feeling that everyone looks at her, knows what happened and judges her, especially if she lives in a small community
- Victims may feel powerless, out of control, helpless
  - Privacy and right to choose have been denied
  - Feeling unable to: change the situation; stop crying; stop reliving the assault
  - Inability to fight back or scream
  - Sense of isolation
  - Investigation is out of her hands

Victims of Sexual Assault

- Victims may fear:
  - Being alone
  - Offender returning or making good on threats
  - Things and places which remind her of the attack
  - Men, distrust of men
  - Her children being attacked
  - Health concerns: pregnancy, HIV/AIDS, other sexually transmitted diseases

Victims of Sexual Assault

- Victims may feel anger:
  - Wanting to kill, castrate and/or humiliate the offender
  - At oneself for having "let" it happen
  - At oneself for having trusted the offender
  - At the officer "for taking too long", for asking private questions, etc.
- Victims may feel betrayed:
  - For loving; trusting
  - For being friendly
- Denial/ wanting to forget
  - To deny it happened
  - To not make a fuss over it
  - To "get over it"/ to get on with one's life

Sears & Spohn Study

- Prosecutor 5 times more likely to file charges if there were no questions about victims moral character.
- Prosecutor 2 1/2 times more likely to file if the victim did not engage in any risky behavior at the time of the assault.
- Prosecutor 4 times as likely to file if the victim reported to police within one hour.

In other words, judgment of the rape case stills rests on the victim and not the offender.

Credibility Challenge #1: Lack of Physical Evidence

- Victims may not resist because they are too surprised, confused, or scared.
- Others do not resist because the man's size and strength are sufficient enough to induce compliance.
- Victims may not resist because they are experiencing dissociation, fright or under the influence of alcohol and/or drugs.

Overcoming this Challenge

- To overcome this challenge, the interviewer MUST carefully elicit from the victim exactly how she responded to the situation and what she was thinking and feeling while she did so.
- Officers must ask open ended questions so victim can describe the experience in her own words.

"Our Stuff"

- What are things we do or say that can impact the information victims give us?

Interview Video

Interviewer should never ask/or Preface Before Asking:

- Did you fight the suspect?
- Why didn't you try to run or escape?
- Did you scream for help?

Questions like these w/out a preface imply that there is a correct response to rape (because we all know that victims of "real rape" try to run, scream, fight).

Interviewers should provide open-ended prompts:

- What did you do next?
- Tell me what you were thinking at that point?
- Tell me what you were feeling when he did that?

Credibility Challenge #2: Delayed Reporting

Another common challenge to the credibility is delayed reporting because victims typically do not report the crime, or if they do, there is a time delay.

Why Victims Do Not Report

- Victims may fail to label coercive sex as sexual assault.
- Failure to identify acquaintance rape as rape.
- Fear that no one will believe her.
- Fear of being blamed for the assault.
- Concern that she will not be treated fairly.
- Unable to tell whole story to police.
- Fear she will be blamed due to use of alcohol or drugs.

Why Victims Do Not Report

- Fear of family knowing.
- Fear of name being made public by the news media.
- Fear that details of her life will be known.
- Lack of support.
- Only came forward because of pressure from others, not free will.
- Fear of how her case may be handled by the court system.

Why Victims Do Not Report

- Lack of knowledge or understanding about the legal system.
- Frustration with length of time court case can take (backlog, continuances).
- Fear of police
- Past history with police
- Concerns about communication: fear of not being understood
- Cultural mistrust of police

Why Victims Do Not Report

- Wanting to put it all behind her. Feeling that the situation will go away if she ends the process.
- Threat by offender, offender's family or friends of the offender.
- Emotional attachment to offender. Fear of what will happen to offender/not wanting to get him in trouble.
- In incest cases, victim may be concerned about the family being broken up.

Overcoming This Challenge

- The underlying belief that since the victim did not report immediately, then she is fabricating or exaggerating the event.
- Document the reasons why the victim delayed the report- fear, confusion, failure to label the trauma as rape and this should also make sense to prosecutors and jurors.

Credibility Challenge #3: Inconsistent or Untrue Statements

There are a number of reasons why a victim sometimes makes inconsistent or untrue statements to police:

- Trauma and disorganization
- Discomfort with sexual details
- Fear of doubt or blame
- Method of documentation (a written report is only as good as the interviewer's ability to understand, interpret and record the victim's actual statement.

Overcoming this Challenge

- It's important for officers to realize that these inconsistencies or untruths are understandable and should not be confused with a "false" allegation.
- When an inconsistency does arise, point it out to the victim and ask her to clarify. It's likely the victim simply made a mistake or the officer misheard or misunderstood what the victim was saying.
- Explain to the victim the impact of inconsistencies.

Reduce the Number of Interviews

A typical victim speaks to:

- Friend or family member
- Dispatcher
- Patrol officer
- Nurse or clerk on duty
- Physician or nurse
- rape crisis advocate
- Detective
- Prosecutor
- Victim witness
- Judge
- Jury

Barriers to Successful Interview

- Police are typically action oriented people and this interview requires great patience for a long, detailed and emotional interview.
- Officers may take on a tough exterior because they are nervous or uncomfortable responding to sexual assault cases.
- Police often learn interviewing on the job as patrol officers, in chaotic, confusing environments that are loud and tension filled. So officers learn to ask questions in a rapid fire format.

Starting the Interview

- Acknowledge the victims ordeal
- Allow victim to vent emotions
- Communicate empathy by listening

Never Tell a Victim

- “I know how you feel”
- Everything is going to be all right.
- Don’t cry.
- You shouldn’t feel that way.
- You must get on with your life.
- Time heals all wounds.
- It could have been worse.
- At least you’re not injured.

Start with "You" Statements:

- How are you feeling?
- I'm sorry this happened to you.
- May I call you by your first name, or do you prefer that I use your last name?
- Do you have any questions?

"YOU" questions focus on the victim and her well being and may help her relax and aid the investigator in building rapport.

Keep the Victim Informed with "WE" statements:

- We are going to talk about the incident.
- We need to review this information together.

Using "We" statements provides the victim with a sense that this is a team effort, that her input matters and gives her a sense of control.

Investigator Should Use "I" Statements to Keep Victim Informed:

- I am going to write this report and then I would like for you to review it for accuracy.
- I am going to talk with your friend who saw the two of you leave the bar together.
- I have talked to many victims who have the same concerns as you do.

This allows the investigator to focus on his experience and allows the victim to know that her complaint is being taken seriously.

Avoid Leading Questions:

- Did he use physical force to restrain you?
- Was he bigger than you?
- Did you resist?

Use open-ended questions:

- What did he do?
- How tall was he? How much did he weigh?
- What did you do or say?

Explain Repeated Questions

Victims may speak with a responding officer, then a nurse at the hospital then a detective and each of the investigators may ask similar questions. It is important for the victim to know why they have been asked the same question multiple times. Otherwise, the victim may feel she is not being believed.

Use Effective Body Language

- Sit down with the victim
- If possible, allow victim to sit in a position that is higher than the officers.
- Express attention and interest by nodding, etc.

Avoid Touching the Victim

- Victims have lost all control over themselves and have been violated. Touching them may amplify the feeling of being out of control or violated.

Monitor Victim's Body Language

- When victim communicates that she is uncomfortable or upset, may be time for a break.
- Investigator may skip certain questions as they become difficult for victim and come back to them later.

Using Sexual Language

- Avoid police terminology such as "digital penetration" or "oral copulation."
- Start with medical terminology- penis, vagina, anus.
- If victim uses other words/ phrases, then officer, with permission, may use same terminology- ex. victim uses "pussy" instead of vagina.
- Use exact language of victim in your report. Do not sanitize her statement or replace it with police terminology.

Using Sexual Language

- When a victim uses a particular term or phrase, officers should clarify what she means by it and document it in the report.
- Make sure not to appear embarrassed or shocked by the language a victim uses to describe a particular act.
- If victim appears uncomfortable with sexual language and details, it is sometimes helpful for officers to reassure victim they have heard these things before.
- Make sure you are comfortable using graphic sexual language. Any visible discomfort will make the victim feel less comfortable and willing to cooperate.

Engage in Active Listening

- Officers should engage in active listening at all times, and particularly at the beginning of the interview process when victims should be able to tell their account in their own words and at their own pace.
- Allowing the victim to take the lead in telling their story and not interrupting them increases the amount of information the officer receives.
- If victim pauses, officers should remain silent or provide encouraging prompt for her to continue. Silence often allows the victim a moment to collect her thoughts.

Use Reflective Comments

Officers should use reflective comments to encourage continued disclosures by the victim. Reflect back to the victim some of what she said.

Example of Reflective Comments:

- **Victim**: "So I had met him at a few parties, but I didn't really know his name."
- **Officer**: "He was someone you knew casually?"
- **Victim**: "Yeah, he must have been friends with some of my friends because we would see each other at all of the same parties even though we never really met, you know, officially."

Reflection encourages victim to elaborate.

Clarify and Summarize:

- Officers should clarify and summarize what they have heard from the victim after she has finished telling a segment of her story.
- Do not interrupt the victim.
- After summarizing, officer should ask a question to invite clarification or elaboration.

Follow-Up Questions

- Continue using open-ended prompts and avoid interrupting.
- Avoid inappropriate sequencing- ex. ask all questions about the suspect at the same time, rather than interspersed throughout the interview.

Information to Obtain During the Interview

Describe Victim's Behavior & Relationship to Suspect

- The victim's activity prior to the assault
- Any past relationship or contact with the suspect
- How the victim and suspect initially came into contact
- When the victim last had consensual sexual intercourse, and with whom (questions must be prefaced with why this information is important)
- Who the victim first told about the assault
- Any witnesses with information about the assault, the suspect

Describe Suspect's Behavior

- How the suspect entered and exited the crime scene
- Whether the suspect brought anything or left anything at the scene
- Whether the suspect touched or moved anything
- Whether the suspect took any pictures or videos
- Whether the suspect showed any videos or magazines to the victim
- If the suspect used any objects during the assault

Describe Suspect's Behavior

- If the suspect moved or transported the victim
- Whether the suspect made any threats to the victim, and specific language used
- Whether the suspect committed any other crimes in connection with the sexual assault (e.g., whether the suspect took or damaged anything belonging to the victim)

Document Specific Acts Committed

- Penile-vaginal intercourse (degree of contact or penetration)
- Sodomy (anal intercourse)
- Oral copulation (cunnilingus or fellatio)
- Digital penetration of the genitals
- Other foreign penetration of the genitals
- Sexual contact other than penetration

Describe Suspect's Sexual Behavior

- Whether a condom was used
- Type of condom used or description of packaging
- Whether the condom was provided by the victim or suspect
- The location of the used condom
- Whether a lubricant was used
- Whether the suspect ejaculated, and if so, where (explain that this is not an element of the offense but indicative of where evidence might be located)
- Whether the suspect wiped his genitals with a tissue, sheet or item of clothing

Establish Force or Threat of Force

- Whether any physical force was used
- Whether any real or simulated weapons were used
- Whether the suspect used his body to restrain or intimidate the victim
- What the physical positioning of the suspect was in relation to the victim
- Whether any threats were made
- Information regarding the size and strength of the suspect
- Circumstances that made the victim feel threatened, including isolation
- Whether the victim was incapacitated or otherwise vulnerable

Description of Suspect

- Clothing
- Jewelry
- Earrings or other piercings
- Glasses (type)
- Tattoos
- Accents
- Body and facial hair
- Body odor
- Circumcision
- Scars
- Masks
- Gloves
- Items or weapons carried

Establish M.O. or Signature

- Whether the suspect had an erection or had difficulty maintaining an erection
- Any statements or words used by the suspect
- Any specific threats made by the suspect
- Any weapons or other items used by the suspect
- Any contact with the suspect before or after the assault

Concluding the Interview

- Ask victim if she has any additional information or questions
- Tell the victim, again, that the assault was not her fault.
- Explain future proceedings
- Address safety concerns
- Acknowledge that disclosure is a process and to call if she remembers anything else.
- Obtain contact information
- Assist with notification if possible
- Provide written information and referrals

Preliminary Investigations

Communications Personnel

- Should be trained to ask victim if she has bathed, douched, urinated or otherwise altered her physical self or the crime scene.
- Call taker should advise victim not to engage in any of these activities and be able to explain why.
- If victim has engaged in any of these activities, it is important that call taker does not stigmatize victim for having done so.
- Save a copy of 911 tape.

Attend to Victim Safety

- Obtain medical assistance for victim
- Offer to contact local rape and victim assistance center
- Offer to call a family member
- Explain officer's responsibilities:
  - taking victim's statement
  - collecting/retaining evidence
  - identifying and arresting suspect
  - following up with victim as investigation progresses

Attend to Victim Safety

- If victim able, ask her to tell you exactly what happened in their words.
- Let victim know it may be necessary to talk with more than one investigator.
- Assure victim you will make every effort to keep her identity confidential.

Protocol if Assault Just Occurred or Occurred Very Recently

- Keep the 911 tape if one exists
- Ensure victim safety and arrange for emergency medical assistance if needed
- Even if emergency medical assistance is not needed, encourage victim to get medical attention, including testing for pregnancy and sexually transmitted diseases.
- Explain to victim the importance of forensic evidence collection and the need to collect it as soon as possible after the assault and provide general information about the process.

Protocol if Assault Just Occurred or Occurred Very Recently

- Explain to the victim that the decision to prosecute can be made at a later date, but that forensic evidence must be collected as soon as possible.
- Explain to the victim the officer's responsibilities at the scene and what the victim should expect to occur during the coming hours (hospital exam, initial interview, identification of the offender if apprehended, evidence collection)
- Gather initial information about the crime, such as description of suspect and vehicle, direction of flight, basic details of assault and scope of the crime scene or multiple crime scenes.

Protocol if Assault Just Occurred or Occurred Very Recently

- Document all facts an observations, including the physical and emotional condition of the victim.
- Be specific, e.g., indicate that victim was tearful and trembling, rather than just "upset" or that victim's shirt was torn and shoe was missing rather than "disheveled."

If the Report is Delayed (Occurred More Than 72 Hours Earlier)

- Be aware that delayed reporting is common and should not deter the investigation.
- Keep in mind that something has caused the victim to be reluctant to report sooner. Be patient regarding any hesitancy of the victim. Be sensitive to the fact that while it is important to document the reason for the delay, questions about the delay may cause the victim to feel blamed in some way.
- Assure the victim that even though the report is delayed, a thorough investigation will be conducted.

If the Report is Delayed (Occurred More Than 72 Hours Earlier)

- Encourage victim to get medical attention if she has not already done so.
- Explain that although generally forensic evidence from the victim's body should be collected within 72 hours of the assault, it is important for her to get other medical attention including a pregnancy test and testing for sexually transmitted diseases.
- Any other injuries sustained in the assault will be treated and documented by medical personnel.