SEXUAL ASSAULT FIRST RESPONDER TRAINING & TRAUMA-INFORMED TITLE IX INVESTIGATORS TRAINING PROGRAM

January 8-9, 2017

PARTICIPANT GUIDEBOOK

The University of Arizona

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# TABLE OF CONTENTS

## PART I: TRAINING MATERIALS

<table>
<thead>
<tr>
<th>Agenda</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training PowerPoint Slides and Notes</td>
<td>5</td>
</tr>
<tr>
<td>Sexual Assault First Responder Training</td>
<td>5</td>
</tr>
<tr>
<td>Title IX/Sexual Assault: Enhancing Campus Response &amp; Investigations</td>
<td>25</td>
</tr>
</tbody>
</table>

## PART II: REFERENCES

| False Reports - Moving Beyond the Issue, J. Archambault, K. Lonsway, D. Lisak | 100 |
| Forensic Experiential Trauma Interview (FETI) Public Description, R. Strand | 112 |
| Forensic Experiential Trauma Interview (FETI) Interview White Paper, R. Malone, R. Strand | 122 |
| Serial Sexual Perpetration Profile Questions | 135 |
| Suggested Guidelines on Language Use for Sexual Assault | 136 |
| The Justice Gap for Sexual Assault Cases, K. Lonsway, J. Archambault | 141 |
| You Have Options Program - 20 Elements Infographic | 165 |
| You Have Options Program - Records Checklist | 167 |
| Margolis Healy Promising Practice Standard for Title IX Training | 169 |
| Officer Safety Corner: The Role of Mindfulness Training in Policing a Democratic Society | 171 |
| Margolis Healy White Paper: Concurrent Criminal and Title IX Investigations | 178 |
| Additional References | 179 |

## PART III: ADDITIONAL RESOURCES

| Margolis Healy Instructor Biographies | 182 |
| Margolis Healy Background and Information | 184 |
PART I: TRAINING MATERIALS

AGENDA AND CURRICULUM OVERVIEW

Day 1: Monday, January 8, 2018

9:00 a.m. - 12:00 p.m.: Sexual Assault First Responder Training
1:00 p.m. - 4:30 p.m.: Trauma-Informed Title IX Investigator Training, Part 1

Day 2: Tuesday, January 9, 2018

8:30 a.m. - 4:30 p.m.: Trauma-Informed Title IX Investigator Training, Part 2

SEXUAL ASSAULT FIRST RESPONDER TRAINING

This 3-hour training will provide responsible employees (REs), identified as likely to receive reports of VAWA offenses, with familiarity about Title IX and the Clery Act compliance, their special responsibilities under these laws and institution policy, the importance of avoiding re-traumatization working with reluctant victims, and practicing the basic interview skills to undertake this critical first conversation.

Participants will be able to:

- Describe the compliance challenges imposed by Title IX and the Clery Act on REs.
- Demonstrate familiarity with trauma in the VAWA offense setting on a campus.
- Distinguish between resources providing privileged support, confidential support, and reporting.
- Understand their duties under institutional policy and federal laws.
- Satisfy these duties minimizing traumatic impact on the complainant.

TRAUMA-INFORMED TITLE IX INVESTIGATORS TRAINING PROGRAM

We will conduct a 1.5-day, cross-functional trauma informed sexual and gender violence investigators training program for those with Title IX responsibilities (such as investigators and hearing officials), and relevant leadership and administrative staff. Our training is also completely applicable to law enforcement investigators, and is beneficial to train both their civil rights and police investigators in this program.

Our nationally recognized instructors will address the following topics:

- Common Challenges
Participants will gain an understanding of the practical techniques to effectively implement a trauma-informed, prompt, fair and equitable investigation and adjudication process at their institution. Our curriculum will focus on a multidisciplinary approach across the University using case studies and real-world examples.
Getting Started

- Intros – Margolis Healy, Liz, Mike
- Restrooms, cell phones, etc.
- Participation and feedback are critical.
- Questions are encouraged.
- Our language is important.

Who are you?
What is your biggest challenge?
Learning Objectives

• Describe the compliance challenges imposed by Title IX (TIX) and the Clery Act on Responsible Employees (RE)
• Demonstrate familiarity with trauma in the VAWA offense setting on campus
• Distinguish between resources providing privileged support, confidential support, and reporting
• Understand RE duties under University of Arizona policy and federal laws
• Satisfy these duties while minimizing traumatic impact on the complainant.

Agenda

• Law & policy
  • Title IX and the Clery Act
  • Compliance challenges
• Trauma and interpersonal violence (IPV)
  • Understanding & minimizing impact
  • Accepting a report of IPV
  • Resources and degrees of privacy

Title IX & the Clery Act
Compliance Challenges
Sexual Violence Laws

Clery Act

VAWA

Title IX

Clery & TIX Enforcement

Clery
- Sexual assault
- Dating violence
- Domestic violence
- Stalking
- Other Clery crimes
- Scope
  - On Clery geography (for counting)
  - Across campus (for policies and procedures)

Title IX
- Sex discrimination
- Sexual and gender-based harassment
- Sexual violence
- Scope
  - On campus
  - In the context of any school program or activity
  - Continuing effects on campus caused by off-campus conduct
Who’s Who

- TIXC is...
- Deputies are...
- CSAs are...
- Responsible employees (REs) are...
- Duty to report
  - To... and When...
  - That... and Happened where...
  - With out PII?

Summary of Inst’l. Obligations

- Designate your “responsible employees”.
- Train them to report harassment to appropriate institutional officials.
- Train employees with authority to address harassment, or who are likely to witness it or receive reports, how to respond properly.

  - OCR examples: “teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.”
  - From 4/11/11 DCL but still common sense.

Complainant’s View

Complainant

- Communications
  - Friends
  - Support
  - Family
  - Shunning
- Stigma

- Practical Life
  - Changes
  - Counseling
  - Safety
  - Concerns
  - Change
  - School
  - No Contact
  - Order
  - Change in Class
  - Schedule
  - Change in Living

- No Report
- Effect of Delay
- Change
- Mind
- Report
- Hospital
- Family
- Law Enforcement
- Friend
- RA
- University
- Evidence
- Collection
- Crisis Counseling
- Medical/STD/Prophylactic treatment
- Investigative Processes
- Student Conduct
- Law Enforcement
- Interview
- Evidence preservation
- RA

- Emotional Response
  - Fear
  - Anger
  - Embarrassment
  - Uncertainty of Incident
  - Paralysis
  - Shock
  - Denial
  - PTSD
  - Depression
  - Equivocation

- Title IX Inquiry
  - With      Without
  - Action      Action
- INCIDENT
- Police
- Judicial
- University
- Community
- Outreach

- Retaliation
- Support
- Media
The Institutions View

Title IX

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Title IX Regulations - 34 C.F.R. Part 106

- § 106.4: Assurance of compliance required of recipients of federal financial assistance
- § 106.8: Designation of responsible employee and adoption of grievance procedure
- § 106.9: Notification of Title IX nondiscrimination obligations in education programs and employment
- § 106.31: “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity . . .

• Adverse treatment...
• because of US or AZ protected class, or per UA policy (race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity, or genetic information).
• Failure to reasonably accommodate required by law or UA policy based on disability or religious practice may be discrimination.

http://www.titleix.arizona.edu/definitions

• Sexual harassment:
  - is unwelcome conduct of a sexual nature and includes; unwelcome sexual advances; requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature; student-to-student harassment
  - conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment
• Schools must investigate all reports of unwelcome conduct of a sexual nature to determine if conduct is sufficiently severe or pervasive to create hostile environment.

https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf

• Different treatment based upon protected class
  • Harassment
    • Unwelcome & sever/pervasive ->
    • Intimidating/hostile/offensive environs->
    • Academic/employment/univ. sponsored act.
    • May be quid pro quo in participation or decisions
  • Multiform
Retaliation at UA

- Adverse action for engaging in protected activity. Protected activity consists of:
  - opposing conduct reasonably believed to constitute discrimination, including harassment, which violates a nondiscrimination statute or which University policy prohibits;
  - filing a complaint about such practice; or
  - testifying, assisting, or participating in any manner in an investigation or other proceeding related to a discrimination complaint.
- Adverse actions that are reasonably likely to deter a complaining individual or others from engaging in protected activity are prohibited.

How about a cup of tea

- [https://www.youtube.com/watch?v=oQbei5JGiT8&t=6s](https://www.youtube.com/watch?v=oQbei5JGiT8&t=6s)

Consent (sex. activity) at UA

- Informed & freely given words or actions that indicate a willingness to participate in mutually agreed upon sexual activity.
- Not inferred from:
  1. silence, passivity or lack of resistance,
  2. a current or previous dating or sexual relationship,
  3. acceptance or provision of gifts, meals, drinks, or other items or or
  4. previous consent to sexual activity.
Consent (sex. activity) at UA

- It may be withdrawn during sexual activity, consent to one form does not imply consent to any other form of sexual activity.
- Consent may not be obtained through physical force, violence, duress, intimidation, coercion, or an express or implied threat of injury.
- Consent may never be given by a person who is: incapacitated, ...
- The use of [AOD] does not diminish one’s responsibility to obtain consent [nor] excuse conduct.

Sexual Violence Definition

- Sexual violence is a form of sexual harassment covered by Title IX.
  - Sexual violence refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol
  - An individual also may be unable to give consent due to an intellectual or other disability
  - A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion.
  
  ![Sexual Violence Definition](https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue01.html)

Scope of Coverage

- Title IX protects students from sexual harassment in an institution’s education programs and activities, including:
  - All academic, educational, extracurricular, athletic, and other programs of the institution
  - On-campus, off-campus, on a school bus or shuttle, at a class or training program sponsored at another location, etc.
Scope of Coverage

Institutions may have an obligation to respond to student-on-student sexual harassment that initially occurred off campus and outside institution’s education program or activity.

- If student files a complaint re off-campus conduct, institution “must process the complaint in accordance with its established procedures.”
- If there are continuing effects on campus of off-campus sexual harassment that are creating or contributing to a hostile environment (e.g., taunting or harassment by the alleged perpetrator or friends of the alleged perpetrator), the institution must address it.

Title IX protects students from sexual harassment in an institution’s education programs and activities, including:
- All academic, educational, extracurricular, athletic, and other programs of the institution
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Institutions may have an obligation to respond to student-on-student sexual harassment that initially occurred off campus and outside institution’s education program or activity.

- “Whether or not a student files a complaint of alleged sexual misconduct or otherwise asks the school to take action, where the school knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately.”
- Determine if there are continuing effects on campus of off-campus sexual harassment that are creating or contributing to a hostile environment.
Scope of Coverage

- **Title IX protects third parties** from sexual harassment or violence in an institution’s education programs and activities.
  - E.g.: Title IX protects a high school student participating in a college’s recruitment program, a visiting student athlete, and a visitor in a school’s on-campus residence hall.
- **Title IX prohibits discrimination/harassment by faculty, staff, and third parties.**
- **Title IX protects employees from sexual harassment.**

Bottom Line

- **If your institution knows or reasonably should know about sexual harassment that creates a hostile environment, Title IX requires immediate action** to eliminate the harassment, prevent its recurrence, and address it.
  - Regardless of whether a harassed student, his or her parent, or a third party files a complaint.
What You Must Tell Victims

• Procedures victims should follow if a covered offense occurs:
  - Importance of preserving evidence for all VAWA crimes
  - How and to whom the alleged offense should be reported
  - Options about the involvement of law enforcement and campus authorities
  - Victim's rights and institutional responsibilities regarding judicial no-contact, restraining, and protective orders

Disclosures in the ASR

• Disciplinary Action
  - How to file a complaint
  - Description of each disciplinary process
  - Steps, anticipated timelines, decision-making process for each
  - How you determine the type of proceeding used
  - Description of the standard of evidence
  - List of all possible sanctions
  - Range of protective measures

RE Requirements

• Written Notice of Rights and Options:
  - Information about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community
    • This also applies to incident occurring off-campus
  - Information about options for, available assistance in, and how to request changes to:
    • Academic, living, transportation, and working situations
    • How these accommodations will be kept confidential
RE Requirements

• Written Notice
  - That you will provide information on resources, accommodations or protective measures if requested, and they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
  - Explanation of procedures for institutional disciplinary action.

Awareness Requirements

• Prevention & Education
  - Must offer incoming students and new employees “primary prevention and awareness programs” that promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking.
  - Program elements are prescriptive
  - Offer on-going prevention and awareness CAMPAIGNS for students and faculty on all of the above.

New Requirements

Note the Definition of “Programs to prevent dating violence, domestic violence, sexual assault, and stalking”

(i) Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that—

(A) Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and...
• Sworn or commissioned officers, only, can “unfound” an incident by formally determining the report was “false or baseless”
• This requires an INVESTIGATION

Key Steps
• Assess immediate safety and well-being
• Gather basic facts
• Ascertain complainant’s wishes
• Notify of right to contact or decline to contact law enforcement
• Notify of right to seek medical treatment
• Notify of importance of preservation of evidence
• Identify resources
• Explain interim remedial measures

QUESTIONS
Title IX & the Clery Act Compliance Challenges
Trauma and interpersonal violence (IPV)
Understanding & minimizing impact
Accepting a report of IPV
Resources and degrees of privacy

Victim’s Impression

Why you?
Victim’s first impression of your response matters:
• When do you think the victim’s impression begins?

Victim’s Impression

• What message is UA sending about sexual violence awareness, prevention & accountability?
• What about special populations
  - Athletes
  - Greeks
  - LGBTQIA
  - Others
**Trauma**

- What is TRAUMA in the context of campus sexual assault?
  - [https://www.youtube.com/watch?v=gtWD1XJrhNo](https://www.youtube.com/watch?v=gtWD1XJrhNo)
    - 2:40 to 8:43 / 10:46 to 12:06 and 17:32 to end

**Do You Believe Me?**

- [https://margolishealy1.app.box.com/file/50622706145](https://margolishealy1.app.box.com/file/50622706145)


**First Point of Contact**

- First Impression matters...
  - Identify safe & knowledgeable points of entry for anyone choosing to disclose sexual misconduct.
    - Who will be first point of contact?
    - What level of training do they have?
    - Do they understand their responsibilities, institutional responsibilities / policy?
First Point of Contact

• Provide a trauma-informed approach.
  - Create a climate of safety and empowerment to support complainants in their process of disclosure and reporting.
  - Provide information to complainants about support services and their rights.
    • http://titleix.arizona.edu/sites/default/files/University-of-Arizona-VAWA-Booklet.pdf
  - Support with humanism.

Initial Response Considerations

• Obtain a brief statement to determine appropriate course of action.
  - I know this must be difficult, what are you able to tell about your experience?
  - Would it be okay if I asked you some additional questions? – ONLY IF YOU ACTUALLY NEED TO
• Victim safety: weapons involved, threats, history of violence (threat assessment) (interim measures)
• Information to assist in identity / location of respondent
• Advocacy / Support Person

Victim Considerations

While there is no “normal” victim response, many experience the following concerns and fears:
• “I can’t believe this is happening…”
• “It’s my fault… I’m so ashamed…”
• “No one will believe me…”
• “How can I trust anyone…”
While there is no “normal” victim response, many experience the following concerns and fears:

- “I thought I was going to die / be killed…”
- “I’m afraid and so overwhelmed…”
- “What are people going to think…”

Provide Information and Options

**Information is Power:** helps to identify what the participants in the process can control

- “Would you like me to call someone for support?”
- “Where would you like to sit?”
- “Is it okay if I sit here?”
- “Can I get you something….”
- “Can I walk you to the Title IX Coordinator’s Office…”

Provide information centered on the victim. Let them tell you what is important for them at that moment. If appropriate, consider saying:

- “Your health and safety is our priority. Would you like to talk with someone at medical facility?”
- “Would it be okay if I explained your options?”
- “Is there something I can do to help?”
- “I’m sorry you’re going through this or preferably, I appreciate your willingness to talk with me.”
Proceed With CAUTION

Be careful not to insert yourself or your opinion into their experience. Take care not to be condescending or make assumptions about what a victim needs or wants.
Not appropriate to say:
• "You should report so that someone else doesn’t get hurt."
• "You’re brave/strong/etc. for reporting."
• "I think you should ..."

Provide Information

“I don’t know what to do, will I have to go to Court / Student Conduct Board?”
Would you like to know more about that process?
• The first step if you reported would be ...
• Some ways the University may interact with you are ...
• You have some control over the process... and you don’t have to make any decisions right now...

Never Ask “Why” Questions

Questions to avoid:
• Why did you...?
• Why didn’t you...?

Investigators are trained not to ask these questions... They have no place in an intake conversation.
### Resources Degrees of Privacy

- **Private – FERPA**
  - All UA employees accessing educational records (broadly defined). UA may define directory information that is exempted.

- **Confidential – Title IX**
  - Allowed for designated resources (not REs) although still may be CSAs

- **Privileged – Arizona State Law**
  - Statutorily defined and Clery Act exempt with limitations

  - [http://titleix.arizona.edu/confidentiality](http://titleix.arizona.edu/confidentiality)

### Accepting a Report

- **Emphasizing resources – see:**
  - [www.titleix.arizona.edu/reporting_responsibility_for_employees](http://www.titleix.arizona.edu/reporting_responsibility_for_employees)
  - [http://titleix.arizona.edu/sites/default/files/TITLE-IX-Brochure.pdf](http://titleix.arizona.edu/sites/default/files/TITLE-IX-Brochure.pdf)

- **Procedures for students and others**
  - [http://www.titleix.arizona.edu/procedures](http://www.titleix.arizona.edu/procedures)

- **Interim & Immediate Measures**
  - [http://www.titleix.arizona.edu/interim-immediate_measures](http://www.titleix.arizona.edu/interim-immediate_measures)

### QUESTIONS

**Trauma and interpersonal violence (IPV)**

Understanding & minimizing impact

Accepting a report of IPV

Resources and degrees of privacy
Title IX / Sexual Assault: Enhancing Campus Response and Investigations

Day 1 Agenda

• Housekeeping and Introductions
• Title IX & Clery Act
• Common Challenges
• Sexual Offender Realities
• Sexual Offender Dynamics
• Trauma Informed Investigations and Adjudications

Day 2 Agenda

• First Impressions Matter
• Investigative Interviews
• Respondent Considerations
• Understanding Investigations and Adjudication
• Case Study
Getting Started

- Participation and feedback are critical.
- Questions are encouraged.
- Our language is important.
- Anyone can be a victim or an offender. There are survivors of sexual violence everywhere, including in our profession.
- Intros – Margolis Healy, Liz, Mike.

Who are you?

What is your biggest challenge?
Title IX and Clery
Michael Webster, Director for Regulatory Compliance

The Landscape
A sea change –
• Continuing activism on both sides of the process
  • Social media linkages
  • Respondents and case law
  • Rescission of heretofore foundational documents
• REALITY – The world is FLAT

Laws/Regs/Guidance

LAW
REGULATION
Subregulatory Guidance
Sexual Violence Laws

Clery Act
Title IX
VAWA

Clery & TIX Enforcement

Clery
- Sexual assault
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  - On Clery geography (for counting)
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- Sex discrimination
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Who's Who

- CSAs are...
- Responsible employees are...
- Some examples are...
- Duty to report
  - To... and When...
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- Train employees with authority to address harassment, or who are likely to witness it or receive reports, how to respond properly.
  - OCR examples: "teachers, school law enforcement unit employees, school administrators, school counselors, general counsel, health personnel, and resident advisors" From 4/11/11 DCL but still common sense.
Recent Changes

Out with the Old and in with the Older –
- DCL of 9/22/17
  (https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf)
- Q&A of 9/22/17
  (https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf)
  - Addresses specific changes from Obama era guidance that rescission left undetermined.

• Still in place is the 2015 DCL that outlines TIXCs roles, responsibilities, etc.
• Rescinded the 5/13/16 DCL re: transgender bathroom issue in DCL of 2/22/17.

Interim Measures (required by Clery upon request of compl. if reasonable) – Safety Planning
- In fairly assessing the need for... interim measures, a school may not rely on fixed rules or operating assumptions that favor one party over another, nor... measures available only to one party... making every effort to avoid depriving any student of her or his education. (p. 3)
Training materials or investigative techniques and approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the investigation proceeds objectively and impartially. (p. 4)

• Prompt is a “good faith effort to conduct a fair, impartial investigation in a timely manner...” (p. 3)
• Equitable (2017 Q&A pp. 3-4)
  – School gathers evidence not the parties
  – Requires a trained, objective investigator, attending to each case’s uniqueness
  – Parity of opportunity (except appeal)
  – Bar on “gag orders” (likely subject to refinement)
  – Special disciplinary processes suggest discrimination

Concurrent LEA and TIX investigations
Investigation opens that may lead to discipline a school should provide written notice of the allegations... including sufficient details and...time to prepare a response before any initial interview. Sufficient details include... (p. 4)
Recent Changes

Sufficient details include (p.4):
• the identities of the parties,
• the specific section of the code of conduct allegedly violated,
• the precise conduct allegedly constituting the potential violation,
• and the date and location of the alleged incident.

Recent Changes

• Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation (p.4).
• The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence (p.4).
• The reporting and responding parties and appropriate officials must have timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings (p.4).

Recent Changes

• Informal resolution (including mediation) doesn't require full investigation & adjudication if school finds it’s appropriate (p.4).
• Procedures required (p.5).
  – Discrete findings on discrete violations
  – POE or CaC are allowable standards
  – Parity of access to all information being considered with opportunity to respond in writing.
  – Parity of process steps (already in Clery for crimes) except appeal
  – Cross-examine or submit questions
Recent Changes

- Avoid conflicts of interest including the school’s interests (p.5).
- Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.
- Resolution Agreements are non-binding on other schools as they are “fact-specific” (p.5).

Summary of Title IX Obligations

- Investigate complaints adequately, reliably and impartially (including presenting witnesses and evidence).
- Must adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints.
- Undertake education and prevention efforts aimed at students.

Still Out There

Title IX prohibits gender-based harassment.
- “Please note that this withdrawal of [Gender Identity DCL of 2016] does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure... LGBT students, are able to learn and thrive in a safe environment. [ED OCR] will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms. [ED & DOJ] are committed to the application of Title IX and other federal laws to ensure such protection.”
  (https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf)
Still Out There ???

- Use of prior sexual history in the investigation or adjudication.
- What’s a RE to do?
  - Duties
  - Carve out for institutionally designated confidential resources
  - What about reluctant victims (and this is a big one)
- What about special issues (see 2014 OCR Q&A, pages 5-8, Questions B-2 to B-4).

Clery Act Updates

- Publish & distribute an Annual Security Report with various policy statements, policies and statistics (NLT October 1, each year).
- Provide ASR to current students & employees AND inform prospective students & employees about it.
- Submit crime statistics to U.S. Dept. of Education.
- Provide timely notice and emergency notifications to the campus community.
- Maintain a public, daily log of reported crimes.
Chronology

- 1986: Jeanne Clery murdered at Lehigh University
- 1988: Pennsylvania Act 73
- 1990: Federal Crime Awareness & Campus Security Act
- 1992: Campus Sexual Assault Victims’ Bill of Rights
- 1994: Campus Security Act Regulations
- 1996: Higher Education Act Amendments
- 1999: Clery Act Regulations Issued
- 2000: Campus Security Statistics Website
- 2002: Campus Sex Crimes Prevention Act
- 2005: ED’s Clery Handbook Published
- 2009: Final Campus Safety Regulations
- 2013: VAWA Amendments to the Clery Act
- 2014: Not Alone Report; OCR Q&A; Final Regulations
- 2015: Clery Final Regulations in effect continuing OCR guidance
- 2016: Clery Compliance Handbook is published & the Penn State Report is released.

And then, there was...

The 2013 Violence Against Women Reauthorization Act

Clery Act (as amended)

- Several specific procedural protections/statements must be included in 2014 ASR.
- Some from April 2011 DCL
- Student AND employee complainants
- Policies must align with ASR statements.
- Changes most expansive since Clery enacted
- Compliance required July 1, 2015
Crime Data Disclosure

• Crime Statistics:
  - Adds domestic violence, dating violence, and stalking to crimes that must be reported
  - Adds “national origin” and “gender identity” to the hate crime categories

Process Changes in ASR

• Procedures victims should follow if a covered offense occurs:
  - Importance of preserving evidence for all VAWA crimes
  - How and to whom the alleged offense should be reported
  - Options about the involvement of law enforcement and campus authorities
  - Victim’s rights and institutional responsibilities regarding judicial no-contact, restraining, and protective orders

Disclosures in the ASR

• Disciplinary Action
  - How to file a complaint
  - Description of each disciplinary process
  - Steps, anticipated timelines, decision-making process for each
  - How you determine the type of proceeding used
  - Description of the standard of evidence
  - List of all possible sanctions
  - Range of protective measures
Process Changes

- Disciplinary Proceedings
  - Must include a prompt, fair, and impartial process from the initial investigation to the final result.
  - Conducted by officials who receive annual training on how to investigate and conduct hearings in a manner that “protects the safety of victims” and “promotes accountability”
  - Provide both parties the same opportunities to be accompanied to any related meeting by advisor of choice; with allowance for “others”

Annual Training

- Training topics (MHA’s promising practice):
  - Understanding institutional obligations
  - Exploration of rape myths & rape culture
  - Cultural competency
  - Understanding impact of trauma
  - Investigative strategies
  - Interviewing complainants, respondents, witnesses
  - Report writing
  - Adjudication & Appeals

Process Requirements

- Notification of Results of Disciplinary Proceedings
  - Must simultaneously notify, in writing, both the accuser and the accused of:
    - The result of any institutional disciplinary proceeding
    - Procedures for both parties to appeal the results (if such procedures are available)
    - Any change to the result
    - When such results become final
RE Requirements

• Written Notice of Rights and Options:
  – Information about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community
  – This also applies to incidents occurring off-campus
  – Information about options for, available assistance in, and how to request changes to:
    - Academic, living, transportation, and working situations
    - How these accommodations will be kept confidential

• Written Notice
  – That you will provide information on resources, accommodations or protective measures if requested, and that they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement
  – Explanation of procedures for institutional disciplinary action

Awareness Requirements

• Prevention & Education
  – Must offer incoming students and new employees "primary prevention and awareness programs" that promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking.
  – Program elements are prescriptive
  – Offer on-going prevention and awareness CAMPAIGNS for students and faculty on all of the above.
New Requirements

Note the Definition of “Programs to prevent dating violence, domestic violence, sexual assault, and stalking”

(i) Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that—

(A) Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and…

668.46 Institutional security policies and crime statistics. (a) Definitions.52

Sexual Assault and Consent

“Note that, while the definitions of Sexual Assault include lack of consent as an element of the offense, for the purposes of including a reported Sexual Assault in Clery Act statistics, no determination as to whether that element has been met is required. Therefore, all Sexual Assaults that are reported to a campus security authority must be included in your Clery Act statistics and also included in your crime log (if you are required to have one), regardless of the issue of consent.”

(pgs. 3-7)

Unfounded

• Sworn or commissioned officers, only, can “unfound” an incident by formally determining the report was “false or baseless”

• This requires an INVESTIGATION

• The unfounded statistic is NOT in the crime category but is in the daily crime log with an unfounded disposition.

(pgs. 3-51 to 3-54)
Tasks Ahead

- Campus Climate Surveys
- Prevention (education including bystander options, engaging men)
- Effective responses (including confidentiality clarifications and inclusiveness)
- Trauma-informed training for campus officials
- Community partnerships
- Policy checklists and scripts

Key Steps

- Assess immediate safety and well-being
- Gather basic facts
- Notify of right to contact or decline to contact law enforcement
- Notify of right to seek medical treatment
- Notify of importance of preservation of evidence
- Enter into daily crime log
- Assess for timely warning
- Identify resources
- Offer interim remedial measures
- Evaluate for interim protective measures
- Provide process options
- Assess for pattern
- Ascertain complainant’s wishes
- Discuss barriers to proceeding
- Evaluate individual vs. campus safety
- Assign advocate/support person

Resources

- OCR 2001 Revised Sexual Harassment Guidance: [http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf)
- 2010 Dear Colleague letter on Harassment and Bullying: [http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf)
- April 2013 OCR Dear Colleague Letter on Retaliation: [http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html)
- 2017 DCL and & Q&A: [https://www2.ed.gov/about/offices/list/ocr/faq/rr/policyguidance/sex.htm](https://www2.ed.gov/about/offices/list/ocr/faq/rr/policyguidance/sex.htm)
Critical Tasks

- Timely warning
- Interim measures
  - Suspension
  - Protective measures
- Request for "confidentiality"
- Steps taken to eliminate, prevent & address
- Investigative chronology
- Outcome
- Sanction

- Identify decision-maker(s)
- Outline key factors
- Outline steps taken
- Communicate to parties
- Document in file
  - Capture emails
  - Capture phone calls
  - Capture text messages

Complexities of Sexual Violence: Understanding the Realities & Exploration of Rape Culture

Sgt. Elizabeth Donegan (ret.), Austin
Police Department

The Reality of Sexual Violence

Addressing and Preventing Gender Bias

Sexual assault, domestic violence, stalking, and gender bias affect people of all genders and sexual orientations.

http://www.theiacp.org/Gender-bias
Most victims know their perpetrators:

- 51% of female victims were raped by a current or former intimate partner.
- 41% were raped by an acquaintance.
- Of men and boys, 52% report being raped by an acquaintance.
Most victims know their perpetrators:

- Stranger rape accounts for 14% of the total.

When is an act nonconsensual?

Consent

I didn't say yes, I didn't say no.
Examples of Non-Consent

- Physical force
- Manipulation
- Coercion
- Threats
- Unable to grant consent

What Consent Is Not

- Assuming that dressing sexy, flirting, accepting a ride, accepting a drink etc. is in any way consenting to anything more
- Saying yes (or saying nothing) while under the influence of drugs or alcohol
- Saying yes or giving into something because you feel too pressured or too afraid to say no
- Assuming that because you have done it before, you can do it again

Consent and Tea
Perception vs. Reality

The Justice Gap


Reality of Reporting

What influences a person’s decision to report sexual violence?
Barriers to Reporting

Top 3 barriers identified by victims during the development of YHOP:
- Confidentiality
- Fear of not being believed
- Delayed report

What is Rape Culture?
- Rape is pervasive and normalized due to societal attitudes about gender, sex and sexuality.
- Rape myths are sustained.
- Sexuality and violence are merged, & affirmed through the media and other male dominate institutions.
- Physical and emotional violence against women, men and trans-identified is acceptable.
  [Link: http://www.wavaw.ca/what-is-rape-culture/]

Rape Culture

Baby Soft from the 70s
Virgin Mobil from 2012
Rape Culture

• Athletics?
• Entertainment?
• Politics and Government?
• Other sources?

The Law
“No means yes, yes means anal!”

Rape Culture

Social Media

False Reports

Sexual violence myths, misperceptions and victim blaming impact the pursuit of justice...

Reality:

• No higher false reporting rates for sexual assault than any other crime...
Research conclusion:
Estimates for the percentage of false reports begin to converge around 2% – 8%

Recommended Reading:
“False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault”
By Dr. Kimberly A. Lonsway, SGT Joanne Archambault (Ret), Dr. David Lisak

“The determination that a report of sexual assault is false can be made only if the [investigation] establishes that no crime was committed or attempted.”

Before the offender blames the victim remember:
Three sides to everyone’s life...

PUBLIC

PRIVATE
• Offenders are predatory; they target and exploit victims they think are most vulnerable.
• Offenders often choose victims they think are less likely to report, or to be believed...
• Offenders use alcohol/drugs and manipulate other factors to discredit the victim.

• 16.3% chance that rapists will end up in prison.
  *(NCPA from US DOJ stats)*
• In a sample of imprisoned sex offenders with fewer than 2 known victims, offenders actually disclosed an average of 110 victims.
• Separate sample found that sex offenders commit sex crimes for an average of 16 years before being caught.
  *(Ahlmeyer, Heil, McKee & English 2000)*
Sexual Offender Realities

Q & A

Trauma Informed Investigations and Adjudications

Sgt. Elizabeth Donegan (ret.), Austin Police Department

Trauma and the Brain Video
Interview v. Invest.

- Investigation... Find out what happened
- Interview what they’re ABLE to tell you
- Linear vs. disconnected in the disclosure of information.
- Victims are not witnesses, but experience it.

Investigator Barriers

- Be aware of your personal biases and stereotypes: Keep an open mind.
- The recipe for a bad investigation is to form a hypothesis and try to prove it.
Best Practice Approach

- Coordinated – Multi-disciplinary (Policy)
- Compassionate – Victim Centered & Trauma Informed Response
- Objective – fact finding investigation, focus on the offender
- Thorough – investigations & reports

Traditional Response Impacts

- Victims omitting information.
- Victims not continuing with the investigation.
- Victims providing false information.
- Victims saying the assault did not happen to disengage from the process.

Dangerous Investigative Assumptions

- Victim wants campus response involved.
- Victim wants law enforcement involved.
- Victim wants the suspect caught and prosecuted.
- False or misleading information at any point in the investigation from the complainant indicates a false report.
- Uniform approach will work with all cases.
Best Practice Investigations

• Shift the focus from the victim to the offender.
• How and why did the offender target the victim?
• How did the offender exploit the victim’s vulnerabilities?
• Vulnerable – Accessible – Lacking in Credibility

Develop Strategy

• Know your Student Code of Conduct / Definition of Consent / Sexual Assault Laws.
• Consider nature of the assault:
  – Known facts
  – Evidence
  – Timing and investigative sequence
  – Possible defenses

Develop Strategy

• Non-stranger sexual assault:
  – Evidence is all about the relationship (Boundaries) and CONSENT...
Non-Stranger Sexual Assault

- Most assaults are preceded by contact between the victim and the offender in a “normal social context” that the offender creates or uses to his advantage (grooming - testing).
  - Fellow student
  - Friend of a friend
  - Date
  - Brief encounter

Focus on the Offender

- Non-stranger sexual assault:
  - History: previous assaults / abuse on complainant or others
  - Suspect behavior, boundaries, what changed

Course of Conduct Investigation

- Suspect’s previous conduct with victim?
  - Controlling, threatening, frightening behavior
  - Abuse, harassment, stalking
  - Physical assault, injury, strangulation
- Suspect’s conduct with other potential victims?
Incident Timeline

- Background / History
- Targeting / Premeditation
- Grooming the Victim
- Manipulation
- Isolation
- Post Assault Behavior

Assault

Targeting

Why was this victim chosen?

What / who made the victim more vulnerable?

How did the suspect set the stage?

How did the suspect effectively isolate the victim

Pretext Communication

- Pre-text phone call
- Text messaging
- Email
- Social Media
- Jail phone call*
Focus on the Offender

• Digital Forensics Capabilities?
  - Computer related research by suspect:
    - Email, text messages, cell phone calls
  - Admissions, times, identify witnesses
  - Cell phone; photos, video (hidden recordings)
  - Social media; photos, comments, information

Social Media

Focus on the Offender

• Grooming / testing methods, contrived circumstances
• What role did drugs and alcohol play?
• Who supplied drugs / alcohol?
• Did respondent provide drugs / alcohol to others?
Drug Facilitated Sexual Assault

• Either...
  – A perpetrator deliberately tries to induce a state of intoxication and/or incapacitation by administering a substance to the victim without knowledge or consent
• Or....
  – A perpetrator who exploits voluntary intoxication or incapacitation

Drugs Used to Commit DFSA

- Alcohol
- Benzodiazepines
- Flunitrazepam (Rohypnol®)
- Diazepam (Valium®)
- Alprazolam (Xanax®)
- Barbiturates
- Antidepressants
- GHB - Gamma Hydroxybutyrate
- Ketamine
- Over-the-Counter or OTC drugs
- Antihistamines

Alcohol / Drugs:

• Investigate the fine points...
  – How much knowledge did respondent have of victim’s drinking habits before hand?
  – Who supplied the alcohol?
  – Who was in more control of themselves?
  – Who has more experience with alcohol?
  – Women and Men can digest alcohol differently.
Alcohol / Drugs:

- Investigate the fine points...
  - What is the size and weight difference?
  - Is respondent drinking beer and feeding complainant shots?
  - Any evidence of the complainant throwing up?
  - Any evidence of the complainant passing out?
  - Review facts with a Toxicologist.

Alcohol: Weapon & Shield

Alcohol is used as a WEAPON against victims to make them vulnerable and to diminish their credibility.

Alcohol is used as a SHIELD to prevent offenders from being held accountable. We tend to blame victim behavior and excuse offender behavior when they drink.

Report Format

Do you have a report format or template?
Reports are critical and the most important documents in sexual violence cases.

All information received on a reported sexual assault should be documented regardless of the apparent credibility of the reporter or apparent veracity of the information being provided.

Victim statements should be documented in a manner best allowing for an accurate record of the victim’s exact statements, not a synopsis of the interviewer’s perception of what was said. Paraphrasing can impart a different meaning.
It is strongly recommended that, with a victim’s consent, all victim interviews be audio and/or video recorded. This method of documentation allows the written record to most accurately reflect the actual words spoken by a victim or reporting party, and removes the chance for inconsistencies between the victim’s and interviewer’s recall of the interview.

Additional Evidence

- Forensic Information
- Medical Records
- Expert Witnesses
- Other?

Investigations and Adjudications

Q & A
Signs of Burnout

- Reduction in one’s sense of personal accomplishments
  - Chronic inability to see accomplishments, feel empowered, competent
  - Chronic hopelessness about work and the ability to overcome injustice

OR

- Grandiosity
  - Sense of omnipotence about one’s work leading to an inability to listen to others and see the work for what it is

What Leads to Burnout

- Vicarious traumatization: Process of cognitive change that stems from chronic engagement with traumatized individuals
- Secondary traumatic stress: Natural and consequential behaviors resulting from helping or wanting to help a traumatized individual(s)
- Compassion Fatigue: Emotional and physical fatigue resulting from the use of chronic empathy with traumatized individuals
Risk Factors

• Lack of experience combined with high caseload
• Lack of appropriate formal supervision
• Caseload weighted most towards extreme cases
• Own trauma history
• Pre-existing mood disorders or anxiety
• Maladaptive coping skills in response to trauma work

Risk Factors: The Organization

• Inadequate supervision
• Lack of resources
• Lack of support from professional colleagues
• Denial about the impact of vicarious traumatization, secondary traumatic stress, and compassion fatigue on its employees leads to stigma

Mindfulness

• “the awareness that emerges through paying attention on purpose, in the present moment, and nonjudgmentally to the unfolding of experience moment by moment.” (www.theiacp.org)
• Before the game, Steve Kerr took a break with his surgery-complicated respite and addressed his team. He reminded them of their “four core principles”: joy, mindfulness, compassion and competition. Mindfulness means focusing on the task at hand and not getting distracted by the surrounding noise.
Resilience

- Resilience is defined nicely by the late Dr. Al Siebert as the “ability to cope well with high levels of ongoing disruptive change; to sustain good health and energy when under constant pressure; to bounce back easily from setbacks; to overcome adversities; to change to a new way of working and living when an old way is no longer possible; and to do all this without acting in dysfunctional or harmful ways.”

Increasing Resilience

- Organizational responsibility
  - Adequate staff/FTE’s
  - Competent supervisors
  - Know about burnout and do everything you can to prevent and/or remediate it.
  - Consistent training and supervision of staff and supervisors
  - Work on staff dynamics to increase cohesion.

- Self-care
  - Extending care to the various domains of oneself including the physical, emotional, mental, and creative.
  - Ideally, should have little or no negative side-effects.
  - A process that never ends. One must practice self-care continuously.
  - “Buddhify” – Mindfulness & Meditation
**Increasing Resilience**

- Self-care at work
  - Stay organized: keep on top your emails, deadlines; make checklists to decrease nightly “ruminations”.
  - Know your limits: know when you can’t make a deadline and make others aware you need support.
  - Take breaks with others and talk about something else!

**Types of Self-Care**

- Social support
  - Professional network
  - Peers: quality not quantity
- Family
- Social activities
  - Gym
  - Community events
  - Peer networks
  - Coffee or tea with friends/colleagues

- Cognitive Strategies
  - Altering one’s perceptions:
    - Gratitude practice/Positive affirmations
    - Mindfulness
    - Radical acceptance
  - Healthy distancing:
    - Maintaining sensitivity and care while employing a healthy detachment from the situation
Types of Self-Care

• Awareness
  - Remember how difficult this work is, whether you are a veteran or newbie.
  - Acknowledge if you are having a difficult time.
  - Be aware of other stressful events in your life.
  - Know your limits!

• Behavioral
  - Exercise or other body-oriented activities
  - Hobbies
  - Doing OTHER WORK
  - Focusing on the mundane in your personal life
    ✓ Walk the dog, clean your house, do the dishes
  - Use other parts of your brain: journal writing, art, puzzles
  - Humor
  - Rest AND Vacation

• Personal
  - App:
    ✓ Headspace
    ✓ 5-minute journal
  - Book:
    ✓ Into the Magic Shop by James Doty
  - Ted Talks:
    ✓ Ted Talk with Andy Puddicombe: All it takes is 10 mindful minutes
    ✓ Ted Talk with Pico Iyer: The Art of Stillness

• Professional
  - Podcasts:
    ✓ On Being by Krista Tippett, Episodes: David Slay “listening as an act of love”
    ✓ Kevin Kling “The Losses and Laughter we grow into”
  - Personal therapy
  - Massage or other bodywork
  - Support groups
First Impressions Matter

Mike Webster, Director for Regulatory Compliance

First Point of Contact

- First Impression matters...
- Identify safe & knowledgeable points of entry for anyone choosing to disclose sexual misconduct.
  - Who will be first point of contact?
  - What level of training do they have?
  - Do they understand their responsibilities, institutional responsibilities / policy?

First Point of Contact

- Ensure that a trauma-informed approach is provided to complainants at every level.
  - Create a climate of safety and empowerment to support complainants in their process of disclosure and reporting, advance pic, gps, meet outside.
  - Provide information to complainants about support services and their rights (Know your Rights).
  - Disseminate policies, communicate to the campus, and provide regular training, identify places where students can seek confidential support services.
Victim’s Impression

Victim’s first impression of your response matters:
• When do you think the victim’s impression of the department's professionalism begins?
• What message is the College/University and the Police sending about sexual violence awareness, prevention & accountability?

Initial Response Considerations

• Obtain a brief statement to determine appropriate course of action.
  – I know this must be difficult, what are you able to tell about your experience?
  – Would it be okay if I asked you some additional questions? ONLY IF YOU ACTUALLY NEED TO
• Victim safety: weapons involved, threats, history of violence (threat assessment) (interim measures)
• Information to assist in identity / location of respondent
• Advocacy / Support Person

Victim Considerations

While there is no “normal” victim response, many experience the following concerns and fears:
• “I can’t believe this is happening…”
• “It’s my fault… I’m so ashamed…”
• “No one will believe me…”
• “How can I trust anyone…”
While there is no “normal” victim response, many experience the following concerns and fears:

- “I thought I was going to die / be killed…”
- “I’m afraid and so overwhelmed…”
- “What are people going to think…”

Provide information centered on the victim. Let them tell you what is important for them at that moment. If appropriate, consider saying:

- “Your health and safety is our priority. Would you like to talk with someone at medical facility?”
- “Would it be okay if I explained your options?”
- “Is there something I can do to help?”
- “I'm sorry you're going through this or preferably, I appreciate your willingness to talk with me.”

Information is Power: helps to identify what the participants in the process can control

- “Would you like to call someone for support?”
- “Where would you like to sit?”
- “Is it okay if I sit here?”
- “Can I get you something…”
- “What can I explain about what is happening?”
Be careful not to insert yourself or your opinion into their experience. Take care not to be condescending or make assumptions about what a victim needs or wants.

Not appropriate to say:
- “You should report so that someone else doesn’t get hurt.”
- “You’re brave/strong/etc. for reporting.”
- “I think you should …”

Provide Information

“I don’t know what to do, will I have to go to Court / Student Conduct Board?”

Would you like to know more about that process?
- The first step if you reported would be …
- Some ways the University may interact with you are …
- You have some control over the process… and you don’t have to make any decisions right now…

Never Ask “Why” Questions

Questions to avoid:
- Why did you…?
- Why didn’t you…?

If we need to answer these questions during the investigation there are other ways to ask…
Initial Disclosure: First Impressions Matter

Q & A

Investigative Interviews
Sgt. Elizabeth Donegan (ret.), Austin Police Department

Victim Interview
• The interview is a way to allow the victim to express what their experience was rather than just what they remember or don’t remember.
• Capturing the trauma and the sensory and central details, as able to be shared by the interviewee, of the event is compelling information.
Before the Interview

- Select a location.
- Address specific needs.
- Who will be present?
- What are the ground rules?
  - Parties present (Advocate, Medical Professional)
- How can you give the victim some control?

Victim Interview

- Trauma Informed Interview Recognizes:
  - Disclosure is a process, not an event
  - Delayed reporting, inability to recall details and sequence of events is common as a result of victim trauma.
  - Victim may remember additional details over time; keep options open for continued disclosures.
  - Traumatic memory is stored in the brain differently.
Before the Interview

The victim’s safety, cognitive impairment and mental health should be taken into consideration prior to any interview.

Medical / Forensic Care

• Evaluate the need for emergency medical treatment.
• Evaluate the need for a Sexual Assault Forensic Exam or medical care.

Medical care is always advisable.

Considerations

• Are you prepared?
• Timing; balance the victim’s needs with pace of investigation
• Allow for breaks and other needs
• Recording / Documentation
GOAL: To obtain what the victim is ABLE to tell you.

Beginning the Interview

• Facilitate comfort
• Show appreciation
• Communicate empathy
• Rapport

• Explain the purpose of the interview
• Address questions
• Explain that it is okay to answer “I don’t know”, “I don’t remember” or “I’m not ready to talk about that.”
The FETI was developed by Russell Strand and the Behavioral Sciences Education and Training Division at the US Army Military Police School.

Research supported interview strategies developed using the science of memory and psychological trauma. Combines child forensic interview techniques with principles of critical incident stress debriefings.

First introduced in 2010, FETI is now a central part of the Special Victims Unit Investigations Course (SVUIC), an advanced sexual assault investigations course taught at the US Army Military Police School.
To date, over 1700 DoD personnel have been trained in FETI; personnel including both military and civilian, Special Agents, Trial Counsels, and Sexual Assault Prevention and Response personnel.

- FETI trainers have addressed 10,000 law enforcement officers, prosecutors, and Sexual Assault Nurse Examiners (SANE).

Most criminal investigation interview protocols were developed by psychologists working with law enforcement.

FETI was developed by law enforcement professionals working with psychologists. It reflects a research-based, operational focus.

- Most traditional interview training has focused on the higher functioning portions of the brain (prefrontal cortex).
  - Research clearly shows these portions of the brain are not generally involved in experiencing, reacting to or recording the experience during trauma.
- FETI was developed to interview the more primitive portions of the brain shown to be engaged during trauma.
Obtain significantly more information about the experience
Enhance a trauma victim’s ability to recall
Reduces the potential for false information
Allows the victim to recount the experience in the manner in which the trauma was experienced

Acknowledge their trauma/pain/difficult situation
Ask:
- What are you able to tell me about your experience?
  - Tell me more about...
- What was your thought process during this experience?
- What are you able to remember about...
  - 5 Senses + Body sensation

Ask:
- Tell me what you’re able to about how you felt/actions:
  - Before, during and after the event
- What was the most difficult part of this experience for you?
- What, if anything can’t you forget about your experience?
- Clarify after you provide an opportunity to tell about the “experience”
Important:

Victims should not be treated as witnesses to their own crime.

VERY IMPORTANT

• Do not ask questions that assume facts not yet offered by the victim.
  - Is that when he/she raped you?
  - What did he/she do that was threatening?
  - What did he/she hit you with?

Possible Follow-up Questions

• What are you able to tell me about his/her words?
• What are you able to tell me about his/her clothing?
• What are you able to tell me about where he/she was in the room?
• What are you able to tell me about anything he/she left behind?
• What, if any, contact have you had with him/her since this happened?
Explain All Of Your Questions!

What you say...

Are those the clothes you were wearing when this happened?
Were you drinking or doing any drugs?
Did he physically hurt you or threaten you with a weapon?

What the Victim hears...

The investigator thinks it is my fault because of what I was wearing.
I knew this was my fault for drinking too much, the officer thinks so too!
It must not be real rape, I knew the guy and he didn’t hurt me or use a weapon.

After the Interview

• Work with advocate: resources, referrals, support
  • “Recalling information like this is a process. I would really like to talk with you again if you remember more.”
  • Next steps, time line
  • Safety planning / interim actions
  • Contact details and information?
  • How would you like me to keep you informed?
  • Is it okay to leave messages?

Investigative Interviews

Q & A
Suspect Considerations
Sgt. Elizabeth Donegan (ret.), Austin Police Department

Suspect Interview
• What are the challenges you face with suspect interviews?
• What training have you received to help prepare you for respondent interviews?

Potential Suspect Defenses
• Identity: “It wasn’t me”
• Denial of sexual contact: “I didn’t do that”
• Consent: “it was totally consensual”
• Intoxicated: “can’t remember, but it wasn’t rape”
• Impeachment: of complainant, officer, investigator, investigation, institution...
• All of the above
“I didn’t rape her.”
“I only slapped her after she became skittish about having sex. She raised her voice; I tried to calm her down and convince her it was alright, but she raised her voice again. I told her to be quiet and slapped her face.”

Medical student charged with raping a freshman

We Want to Hear Their Account

Incident Timeline

Law Enforcement Considerations

- Evaluate prior to approaching respondent:
  - “Pretext” or “confrontation” phone call or text message (Check w/ Legal Counsel / Prosecutor)
    - Helpful investigative tool for cases involving people who know each other
    - Make sure complainant is emotionally capable of participating, seek guidance from advocate / counselor
Develop Strategy

Considerations prior to approaching suspect:
- Suspect interview strategy/timing
- Know the suspect’s background
- Witnesses the suspect may know
- Evidence in suspect’s control (warrant)
- Suspect forensic exam (warrant)

Considerations prior to approaching suspect:
- We want to hear the suspect’s account...
- Approach for non-custodial interview/respondent notification
- Invite the respondent in for their statement
  - Legal considerations: Miranda Rights and Student Policy Rights
  - “Advisors of choice” in interview

Suspect Interview

If the suspect agrees to provide statement:
- Allow suspect to give statement in their own words, uninterrupted if possible.
- Seek facts and information to determine elements of crime/student conduct violation.
- Seek exculpatory evidence, information and/or leads, other witnesses, etc...
- Who, What, Where, When and Why?
Suspect Interview

• Interview for clarification: We want to get it right!
  - Seek clarification for inconsistencies and explanations that don’t make sense with known evidence, information, or witness statements.

Suspect Interview

• Listen carefully to the response to your questions:
  - Does it make sense?
  - Did the suspect answer or avoid the question?
  - Did the suspect shift blame or distract?
  - Did the suspect minimize?

Interview or Interrogation?

Balancing a fair and thorough investigation:
• Confronting Inconsistencies vs. Interrogation
• Interview for clarification can lead to:
  - Better understanding of the facts
  - Additional exculpatory evidence or information
  - Further inconsistencies, corroboration of witness and victim statements
  - Partial admissions, admissions, confessions
Balancing a fair and thorough investigation

• Tie in offender behavior, background, inconsistencies, evidence, facts, other potential victims
• History of sexual assault, violence, student conduct violations
• Use anti-violence prevention education, University policy, consent definition, etc...

Seek details / evidence that respondent might have:
Pre and post assault text messages, calls, social media
• Did you Email, text message, or make phone calls about this incident?
• Did you photograph or video any part of the incident?
• Have you posted comments, photos, or videos on social media sites?
• Are you willing to allow an examination of your computer, Facebook, phone, etc...

Confront lack of consent and victim trauma:
• Use sensory and peripheral details disclosed by victim...
• Why was victim upset during, after?
• Why did victim express fear / trauma?
• How do you explain that the victim told (friend, family, etc...)?
• Why has victim behavior changed?
Prior to Concluding

• Note respondent injuries; is suspect forensic exam necessary?
• Explain next steps/Title IX process
• Exchange contact information; get agreement for follow-up interviews if necessary
• Ensure respondent understands rights & resources
• Remind respondent of interim actions and retaliation / interference warnings with victim or potential witnesses
Corporal Marie-France Comeau, a 37-year-old military flight attendant, and Jessica Lloyd, 27, vanished on January 28, 2010.

Colonel Russ Williams

Suspect Considerations

Q & A
Corroboration and Applying the Facts

Sgt. Elizabeth Donegan (ret.), Austin Police Department

Corroboration Opportunities

- Physical evidence
- Sexual assault exam and evidence
- Crime scene, crime scene photos
- Sensory & peripheral details
- Movements, timeline; security cameras, swipe cards

Serial Perpetration

They Said

Victim 1
Victim 2
Victim 3
Suspect 1
Find and Seek

• Important to search for other investigations where subject has been identified as a person of interest or suspect in a sexual assault investigation.

• Rule of 3:
Utilize information gathering strategies that focus on identifying (at a minimum) a suspect’s current and/or former employers, residences and schools attended.

Serial Perpetration

• Never rely only on a CCH (only shows if arrested/convicted).
• Sexual assault investigations often do not result in an arrest or charge that would show on a CCH.

NCIC Offline Search

• National Crime Information Center (FBI)
• Searches information in the NCIC database a different way and/or searches records no longer available on the NCIC server.
NCIC Offline Search

- Can search:
  - Partial information (half a license plate)
  - Purged records
  - Non-unique personal descriptors without other personal identifiers (sex, height, hair color)
  - NCIC transaction logs
  - Inquires made by other LEO on the same suspect

NCIC Offline Search

- Send by e-mail to ioau@leo.gov
- Government agencies only (typically law enforcement)
- Search all available was subject may have been run by another agency:
  - Name / Date of Birth
  - Social Security Number / SID / FBI
  - State Driver’s License or Identification Number
  - License Plate
Records Requests

• Don’t let someone in the records department determine what may be important to your investigation.
• Information gathered from an offline search and subsequent records requests/interviews can reveal an important pattern useful:
  – During interviews
  – For overcoming the consent defense

Database Searches

Corroborative Interviews
United Educators Checklist

- Review and compare with your policy – What might be helpful?

- Checklist Caution:
  Checklist can be helpful, but we must sensitively explain why we are asking the questions we are asking!
Sexual Assault is the most complex crime to investigate (Policy / MOU / Training).
Investigation requires a multi-disciplinary coordinated, compassionate, objective and thorough response – focus on the respondent.
Use what we know about the realities of sexual violence, victim trauma and offender behavior as the foundation for your interviews and investigation (Strategy).
Takeaways

- Don’t insert yourself into the investigation.
- Be as open as possible to information.
- Think beyond your venue.
- Beware of assumptions.

Video – James Is Dead

Q & A
SEXUAL ASSAULT FIRST RESPONDER &
TRAUMA-INFORMED TITLE IX INVESTIGATORS TRAINING
PROGRAM FOR UNIVERSITY OF ARIZONA

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The issue of false reporting may be one of the most important barriers to successfully investigating and prosecuting sexual assault, especially with cases involving non-strangers. In this article, we will begin by reviewing the research on the percentage of false reports and then go on to discuss some of the complex issues underlying societal beliefs and attitudes in this area.

How Many Sexual Assault Reports are False?

One of the most common questions we address in training presentations with professionals—as well as personal conversations with lay people—is how many sexual assault reports are false. In the research literature, estimates for the percentage of sexual assault reports that are false have varied widely, virtually across the entire possible spectrum. For example, a very comprehensive review article documented estimates in the literature ranging from 1.5% to 90% (Rumney, 2006). However, very few of these estimates are based on research that could be considered credible. Most are reported without the kind of information that would be needed to evaluate their reliability and validity. A few are little more than published opinions, based either on personal experience or a non-systematic review (e.g., of police files, interviews with police investigators, or other information with unknown reliability and validity).

Prior “research:” The Kanin study

In the most frequently cited study on this topic, Professor Eugene Kanin (1994) reported that 41% of the 109 sexual assault reports made to one midwestern police agency were deemed to be false over a nine-year time period. However, the determination that the charges were false was made solely by the detectives; this evaluation was not reviewed substantively by the researcher or anyone else. As Lisak (2007) describes in an article published in the Sexual Assault Report:

Kanin describes no effort to systematize his own ‘evaluation’ of the police reports—for example, by listing details or facts that he used to evaluate the criteria used by the police to draw their conclusions. Nor does Kanin describe any effort to compare his evaluation of those reports to that of a sec-ond, independent research—providing a ‘reliability’ analysis. This violates a cardinal rule of
science, a rule designed to ensure that observations are not simply the reflection of the bias of the observer (p. 2).³

In other words, there is no way to explore whether the classification of these cases as false was simply made as a result of the detectives’ own perceptions and biases, without any real investigation being conducted. This concern is compounded by the fact that the practice of this particular police department was to make a “serious offer to polygraph” all rape complainants and suspects (Kanin, 1994, p. 82). In fact, this practice “has been rejected and, in many cases, outlawed because of its intimidating impact on victims” (Lisak, 2007, p. 6). The reason is because many victims will recant when faced with apparent skepticism on the part of the investigator and the intimidating prospect of having to take a polygraph examination. Yet such a recantation does not necessarily mean that the original report was false.

In reality, there is no way that an investigator can make an appropriate determination about the legitimacy of a sexual assault report when no real investigation has been conducted—and the victim is intimidated by the department’s policy of making a “serious offer to polygraph” all rape complainants. As we will discuss at length below, the determination that a report is false can only be made on the basis of findings from a thorough, evidence-based investigation.

As a result of these and other serious problems with the “research,” Kanin’s (1994) article can be considered “a provocative opinion piece, but it is not a scientific study of the issue of false reporting of rape. It certainly should never be used to assert a scientific foundation for the frequency of false allegations” (Lisak, 2007, p. 1).

Methodologically rigorous research finds 2-8%.

In contrast, when more methodologically rigorous research has been conducted, estimates for the percentage of false reports begin to converge around 2-8%.

For example, in a multi-site study of eight U.S. communities involved in the “Making a Difference” (or “MAD”) Project, data were collected by law enforcement agencies for all sexual assault reports received in an 18-24 month period. Of the 2,059 cases that were included in the study, 140 (7%) were classified as false. This is particularly noteworthy because a number of measures were taken to protect the reliability and validity of the research. First, all participating law enforcement agencies were provided training and technical assistance in an ongoing way to ensure that they were applying consistent definitions for a false report. In addition, a random sample of cases was checked for data entry errors. More information on the MAD Project is available at http://www.evawintl.org.

To date, the MAD study is the only research conducted in the U.S. to evaluate the percentage of false reports made to law enforcement. The remaining evidence is therefore based on research conducted outside the U.S., but it all converges within the same range of 2-8%.

For example, Clark and Lewis (1977) examined case files for all 116 rapes investigated by the Toronto Metropolitan Police Department in 1970. As a result, they concluded that seven cases (6%) involved false reports made by victims. There were also five other reports made by someone other than the victim that were deemed by these researchers to be false (e.g., a relative or boyfriend).

Grace, Lloyd, and Smith (1992) conducted a similar analysis of the evidence in all 348 rape cases reported to police in England and Wales during the first three months of 1985. After reviewing the case files, reports from forensic examiners, and the statements of victims and suspects, 8.3% were determined to constitute false allegations. This study was sponsored by the British Home Office.

A similar study was then again sponsored by the Home Office in 1996 (Harris & Grace, 1999). This time, the case files of 483 rape cases were examined, and supplemented with information from a limited number of interviews with sexual assault victims and criminal justice personnel. However, the determination that a report was false was made solely by the police. It is therefore not surprising that the estimate for false allegations (10.9%) was higher than those in other studies with a methodology designed to systematically evaluate these classifications.

The largest and most rigorous study that is currently available in this area is the third one commissioned by the British Home Office (Kelly, Lovett, & Regan, 2005). The analysis was based on the 2,643 sexual assault cases (where the outcome was known) that were reported to British police over a 15-year period of time. Of these, 8% were classified by the police department as false reports. Yet the researchers noted that some of these classifications were based simply on the personal judgments of the police investigators, based on the victim’s mental illness, inconsistent statements, drinking or drug use. These classifications were thus made in violation of the explicit
policies of their own police agencies. The researchers therefore supplemented the information contained in the police files by collecting many different types of additional data, including: reports from forensic examiners, questionnaires completed by police investigators, interviews with victims and victim service providers, and content analyses of the statements made by victims and witnesses. They then proceeded to evaluate each case using the official criteria for establishing a false allegation, which was that there must be either “a clear and credible admission by the complainant” or “strong evidential grounds” (Kelly, Lovett, & Regan, 2005). On the basis of this analysis, the percentage of false reports dropped to 2.5%.

Finally, another large-scale study was conducted in Australia, with the 850 rapes reported to the Victoria police between 2000 and 2003 (Heenan & Murray, 2006). Using both quantitative and qualitative methods, the researchers examined 812 cases with sufficient information to make an appropriate determination, and found that only 2.1% of these were classified as false reports. All of these complainants were then charged or threatened with charges for filing a false police report.

Of course, in reality, no one knows—and in fact no one can possibly know—exactly how many sexual assault reports are false. However, estimates narrow to the range of 2-8% when they are based on more rigorous research of case classifications using specific criteria and incorporating various protections of the reliability and validity of the research—so the “study” does not simply codify the opinion of one detective who may believe a variety of myths regarding false reporting.

This realistic and evidence-based estimate of 2-8% thus suggests that the American public dramatically overestimates the percentage of sexual assault reports that are false. It’s probably not hard to imagine why. For example, we have all seen how victims are portrayed in the media accounts of rape accusations made against popular sports and cultural figures. These media accounts show us just how easy it is for us as a society to believe the suspect’s statements (a respected cultural icon) and both discount the victim’s statements and disparage her character.

This tendency to overestimate the percentage of false reports can then introduce bias into an investigation and prosecution because it causes us to give less credibility to victims and more credibility to suspects. This is especially true if the victim’s behavior is seen as risky or problematic and if the suspect seems like a “nice guy” who doesn’t look like a stereotypic rapist. We describe these characteristics as “red flags,” in the characteristics of sexual assault cases.

What Are These Red Flags?

Concerns regarding the legitimacy of a sexual assault report are often triggered by the presence of “red flags,” based on specific characteristics of the victim, suspect, or assault. Yet many of these “red flags” are actually based on our cultural stereotypes of what constitutes “real rape.”

As professionals, we are often reluctant to believe that we share these stereotypes, but the reality is that everyone in our society is exposed to the same cultural messages about sexual assault, and they inevitably influence how we think about it. Because these are societal stereotypes, they impact not only jurors but also the other professionals involved in sexual assault response (e.g., law enforcement professionals, forensic examiners, victim advocates, prosecutors, and other professionals). They even influence friends and family, all too often preventing them from providing the emotional support that victims of sexual assault so desperately need.

It is typically not difficult for a professional working in this field to describe what our society considers to be a “real rape.” For example, if you were to ask a roomful of people to describe what sexual assault is like, they might give some of the following common characteristics:

• The victim and suspect do not know each other—they are strangers.
• A weapon was used and/or physical violence was reported.
• There are signs of physical injury.
• The victim is hysterical and reports to law enforcement immediately.
• The victim did not exercise bad judgment at the time of the sexual assault.
• The victim has never reported a sexual assault in the past.
• The suspect is seen as sick, crazy, or deranged—not respectable, credible, or likeable.

Then when it comes to the victim’s involvement in the criminal justice system, there are again a number of characteristics that most people would assume are typical of sexual assault cases:
• There is a great deal of physical evidence to corroborate the allegation.
• The victim actively participates with the investigation and prosecution.
• The victim does not change his or her account of what happened.
• The victim is absolutely certain about the details of the sexual assault.
• The victim does not recant.
• Not a single detail in the victim’s account is provably false.

However, if you asked a room full of prosecutors how many of their cases resemble this stereotype, most would say that only a small percentage of their cases do. In fact, the research is clear that these stereotypic characteristics of “real rape” are actually quite rare:
• In reality, most sexual assaults are perpetrated by someone known to the victim, without a weapon, physical violence, or signs of physical injury.
• Very few victims report immediately to law enforcement, but if they do report to law enforcement, it is often after a delay of days, weeks, months, or even years.
• Many victims have a number of factors that limit their perceived credibility: they are often young, homeless, have a mental or physical impairment, are belligerent, and/or abusing alcohol or controlled substances.
• Victims often omit, exaggerate or fabricate parts of their account, and they may even recant altogether. They are not typically hysterical when interviewed by medical professionals, law enforcement professionals, prosecutors, or others.
• Suspects often do not fit our stereotype of a “rapist.”

In short, most sexual assault reports involve at least some of the “red flags” listed above. Yet sexual assault reports that are different from this stereotype of “real rape” are all too often viewed with suspicion, not only by jurors, support people, and other community members, but also by the professionals who are tasked with responding within the criminal justice system.

Of course, prosecutors may share some of these same “red flags” for suspecting that a sexual assault report is false. Yet this doesn’t necessarily indicate a personal belief in the stereotype. Often, prosecutors understand the realistic dynamics of sexual assault, but know that this stereotype will be prominent in the minds of judges and jurors as they make decisions regarding a sexual assault case. Prosecutors may therefore believe that they cannot ethically charge a defendant in cases that depart too much from the stereotype of “real rape,” because a jury would not be likely to convict. All of this makes cases with “red flags” more difficult to investigate and prosecute—despite the fact that many of the characteristics are actually typical of sexual assault.

W h a t  i s  t h e  A c t u a l  D e f i n i t i o n  o f  a  F a l s e  R e p o r t ?

Although many people have different ideas about what exactly constitutes a false report, the most reasonable definition is that a false report is a report of a sexual assault that did not happen (i.e., it was not completed or attempted). While we might all agree with this simplistic definition of a false report, people have different ideas about exactly when they can decide that the sexual assault did not actually happen. For example, investigators, prosecutors, and others often decide that a sexual assault did not happen based simply on their own views of the victim, the suspect, and their credibility. This is an unacceptable practice.

In reality, investigators and prosecutors cannot determine that the sexual assault did not happen, simply because they suspect that the report is false, view it with suspicion, or because the victim changes his or her account of what happened.

Investigators and prosecutors certainly cannot determine that the sexual assault did not happen because the victim lacks credibility—perhaps because the victim is young, drunk, taking drugs, belligerent, or suspected of “being a prostitute.”

It is similarly impossible to determine that a sexual assault did not happen based on sympathy for the suspect, because he seems sincerely outraged and upset by the charges, he has a credible story, or he appears to be a responsible citizen who does not meet our personal assumptions about who is likely to be a “rapist.”

In other words, professionals cannot determine that the sexual assault did not happen just because any of the “red flags” are present in a sexual assault case.

Rather, investigators and prosecutors must base all final judgments of a sexual assault report on the findings from a thorough, evidence-based investigation. The determination that a report is false can then only be
enforcement agencies are so different; many are labeling sexual assault reports false without any evidence to establish that they did not occur.

**But What if Part of the Report is False?**

We have therefore sought to offer a clear definition of what constitutes a false report. Next we want to address the very common problem that investigators and prosecutors face—that parts of the victim’s account may be false, omitted, exaggerated, or inconsistent with other information that is given. In other words, how false does a false report need to be? Does the whole report have to be false to constitute a false report of sexual assault?

For most criminal justice professionals, it is not difficult to come up with reasons why sexual assault victims might omit, exaggerate, or even fabricate aspects of their report.

For example, victims might give inconsistent or untrue information out of trauma or disorganization. When we are traumatized, we do not always think clearly and cannot necessarily provide information that is 100% complete and accurate. This is especially true for victims who have been sexually assaulted more than once, because aspects of the prior sexual assault may be confused with the current one. Victims may also have memory impairment due to alcohol or drug use.

Victims might also give incomplete, inconsistent, or untrue information because they are afraid that they won’t be believed or that they will be blamed for the sexual assault. To illustrate, victims may omit details that will undermine their credibility, such as drug or alcohol use, prostitution, or other unflattering or even illegal behavior. Of course, victims may also omit details about their own unlawful activity out of the fear of being arrested.5

Victims also sometimes minimize what happened or change the details in order to protect the perpetrator. This can occur when the two people have a relationship, when the victim depends on the perpetrator for financial or emotional support, or is afraid of getting the perpetrator “into trouble.” As a result, victims may give incorrect or confusing information about what actually occurred.

Victims also may give information that is incomplete, inconsistent or inaccurate because of their immigration status (or assumed status). Many victims have learned from experiences in their country of origin that authority figures are not to be trusted, particularly law enforcement officers. In addition, suspects often use immigration status against victims, threatening to report them to immigration authorities or to have them deported if they tell anyone about the sexual assault.

There can also be cultural reasons for exaggerating or minimizing the facts of a sexual
assault report. For victims from another culture, beliefs about what is acceptable to tell a stranger and taboos about sexuality and sexual activity may influence their description of what happened. This problem can be especially pronounced when the (female) victim is from a minority culture and the (male) law enforcement professional is from the dominant culture of the United States.

Victims from a minority cultural group may be particularly reluctant to report a sexual assault against another member of their cultural group, because it is sometimes seen as a betrayal of the victim's cultural group. This reluctance may be heightened when there is a perception that the cultural group is treated unfairly by law enforcement.

However, one of the most common reasons why victims alter or exaggerate the details of what happened is to create a case that seems more believable. This can be due to guilt, shame, or a fear of not being believed. Just like everyone else in society, sexual assault victims know the stereotype of a “real rape”—that it is perpetrated by a stranger with a weapon or physical violence, that it is reported to law enforcement immediately, and that the victim is emotionally hysterical. In an effort to be believed, therefore, victims may change aspects of the reported incident to make it sound more like this stereotype.

For example, victims may report that they were assaulted by a stranger when they really knew the suspect, and perhaps even had a prior sexual relationship together.

Victims may also report that the suspect used a weapon when this is not really true, or describe threats of physical violence that were not really made. Remember that victims also struggle with the same societal stereotypes as well.

When we think about these dynamics, it makes sense why victims might provide inconsistent, incomplete, or even untrue statements. Yet many investigators and prosecutors have seen this as evidence of a “false report.” In fact, none of these situations meets the actual criteria for a false report—because even if aspects of the victim’s account of the incident are missing, exaggerated, or false, this does not necessarily mean that the sexual assault did not happen.

**Overcoming This Challenge**

For all of the reasons provided above, it is understandable that victims often give information in their statement that is incomplete, inconsistent or even untrue. Nonetheless, these issues can destroy the victim’s credibility if they are not handled by criminal justice professionals. As a first step in overcoming this challenge, investigators and prosecutors must recognize that these omissions, inconsistencies, and even untrue statements are understandable and should never be confused with a “false report.”

Then, they can address these issues by exploring them gently and nonjudgmentally with the victim.

The most important objective is to create a safe and nonjudgmental environment that encourages honesty even for unflattering or illegal behavior.

Then when an omission, inconsistency, or untrue statement is suspected, the investigator or prosecutor can respond by pointing out the issue and asking for clarification. It is entirely possible that the victim simply made a mistake or the professional misunderstood what the victim was saying. Yet the appropriate time for this type of clarification is after the victim has completed his or her description of what happened—not immediately when the issue arises, because this will interrupt the victim’s narrative account.

It is also important to fully—but gently—explain to victims the negative impact of such omissions, inconsistencies, or untrue statements on their credibility during the law enforcement investigation. By doing so, investigators and prosecutors can emphasize the importance of complete truthfulness.

If the issue remains, the professional can explain that conflicting information has arisen and ask for the victim’s help to make sense of it. For example, an investigator could say: “I need to ask these questions because I have to write a report on this, and I want to get every detail correct.”

**Reduce the number of unnecessary professional contacts**

Problems such as inconsistent statements from the victim can also be decreased by reducing the number of unnecessary professional contacts. This is often a goal for communities that implement a coordinated Sexual Assault Response and Resource Team (SARRT).

This does not mean that investigators and prosecutors should be reluctant to conduct follow-up interviews during the course of the investigation, as additional evidence and information is uncovered. In fact, such follow-up interviews are necessary to conduct a comprehensive investigation.

Rather, the goal is to reduce the number of unnecessary professional contacts that take place, either because the case is being screened or the victim is being “handed off” to another professional for some administrative reason. The purpose of any follow-up interviews should therefore be to gather additional information and clarify any questions, not to go over the same information again.
Because it takes time to develop rapport and trust with sexual assault victims, agencies should not allow investigators or prosecutors to “hand off” a sexual assault investigation in mid-stream, if there is any way to avoid it. This is a frequent cause of inconsistencies in the victim’s statement, and it creates serious difficulties in establishing rapport and trust with criminal justice professionals. Rather, criminal justice agencies should have policies in place that provide their personnel with the resources needed to complete thorough sexual assault investigations.

Given the advantages of reducing the number of unnecessary professional contacts, some communities have also implemented a policy of “vertical prosecution” in sexual assault cases. This strategy allows victims to work with the same prosecutor throughout their case processing, which can be especially valuable in larger jurisdictions where cases are typically initiated by one prosecutor and “handed off” to another. It clearly represents a “Best Practices” for the investigation and prosecution of sexual assault.

Seek corroboration for details in the victim’s statement

There are clearly a number of strategies that investigators can use to clarify inconsistencies, omissions, or untruths in the victim’s description of what happened. However, as important as it is to seek clarification of such inconsistencies or omissions, it is equally important to highlight the accuracy of other details in the victim’s statement. Thus, a primary goal of any sexual assault investigation will be seeking corroboration for details in the victim’s account of events, regardless of whether or not they are relevant for establishing an element of the offense.

How to Handle the Frustrating Reality of “Real” False Reports

Having demonstrated that the percentage of false sexual assault reports is not as high as many people think, this does not deny their terrible reality. We all know that false reports do really exist, and they are incredibly damaging both to criminal justice personnel and to the countless victims of sexual assault whose credibility they undermine.

Potential indicators of a false report

Investigators and prosecutors may already be familiar with some of the training materials that are widely available to describe “indicators” of a false report of sexual assault. Unfortunately, some of these indicators are based on research that is extremely limited and/or inappropriate for this purpose. For example, many were developed on the basis of FBI experience with false reports of stranger sexual assaults. These may not be appropriate, because these sexual assault reports are more likely to involve a perpetrator who is known to the victim. Regardless, these training materials typically suggest that the potential indicators of a false report are actually the same stereotypic characteristics of “real rape” described previously. This is not a coincidence.

Consider this: If you were going to file a false report of sexual assault, would you describe the realistic dynamics of sexual assault? You would really say that you were assaulted by someone you knew, perhaps someone with whom you have had a relationship or even had sex? Would you really say that you were drinking at the time, or perhaps even taking drugs, or engaging in other risky behavior? Probably not.

By describing this type of realistic sexual assault, you might not get the kind of reaction you were looking for, because people might respond to you in the same way they respond to victims of sexual assaults in the real world. That is, you might not be believed, or you might be blamed for the sexual assault yourself.

Therefore, if you were going to file a false report of sexual assault, you would probably describe a sexual assault that looks like the stereotype of “real rape” that we have discussed at such length throughout this article.

For this reason, it is not surprising that the potential indicators of a false report are actually the same as the stereotypic characteristics of “real rape.” To summarize material developed by McDowell and Hibler (1987), realistic indicators of a false report could potentially include:

• A perpetrator who is either a stranger or a vaguely described acquaintance who is not identified by name. As previously discussed, most sexual assault perpetrators are actually known to their victims. Identifying the suspect is therefore not typically a problem. However, victims who fabricate a sexual assault report may not want anyone to actually be arrested for the fictional crime. Therefore, they may say that they were sexually assaulted by a stranger or an acquaintance who is only vaguely described and not identified by name.

• Victim claims of having physically resisted to the utmost. In fact, many victims do not physically resist during a sexual assault. There are a number of reasons for this. Many victims are simply too surprised or confused to resist, because they are assaulted by someone they know and trust. Often, they do not resist during the sexual assault because they are simply trying to make sense of what is happening. Other victims do not physically resist.
resist because they don’t trust their own perceptions of what is happening, or blame themselves for the situation. Of course, physical resistance is not likely among victims who experience dissociation or frozen fright, and those who have been drinking and/or taking drugs. Still other victims do not physically resist because they are too frightened, and may even fear that resistance will anger their assailant and increase their risk of injury or death. Therefore, although many sexual assault victims do not physically resist, a false report may include a description by the victim as having resisted vigorously—in an effort to appear blameless.

• Use of a weapon, serious physical violence, and/or signs of injury. Most sexual assaults do not actually involve a weapon, physical violence, or evidence of physical injury. Yet fabricated claims may be more likely to resemble the stereotype of “real rape” in this regard. In some cases, individuals who falsely report a sexual assault may even inflict physical injuries upon themselves to bolster the credibility of their report. These can sometimes be identified by their nature and placement, which suggest that they were self-inflicted and are generally superficial.

• An assault involving only penile-vaginal penetration. While other sexual acts are commonly experienced by sexual assault victims, fabricated claims typically include only this “classic” form of rape (i.e., penile-vaginal penetration).

Still other indicators may be based on the lifestyle or history of the reporting party, such as:

• Escalating problems in life or personal relationships.

• A documented history of mental or emotional problems.

• Characteristics of the allegation that “copycat” a highly publicized crime.

While these indicators may therefore raise suspicion that a report of sexual assault may be false, none of them should be considered significant when observed in isolation. In fact, some of these factors are particularly challenging because they are associated both with an increased risk of actually being sexually assaulted and with an increased likelihood of filing a false report. Examples include “escalating problems in life or personal relationships” and “a documented history of mental or emotional problems.”

On the one hand, these factors make an individual more vulnerable to actually being sexually assaulted. Yet these same factors may also indicate emotional instability that could potentially lead an individual to file a false report of sexual assault. Therefore, a report should only be considered suspect when a number of these indicators are present. Then the report can only be determined to be false when the investigative facts directly contradict the victim’s account of events. In fact, the best way to identify a false report is to uncover evidence that actually contradicts the victim’s account of events or makes it impossible for the sexual assault to have taken place as described.

For example, there might be no sign of a physical struggle or injury when there logically should be. Or perhaps the victim states that she was “hit over the head with a bat and knocked unconscious” or “cut with a knife” yet there is no evidence of such an injury. There might even be evidence that the victim purchased materials used in the sexual assault or wrote a note or letter that is attributed to the suspect (McDowell & Hibler, 1987). Therefore, the determination that a report is false is the result of “putting all the pieces together.”

Responding to a suspected false report

Investigators and prosecutors should only act upon their suspicion that a sexual assault report is false if these concerns are very serious and they are based on the evidence uncovered during the investigation. As McDowell and Hibler (1987) describe, any effort to challenge the validity of a sexual assault report could be devastating if the suspicion is misplaced and the victim really was assaulted. Such a challenge would certainly destroy the trusting relationship that must develop between criminal justice professionals and victims for successful investigation and prosecution.

It is therefore recommended that the tone of any challenge be supportive and based on the information provided by the victim.

This decreases the likelihood of defensiveness and allows for the continued investigation of the report, in case the sexual assault was legitimate but the information provided by the victim was incomplete, inconsistent, or inaccurate.

When the validity of a sexual assault claim is challenged, the person reporting the crime may react with anything ranging from relief to outrage.

To prosecute or not to prosecute?

If a report of sexual assault is determined on the basis of the investigative findings to be false, investigators must then make the decision regarding whether or not to charge the individual with filing a false report. However,
For one thing, such a charge is likely to be publicized by the media and this can create problems with future jurors who use it as evidence to confirm their suspicion that many or most sexual assault reports are false.

Even more important, such media coverage can serve as a serious deterrent for victims of sexual assault who might consider reporting the crime to law enforcement but fear that they will not be believed.

Given the size of the caseload that most investigators and prosecutors handle, it seems difficult to justify the inordinate time that would be involved in investigating and prosecuting someone for filing a false report—given that it is typically only a misdemeanor offense.

While it is understandable that investigators might want to prove that the report is false out of a sense of frustration and a determination to get to the truth, this is probably not the best use of limited resources. Rather, the decision regarding whether to charge someone with filing a false report should simply be based on the investigative findings already documented in the case file.

It is also important to keep in mind that most false reports of sexual assault are typically the result of personal and emotional problems, rather than vengeful motives.

Despite the stereotype, false reports of sexual assault are not typically filed by women trying to “get back at a boyfriend” or cover up a pregnancy, affair, or other misbehavior. While there are examples of this kind of false report, the vast majority are actually filed by people with serious psychological and emotional problems. In these situations, the person files a false report for the attention and sympathy that they receive. This explains why many “real” false reports do not involve a named suspect, because the intention is not to get someone in trouble with the police. Rather, many “real” false reports involve only a vaguely described stranger, so the victim can receive the caring attention of law enforcement officials and social service providers without the fear that someone will be arrested. Clearly, these cases can be extremely frustrating for criminal justice professionals, but they are probably best handled with appropriate referrals for social services rather than prosecution for filing a false report. Two other examples of best practices for handling these issues are to establish a multi-disciplinary review panel and develop a position paper to provide guidance.

Establish a multi-disciplinary review panel

To address these difficult issues, criminal justice professionals should also consider setting up a multi-disciplinary review panel, to discuss cases and investigations with input from other members in the coordinated community response to sexual assault. For example, a review panel might consist of victim advocates, forensic examiners, prosecutors, and others (including representatives from the crime laboratory, sex offender treatment program, and probation/parole). The purpose is not only to review the sexual assault reports that were unfounded by law enforcement—or rejected by prosecutors—within a specified time frame. The objective is to discuss and review these cases to determine the most appropriate response for victims whose sexual assaults are not likely to result in successful prosecution.

Adopt a position paper to provide guidance

Another best practice is to develop or adopt a position paper to provide guidance for
criminal justice professionals and others on the topic of false allegations, unfounded cases, and victim recantation. The state of Oregon has led the way in this regard, by publishing a concise discussion of the issues in a four-page document that is available from the Oregon Attorney General’s Sexual Assault Task Force. This document could serve as a starting point for others seeking to disseminate similar guidance for professionals within a community, region, or state. Such guidance is often desperately needed, because the terms are so often misunderstood and practices across agencies vary so widely.

**Conclusion**

Again, one of the most important challenges for successfully investigating and prosecuting cases of non-stranger sexual assault is the idea that many—or even most—reports are false. As long as this belief is accepted by law enforcement professionals, prosecutors, jurors, and others, our efforts to improve the criminal justice response to sexual assault will have only limited impact. Only those cases that look like our societal stereotype of “real rape” will be successfully investigated and prosecuted.

To move beyond this issue of false reporting, one of the most important steps we can take is therefore to recognize that the “red flags” that raise suspicion in the minds of most people actually represent the typical dynamics of sexual assault in the real world.

Once we accept this reality, we can begin to move beyond this issue to more successfully investigate and prosecute sexual assault cases, especially those involving non-strangers.

In fact, these issues have historically created a bigger hurdle for sexual assault victims than any lack of training or experience on the part of law enforcement professionals. It is therefore critically important for investigators, prosecutors, and others involved in the community response system to recognize these factors and seek to address them. To provide assistance, a number of useful resources are available.

**For More Information**

The EVAW International On-Line Training Institute offers a comprehensive training module on this subject, entitled: “False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault.” This article constitutes an adapted excerpt from that module. Other modules are also relevant for addressing these issues and improving the investigation and prosecution of non-stranger sexual assault. These include modules entitled: “Interviewing the Victim: Techniques Based on the Real Dynamics of Sexual Assault” and “Effective Report Writing: Using The Language of Non-Consensual Sex.” For more information on the On-Line Training Institute, please see: http://www.evawintl.org/evaw_courseware.


The Oregon Attorney General’s Sexual Assault Task Force has published a four-page position paper on “False Allegations, Recantations, and Unfounding in the Context of Sexual Assault.” It is available at: http://www.oregonsatf.org/documents/False Allegations.pdf.

**References**


Harris, J. & Grace, S. (1999). A question of evidence! Investigating and prosecuting rape in the 1990s. Home Office Research...


**END NOTES**

1 Dr. Loraway is the Research Director of EVAW International; Sgt. Archambault is the Executive Director of EVAW International; and Dr. David Lisak is an Associate Professor of Psychology at the University of Massachusetts. This article is an adapted excerpt from the training module of the same name in the On-Line Training Institute hosted by End Violence Against Women (EVAW) International, at http://www.evawan.org/evaw_courseware.

2 In an “addenda” to his article, Kanin (1994) describes how he also “gained access to the police records of two large Midwestern state universities” (p. 90) and examined all forcible rape complaints from a three-year period of time. Of these, 50% were classified as false reports, yet again this determination was made solely by police personnel and not reviewed in any systematic way by the researcher. Kanin does note, however, that these agencies did not use the polygraph and “neither declared the complaint false without a recantation of the charge” (p. 90).


5 This calls to mind the terminology of “factually innocent” which the courts use to dismiss cases where it can be established that the suspect did not in fact commit the crime. To illustrate, the California appellate court has defined someone as “factually innocent” when:

6 We believe that it is important for investigators and prosecutors to reassure victims that they will not be arrested for such behavior; but equally critical that departments have a policy of not arresting in such instances, unless it is absolutely necessary given the seriousness of the offense. Just as people who have overdosed on illegal drugs are treated for their medical emergency and not arrested, the priority in sexual assault cases must remain on investigating the crime and treating the victim with compassion. Arresting the victim will likely damage any trust that has been established with law enforcement, eliminate any chance that the victim will cooperate with the investigation, interfere with the victim’s emotional recovery, and perhaps even deter future additional victims from reporting.

7 This hypothesis is supported by research studies that document more stereotypic characteristics (e.g., offender violence) in accounts of rape that are generated as false, than in reports to law enforcement that are corroborated with an investigation and maintained as true (e.g., Norton & Grant, 2008).

8 Some readers may have heard of the “McDowell checklist” which is a series of questions purportedly used to score the account given by a sexual assault victim and determine whether or not it is a false report. Yet there is absolutely no scientific basis to support such a procedure — using this or any other similar “checklist.” Equally important, this type of procedure interferes with the rapport and trust that is needed for a law enforcement investigator to conduct an effective interview with a sexual assault victim. Of course, this in turn eliminates any chance for successful investigation and prosecution.

**NCPVAW DISCUSSION GROUP**

Are you a prosecutor or allied professional involved in the prosecution of violence against women? Join the NCPVAW Yahoo! discussion group at http://groups.yahoo.com/group/apri-vawp
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Sergeant Elizabeth Donogan, Sex Crimes Unit, Austin Police Department

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End Violence Against Women (EVAW) International is offering an introductory training module entitled: “Effective Report Writing: The Language of Non-Consensual Sex” free of charge. The cost for any other individual training module is $50. A track of six training modules costs $200; you receive TWO additional training modules FREE.

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The Forensic Experiential Trauma Interview (FETI)

By Russell W. Strand

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Traumatized individuals often undergo a process many professionals and victims do not commonly understand. Many professionals inside and outside law enforcement have been trained to believe when an individual experiences an event, to include a trauma event, the cognitive (prefrontal cortex) brain usually records the vast majority of the event including the who, what, where, why, when and how and peripheral vs. central information. This approach often ignores the role of bottom-up attention of the more primitive portion of the brain during highly stressful or traumatic event. Therefore, when the criminal justice system responds to the report of a crime most professionals are trained to obtain this type of peripheral and higher level thinking and processing information often discounting the enhancement of memory traces – for what was attended, via bottom-up mechanisms and norepinephrine and glucocorticoid effects on the amygdala and hippocampus. Sadly, collecting information about the event in this manner while overlooking the manner in which the memory and trauma shapes the memory may actually inhibit traumatic or highly stressful or fear producing memory and the accuracy of the details provided. Trauma victims/witnesses do not generally experience trauma in the in the same way most of us experience a non-traumatic event. The body and brain react to and record trauma in a different way then we have traditionally been led to believe. When trauma occurs, the prefrontal cortex will frequently shut down leaving the less primitive portions of the brain to experience and record the event. The more primitive areas of the brain do a great job recording experiential and sensory information but don’t do very well recording the information many professionals have been trained to obtain. Most interview techniques have been developed to interview the more advance portion of the brain (prefrontal cortex) and obtain specific detail/peripheral information such as the color of shirt, description of the suspect, time frame, and other important information. Some victims are in fact capable of providing this information in a
limited fashion. Most trauma victims however are not only unable to accurately provide this type of information, but when asked to do so often inadvertently provide inaccurate information and details which frequently causes the fact finder to become suspicious of the information provided. Stress and trauma routinely interrupt the memory process thereby changing the memory in ways most people do not accurately appreciate. One of the mantras within the criminal justice system is “inconsistent statements equal a lie”. Nothing could be further from the truth when stress and trauma impact memory, research shows.

In fact, good solid neurobiological science routinely demonstrates that, when a person is stressed or traumatized, inconsistent statements are not only the norm, but sometimes strong evidence that the memory was encoded in the context of severe stress and trauma. In addition, what many in the criminal justice field have been educated to believe people do when they lie (e.g., changes in body language, affect, ah-filled pauses, lack of eye contact, etc.) actually occur naturally when human beings are highly stressed or traumatized. Science of memory and psychological trauma must be applied to interview approaches and techniques.

Since the vast majority of traditional training and experience has caused many to focus on the higher functioning portions of the brain and research clearly shows these portions of the brain is not generally involved in experiencing, reacting to or recording the experience, the FETI process was developed and implemented as proven methods to properly interview the more primitive portions of the brain. This technique not only reduces the innacuarcy of the information provided but will greatly enhance understanding of the the experience, thereby increasing the likelyhood of a better understanding of the totality of the event. FETI is highly effective technique for victim, witness and some suspect/subject interviews. FETI entails the adaptation of the principles used in critical incident stress debriefing and defusing (impact of the event including emotional and physical responses) as well as principles and techniques developed for forensic child interviews (open-ended non-leading questions, soft interview room and empathy) as well as neurobiology of memory and psychological trauma (initially tapping into the lower functioning portion of the brain to understand the experience as well as the meaning of the experience in a non-threatening, non-suggestive manner). This concept and approach of this technique can be described as a forensic psychophysiological investigation - an opportunity for the victim to describe the experience of the sexual assault or other traumatic and/or fear producing event, physically and emotionally. This method has resulted in reports of better victim interviews by those who have used it. More importantly, the FETI interview process obtains significantly more information about the experience, enhances a trauma victim’s ability to recall,
reduces the potential for false information, and allows the interviewee to recount the experience in the manner in which the trauma was experienced. The FETI interview enhances the investigative process by taking a one-dimensional traditional investigation and turning it into a three-dimensional offense-centric investigation including subjective experiences indicative of trauma-based brain states. Traumatic memories are often encoded and retrieved differently than non-traumatic memories, so they have that dimension of the experience, and then presenting the fullness – and limitations – of the victim’s memories, including the fragmented sensations and emotions, lack of narrative and sequencing, etc., which are then critical facts of their own.

This technique significantly enhances the quality and quantity of testimonial and psychophysiological evidence obtained. This method has also been shown to drastically reduce victim recantations, increase victim cooperation and participation and significantly improves chances for successful investigations and prosecutions.

The forensic experiential trauma interview includes using interview techniques described below:

A Paradigm Shift
Forensic Experiential Trauma Interview

- Acknowledge their trauma/pain/stressful situation
- What are you able to tell me about your experience?
- Tell me more about... or, Help me understand...
- What were you feeling when... or, What was your thought process during this experience?
- What are you able to remember about... the 6 senses
  - Sight, Sound, Smell, Taste, Touch, Body Sensations
- What were your reactions to this experience
  - Physically?
  - Emotionally?
- What was the most difficult part of this experience for you?
- What can’t you forget about your experience?
- Clarify other information and details... after you facilitate all you can about their “experience”
- Closing
a. **Acknowledge the victim’s trauma and/or pain.** This will assist you, the listener, to demonstrate genuine concern and empathy towards the interviewee in an attempt to provide a sense of psychological and physical safety during the interview process. It may be difficult to establish trust with someone whose trust may have been horribly violated by another human being they may have trusted. Every effort should be made by you to demonstrate genuine empathy, patience and understanding towards the person with whom you are facilitating a disclosure of their experience. You may need to spend additional time establishing this your sincere empathy and caring concern to be invited into their traumatic and/or painful experience. One of the greatest needs of anyone who has experienced or is experiencing high stress and/or trauma is the need to be safe, trust is central to that need.

b. **Ask the victim/witness what they are able to remember about their experience.** Two key words in this question are “able” and “experience”. Not all victims are able to recall all significant information about something that happened to them initially or even after a period of time. Using the word "able" has been proven to relieve some pressures on the trauma victim thereby increasing the information they are able to provide. Using the term “experience” encourages the victim to describe their actual experience relieving the pressure on the interviewee to try to figure out what is important to the interviewee in the context of a criminal investigation. As the victim/witness describes their experience, the Interviewer can better understand what happened as they are provided a recounting of the events that are generally extremely rich in details. Following the initial open-ended prompt, employ active listening techniques allowing the interviewee to free-flow their description of what they remember about their experience. The Interviewer will enhance this description by adding additional open-ended prompts such as “tell me more about that” or “tell me more about __”. This technique will allow the
interviewee to provide even more significant information about their experience by prompting their memory in a more natural way. Open-ended prompts should include the interviewee’s emotional and physical experiences, before, during, and after the reported incident. Do not tell the interviewee to start at the beginning. This technique often inhibits trauma memory recall. Providing an opportunity for the victim to communicate his/her experience in the manner in which he/she recalls what happened is much more effective than initially requiring the victim to provide a chronological narrative. A sequential narrative may come to the victim later.

FETI Funnel – this term is used to describe the method to use clarifying questions to better understand both explicit and implicit memories. The use of “tell me more” questions are the most effective type of question to take an explicit memory such as “the rape”, “the man”, “the car”, “drinking”, “taking a shower”, etc. and better understand the context and impact of the particular remembrance. The interviewer should focus the interviewee’s thoughts on these particular topics to identify senses, thoughts, and feelings along with implicit memories. For example, if the interviewee states something along the lines of “and then he raped me.”, the interviewer should respond with “tell me more about the rape”. The interviewee may then respond by saying “he held me down and forced his penis into me.” The interviewer may then respond by saying “tell me more about him forcing his penis into you.” A follow-up question may then be “tell me what it felt like when…”, or what were you thinking when…”, or what did it smell like when…”

The FETI Funnel
c. Ask the victim/witness about their thought process at particular points during their experience. What was he/she thinking and how was he/she processing his/her experiences. This will assist the interviewer to better understand the actions/inactions and behaviors of the victim before, during, and after the assault. This will also reduce or even eliminate the need for the Interviewer to ask the victim/witness why they did or did not do something such as fight back, kick, scream, run, etc. Why questions of this nature have been proven to re-victimize victims, close them down, increase false information, and destroy or damage fragile trauma memories. By asking what their thought process was not only provides additional understanding of the victim/witness reaction and behaviors, but also increases their ability to recall additional psychophysiological evidence. For example, if the victim was sexually assaulted and during the sexual assault they may have “frozen” due to tonic immobility, asking them what they were thinking at the time they were being assaulted will often prompt will often solicit responses such as “I though he was going to kill me”, “I couldn’t move or scream”, “I couldn’t understand what was happening at that moment”. This type of information not only assists the Interviewer in determining a better understanding of why the victim/witness did or did not do something, but also identifies significant forensic physiological evidence that will assist in proving or disproving and or corroborating the reported offense.


d. Ask about tactile memories such as sounds, sights, smells, and feelings before, during, and after the incident. This is one of the most important aspects of the FETI process and a central theme. Because the primitive portion of the brain is optimized to collect, store, and recount this information far more efficiently than peripheral information or details, this is crucial evidence to collect as well. It is also believed that tactile and sensory details may block some memories and negatively impact on the victim’s ability to disclose additional information. Asking about sensory information has been shown to increase the victim’s ability to relate to the experience in a way that produces significantly more information. Sensory information also assists fact-finders and juries to better relate to the experience of the victim as well. Asking about sights, sounds, smells, feelings (physical and emotional), and tastes throughout the interview about specific memories related by the interview is extremely beneficial for the interviewer to better understand the experience and assist the interviewee in remembering and relating essential memories including central details (those details most important to the interviewee) and peripheral details (those details judged not important to the interviewee). For example, during the interview of an experienced police officer
who witnessed a woman shooting herself in the head (specifically – “blew her brains out” as related by the officer) following an attempt to talk her out of shooting herself, this officer provided details of the events surrounding this experience. Following open-ended questions about this officer’s experience, the officer concluded he recounted all the details he could recall. This officer was then asked what, if anything he was able to remember about what it smelled like after the woman “blew her brains out”. This officer appeared to reel back in his chair, his nose started to twitch and he appeared to become emotional following this question. The officer then recounted in a very animated manner that he smelled “honesuckle”. Following his disclosure about the honeysuckle, this officer became even more animated and disclosed, and demonstrated, that this woman’s hand was shaking and she was breathing deeply after she shot herself. This officer then added that her blood flowed from her open head “like motor oil”. This officer had not remembered these specific details during previous traditional interviews and was surprised by the amount of detail he was able to recall following the sensory cue provided by the FETI interviewer. This is but one example of many in which victims and witnesses of trauma can be assisted to recall specific sensory memories, which often assist them in remembering not only explicit memories, but implicit memories as well. Sensory information is often at the core of central details for most individuals. Therefore, asking specific questions about the various senses throughout the FETI process greatly enhances the likelihood of obtaining accurate experiential information increasing the ability of the interviewee to recall essential central details of the experience. Some individuals will recall certain senses better than others, so it is important to ask about all senses separately while obtain specific memories during specific aspects of the experience before, during and after the traumatic event.

e. Ask the interviewee how this experience affected them physically and emotionally. This is extremely important to understand because the effects of the assault will increase the Interviewer’s understanding the context of the experience, as well as provide evidence and insights about the trauma in ways that will further an in-depth conception of the impact of the assault on the victim. How the victim felt before, during, and after the event under investigation is fundamentally important for the Interviewer to understand and collect. During fear producing and traumatic events the sympathetic and parasympathetic system of the human body react to the fear stimulus in significant ways. The victim/witness may experience the emotional feelings of fear, shock, anger, rage, sadness, etc. The victim/witness may also experience physiological reactions to the trauma including the emotional feelings combined with the physical manifestations of stress, crisis, and trauma such as shortness of breath, increased heart rate, dilated pupils, muscle
rigidity and/or pain, light-headedness and or headache, tonic immobility, dissociation, etc. Identifying and properly documenting these reactions to their experience are essential pieces of information that can greatly assist the Interviewer in understanding the context of the experience and provide significant forensic psychophysiological evidence.

f. **Ask the victim/witness what the most difficult part of the experience was for them.** Trauma victims/witnesses will often intentionally or unintentionally repress extremely difficult to handle information about their experiences. A sensitive inquiry about the most difficult part of their experience may provide significant evidence of the trauma experience and/or crime and will in many cases increase understanding of the totality of circumstanced in reference to the victim/witness experience. Additionally, the most difficult part of the interviewees experience is more often than not the “key” central detail that may have not only framed the manner in which the trauma was experienced and remembered, but may also be fundamentally important aspect for investigators to better understand the context of that experience and subsequent reactions/behaviors of the interviewee following that experience.

g. **The interview should inquire what, of anything can’t the interviewee forget about their experience.** This question may assist the interviewer and interviewee to better understand another critical “central detail” and a better understanding of the interviewee’s perception and response to the trauma. This question also may obtain additional psychophysiological evidence. For example, a victim of a robbery in which the victim was brutally beaten by two assailants with hammers, was initially interviewed by a responding police officer utilizing traditional who, what, where, why, when, and how police questions in an attempt to obtain a chronological narrative immediately following the event. This particular victim became increasingly frustrated during the interview because he could not remember and did not know the answers to the majority of the questions the police officer was asking the robbery victim. Questions such as “what time did the incident occur”, “how many times did they hit you”, “how long did they hit you”, “what did they look like”, how tall were they”, what were they wearing”, “why didn’t you let them take your watch” (the victim continued to hold his arm on which he was wearing the watch during the attack – possible tonic immobility). As these questions, and many others, were being asked, the victim continued to become more frustrated and agitated because he felt he should know the answers simply because the police officer was asking them. This line of questioning was potentially increasing the victims stress level, increasing stress hormones, decreasing the ability of the victim to answer the questions and possibly increasing the possibility
that the victim, with a desire to assist the officer, to provide inaccurate information. During a subsequent FETI interview of this same victim, the victim was initially unable to provide any additional experiential information. This victim was then asked, “what, if anything, can’t you forget about your experience?” Following this question, the interviewee began to hit his head stating “the hammers hitting my skull, the hammers hitting my skull, I can’t get that sound out of my mind, I can’t sleep well, I can’t concentrate, the hammers hitting my skull”. After this disclosure, this victim was able to remember significant details about the robbery including other sensory information, what happened before, during and after the robbery, and other significant information about this experience.

h. The interviewer should clarify other information and details (e.g. who, what, where, when, and how) after facilitation and collection of the forensic psychophysiological experiential evidence. Although the primitive portions of the brain collect, store, and recall information pertaining to the experience, the cognitive brain may have collected or is able to retrieve from other portions of the brain information pertaining to the who, what, where, when, and how types of information. Interviewers should be careful about asking specific questions pertaining to length of time and elements of distance due to the fact that fear and trauma often distorts time and distance. The Interviewer should explore the additional central/peripheral information and who, what, where, when, and how type of information in a sensitive and empathetic manner taking great care not to inhibit or change already fragile testimonial trauma evidence.

i. The interviewer should remember to close the interview as empathically as it began. The interviewee should be allowed to control the length and breadth of the interview. Upon termination of the interview the interviewer should provide reassurance to the interviewee that it is normal after the interview for them to remember additional elements of their experience. In large part this is due to the way in which the brain continues to process through a traumatic experience. Further there may be elements of their day to day activities that will cause particular remembrances. This is commonly known as triggers, such as sights, sounds smells, tastes, feelings, and body sensations. These triggers are often caused by these sensations and/or explicit memories triggering the implicit memories. The interviewee should be encouraged
to make note of these remembrances and the interviewer should encourage them to share that information as it may prove critical and noteworthy to the investigation and potential prosecution. Finally the interviewer should address any concerns/questions the interviewee has at that time and close by thanking the interviewee for their participation and willingness to trust the interviewer with the disclosure. Also, it is important to remember, if done effectively, there may be a trauma related bond between the interviewer and interviewee. Provide some time for closure and normalization prior to the final completion of the interview. Ensure the interviewee has follow-on resources available, as needed, such as a victim advocate or other helping professional.

The FETI interview techniques are specifically designed to provide an opportunity for the Interviewer to obtain significantly more psychophysiological evidence than traditional interview techniques. Psychophysiological evidence is defined as “evidence which tends to prove or disprove the matter under investigation based on psychological and physical reactions to the criminal conduct the person experienced or witnessed. Examples would include, but are not limited to: nausea, flashbacks, muscle rigidity, trembling, terror, memory gaps, etc.” In addition, these techniques provide the victim a better avenue for disclosure, reducing the potential for defensive feelings and uncooperative behavior, which can limit the information/evidence provided to an Interviewer.

Memory encoding during a traumatic event is diminished and sometimes inaccurate, and due to bottom-up attention processes focused only on central details perceived as essential to survival and self-defense, many aspects of the event, including those deemed by investigators as essential facts of the crime, may not be encoded strongly or at all. But the assault’s psychophysiological impact is registered with much greater accuracy and strength in the brain’s circuitries of fear and stress, and remembered with far more precision. The impact of the psychophysiological experience also continues to produce potential psychophysiological evidence long after the event. Indeed, psychophysiological evidence is often the only evidence available to distinguish between consent/non-consent and levels of incapacitation. It is also extremely beneficial in demonstrating the ‘three dimensional’ assault experience and subsequent victim reactions and behaviors.
Forensic Experiential Trauma Interview (FETI)

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August 30, 2015
The Forensic Experiential Trauma Interview (FETI)

INTRODUCTION

Traditional law enforcement interview techniques and protocols do not always recognize the effect trauma plays in memory formation and retrieval. These approaches risk alienating victims of traumatic events and mischaracterizing or missing vital evidence. The Forensic Experiential Trauma Interview (FETI) reflects communication principles designed to maximize the accuracy of witness recollection and minimize the harmful effect on victims. The FETI interview technique and training were designed using the best practices of child forensic interviews and critical incident stress debriefings—specifically recognizing neuroscience research and the research on memories formed during highly stressful and traumatic events.

First introduced in 2010, FETI became a central part of the Special Victims Unit Investigations Course (SVUIC), an advanced sexual assault investigations course taught at the US Army Military Police School. Beyond adding an additional interview technique to their arsenal, investigators are trained to recognize and value “psycho-physiological” evidence—those predictable physiological responses to the impact of trauma. To date over 1700 DoD personnel have been trained in FETI; personnel including both military and civilian, Special Agents, Trial Counsels, and Sexual Assault Prevention and Response personnel. Its underlying principles have been adapted to Cultural Change Training, reaching over 70,000 additional personnel. Numerous federal and state civilian agencies continue to request FETI training, which has currently reached over 10,000 law enforcement officers, prosecutors, and Sexual Assault Nurse Examiners (SANE).

BACKGROUND

The FETI was developed by Russell Strand and the Behavioral Sciences Education and Training Division at the US Army Military Police School. It is taught to criminal investigators and trial counsels from the military services as part of the Special Victims Capability Course (SVCC) (formerly the SVUIC). As a law enforcement practitioner with over 40 years of criminal investigations, special victim response, critical incident response, and forensic interview experience, Mr. Strand has seen a great many changes in the approach to witnesses and victims of crime. He noted unintended yet tremendous harm done to many victims by well-meaning criminal justice professionals—including police officers, detectives, prosecutors, and defense attorneys. He had the opportunity to work with some of the great pioneers in the forensic interview field during the past several decades.
Mr. Strand was trained in several child forensic interview methods and numerous other forensic interview styles, methodologies and concepts - all of which have some good elements for consideration. He also had some opportunities to learn about and use some of the principles from the critical incident debriefing field, by assisting first responders in dealing with critical incident stress, including responding to the November 2009 Fort Hood Shooting.

This background shaped Mr. Strand’s approach, motives, and concerns over the years about traditional police interviews, particularly of traumatized crime victims - more specifically child abuse, domestic violence and sexual assault victims. In the end, he is a practitioner, not a researcher. He has personally conducted victim interviews throughout his career and continues to do so. Although not a researcher, he has kept abreast of the work that researchers do and the essential contributions they make. Advances in understanding the neuroscience of trauma and trauma memory led him to realize that many of the traditional interview techniques were inappropriate for trauma victims, and have the potential to negatively affect rapport, recall, and legal outcomes. He developed the FETI to address these problems, drawing on the neuroscience of trauma and his experience with techniques adapted from other trauma-informed interview practices. Whereas many criminal investigation interview protocols were developed by psychologists working with law enforcement, the FETI was developed by law enforcement professionals working with psychologists, and it reflects this research-based but operational focus.

DEVELOPMENT OF THE FETI

Working directly with actual sexual assault victims and with prosecutors teaches a great deal about what type of evidence is needed to successfully investigate and prosecute crimes where there is little or no meaningful physical evidence. In a traditional police investigation and prosecution, physical evidence is collected in an attempt to prove or disprove the reported offense. Unfortunately, most suspects in sexual assaults are smart enough not to create evidence of physical trauma, but they have great difficulty preventing the accumulation of evidence of psychological impact or trauma. When exploring how to better investigate and prosecute these types of crimes, the focus shifted to the elements of proof that encompass consent, incapacitation, and force. Furthermore, most juries don’t understand trauma victim reactions, behaviors, and decisions (commonly known as “counter-intuitive behaviors”). This increases the importance of evidence supporting non-consent, evidence of fear, and evidence of force (or constructive force). Most of this evidence appeared to straddle what is traditionally viewed as physical evidence and testimonial evidence. In looking at these issues another class of evidence was identified, referred to as psycho-physiological evidence, which includes impact of the experience before, during, and after the high stress or traumatic experience. Some of this evidence can be corroborated, unknowingly, by suspects (e.g., the rigid body of a victim in a state of tonic immobility, the sudden total “relaxation” of a victim who has just entered a state of collapsed immobility, the automatic and unquestioning compliance of a victim in a state of dissociative autopilot).
Most interview techniques, including child forensic interview techniques and Cognitive Interview (CI), were developed long before neuroscientists provided a better understanding of trauma and trauma memory. FETI was developed with the goal of improving victim interviews and investigative skills by learning from research— and continuing to learn— including the relevant ethological research (e.g., on animal defense responses) and relevant neuroscience research (e.g., on stress- and fear-induced alterations of prefrontal cortical function and time-dependent impacts\(^1\) of acute stress [and fear] on hippocampus-mediated memory encoding and consolidation). Subsequent experience has expanded its application to subject and witness interviews as well. As in the development of scientific principles in any field, practices must continuously be critically evaluated and changes made as appropriate to move the field forward. Doing things the same way even in the face of new scientific understandings must always be resisted, otherwise the pioneers in the field will become guardians instead.

Relevant ethological and neuroscientific research shows that during a highly stressful or traumatic event, stress chemicals released by the fear circuitry typically impair or even effectively shut down the prefrontal cortex. With the fear circuitry in control of behavior, the victim may only (or predominantly) respond with reflexes and habits. The shift to fear circuitry dominance and control of attention and hippocampal function also impacts how the experience is encoded, consolidated and retrieved—as both explicit and implicit memories. (Two of the experts who have worked closely with Mr. Strand, Drs. Jim Hopper and David Lisak, provide concise summaries of these issues in two op ed pieces: Why Many Rape Victims Don’t Fight or Yell,\(^2\) a brief review article with links to key scientific papers, and Why Rape and Trauma Victims Have Fragmented and Incomplete Memories.\(^3\) )

The research cited above along with other significant peer-reviewed scientific neuroscience research, which did not exist when most interview techniques and tools were developed, led to re-examination of the experiences, behaviors and memories of traumatized crime victims. Based on decades of professional experience and a solid body of relevant research, especially neuroscience research, the FETI (a set of tools rather than a prescriptive rigid technique) was developed to maximize the collection of psycho-physiological evidence and minimize the collection of potentially problematic inaccuracies (e.g., with respect to poorly or non-encoded peripheral details). The FETI was designed using the best practices of child forensic interviews (open-ended questions, non-leading questions, simple prompts, single versus multiple questions, and giving the victim control and pace of the interview); neuroscience research (on how brain and body react to stress, fear and trauma); research on memories of highly stressful and traumatic events (e.g., potential lack of narrative and time-sequence

\(^1\) See https://www.dropbox.com/sh/s1r3sz0fnormbqv/AADcJ2ZBAibY-u9ByDr7CsPSa?dl=0
\(^3\) See http://time.com/3625414/rape-trauma-brain-memory/. Dr. Hopper has also posted a number of key articles at https://www.dropbox.com/sh/s1r3sz0fnormbqv/AADcJ2ZBAibY-u9ByDr7CsPSa?dl=0
CHARACTERISTICS OF THE FETI

Unlike other interview methods, the FETI does not consist of a sequence of steps, but rather represents a set of key principles that are followed to conduct the interview. There are some specific words and questions in the FETI used as cues, such as the first question: “Help me understand what you are able to tell me about your experience?” This phrasing is very deliberate, especially two key words: “able” and “experience”. Acknowledging up front that trauma victims are not able to remember or disclose everything right away helps to normalize this for them and reduce any feelings of inadequacy in this regard. Additionally, “experience” has a far different connotation than the more common phrase “what happened”. Experience is the three dimensional aspect, while “happened” is often a linear, one dimensional aspect. Also, “what happened” can implicitly communicate – or at least be understood by the victim to mean – that the investigator expects the victim to only report “facts”, events that they may not have encoded or consolidated into memory in the first place, thereby creating significant feelings of anxiety, fear, and incompetence from the outset.

There are specific memory cues used to collect specific experiential information (psycho-physiological evidence). Some of these cues differ from many other interview techniques but are intentionally used in the FETI. For example, if it appears the victim is having difficulty answering questions or remembering particular aspects of the experience(s), the interviewer asks the question “what, if anything can’t you forget?” This assists victims in focusing more clearly on the central details without having to worry about trying to remember aspects that they have no memory of, or may not be able to retrieve at the time, or, due to shame and fear, not be willing to disclose yet. Another example is when the victim appears to be struggling or not remembering certain aspects, the interviewer may ask “what was the most difficult part of this experience for you?” This question has yielded significant psycho-physiological, sensory, impact, and other forms of critical information, including implicit memories and additional central details.

Unlike other techniques, FETI prohibits asking “why” questions. Most forensic
Interview techniques have no problem with asking “why” questions of the victim. A general understanding of victimology and victim impact clearly shows that most victims blame themselves. Interviewers have found that asking why questions, such as “why didn’t you scream out or hit the other person?” can be very damaging, and therefore these are strictly prohibited during a FETI. Instead, “why” questions are replaced with “what were your thoughts?”, “what was going through your mind at that point?”, or “what were you thinking when...?” Experience has shown that by prohibiting “why” questions and focusing on such “thought questions”, that victims are far less likely to become defensive and close down, and are significantly more able to assist in the understanding of counterintuitive behaviors and reactions.

FETI was intentionally designed to collect a specific type of information or evidence that represents a shift in the focus of the investigation, as opposed to a means to improve the recall and accuracy of witness (or victim) accounts within the framework of who, what, where, when, why, how. FETI challenges traditional ideas about what is “relevant” for investigation and prosecution of violent and traumatic crimes, and suggests that there is value in emotions and sensations, and in psycho-physiological impact that reflects non-consent, trauma, etc. CI discusses emotion and the expression of emotion as being of “cathartic” value to a victim (which is also important in FETI as well), as opposed to being psycho-physiological evidence to be understood, gathered, and preserved as such. CI and other protocols seek to assist investigators within the traditional paradigm of the “5 W’s and an H”, while FETI seeks to create a new paradigm in which a different class of evidence is also elicited, explored, and collected. This paradigm shift has already proved itself anecdotally in the investigation and prosecution of certain crimes in which there is generally a lack of physical evidence, such as many types of crimes against persons.

COMPARISON WITH THE COGNITIVE INTERVIEW AND OTHER PROTOCOLS

FETI has been compared and contrasted with the Cognitive Interview (CI) developed by Drs. Geiselman and Fisher⁴, which has been adopted by several law enforcement organizations. It has been criticized for both being too similar to the CI with only minor variations (i.e., the CI in disguise), and for lacking CI’s scientific validation (often by the same critics). While the CI has been evaluated in a number of studies, not all have been methodologically precise or the findings consistently supportive of its efficacy. Nevertheless, FETI represents a natural evolution of research-based interview practices, in keeping with Geiselman’s and Fisher’s own encouragement to “develop other innovative techniques to improve upon these two

important goals of the legal system: collecting crime-related information for investigative purposes and enhancing [traumatized] victims’ (and others’) wellbeing.”

FETI and CI do share several similarities. These include open-ended questions, non-leading questions, rapport building, avoidance of victim blaming, etc. However, while CI and FETI may look similar in practice, they come from very different origins. CI was developed based on pre-1990s research on episodic memory encoding, storage, and retrieval.

Although there are many similarities between FETI and several other child forensic interview techniques and CI, there are also significant differences between FETI and other forensic interview techniques, including CI. Developers of the FETI have never meant to imply that the CI is clearly harmful to victims, at least in a direct psychological sense, as some critics have stated. There are some concerns, however, given what is now known about the neuroscience and trauma memory, that certain elements of the CI could lead investigators and prosecutors to unreasonably question the validity of traumatized victims’ memories, which can lead to negative outcomes in the psychological and legal realms. More specifically, because trauma-induced alterations of hippocampal function can dramatically reduce the encoding and consolidation of temporal context (i.e., the time-sequence of events), the Reverse Order (RO) element of the CI could contribute to errors and inconsistencies in memories. Those errors and inconsistencies could then potentially harm victims in several ways: (1) they are not believed by investigators, (2) they are not believed by prosecutors, (3) they are more easily attacked by the defense, and thus they are (4) less likely to succeed in the legal system and (5) potentially suffer harm by the many consequences of not being believed and/or failing in the legal system.

Some of the other differences are obvious and some are more subtle. Some of the important differences include:

(1) FETI does not simply begin by attempting to obtain a sequence of events or narrative right away. Instead, the victim is invited to simply tell whatever s/he is able to remember, at whatever point the victim wants to begin. This may be at the beginning, middle or end of the experience. It may begin with something that occurred after the experience or anything else. The victim is not instructed to mentally recreate external factors, emotional factors, or cognitive factors. This information may be obtained in the context of the interview, but it is not under the service of improving other memories per se; it serves to collect information that is central to the victim’s experience of the crime.

(2) Another apparent difference is that while other forensic interviews tend to maintain a focus on the who, what, where, when, why, and how (the traditional “5W’s

and an H”), and see expression of emotion as a cathartic experience for victims that can lead to increased disclosures, FETI treats emotion as part of the impact of the experience, as data to be gathered. This reflects the paradigm shift that FETI represents: The focus is primarily on the details central to the victim, such as sights, sounds, smells, tastes, body positions, thought processes and impacts of the experience. Emphasis is also placed on collecting and understanding evidence of high stress or trauma, as well as both explicit and implicit memories. This is all done in the service of collecting a different type of evidence that helps establish the non-physical elements of the crime, and getting away from an exclusive focus on the “5 W’s and an H.” Instead, the FETI places more of an emphasis on collecting what is called psycho-physiological evidence. The narrative, much of the sequence information, and peripheral details may come later.

(3) The Reverse Order component of CI is avoided primarily due to concerns over premature or inappropriate attempts at narrative and sequencing (described above).

(4) Imagery or other similar cues are not included. This is based on the understanding that this component of the CI could potentially decrease accuracy and increase false information.

(5) Also excluded are components involving reviewing or remembering the experience from another perspective. Victims are asked only to provide their experience as they originally remember it in the most natural manner. Current understanding of trauma and trauma memory is that suggestibility in some trauma victims (adults and children) is an issue as they try to make sense of what happened. Asking them to remember their experience in a manner in which they did not experience it could potentially distort their retrieval and reconsolidation of memories of their experience.7

(6) FETI treats emotional response as data or evidence. CI appears to emphasize encouraging victims and witnesses to describe their emotions for the purpose of contextual reinstatement, and not necessarily for gathering that emotional response as data. Also, as quoted from the CI material, “If police interviewers were more aware of the cathartic value of victims voicing their emotional experiences, perhaps police would be more receptive to allowing victims to incorporate their emotional reactions within their narrative of the crime details.” While this is important, police officers and detectives may still shy away from these emotions in order to shield themselves from potential secondary trauma; may believe the emotions have no value to the case; or may even believe it necessary to protect themselves from becoming biased through engaging with the victim’s emotions. It is for these reasons (among

7 There is a significant body of research literature on how egocentric and allocentric memory representations depend on different neural substrates [e.g., see 2006 review by Burgess in Trends in Cognitive Sciences, 10, 551-557], and evidence that the consolidation of allocentric information is more demanding of hippocampal resources and can be impaired by stress, fear and alcohol [e.g., see Holdstock et al. 2000, Neuropsychologia, 38, 410-425; Smith et al. 2015, Neurobiology of Learning and Memory, 119, 69-76, and Bisby et al. 2010, Biological Psychiatry, 68, 280-286] – all common factors in sexual assaults.
many) that FETI interviewers are taught that emotions are not just a means to obtain information but more importantly can be understood and used as potential evidence of the crime.

(7) FETI does not aim to promote catharsis, although it is an important outcome – it is more about evidence collection, and emotion is a form of evidence as a potential sign of non-consent, etc. Empathy is not simply a technique for supporting victims so they can “continue to narrate their story;” it is also a valuable way to elicit and collect valuable evidence.

(8) CI acknowledges that victims may have only paid attention to a perpetrator’s face or weapon (the two examples given); FETI goes further, acknowledging and training interviewers that the victim may not have paid attention to anything related to the crime, or significant periods of the crime. This is often true in dissociated states, for example.

(9) Unlike CI, which emphasizes multiple retrieval cues, but not different types of memories that can be retrieved - FETI actually looks for both explicit and implicit memories of the event, by asking questions specifically tailored to each type of memory.

(10) Unlike CI, which encourages investigators to reassure victims and witnesses that it is okay not to know the answer to certain questions, FETI attempts to avoid asking questions that memory and neuroscience research suggests the victim will often not be able to answer (e.g., about time sequences and spatial contexts) in the first place. They may be addressed at the end of the interview, and only very carefully then.

(11) The rapport building techniques in FETI are different from most forensic interview techniques. Experience has shown that when someone is traumatized, talking about hobbies, similarities with the interviewer, or other trivial topics, can often irritate and potentially further stress the victim. FETI takes a different approach and goes right to the heart of the matter, even suggesting when appropriate to skip the administrative paperwork and collection of personal data and obtain that information near the end of the interview. It has been found to be just as effective in establishing rapport and much more productive to simply demonstrate genuine empathy by calmly expressing concern for victims and understanding that this may be difficult for them.

ADMISSIBILITY

Concerns raised about Daubert and Frye have been addressed by legal experts around the country at the national, state, and local levels. FETI training has been conducted for several legal organizations across the country, including the Department of Justice and prosecuting attorney associations. Some of these organizations have adapted and are training FETI across their professional organizations. They point out that Frye was a 1923 case about general acceptance of scientific methods. It was

8 Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)
deemed insufficient when the Supreme Court made its decision in Daubert vs. Merrell-Dow9. Daubert is a case that comments on Rule of Evidence 702 regarding the admissibility of “expert witness testimony”, specifically scientific expert testimony. FETI is used to train and educate criminal investigators and lawyers, not expert witnesses. By the time these cases make it to court, FETI has already been employed during the investigative stage. In its simplest form, it is merely a highly empathetic (and trauma-informed) way of interviewing someone who has experienced a traumatic crime. It is not an intrusive memory retrieval device like hypnosis that risks significant alteration of memory and must only be used by trained experts. Special agents, detectives, investigators and other first responders may become “fact” witnesses, but will not generally be called as an “expert” witness during judicial proceedings.

Although it was common for some forensic interviewers, specifically child forensic interviewers to be called to testify on the manner of child victims or in place of them, this has been rare since Crawford vs. Washington10. There is a 6th Amendment issue concerning this type of testimony, especially for adult victims, where it is generally considered hearsay evidence. With FETI, investigators don’t generally need to explain the technique they used on direct examination. They merely comment on the victim’s emotions/disposition during the interview, along with any other facts that are pertinent to enter as evidence. They are generally not allowed to draw conclusions or inferences as scientific experts are asked to do. Even if a defense attorney cross examines the investigator about the FETI technique, this does not raise a Daubert issue because, again, Daubert is based solely on “expert witness testimony”.

TRAINING

Any interview technique is only as good as the training that teaches it. This is a critical function for mastering any task - especially complicated tasks such as forensic interviewing. FETI is not taught as a standalone interview technique, but only as part of a comprehensive approach to investigating and prosecuting these traumatic crimes. FETI is always trained beginning with a solid understanding of relevant trauma and neuroscience research, which is a foundation of the interview technique. Everyone using FETI should understand key facts about how the brain works, what often happens to the brain during an assault, and the impacts of fear and trauma on attention, behavior, thinking, decisions, and memory encoding and consolidation. These are important topics and requirements for all practitioners using FETI to learn about and understand sufficiently to appreciate and apply their implications in their work.

FETI was not simply designed for use by law enforcement or forensic interviewers, as are most forensic interview techniques. Forensic interviewers are often not the first professionals to respond and question the victim. The FETI has also been simplified and adapted for use by Sexual Assault Nurse Examiners, medical personnel and other first responders. It is important for all responders to be trained in a trauma-

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informed interview technique such as FETI, so they don’t cause psychological damage, introduce or elicit false information, or otherwise adversely influence the memories of the experience before skilled investigators can collect those memories. If solid trauma-informed and neuroscience-based interview techniques are properly used with the trauma victim to obtain basic information prior to an in-depth interview, the victim will already be acclimated to this manner and style of questioning, thereby reducing stress while enhancing memory for central details. The use of FETI by other professionals also minimizes the amount of erroneous and conflicting peripheral information.

FETI is also being taught to and used with great success in court by prosecutors and defense attorneys. Law enforcement personnel and attorneys are preferably trained together. This provides a great opportunity for lawyers and law enforcement officers to learn and practice the principles of FETI together, and also has the added benefit of working through the complexities of these difficult cases as well. In, fact, many prosecutors have replaced the typical direct questions (e.g., the “5 W’s and an H”), which can cause additional damage to the trauma victim on the stand, with FETI questions. Prosecuting attorneys have reported great success in using the FETI, not only by assisting victims to share their experience in a trauma- and neuroscience-informed manner, but also by assisting the jury in understanding the victim’s experience in a far more complete and three-dimensional way. Their understanding of victim decision-making, responses, and behaviors are significantly greater, thereby minimizing bias which often leads to reasonable doubt. Anecdotal evidence also indicates that use of FETI in the courtroom has decreased victim blaming and increased victim credibility. It does no good to use proper techniques with a victim during an investigative interview only to have other responding professionals and lawyers re-victimize the trauma victim using traditional interview techniques.

EFFECTIVENESS

The FETI has been a central element of the US Army Military Police School Special Victims Unit Investigations Course (SVUIC) since 2010. Some of the metrics and anecdotal evidence of the effectiveness of FETI include:

(1) Metrics

(a) The solve rate for sexual assaults increased to a high of 95% (compared to 91% in FY08).
(b) According to OTJAG reports, since 2009 the Army has seen an increase of more than 100% in the proportion of sexual assault cases that result in prosecutions and convictions (source: POTUS report).
(c) The DODIG found a 52% decrease in deficiencies in their investigations from their first inspection (covered FY10 and earlier) and their next inspection (covered FY12-13).
(d) Sustained Standards of Conduct (SOCO) complaints related to sexual assault investigations decreased from 26 for the five year period FY05-09 to only three for the five year period FY10-14.

(2) Anecdotal reports

(a) According to the CID IG, it is readily apparent during their case reviews which agents have attended the SVUIC and which have not when they look at interviews and statements of victims. The trained agents focused on what the victim experienced rather than focusing on why the victim could not remember details. Additionally, trained agents are following up with the victim through the remainder of the investigation to document changes in behavior caused by trauma. Untrained agents tend to focus on questions of how much, how many, and related details that result in a stereotypical “he said/she said” “drunk sex” investigation.

(b) After taking the SVUIC, numerous agents have approached the instructors and admitted that they had previously completed sexual assault investigations that had reached the wrong conclusions, based mainly on their misunderstanding of trauma and memory issues, poor interview techniques of victims, and misperceptions about alcohol facilitated sexual assaults.

(c) Mr. Russell Strand, primary SVUIC instructor, has taught FETI to numerous civilian law enforcement agencies, the FBI, Department of Justice, International Association of Chiefs of Police, American Academy of Forensic Sciences, Los Angeles Police Department, and various district attorney offices. He has received widespread praise and national recognition of the FETI as a cutting edge technique in interviewing trauma victims from highly experienced investigators and prosecutors.

(d) A review of cases and statements indicates that trained agents are more sensitive to victims and what they have gone through, the statements are fuller in details and less accusatory in tone, and the overall product appears to be better sexual assault investigations.

(e) An analysis of CID Reports of Investigation for FY 2014 revealed that the proportion of complaints determined to be false had dropped to 1.4%, a significant decrease from historical determinations, which were around 13%. This false report rate is considerably lower than the national average, which is 2 to 8%.

CONCLUSION

Not all interview protocols commonly used in law enforcement have been rigorously evaluated for their effectiveness. While there is ample anecdotal evidence of the effectiveness of the FETI approach, there is still great value in systematic evaluation through empirical research. (This is also true for variations of the CI that some agencies may have adapted that differ significantly from the processes that have been studied.)
Such evaluation of FETI is much needed. FETI is not promoted as a superior or exclusive interview technique, however; it was built on a solid neuroscience research base. FETI simply represents progress towards improving traditional interview techniques in sexual assault and other traumatic crimes with research-based, trauma-informed best practices.
Information obtained from the following questions may be used to obtain subpoenas for information that will assist in corroborating serial perpetration, identifying perpetration patterns and/or aid in identifying additional victims or witnesses to perpetrator behavior. The pronoun “he” is used but “she” can be substituted depending on your suspects gender. By using “tell me” as opposed to “does” you are facilitating a narrative response as opposed to a yes/no response. The following questions are best utilized when incorporated into a traditional interview. It is recommended to avoid using this form as a questionnaire. Not all of the following may pertain to your investigation.

- Tell me about who he is currently in a relationship with.
- Tell me who he has been in a relationship with in the past.
- Tell me about problems he had in his relationships.
- Tell me about where he is currently working.
- Tell me about the coworkers he spends time with.
- Tell me where he has worked in the past.
- Tell me about any problems he has had at work.
- Tell me about who he spends time with.
- Tell me where he likes to spend his time away from work.
- Tell me about what sports he likes to play and who he plays with.
- Tell me about his hobbies.
- Tell me about the bars he frequents.
- Tell me about where he likes to work out/exercise.
- Tell me about any places he is no longer allowed to go.
- Tell me about what schools he has attended/is currently attending.
- Tell me about places he has lived in the past.
- Tell me about any people he used to live with.
- Tell me about where he travels to.
- Tell me about any time he has applied for something and not been accepted.
- Tell me about any groups he is associated with.
- Tell me about his family.
- Tell me about any problems he has had with his family.
- Describe his personality.
- Tell me what makes him mad.
- Tell me how he reacts to authority.
- Tell me about a time you’ve seen and/or heard about him being violent.
- Tell me about how he gets along with others.
- Tell me what you hear him say about women/men.
- Tell me about his interaction with women/men.
- Tell me about how he reacts when something doesn’t go his way.
- Tell me something he has asked you to keep secret.
- Tell me about a time that he worried you.
- Tell me about something he did that you were not okay with.
Introduction

We all know that words matter, and this can be especially true when we are talking about sexual assault. In this training bulletin, we are sending out a document that was originally developed to provide guidance on language use for the authors and editors of Sexual Assault Report, a publication that we co-edited for five years. (We are currently in the process of editing our last issue, and passing the torch of leadership to others.)

Because this document is likely to be helpful to just about anyone working in this field, we have adapted it for this purpose. We believe these recommendations for language use can improve our verbal and written communications as professionals in the field, helping us to provide information in ways that maximize our accuracy and clarity – and to avoid common tendencies that can create confusion, perpetuate misinformation, and contribute to a climate of doubt and victim blame.

The original version of this article appeared in Sexual Assault Report, 2011 (November/December) Volume 15, Number 2, pp. 17, 30-31. Published by Civic Research Institute.

Referring to the Crime, and Avoiding the Word “Alleged”

The word “alleged” will generally be avoided, given the historical context of skepticism for reports of sexual assault. In some instances, the offense will simply be described as a “rape” or a “sexual assault,” following standard conventions within the criminal justice system. It may also be described as the “crime,” “offense,” “reported sexual assault,” etc.

Many people say they use the word “alleged” to refer to sexual assault cases, because they have not reached a final resolution within the criminal justice system (e.g., conviction of the defendant). This is consistent with the presumption that all defendants are innocent until proven guilty. However, it is important to keep in mind that only a miniscule percentage of sexual assaults ever make their way through the entire criminal justice process. Moreover, exhausting the appeals process can take years and even decades. In other words, almost all sexual assaults remain “unresolved” by the legal system, and it would be inappropriate to refer to all such reports (or even disclosures) of sexual assault as “alleged.”

Equally important, this practice is not generally used for any type of crime other than sexual assault.

Describing Sexual Acts

Every effort will be made to avoid using the language of consensual sex to describe acts of sexual abuse and assault. For example, terms such as the following will be avoided because they convey a degree of mutual consent and/or minimize the
seriousness of the acts: “sexual intercourse,” “had sex,” “oral sex,” “fondling,”
“massaging,” “foreplay,” etc. Instead, objective language will be used to describe the
specific body parts and sexual acts involved: “penile-vaginal penetration,” “he rubbed
his penis on her vulva,” “the defendant penetrated the victim’s anus with her fingers.”

Other phrases will be avoided when they appear to place agency for the sexual act on
the victim rather than the perpetrator. Problematic phrases include: “the victim
performed oral sex on the defendant.” Rather, objective language will be used to
describe the specific body parts and types of contact involved, including the element of
force or coercion if it is present. For example: “The defendant forced his penis into the
victim’s vagina,” or “After the defendant threatened to hurt him, the victim stopped
resisting, enabling the defendant to penetrate the victim.” Alternatively, the legal term
may be used: “the defendant raped the victim,” again with the understanding that this
conclusion may not reflect the final resolution of the case within the legal system.

**Referring to the Perpetrator, Suspect, Defendant**

When referring to a legal case, the defendant will generally be named, following
standard conventions for the legal field, and also reflecting the reality that criminal legal
cases are identified, filed, and retrieved using the defendant’s name. This will typically
include the defendant’s full legal name (first, middle, and last name). One exception to
this general rule is when the identification of the defendant would also lead to the
identification of the victim (e.g., when the defendant is the victim’s spouse, parent, or
sibling). In these situations, the defendant might be identified using only initials, or with
a first name and an initial for the last name. Alternatively, the defendant may simply be
identified on the basis a relationship to the victim or another household member (e.g.,
the victim’s mother’s boyfriend).

When referring to the criminal justice system, the word “perpetrator” will generally be
used only when a sexual assault conviction represents the final resolution of a case.
This would be the case, for example, when a defendant has been convicted.
Otherwise, the defendant will typically be referred to by name or described using the
specific legal standing at the appropriate point in the narrative (e.g., “suspect” prior to
the filing of charges, or “defendant” during the pendency of a case).

Outside the criminal justice context, the word “perpetrator” will be used to refer in
general terms to those who commit sexual offenses (e.g., “Sexual assault perpetrators
typically use instrumental force, not gratuitous physical violence.”)

**Civil Legal Cases**

When referring to a civil legal case, the language use will differ from the criminal justice
context. For example a tort or divorce case may name the victim or the victim’s
parent(s) in its heading. Child protection cases are usually filed under the child’s name
(or initials or an acronym), but sometimes they are filed under the protective parent’s
name. As a policy, however, a victim’s name should not be used in connection with any sexual assault case (civil or criminal), except in exceptional instances where this reflects the stated preference of the victim.

**Referring to the Victim**

Also following standard legal conventions, the term “victim” will typically be used when referring to the context of the criminal justice system. Only in exceptional instances will the phrase “alleged victim” be used, and its use must be justified by unique circumstances. The terms “accuser” or “prosecutrix” are not appropriate, unless they are used in a direct quote from another source and cited appropriately.

Other terms may be preferred by authors in other professional disciplines or contexts. For example, those in the health care profession will generally use the term “patient,” because it is oriented toward their mission. Victim advocates and other social service providers may use alternative terms, depending on their professional mission and philosophy; these could include “client,” “survivor,” etc.

Victims will generally not be named in our writing, except in circumstances where this reflects the stated preference of the victim. In some instances, the victim will simply be referred to as “the victim” or some other neutral identifier in relation to the defendant (e.g., girlfriend, wife, daughter, foster son, nephew, neighbor). In other situations, the victim’s initials may be used (typically in cases involving child victims). In still others, a pseudonym will be used (e.g., “Jane Doe”). Typically, the referent used in a written article (such as a case review) will reflect the language from the original court decision.

**Active Language**

In general, active language will be preferred over passive forms. An example of passive language would be: “The victim was thrown against the wall” or “The victim was pushed, causing him to strike his head against the table.” Alternative versions using active language would include: “The defendant threw the victim against the wall,” and “The defendant pushed the victim, so his head struck the table.”

On occasion, a similar problem may occur when language implies agency that is not warranted given the common dynamics of sexual assault victimization. For example, it would be problematic to state that the victim “delayed reporting” if he/she did not contact law enforcement for several days after the sexual assault. While this may be described as a “delayed report” in the criminal justice context, alternative wording can be used to describe the victim’s response to the sexual assault in ways that do not carry the connotation of active obstruction of the criminal justice process. To illustrate: “The victim disclosed to her mother the day after the assault and then contacted law enforcement two weeks later.”
Finally, the word “experience” is not preferred for describing victimization. An example would be the following statement: “A woman who experiences sexual assault in addition to physical violence is more likely to be killed than a woman experiencing physical violence only.” Better wording more accurately captures the reality of victimization. To illustrate: “A woman subjected to sexual assault in addition to physical violence is more likely to be killed than a woman subjected to physical violence only.”

**Statement, History, and Story**

Authors should avoid using the term “story” when referring to the victim’s statement or account of events, given the connotation of skepticism conveyed. Other terms are more appropriate, such as “account,” “statement,” or even “the victim’s description of the sexual assault,” etc. The term “history” is often used when describing the victim’s account of the event for health care providers. For example: “The Sexual Assault Nurse Examiner took the victim’s history before collecting evidence.”

**Strangled vs. Choked**

The term “strangled” will be used, rather than “choked,” to accurately describe an act of force. The term “choked” actually refers to a blockage within the victim’s windpipe (e.g., food stuck in the throat), although it is commonly mistaken as referring to an act of strangulation.

**Referring to Victims with Disabilities**

Approximately one in five people have a disability. It is a minority group that one can join at any time, and in fact most people will join if they live long enough. When referring to victims with disabilities it is therefore important to use respectful language, or what is referred to as “People First Language.” People First Language puts the person before the disability and acknowledges that victims with disabilities have a great deal in common with other victims. Having a disability can be one part of the human experience and therefore, such language conveys that a person *has* a disability, not that he or she *is* the disability. For example, a person *has* cerebral palsy rather than a person *is* cerebral palsied.

Other examples of People First Language include describing someone as:

- a person who uses a wheelchair, rather than “wheelchair bound”
- a person with an intellectual disability, rather than “mentally retarded”
- a person with a disability, rather than “the disabled”
- a person with mental illness, rather than “insane”

Other terms that should be avoided when possible include references to Mental Age. Some standardized tests for intelligence and adaptive functioning include a Mental Age comparison. Mental Age scores or age equivalent scores have sometimes been used
to describe adults with intellectual disabilities as children or “functioning as a seven year old.” This reference does not accurately describe the person and their abilities or limitations and should be avoided. One possible exception is when referencing official documents that use such language. In that situation, the language can be used as long as it is clearly attributed to the original source. However, it is best to include a note or discussion to convey that the term is not the most accurate or appropriate.

In general, there is no disability label or diagnosis that describes a specific person. Just as each person with diabetes is unique, so is each person with autism. Also, each person’s experience is unique. It is therefore best to avoid words designed to elicit pity or a patronizing attitude, and rather to use language that communicates an attitude of respect for all victims.

**Flexibility and Reasonableness**

While these preferences are stated for the wording of articles or case reviews, it is worth noting that some degree of flexibility is required. Sometimes problematic wording is included in the original text of a court decision and retained in the case review; this can be noted using quotation marks or other means. In other situations, it can be difficult to avoid problematic language for a variety of reasons. Therefore, a standard of reasonableness will be used to evaluate wording of case reviews and other articles in light of these general standards.

**Conclusion**

We believe these recommendations for language use can improve our verbal and written communications as professionals in the field, helping us to provide information in ways that maximize our accuracy and clarity. Ultimately, the goal is to avoid common tendencies that can create confusion, perpetuate misinformation, and contribute to a climate of doubt and victim blame.
The “Justice Gap” for Sexual Assault Cases: Future Directions for Research and Reform

Kimberly A. Lonsway¹ and Joanne Archambault²

Abstract
Media coverage often reports “good” news about the criminal justice system’s ability to effectively respond to sexual assault, concluding that the past two decades have seen an increase in rape reporting, prosecution, and conviction. The objective of this article is to examine the validity of such conclusions by critically reviewing the strengths and weaknesses of various data sources and comparing the statistics they produce. These statistics include estimates for sexual assault reporting rates and case outcomes in the criminal justice system. We conclude that such pronouncements are not currently supported by statistical evidence, and we outline some directions for future research and reform efforts to make the “good news” a reality in the United States.

Keywords
attrition, prosecution, rape

Media coverage often reports “good” news about the criminal justice system’s ability to effectively respond to sexual assault. To illustrate, an editorial appeared in the Chicago Tribune in 2006, pronouncing, “Rape in Decline” (Chicago Tribune Editorial, 2006). That same year, the Washington Post reported, “The number of rapes per capita in the United States has plunged by more than 85% since the 1970s” (Fahrenthold, 2006). In 2009, USA Today trumpeted, “Reported rapes hit 20-year low” (Leinwand, 2009). The article went on to state that “[r]ape prosecutions have improved dramatically over the past two decades.”

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Our objective in this article is to examine the validity of such conclusions by critically reviewing the strengths and weaknesses of various data sources, including estimates for sexual assault reporting rates and criminal justice outcomes. We conclude that such pronouncements are not supported by statistical evidence, and we outline some directions for future research and reform to make the “good news” a reality in the United States.

Are Sexual Assaults More Likely to Be Reported to Police Now Than in the Past?

As illustrated by the aforementioned headlines, media coverage often suggests that rape reporting has increased over the past few decades. In fact, this suggestion is not just offered by the media; the same conclusion is often arrived at in academic writing, such as the article published by the National Institute of Justice, which asked in the title, “Has Rape Reporting Increased Over Time?” (Taylor, 2006). The answer was clearly yes. “During the past three decades, women have become more likely to report rapes and attempted rapes—particularly those involving known assailants—to police” (Taylor, 2006, p. 28).

The author based this conclusion on statistics drawn from the National Crime Victimization Survey (NCVS), which is conducted by the Bureau of Justice Statistics (BJS), the statistical arm of the U.S. Department of Justice. Specifically, Baumer, Felson, and Messner (2003) conducted an analysis using NCVS data (and data from the National Crime Survey, which was the precursor to the NCVS). Examining only incidents involving a female victim and one or more male offenders, results suggested that the likelihood of a sexual assault being reported to police increased throughout the period of time from 1973 to 2000. Looking at the past 15 years, the NCVS estimate for the percentage of sexual assaults reported to police was 32% in 1995 (BJS, 2000) and 41.4% in 2008 (the most recent data available; Rand, 2009).

The credibility of these findings is bolstered by the many empirical strengths of the NCVS methodology, including the size and diversity of its sample and its combined methodology of contacting respondents both via telephone and in person. The NCVS is also conducted annually, so data can be compared across time to analyze trends. Yet there are a number of critical limitations to the methodology of the NCVS.

First, there are concerns with the screening questions that the NCVS uses for sexual assault. As described in the Interviewing Manual for NCVS Field Representatives published by the U.S. Census Bureau (2003), respondents are first asked the primary screening question: “Has anyone attacked or threatened you in any of these ways?” A number of crimes are then listed, including “any rape, attempted rape, or other type of sexual attack” (pp. B2-48). Clearly, it is problematic to screen respondents by asking if they have been “raped” or “sexually attacked” because many women who have experienced behaviors that meet the legal definition of sexual assault will say “no” when asked if they have been raped. In fact, “research has consistently found that a large percentage of women—typically over 50%—who have experienced vaginal, oral, or anal intercourse against their will will label their experience as something other than rape” (Kahn, Jackson, Kully, Badger, & Halvorsen, 2003, p. 233; see also Littleton, Rhatigan, & Axsom, 2007).
For respondents who ask what is meant by any of these terms, the following definition is provided: “Forced sexual intercourse means vaginal, anal or oral penetration by the offender . . . including both psychological coercion as well as physical force” (pp. B3-71-72). If respondents answer “yes” to this question, they are then asked the follow-up question: “Do you mean forced or coerced sexual intercourse?” These questions thus raise a second primary concern, which is that the definition of sexual assault used by the NCVS does not conform to the legal definitions found in state penal codes or with behaviorally based definitions from social scientific research.

These and other concerns with the NCVS methodology have been well documented by others (e.g., Kilpatrick, 2004; Koss, 1996), and they have led the research field to the conclusion, “It is difficult to justify the NCVS’s current measurement of rape and sexual assault given the evidence that other screening questions are more sensitive by a large order of magnitude” (Kilpatrick, 2004, p. 1231). Nonetheless, NCVS statistics are often cited as the authoritative source for rape prevalence rates. This is likely due in part to the credibility inferred by the federal government through BJS; the NCVS may thus appear to be the official source of information on the topic of criminal victimization.

Yet NCVS data are not the only source of information on reporting rates for sexual assault. A considerable amount of social scientific research has focused on the accurate measure- ment of rape-reporting rates through the use of screening questions that are designed to be behaviorally specific, so they do not ask a respondent if they have been raped or sexually assaulted. Rather, each question “describes an incident in graphic language that covers the elements of a criminal offense (e.g., someone ‘made you have sexual intercourse by using force or threatening to harm you . . . by intercourse I mean putting a penis in your vagina’)” (Fisher, Cullen, & Turner, 2000, p. 5). When this methodology is used to screen respon- dents for sexual assault victimization, the literature suggests that only about 5% to 20% of victims report the crime to law enforcement (Fisher et al., 2000; Frazier, Candell, Arikian, & Tofteland, 1994; Kilpatrick, Edmunds, & Seymour, 1992; Kilpatrick, Resnick, Ruggiero, Conoscenti, & McCauley, 2007; Tjaden & Thoennes, 2000).

Social scientific research also suggests that the likelihood of reporting rape has increased since the 1970s. To illustrate, Clay-Warner and Burt (2005) analyzed data from the National Violence Against Women Survey (NVAWS) and concluded that a sexual assault committed after 1990 was more likely to be reported than one committed before 1974. Their analysis also suggested, however, that reporting rates have remained essentially unchanged since 1990.

Another way of examining this question is to look at three large-scale studies that were conducted over a span of 15 years with nationally representative samples and comparable methodologies. In 1991, the National Women’s Study found that 16% of all sexual assaults were reported to law enforcement (Kilpatrick et al., 1992). The NVAWS was then con- ducted in 1995, and it produced a slightly higher estimate of 19% (Tjaden & Thoennes, 2000). Finally, a national study conducted in 2005 found a rate of 16% (Kilpatrick et al., 2007); this was identical to the estimate reported almost 15 years earlier in the National Women’s Study. This pattern of research findings thus corroborates the conclusion based on NCVS data that the likelihood of reporting a sexual assault increased from the 1960s to the 1990s but has remained stable since that time. However, estimates for the reporting rate
Figure 1. Forcible rapes reported to law enforcement (per 100,000 U.S. inhabitants)
Source: Uniform Crime Report statistics are reported in the Sourcebook of Criminal Justice Statistics Online (BJS, 2008b).

are considerably lower in these social scientific studies (16%-19%) than in the NCVS data for the same period (32%-41%). As the methods for sampling and interviewing procedures were designed to be comparable, the different estimates were likely due to the screening questions that were used.

Are More Sexual Assaults Reported to Police Now Than in the Past?
A related question is whether more sexual assaults are now being reported to law enforcement. The primary source of information to answer this question is the Uniform Crime Report (UCR) program, which is operated by the Federal Bureau of Investigation (FBI) and compiles data submitted on a voluntary basis from law enforcement agencies across the country. As illustrated in Figure 1, UCR data suggest that the number of reported forcible rapes per capita did increase dramatically from the 1960s to the 1990s, but then declined to levels that are currently comparable with the late 1970s. Specifically, the UCR’s reporting rate increased from 9.6 per 100,000 U.S. inhabitants in 1960 to the peak of 42.8 per 100,000 in 1992. It then declined to 29.3 per 100,000 in 2008, the most recent data available at the time of writing (BJS, 2008b). This figure is almost identical to the rate of 29.4 that was seen in 1977, thereby justifying the conclusion on the UCR website that the rate of forcible rapes in 2008 was “the lowest figure in the last 20 years” (FBI, 2008).
However, there are a number of limitations in the UCR methodology that must be understood to properly interpret these statistics. The primary concern is the extremely narrow definition used for sexual assault. For UCR purposes, data are only collected for the crime of *forcible rape*, which, until 2012, was defined as “carnal knowledge of a female, forcibly and against her will.” Both completed and attempted acts are included in UCR data. However, this definition excludes sexual assaults that are facilitated with drugs or alcohol, that involve other forms of penetration, or that are committed against a victim who is male, unconscious, severely disabled, or below the age of 12. In fact, crimes meeting this definition are likely to represent only a minority of the sexual assaults reported to most law enforcement agencies.\(^1\)

There are also a number of organizational factors that limit the quality of information captured in UCR statistics. For example, UCR participation is voluntary for law enforcement agencies, so many do not submit data at all. UCR data, therefore, are not generalizable to the entire United States because they are not representative of all jurisdictions in the country. An additional problem is that law enforcement officers and investigators usually do not receive training in the proper use of UCR definitions and methods. Although officers and investigators are not typically the individuals responsible for the data’s tabulation and submission to the FBI, they are often the ones making important determinations about how to classify reports and how to record clearance decisions. Without consistent training and supervision, there is no assurance that they are using the same definitions and criteria for making UCR clearance decisions. Moreover, there is no requirement that clearance decisions be reviewed by a second person. Without such independent review, there is no way to evaluate the reliability of the information that is submitted. The individual or organizational unit with responsibility for entering the data will vary by agency.

As a result, it is not possible to estimate—based on UCR data—how many sexual assaults have actually been reported to law enforcement. Despite these limitations, UCR statistics are often cited in the media. As with the NCVS, this is likely due in part to the strengths of the data-collection effort, including its large scope and comparability across time (at least for those jurisdictions that consistently participate in the UCR program). It is also likely attributable to the credibility afforded by the FBI’s prominent support of the initiative, which may understandably lead public officials, members of the media, and the public to conclude that the UCR is the authoritative source for information on crime reporting.

### Have Arrests Kept Pace With Reports?

According to UCR data, only a fraction of the reports of forcible rape to law enforcement result in arrests. This point is illustrated in Figure 2, which depicts the rate of reports versus arrests for forcible rape, per 100,000 U.S. inhabitants. The same pattern is also seen for all types of violent crime that are tracked by the UCR program; these data are provided in Figure 3.

However, there appears to be a consistently widening gap between the numbers of reports versus arrests for forcible rape, which differs markedly from the pattern seen with
other violent crimes included in this data-collection effort. We computed this ratio across time, simply by dividing the per capita rate of reports for forcible rape by the per capita rate of arrests for forcible rape using UCR data from 1971 to 2008 (the most recent year available at the time of writing). The pattern is visually depicted in Figure 4. As an illustration, the per capita rate for reports of forcible rape in 2008 was 29.3 per 100,000 U.S. inhabitants, and the rate for arrests was 7.5 per 100,000. This comparison of 7.5 and 29.3 translates to a ratio of 1 in 3.9 (or essentially 1 in 4) and computes to the exact percentage of 25.6%.

When this computation was made for forcible rape across time, the ratio of reports to arrests was in the 50% range in the 1970s and decreased steadily to 26% in 2008 (BJS, 2008b). In other words, the statistics suggest that about 1 in 4 forcible rapes reported to police in 2008 resulted in an arrest; the ratio was approximately 1 in 2 throughout the 1970s. Yet this pattern of consistent decline in arrest rates was not seen for other types of violent crime tracked by the UCR. In fact, the ratio of arrests to reports for all types of violent crime held remarkably steady in the time period between 1971 and 2008, with a figure of 44% in both of those years and little variation in between. The low was 36% in 1980, and the highs were 48% in 1974 and 47% in 1999. None dip as low as the 26% ratio seen for forcible rape in 2008, which continues to exhibit a consistent downward trend (BJS, 2008b).

Given the previously described problems with the UCR data collection, this pattern may simply be an artifact. It may be caused by differences across time in the sample of participating departments, the definitions and criteria used for making clearance decisions, and/or the procedures implemented by law enforcement agencies to collect data and submit it to the FBI. Clearly, caution is warranted any time conclusions are made on the basis of UCR data. However, there is no evidence for a consistent pattern of change in these
Figure 3. Rate of reports and arrests for all violent crimes (per 100,000 U.S. inhabitants)
Source: Uniform Crime Report statistics are reported in the Sourcebook of Criminal Justice Statistics Online (BJS, 2008b).

Figure 4. Ratio of arrests to reports: Forcible rape and all violent crimes
Source: Computations based on Uniform Crime Report Statistics, as reported in the Sourcebook of Criminal Justice Statistics Online (BJS, 2008b).
methodological factors that would cause a continuous decline in the arrest rates for forcible rape. Therefore, it seems reasonable to speculate about the possible causes of such a pattern across time.

What Explains the Declining Arrest Rate?

There are a number of possible explanations for the declining arrest rates for forcible rape, some of which are based on the observation that fewer sexual reports now resemble the cultural stereotype of “real rape.” The evidence suggests, for example, that a higher percentage of reported sexual assaults now involve nonstrangers, as compared with cases reported decades ago (Archambault & Lindsay, 2001; Baumer et al., 2003; Clay-Warner & Burt, 2005). Anecdotal evidence also suggests that reports made now are more likely to be for sexual assaults that are committed against a victim who is incapacitated, severely disabled, or otherwise unable to consent, as well as those from specific vulnerable populations.

At the same time, research documents that an arrest is more likely to be made in cases of sexual assault that resemble the most prominent cultural stereotype of this crime—namely, assaults that are committed by a stranger to the victim, involve a weapon, and result in physical injury of the victim (e.g., Bouffard, 2000; Jordan, 2002). This pattern is at least partly attributable to the widely held cultural perceptions of sexual assault. As documented with a substantial body of research, police officers and other members of society are frequently skeptical of reports that do not resemble the aforementioned stereotypic image (e.g., Campbell, 1995; Frazier & Haney, 1996; Kerstetter, 1990; Lonsway & Fitzgerald, 1994). This may be particularly true when the sexual assault involves factors that may cause others to see the victim as culpable, such as drug/alcohol use or involvement in other high-risk behaviors.

The research literature thus supports the conclusion that fewer sexual assault reports now resemble the stereotype of “real rape” and that these reports are less likely to result in an arrest. This conclusion is consistent with the statistical evidence demonstrating that the ratio of arrests to reports of forcible rape has declined consistently over the past few decades. Social scientific research has not generally explored the question of why this might be the case. However, anecdotal information provided by practitioners in the fields of law enforcement and victim advocacy may assist in the generation of hypotheses about the causes of this phenomenon.

For example, it is possible that a decreasing percentage of cases are being formally documented with a police report. Although this would not affect documented patterns of case attrition within the criminal justice system, victims would likely be surprised to learn that the information they provided was never formally recorded in a written report. This does not contribute to a climate that encourages victims of sexual assault to report the crime to law enforcement. It is also possible that fewer reports are now being coded as a crime and/or thoroughly investigated. This would mean that a greater number of sexual assaults—that were initially reported to law enforcement by the victim or someone else—would not show up in any written records. Alternatively, they might be coded with a non-criminal code (e.g., “call for service”). In either case, the report would not show up in any
formal statistics reported by the law enforcement agency. If there were systematic differences in the type of reports that moved forward, with more “difficult” cases disappearing from the process in these ways, it could certainly influence the arrest rate.

However, it is possible that a greater number of sexual assaults could be unfounded as a false or baseless report. This could be particularly concerning if the determination was made prematurely, without conducting a thorough, evidence-based investigation. Again, these reports would be excluded from any official statistics on forcible rape submitted by the law enforcement agency to the UCR program or reported in the media.

There is also the possibility that a decreasing percentage of cases are being formally referred to the prosecutor’s office, with more cases presented informally to prosecutors by law enforcement investigators. Cases could thus be rejected on the basis of a single conversation, and these referrals may not be counted in any formal statistics because no arrest was made; this makes it very difficult to document or test the idea with empirical research.

Another possibility is that more cases are being cleared by exception because there is sufficient evidence to make an arrest, but the victim is unable to participate in the criminal justice process. Research suggests that the most common reason given by law enforcement for not pursuing sexual assault cases is because the victim is unwilling or unable to participate in the investigation (e.g., Frazier & Haney, 1996; Office of the City Auditor, 2007). Anecdotal information from law enforcement sources suggests that this situation may be more likely to arise when the victim and suspect know each other. Again, this hypothesis is impossible to test with published UCR data on clearance categories because they are not separated out by arrest versus exception. However, it suggests that cultural attitudes may not be the only explanation for the declining arrest rate. Rather, the decreasing likelihood of arrest may also partly reflect the wishes of victims in these cases. As nonstranger sexual assaults are more frequently reported to police, the result could be a decrease in arrest rates and an increase in other case outcomes such as exceptional clearance. However, this may not necessarily be a bad thing in a victim-centered, community response system.

Are Arrest Rates a Meaningful Indicator of Success?

It is not currently possible to determine whether the declining arrest rate (if it exists) is a good or bad thing. However, it is worth noting that the declining arrest rate may not necessarily be a bad thing if it indicates an increased willingness among law enforcement investigators to take the time to conduct a thorough, evidence-based investigation, rather than rushing to make an arrest and clear the case. For UCR purposes, a report can be cleared with an arrest if at least one suspect is arrested and the case is referred for prosecution. However, just because a case is referred for prosecution does not mean that charges are actually filed. If there is insufficient evidence—because the law enforcement investigation was inadequate—the prosecutor will not file charges and the suspect will simply be released. This can hardly be seen as a “success.”

In fact, anecdotal reports from the field suggest that arrests are often made by law enforcement without conducting the type of thorough investigation that is needed to produce sufficient evidence for successful prosecution. This is because it is relatively easy for
officers to make an arrest based on a preliminary investigation of a sexual assault; the evidence only needs to support the legal standard of probable cause. Once this type of a field arrest is made, however, the prosecutor must typically appear in court and charge the defendant within 24 to 72 hr (depending on the jurisdiction). Yet it is almost impossible to conduct the kind of evidence-based investigation that is necessary to support successful prosecution within such a short time frame. Most sexual assault investigations will actually take weeks, if not months, to complete, depending on the course of the investigation and the laboratory work that is requested. By waiting to make an arrest of the suspect(s), law enforcement investigators can often gather the type of evidence that will meet the higher standard of proof that is needed for successful prosecution—proof beyond a reasonable doubt—rather than just establishing probable cause.

For this reason, arrest rates are not necessarily a good measure of success, although they are often used in this way. Rather, we argue that law enforcement performance should be evaluated based on the quality of the investigations that are conducted, regardless of outcome. Specific recommendations are offered in a later section on alternative measures of success.

**How Many Reports Result in Conviction and Incarceration?**

Returning to the research literature, many have asked what percentage of sexual assault reports eventually lead to a conviction or incarceration. One source of information is the Offender-Based Transaction Statistics, which were compiled by BJS from 1979 to 1990. In 1990, the data suggested that approximately 80% of those arrested for rape were prosecuted. \(^3\) An estimated 50% of those arrested and prosecuted for rape were then convicted of a felony, and 8% were convicted of a misdemeanor. In contrast, 36% of those arrested and prosecuted for rape saw their case dismissed by the courts, 3% were acquitted, and 1% received a judgment other than a conviction or acquittal. This rate of felony conviction for rape was higher than for all violent offenses, which was 38% (Perez, 1994). \(^4\)

These estimates generally converge with the State Court Processing Statistics, which were compiled biennially between 1988 and 2004 for felony defendants in the 75 largest counties in the United States. In 2004, the most recent data available at the time of writing suggested that a total of 54% of those charged with rape were convicted of a felony and 8% of a misdemeanor. This is quite similar to the figure for all violent crimes; the 2004 data suggested that 52% of all felony defendants charged with a violent offense were convicted of a felony and 9% of a misdemeanor (BJS, 2008a). \(^5\)

Official data thus suggest that approximately half of those arrested and prosecuted for rape will be convicted on a felony charge (although not necessarily rape). They also suggest that once an individual is convicted of rape, incarceration is almost inevitable. The Offender-Based Transaction Statistics from 1990 indicated that 95% of those convicted of rape were incarcerated (76% in prison and 19% in jail). An identical figure of 95% was seen in the 2004 State Court Processing Statistics for the percentage of defendants convicted of rape who received a sentence of incarceration (65% in prison and 30% in jail). When this is compared with the overall category of violent offenses, it appears that rape
convictions were more likely to lead to incarceration, and incarceration was more likely to be in prison and less likely to be in jail. Specifically, 83% of defendants convicted of a violent offense were sentenced to incarceration (47% prison and 36% jail; BJS, 2008a).

Yet the key to understanding the statistics lies in the denominator of the equations used to compute them. The statistics cited here were computed based on the number of felony defendants who were arrested and prosecuted for rape. The statistics may therefore be misleading because so many reports are screened out before an arrest is made or charges filed.

**Critique of Prosecution Statistics**

Common sense suggests that studies of case attrition within the criminal justice system must begin with a report and end with a conviction or other formal disposition. Conviction rates are meaningless if they are computed based on a starting point where most of the attrition has already taken place. In fact, this method of calculating conviction rates creates a perverse incentive for law enforcement agencies to filter out all but the “strongest” cases—so prosecutors can achieve the high conviction rates that serve as their primary measure of performance. It also fuels practices such as the informal referrals described earlier, with prosecutors rejecting cases presented verbally by investigators without necessarily having to account for these decisions in any formal statistics. A more realistic measure of conviction rates would include in the denominator of the equation all reports of sexual assaults received by law enforcement—including those that did not result in an arrest or referral for prosecution (e.g., those that were unfounded or exceptionally cleared). This information is currently only available in social scientific research or from individual agencies, and it suggests (contrary to the “official” data) that only a very small percentage of sexual assault reports eventually result in a conviction.

Other concerns stem from the type of cases that are included in the federal data. The 1990 report for the Offender-Based Transaction Statistics states that “the OBTS standards use the FBI’s National Crime Information Center (NCIC) offense codes” (Perez, 1994, p. 9). As the NCIC codes cover a broad range of crimes, this strategy could potentially avoid problems such as the extremely narrow definition of forcible rape that is used for UCR purposes. However, at least the text of the report does not clarify which types of sexual assault are included versus excluded using the NCIC codes. The definition used for the State Court Processing Statistics is more clearly stated. The definition of rape report-edly included “forcible intercourse, sodomy, or penetration with a foreign object” (Reaves & Smith, 1995, p. 38). However, it did not include “statutory rape or nonforcible acts with a minor or someone unable to give legal consent, nonviolent sexual offenses, or commercialized sex offenses” (Reaves & Smith, 1995, p. 38). Thus, the data set excluded some sexual assault cases that are relatively more likely to result in conviction (e.g., statutory rape and other sexual offenses involving minor victims). However, it also excluded some types of sexual assault that are commonly reported to law enforcement yet rarely result in successful prosecution (e.g., sexual assaults committed against an incapacitated victim or someone who is unable to consent due to alcohol/drug use or severe disability). To that extent, the overall conviction rates obscure the high rates of attrition that are seen for cer-tain types of sexual assault (e.g., those where a consent defense is available).
These issues are perhaps illustrated best with an excellent report that was published in 2007, describing the results of a study of sexual assaults reported to Alaska State Troopers in 2003-2004 (Postle, Rosay, Wood, & TePas, 2007). Similar to the federal data sources described above, these authors reported that 80% of the cases “accepted” by prosecutors resulted in a conviction. Unlike the federal sources of information, however, the authors also calculated the conviction rate based on the total number of reports received, which was only 22%. Clearly, this is a more realistic measure of case attrition because it includes those cases that resulted in an arrest or referral for prosecution, as well as those that were closed using other means (e.g., declined, exceptionally cleared, closed by investigation, or unfounded). Yet this rate would likely decrease even further if it were computed separately for victims who were children versus adolescents or adults. Like other studies of attrition, this report did not separate out prosecution rates for these two groups, which likely had very different case outcomes. The findings also may not be generalizable to the rest of the United States, given the unique characteristics of the state.

Estimates From Social Science Research

Limited prosecution statistics are available from disparate sources within federal and state governments, but the information must be supplemented with research conducted independently by social scientists. As reviewed by Campbell (2005), data collected from a wide range of sources “have generated replicated, triangulated findings” (p. 56) suggesting that 7% to 27% of the sexual assaults that are initially reported to law enforcement eventually result in charges being filed, and of these reports, only 3% to 26% yield some type of conviction (also see Koss, 2006). The 22% estimate from the Alaska study is consistent with this conclusion, as it falls within the 3%-to-26% range. To that extent, data from such research provides the missing context that is needed to understand state prosecution statistics compiled by the federal government. Although federal statistics estimate that more than half of those arrested or charged with rape will be convicted, social scientific research clarifies the fact that attrition has already claimed at least half—and probably considerably more than half—of the sexual assaults that were originally reported to law enforcement.

The Full Picture of Attrition

To provide the full picture of attrition for sexual assault cases (i.e., those that “fall out” of the criminal justice system at various points before or after charges are filed), it is necessary to put together the various sources of information that were reviewed so far. (As the individual sources were cited previously in the article, they are not repeated here.) First, there is the social scientific research suggesting that about 5% to 20% of all rapes are reported to law enforcement, 7% to 27% of these reports are prosecuted, and 3% to 26% yield a conviction. Then, there is the most recent federal data from the 2004 State Court Processing Statistics, which suggest that 62% of all defendants who are arrested and prosecuted for rape will be convicted, with 54% of these convictions for a felony and 8% for
Of 100 rapes committed
an estimated 5-20 are reported to police
0.4-5.4 are prosecuted
0.2-5.2 result in a conviction
0.02-0.8 result in incarceration

**Figure 5. Visual schematic for attrition of rape cases in the criminal justice system**

Note: This visual schematic is based on research summarized in the article, estimating that 5% to 20% of all forcible rapes are reported to law enforcement; of these reports, 7% to 27% are prosecuted and 3% to 26% yield a conviction. The 2004 State Court Processing Statistics then suggest that 62% of all defendants who are arrested and prosecuted for rape will be convicted; of these, 95% will be sentenced with incarceration (BJS, 2008a). The National Violence Against Women Survey (Tjaden & Thoennes, 2006) revealed that 17.6% of female and 3% of male respondents were raped at some time in their lives. Based on U.S. Census data, this translates to 17.7 million women and 2.8 million American men (Tjaden & Thoennes, 2006, p. 7).

Of course, it is important to keep in mind that the definition of rape differs for many of these data sources, and most focus exclusively on forcible rape (excluding other types of sexual assault). However, even with the considerable margin of error that is inevitable when estimating such a computation based on different data sources, it is clear that only a very small minority of sexual assault cases end in a prosecution, conviction, and a sentence of incarceration.
Have Prosecution Rates Increased?

In 1993, the Senate Judiciary Committee published a report reviewing criminal justice outcomes for crimes of violence against women. In that report, they conducted a very similar computation to the one we offer here, based on the data sources that existed at the time. As a result of this analysis, they concluded that only 1.9% of all sexual assaults ultimately resulted in a sentence of imprisonment for the perpetrator (Senate Judiciary Committee, 1993). There were a number of important limitations of the study, many of which similarly influence the current enterprise. For example, the study used data from a number of different sources (as we do here), which means there are concerns stemming from differences in the definitions used for sexual assault, the criteria for including versus excluding cases in the sample, the methodology for recording and analyzing data, and any protections for data accuracy and reliability. In other words, interpreting the findings requires quite a few assumptions—and a healthy dose of faith.

The title of that report was “The Response to Rape: Detours on the Road to Equal Justice.” Sadly, there is every reason to believe that the same title is equally relevant today. Federal data sources suggest that there is little or no change in the rate of prosecution, conviction, and incarceration for rape in the past two decades. For example, there are the most recent State Court Processing Statistics from 2004 suggesting that 54% of those charged with rape were convicted of a felony (BJS, 2008a). When this is compared with data from 12 years earlier, the figure for rape was identical (Reaves & Smith, 1995). Similarly, social scientific research yields no evidence that the legislative reforms have significantly increased the rates of reporting, charging, prosecution, and conviction for sexual assault (e.g., Horney & Spohn, 1990; Matoesian, 1993). Moreover, when Koss conducted the same type of computation in 2006 that the Senate Judiciary Committee did in 1993, using data from the National Violence Against Women Survey (Tjaden & Thoennes, 2000), the results suggested that only 0.35% of the rapes committed against female respondents were reported, prosecuted, and resulted in a sentence of incarceration. The decrease from 1.9% to 0.35% may not be sufficient to argue that prosecution rates have declined over the past 30 years, but it certainly challenges any suggestion that they have increased. In fact, research suggests, “In virtually all countries where major studies have been published, the number of reported rape offences has grown over the last two decades, yet the number of prosecutions has failed to increase proportionately, resulting in a falling conviction rate” (Lovett & Kelly, 2009, p. 5). This pattern has not generally been reported in the American media, but it has been reported in other countries. In the United Kingdom, for example, the media reported on research findings by the British Home Office, indicating that only “5.7 percent of rapes officially recorded by police in England and Wales end in a conviction” (Jordan, 2008, p. A01). In Scotland, the rate was 6%, and these figures were described as the lowest conviction rates for rape in Europe (“Rape Ruling,” 2004). Reporters and researchers have thus decried the fact that these high rates of attrition appear to be increasing, in a pattern that is described as a widening “justice gap.” As Temkin and Krahé (2008) concluded, “To say that convictions have not kept pace with the number of recorded rapes would appear to be a massive understatement” (p. 20).
Reasons for the Pattern of Attrition

Many experts have concluded that the primary reason the legislative reforms have failed to produce changes in criminal justice outcomes is because the laws have changed but attitudes have not (e.g., Seidman & Vickers, 2005; Temkin & Krahé, 2008). However, other factors also come into play. For example, we have already described evidence suggesting that more sexual assault cases being reported to law enforcement diverge from the cultural stereotype of a “real rape.” These changes could be the positive result of legislative and cultural reform. Yet research demonstrates that such cases of sexual assault are less likely to result in a conviction (e.g., Bouffard, 2000; Bryden & Lengnick, 1997; Campbell, Wasco, Ahrens, Sefl, & Barnes, 2001; Frazier et al., 1994; Kingsnorth, MacIntosh, & Wentworth, 1999; Spears & Spohn, 1997; Spohn, Beichner, Davis-Frenzel, & Holleran, 2002).

As Koss (2000) notes, this does not necessarily mean that prosecutors personally believe in the stereotypic beliefs and attitudes surrounding sexual assault. “Although prosecutors may personally reject the appropriateness of these grounds, they feel themselves positioned downstream of jurors, so they nevertheless incorporate these factors into decision making” (p. 1334). The same type of “downstream orientation” also likely influences police officers and even victims, leading to the patterns of reporting and attrition reviewed here.

Additional factors were described by a sample of British judges and barristers who were quoted by Temkin and Krahé (2008). In their interviews, they described a number of significant problems from their perspective, including poor evidence gathering by police (especially victim interviews), intimidating defense tactics, incompetent prosecutors, and inappropriate decision making by jurors. This last factor is particularly enlightening; at least one judge suggested that jurors were simply unable to accept that the events they heard described in witness testimony could actually take place, especially between people who know each other. Others suggested that jurors have difficulty convicting because the penalties for sexual assault are too high. The authors note that this suggestion is supported with research indicating that mock jurors are more likely to convict in a sexual assault case if the defendant will be given a shorter sentence (Temkin & Krahé, 2008).

Yet despite their recognition of these factors, most of the judges and barristers were reportedly unwilling to accept the notion of a justice gap for sexual assault cases. At least one dismissed the idea as “nonsense” (p. 139). Instead, many blamed the high rate of attrition on a lowering of the standards for prosecution and/or the presence of women on the jury. The authors concluded that this attitude poses a significant barrier to improvement: “If the justice gap is to be reduced, it does require an acceptance among all key players of its reality” (Temkin & Krahé, 2008, p. 141).

Future Research Directions

Clearly, research is needed to document the full picture of attrition for sexual assault cases, with measures of reporting, charging, and conviction that are realistic. This may be one of the most important priorities for research in the field. However, work is also needed to
better understand why such a high rate of attrition persists and how we can reduce it. As a wider range of sexual assault crimes are reported than in the past, it is reasonable to expect that attrition might increase for a period of time. Although efforts during the “first wave” of rape reform were successful in changing laws (e.g., enacting rape shield laws and eliminating marital rape exceptions, evidentiary corroboration requirements, and cautionary instructions), a primary challenge for the “second wave” of reform is to develop and evaluate best practices for successfully investigating and prosecuting these challenging cases (Seidman & Vickers, 2005).

**Alternative Measures of Success**

As previously noted, arrest rates are meaningless if they are made without conducting the type of investigation that is likely to support successful prosecution. It is therefore important for future research to incorporate more meaningful indicators of success, including the total number of reported sexual assaults and the percentage of reports that are referred for prosecution and/or result in a charge or conviction. Yet case outcomes are not the only measure of success within the criminal justice system. Another indicator may be found with evidence that more police officers are conducting thorough, evidence-based investigations, regardless of the potential case outcome. This could be evaluated by determining whether officers are taking specific investigative steps, such as interviewing the victim, suspect, and witnesses; collecting evidence from the victim’s/suspect’s body/clothing; and collecting evidence from the crime scene(s). Another indicator of success could be establishing methods of accountability within law enforcement agencies for every sexual assault incident that is reported to them. This accountability could be assessed by determining whether officers are conducting thorough, evidence-based investigations, regardless of the potential case outcome.

Success in this context also means that officers are not unfounding cases based on faulty methods or reasoning, such as relying solely on the victim’s initial statement or a cursory preliminary investigation. In fact, any evaluation of success should include some effort to determine whether sexual assault cases are being properly cleared using the UCR criteria. This is important because the clearance categories of unfounded and exceptionally cleared are too often used as a “dumping ground” for sexual assault cases that are viewed as dubious or difficult to investigate.

According to UCR guidelines, a crime report can be unfounded if it is determined on the basis of investigative findings to be either false or baseless. A report can only be determined to be false on the basis of evidence that the crime was not committed or attempted. Thus, a crime report cannot be unfounded if no investigation was conducted or if the investigation failed to prove that the crime occurred; this would be considered inconclusive or an unsubstantiated investigation (which is not a UCR category).

However, crime reports can be determined to be baseless if they do not meet the elements of the offense or if they were improperly coded as a sexual assault in the first place. For example, individuals sometimes report sexual acts to law enforcement that are unwanted but do not meet the elements of a sexual assault offense. One illustration would be an adult
who reports to police that they felt pressured into sexual contact, but the coercion did not meet the criteria for a forcible sexual assault. If recorded in a formal crime report, this case should be cleared as unfounded because it is baseless. If the report was not recorded in a crime report, the agency would most likely file the report as informational only.

For evaluation purposes, case files for unfounded reports could thus be reviewed to determine whether the decision was made prematurely, or if it was based on evidence from a meaningful investigation. Another measure of success could be achieved by tracking unfounded cases to determine whether they were cleared this way because they were false versus baseless.

Similarly, sexual assault cases that are exceptionally cleared could be reviewed to determine whether they meet the proper UCR criteria. This requires that the case have sufficient evidence to support an arrest and referral for prosecution, but an arrest is precluded by some factor outside law enforcement control (e.g., the victim declines prosecution). All too often, cases are exceptionally cleared because victims are reluctant to participate during the preliminary investigation and/or cannot be located for any follow-up investigation. However, this is not a sufficient basis for the case to be exceptionally cleared unless there is evidence that would otherwise be sufficient to support an arrest and referral for prosecution. These cases cannot properly be exceptionally cleared; they should remain open but inactivated. By reviewing case files, it would be possible to determine whether these UCR clearance decisions were made appropriately.

**Specific Investigative Steps**

Another future research objective could be to explore the role that specific investigative steps play in predicting case outcomes. For example, some of the decisions made by law enforcement explicitly determine case outcomes (e.g., the decision to unfound the case). However, other decisions are made as a result of process. For instance, a deliberate decision is made in many cases to not conduct any follow-up interview with the victim, not interview the suspect or any witnesses, and not seek to collect any other kind of evidence beyond the preliminary victim interview. In these cases, it is virtually impossible for the case to move forward for successful prosecution, so the range of outcomes is narrowed to unfounding, exceptional clearance, or inactivation. This decision would likely be justified based on the lack of evidence to support prosecution. However, this justification may mask the actual reasons for not investigating the case. Any future research evaluating the impact of various factors on case outcomes should therefore take into account the moderating influence of process variables, such as the specific investigative steps taken by law enforcement.

**Research on Juror Decision Making**

No review of the criminal justice response to sexual assault should conclude without mentioning the need for better research on juror decision making. The few studies on this subject that do exist are mostly outdated and often focus on rape trauma syndrome.
However, many experts caution against using this terminology and framework and instead recommend providing more general expert testimony that simply describes common behaviors and reactions of sexual assault victims (Boeschen, Sales, & Koss, 1998; Stefan, 1994; Torrey, 1995).

A notable exception is the recent work of Ellison and Munro (2009), which involved presenting a series of mini-trial scenarios to mock jurors and varied complainant demeanor, time of report, and physical injury. The researchers also varied whether mock jurors received educational guidance on the topic of sexual assault victimization; they found that educational guidance appeared to increase mock jurors’ understanding of the dynamics of victim demeanor and delayed reporting. However, it appeared to have little impact on beliefs regarding victim injury and physical resistance. The authors concluded that such educational guidance in rape trials “represents a pragmatic, defensible and efficient means of redressing at least some of the unfounded assumptions and attitudinal biases that prevent too many victims of sexual assault from accessing justice” (Ellison & Munro, 2009, p. 379).

As so little is known about how to influence juror decision making, investigators and prosecutors can only speculate about the impact of various types of evidence, testimony, and arguments on the likelihood of conviction. Fortunately, some particularly promising directions for future research have been outlined by Temkin and Krahé (2008). These authors reviewed social scientific research indicating that people are more likely to attribute responsibility to someone for an event (such as a rape) when they (a) know more about that person as compared with the other party; (b) generate alternative courses of action that the person could have taken; and (c) know the outcome of the event in advance. To illustrate, Rempala and Bernieri (2005) conducted a study in which irrelevant biographical information (e.g., college major or city of residence) was provided to research participants about the complainant versus the defendant in a rape case.

When biographical information was provided about the complainant, but not the defendant, just over half the participants found the alleged defendant guilty. In contrast, when biographical information was provided about the defendant, but not the complainant, 90% of participants found the defendant guilty. (p. 49)

The implications for sexual assault trials are interesting, suggesting that the victim may be the more obvious target for culpability at least in part when more detailed information is provided about the victim rather than the suspect. It is therefore possible that investigators could be taught to provide information with the same level of detail regarding the suspect in a sexual assault case. This would include information about how the suspect targeted the victim on the basis of vulnerability characteristics, whether the suspect provided the victim with drugs and/or alcohol, and how the suspect used specific techniques to “groom” the victim. The need for such information may be particularly critical because the suspect is not required to testify at trial—and typically will not—whereas sexual assault trials virtually always involve detailed testimony by the victim. This provocative suggestion can be explored in future research.
Some might argue that research on juror decision making should not necessarily be a high priority for future research because such a small percentage of sexual assault cases end up going to trial. However, we believe that the existence of the downstream orientation within the criminal justice system undermines this argument. If prosecutors do not believe they can persuade jurors to convict in a sexual assault case, they may charge and try fewer cases. Then as law enforcement investigators see that fewer cases are being charged and tried, they may forward fewer cases to the prosecutor’s office. Finally, as fewer cases proceed through the stages of investigation and prosecution, victims may be less likely to report their sexual assault to law enforcement. Therefore, any change that is targeted at the final point in the attrition process has the potential to push for reforms all the way “upstream,” even to the point of victim reporting.

Clearly, tension exists between the pressure to win cases and the need to hold offenders accountable. Research and reform efforts may therefore be needed to reformulate the perceived “convictability standard,” so prosecutors file charges in a broader range of sexual assault cases. Although the short-term result of such an effort may be a decrease in convictions, it is possible that the longer term legacy would be a reduction in the justice gap for sexual assault cases. “If prosecutors dealt with actual juries to prosecute more of these cases, they might learn how to win the cases, hence expanding what is perceived as ‘convictable’” (Frohmann, 1997, p. 553).

**Restorative Justice**

Another direction for future research within the criminal justice system is to implement and evaluate programs for restorative justice. Although such programs are often viewed as controversial, we believe questions about their efficacy, fairness, and impact on victims are ultimately empirical and deserve to be tested with rigorous social scientific research. One example is the research conducted by Koss (2006), which demonstrated positive changes in increased offender responsibility and heightened empathy for the victim using qualitative methods. This evaluation effort is ongoing, and future work will be used to determine whether there is any positive impact in victim outcomes such as increased satisfaction, reduced distress, and increased perceptions of fairness and control of the offender sanctions.

**Success Outside the Criminal Justice System**

Although most of the attention so far has focused on success in terms of criminal justice outcomes, future evaluation research could also incorporate alternative measures of success outside the criminal justice system. For many sexual assault cases, successful prosecution is not possible, so it is important to widen our definition of what constitutes success. At least equally important is the ability of a community to determine in a coordinated way which services are most needed by victims and to assist victims in accessing those services.

For example, many adults and adolescents fall through the cracks of existing community services. This includes individuals who have been victimized repeatedly, are homeless, or
have engaged in survival sex, promiscuous sex, drug use, or other criminal activity. Therefore, one example of a “best practice” is for communities to establish multidisciplinary review committees to discuss how best to provide outreach and assistance for these individuals. Another form of assistance that is often overlooked but nonetheless critically important for victims is increasing access to civil attorneys who can help address problems with housing, employment, education, and immigration status (Seidman & Vickers, 2005). Evaluation of success could thus include the assessment of these alternative forms of collaboration, outreach, and victim assistance.

**Conclusion**

In the present article, we offer several ideas for future research. Yet we want to note that such research will only be fruitful if it translates into meaningful reform efforts. Some of the concrete changes that are needed include eliminating the emphasis on arrest rates, evaluating case outcomes in terms of prosecution and conviction, emphasizing the quality of investigations and prosecutions regardless of case outcomes, and exploring alternative measures of success outside the criminal justice system. We remain optimistic that we can make the “good news” of increased reporting rates and decreased attrition for sexual assault cases a reality in this country.

**Acknowledgments**

The authors are very grateful for the William H. Donner Foundation’s support of this project.

**Declaration of Conflicting Interests**

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

**Funding**

The authors disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This research was supported in part by the William H. Donner Foundation.

**Notes**

1. To illustrate, EVAW International led a data-collection effort in eight diverse U.S. communities as part of the “Making a Difference (MAD) Project.” In these eight communities, a total of 12 law enforcement agencies submitted data on 2,059 sexual assault cases. When cases with missing data were excluded, a total of 95% involved female victims, 66% were perpetrated using “force, threat or fear,” and 65% involved penile–vaginal penetration. When these three variables were combined, just less than half (49%) of all cases involved all three characteristics (Lonsway & Archambault, 2010). As the MAD project excluded cases involving child victims, however, the real percentage is likely to be far lower, suggesting that forcible rapes as defined by the UCR program represent a minority of sex crime cases.
2. Social scientific research provides a range of estimates that are generally consistent with these UCR statistics. Specifically, research estimates that 18% to 50% of the sexual assaults reported to law enforcement will result in an arrest (Frazier et al., 1994; Koss, Bachar, Hopkins, & Carlson, 2004; Spohn & Horney, 1992). However, the evidence is not sufficient to make any claims regarding trends in arrest rates across time.

3. Although the report does not define what is meant by the term prosecuted, it likely refers to charges being filed.

4. For more information on the Offender-Based Transaction Statistics, please see the website for the National Archive of Criminal Justice Data, maintained by the University of Michigan at http://www.icpsr.umich.edu/icpsrweb/NACJD/.

5. For more information on the State Court Processing Statistics, please see the website for the National Archive of Criminal Justice Data, maintained by the University of Michigan, at http://www.icpsr.umich.edu/icpsrweb/NACJD/

References


**Bios**

Kimberly A. Lonsway earned her PhD from the Department of Psychology at the University of Illinois at Urbana–Champaign in 1996. She then completed a 2-year postdoctoral fellowship at the American Bar Foundation in Chicago. In 1998, she moved to California where she served as the director of research for the National Center for Women and Policing, taught as an adjunct professor in the Department of Psychology at California Polytechnic State University, and assisted Penny Harrington & Associates as the director of research and training. In 2003, she joined the nonprofit organization End Violence Against Women International (EVAWI), where she currently serves as the director of research.

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20 ELEMENTS
of a Victim-Centered and Offender-Focused
YOU HAVE OPTIONS Law Enforcement Response

All YOU HAVE OPTIONS Program Law Enforcement Agencies believe in providing victims of sexual assault with as much control over their report and any subsequent criminal investigation as the law allows.

Unless legally mandated or in other rare circumstances, the following victim-centered and offender-focused options are offered during every sexual assault report and/or investigation at all YOU HAVE OPTIONS Program Law Enforcement Agencies:

1. A victim of sexual assault is offered three options for reporting: Information Only, Partial Investigation and Complete Investigation.

2. A victim or other reporting party may remain anonymous and still have the information they provide documented by a You Have Options Program Law Enforcement Agency.

3. A victim or other reporting party may have questions answered regarding their options for reporting and/or a criminal investigation prior to providing any identifying or incident information to law enforcement.

4. A clear explanation of the reporting process and/or investigative procedures will be provided by a law enforcement officer if requested by the victim.

5. When making a report there is no requirement to meet in person with a law enforcement officer. For example, a victim or other reporting party may report using an online form or a victim may choose to have a sexual assault advocate report on their behalf.

6. Reasonable efforts will be made to allow the victim or other reporting party control over the location, time and date where their initial report is made to law enforcement.

7. A victim or other reporting party may provide as much, or as little, information as they choose with no time limitations or restrictions on when the information is given to law enforcement. For example, information obtained on an incident outside the current statute of limitations will be documented and used as the law allows to assist in other investigations.

8. Law enforcement officers will offer assistance in locating sexual assault advocacy services to every person reporting.

9. A victim may be accompanied by a sexual assault advocate or other appropriate support person during all phases of the reporting process and criminal investigation.

10. A victim, or other reporting party, may end an interview with law enforcement at any time without having to provide a reason.
11. After making a report, a victim or other reporting party will not be pressured to participate in a criminal investigation.

Reasonable efforts will be made to meet the needs of the victim and address any barriers the victim faces in providing information to law enforcement during the reporting process.

12. Law enforcement officers will conduct victim interviews in a trauma-informed manner.

Reasonable efforts will be made to meet the needs of the victim and address any barriers the victim faces when participating in a sexual assault investigation.

13. A victim’s right to keep their assault confidential will be respected. If legally permissible, no person (outside of a law enforcement agency) will be notified the victim has reported without the victim’s consent. This includes the interviewing of identified witnesses and perpetrators.

14. Investigators will utilize strategies to identify and document serial sexual perpetration, such as the Inquiry into Serial Sexual Assault (ISSA).

15. Investigators will collaborate with victims during the investigative process and respect a victim’s right to request certain investigative steps not be conducted. Criminal investigations will be conducted at a pace set by the victim, not the law enforcement officer. Victims will be informed that no case can proceed to arrest or referral to an office of prosecution until the investigative process is complete.

16. A victim may disengage from a criminal investigation at any time prior to an arrest being made or the case being referred to an office of prosecution. There is no requirement that an explanation be given by the victim to law enforcement.

17. If legally permissible and probable cause exists for a crime, no arrest or referral to an office of prosecution will occur without the consent of the victim. All You Have Options Law Enforcement Agencies respect the choice of every victim who reports a sexual assault, and understand that justice is not the same for every person who is victimized.

18. Criminal investigations that do not result in arrest or referral to an office of prosecution will be classified as “inactive” unless found baseless or false, allowing for the investigation to be re-opened in the future at a victim’s request and/or if additional information is discovered.

You Have Options When Reporting a Sexual Assault.
Learn more at www.ReportingOptions.org
## Records Checklist

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<td><strong>Child Advocacy Center Database</strong></td>
<td>Yes / No</td>
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<td><strong>Public Records Database</strong></td>
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### PROMISING PRACTICE STANDARD FOR TITLE IX TRAINING

<table>
<thead>
<tr>
<th>Group</th>
<th>Training Level</th>
<th>Frequency</th>
<th>Mode</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Employees</td>
<td>Orientation (Title IX Awareness, Clery Act Orientation; Institution's Policies &amp; Procedures, Rights &amp; Options; What to Do…)</td>
<td>Initial, New Employee Orientation, on-going, etc.</td>
<td>In-person; on-line</td>
<td>Title IX Coordinator; HR Director; Violence Prevention Office</td>
</tr>
<tr>
<td>Title IX Coordinators</td>
<td>Level 3 (3-5 days)</td>
<td>Initial &amp; on-going (Clery requires annual training)</td>
<td>In-person, on-line, etc.</td>
<td>SME</td>
</tr>
<tr>
<td>Investigators</td>
<td>Level 3 (3 - 5+ days)</td>
<td>Initial &amp; on-going (Clery requires annual training)</td>
<td>In-person, supplemented with resources</td>
<td>SME</td>
</tr>
<tr>
<td>Hearing Board Members / Hearing Officers (Depends On Model)</td>
<td>Level 2 (min: 8 hours)</td>
<td>Yearly and on-going, as appropriate</td>
<td>In-person</td>
<td>SME</td>
</tr>
<tr>
<td>Appellate Boards / Appellate Officer</td>
<td>Level 2 (min: 8 hours)</td>
<td>Yearly</td>
<td>In-person</td>
<td>SME/inside or outside counsel</td>
</tr>
<tr>
<td>Board of Trustees</td>
<td>Orientation</td>
<td>Yearly</td>
<td>In-person</td>
<td>SME/inside or outside counsel</td>
</tr>
<tr>
<td>Individuals likely to witness sexual or gender violence or receive reports</td>
<td></td>
<td></td>
<td></td>
<td>See Table Below</td>
</tr>
</tbody>
</table>
## INDIVIDUALS LIKELY TO WITNESS AND/OR RECEIVE REPORTS

<table>
<thead>
<tr>
<th>Group</th>
<th>Training Level</th>
<th>Frequency</th>
<th>Mode</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residence Advisors / Assistant</td>
<td>Level 1 (2-4 hours)</td>
<td>Annually</td>
<td>During RA Training</td>
<td>SME</td>
</tr>
<tr>
<td>Professional Hall Staff</td>
<td>Level 2 (First Responder)</td>
<td>Semi-Anually</td>
<td>During in-service</td>
<td>SME</td>
</tr>
<tr>
<td>Campus Public Safety</td>
<td>Level 3 (First Responder)</td>
<td>Semi-Anually</td>
<td>During in-service</td>
<td>Title IX Coordinator, SME</td>
</tr>
<tr>
<td>Senior Administrators</td>
<td>Orientation (45 min. – 1 hour)</td>
<td>Annually</td>
<td>Senior staff mtgs.</td>
<td>SME</td>
</tr>
<tr>
<td>Deans / Directors / Department Heads / Chairs</td>
<td>Orientation</td>
<td>Semi-Anually</td>
<td>Departmental staff mtgs.</td>
<td>SME</td>
</tr>
<tr>
<td>Athletic Directors, Coaches, Training</td>
<td>Level 1</td>
<td>Semi-Anually</td>
<td>During in-service</td>
<td>Title IX Coordinator, SME</td>
</tr>
<tr>
<td>Student Organization Advisors</td>
<td>Level 1</td>
<td>Annually</td>
<td>During in-service</td>
<td>See also CSA Training</td>
</tr>
<tr>
<td>Health Professionals / Mental Health Counselors</td>
<td>Level 1</td>
<td>Annually</td>
<td>During in-service</td>
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**Training Level:** Level 1: Basic Awareness; Level 2: Intermediate; Level 3: Advanced

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Officer Safety Corner: The Role of Mindfulness Training in Policing a Democratic Society

Richard Goerling, Police Lieutenant; Commander, U.S. Coast Guard Reserve; and Adjunct Faculty, Portland, Oregon, Community College

U.S. police professionals work in an increasingly demanding and complex operational, administrative and legal landscape. Many hazards exist in this environment, and navigating these hazards as a police officer is no longer achievable without significant change. It is time for police leaders to collaborate with community stakeholders and find ways to enhance the wellness of their police officers and communities.

Police work is stressful. Traditional views on police occupational stress have often been viewed in a negative light. Much of this perspective is due, in large part, to the police institution’s reactive approach to stress.
management—police agencies typically wait until significant, negative effects of stress manifest in individuals, teams, or the whole organization before actions are taken to mitigate and manage. Police officer wellness requires a shift in organizational approach among police leadership and an ensuing cultural evolution toward resilience and holistic wellness. This article will discuss what this shift might look like and how police and community leaders might consider leading forward to build a police organizational and cultural construct that has resilience (prevention) at its core.

Historically, the American Police Institution (API) has delegated officer wellness to the individual police officer.¹ Combine this with little or no wellness intervention programs until officers experience trauma, and you are left with the API's current, reactive model that has, time and again, demonstrated little ability to prevent the complex, long-term consequences of trauma. Police organizations and their communities must create a culture of resilience and an organizational model that supports resilience in all wellness dimensions: mind, body, and spirit. Training police officers in resiliency skills, providing stronger preventative mental health care, and cultivating a leadership culture of wellness will shift the API toward a preventative model—one of resilience. This new approach will allow police officers to move beyond survival and into a realm where they can thrive.

The positive outcome of a preventative model of resilience will have noticeable effects at the individual police officer level, the organizational level, and throughout the community. Resilient police officers will have a greater capacity for compassion and performance on the job, healthy organizations will nurture leadership capacity from the briefing room to the
boardroom, and these positive social forces will strengthen the relationship between the community and its police department, perhaps just one police-citizen encounter at a time.

Resilience is defined nicely by the late Dr. Al Siebert as the “ability to cope well with high levels of ongoing disruptive change; to sustain good health and energy when under constant pressure; to bounce back easily from setbacks; to overcome adversities; to change to a new way of working and living when an old way is no longer possible; and to do all this without acting in dysfunctional or harmful ways.”

Holistic wellness simply refers to the mind, body, and spirit connectivity. It requires both training and a leadership culture to support wellness of the whole person—physical, mental, emotional, social, and spiritual.

At the foundation of this culture and organizational model is a holistic approach that includes mindfulness training. Jon Kabat-Zinn defines mindfulness as “the awareness that emerges through paying attention on purpose, in the present moment, and nonjudgmentally to the unfolding of experience moment by moment.”

The practice of paying attention, of cultivating awareness, is one that strongly resonates with the ethos of the guardian and the life path of the warrior. Guardian ethos encompasses our collective warrior culture in policing and the values and beliefs necessary to nurture and sustain the courage and grace it takes to stand the watch. The life path of the “guardian” (the watchstander of democracy) has an arch from accession to retirement. Thriving across this arch is perhaps too rare as most of police culture frames success in terms of survival. Richard Strozzi-Heckler writes of his work training what he calls the awareness disciplines to U.S. Army Special Forces. Police leaders have an opportunity here. Teaching meditation to police officers makes sense, culturally and scientifically. Meditation speaks to the warrior soul and teaches critical skills in self-awareness. From this place, one
can expect physical, spiritual, and social fitness to grow.

Mindfulness-Based Stress Reduction (MBSR) is a training program that Kabat-Zinn developed three decades ago at the University of Massachusetts Medical School. This training program has been adapted to train resilience at the Hillsboro Police Department in Oregon.

Beginning in the summer of 2013, a pilot Mindfulness-Based Resilience Training (MBRT) program was implemented. Through a collaborative research and training partnership with the Hillsboro Stress Reduction Clinic and Pacific University, three separate cohorts of police employees from three different police agencies in the region have been trained in the nine-week MBRT. Research results, which include salivary cortisol testing, are being analyzed. Preliminary research data demonstrate promising outcomes through self-reported improvements in sleep, pain management, emotion regulation, and emotional intelligence.

The collaborative research and training team in Hillsboro has evolved into the Pacific Center for Wellness at Pacific University. This team will continue to research, develop, and deliver mind-body resilience training and mindful leadership training for police professionals. The center invites collaboration with police agencies.

The hope is that this research demonstrates how mindfulness training can develop and nurture resiliency skills, enhance officer performance under acute stress, and improve the outcome of the police-citizen encounter. Mindfulness has been shown to improve the neuroplasticity of the brain and the unconscious resilience that results creates pathways for conscious resilience of hand, heart, and mind. This training provides capacity for police officers to respond through trauma and, after a period of adjustment, land stronger than when they started, an ability also known as post-traumatic growth. Mindfulness also builds improved cognitive performance and greater emotion regulation, which are key to the peak
performance of a police officer under stress. Finally, the improvements in self-awareness, empathy, and emotion regulation that can be achieved with mindfulness training lend toward more grounded outcomes in police-citizen encounters. While the research strives to test these desired outcomes, much work remains to be done as mindfulness training in policing evolves to meet the unique culture and operational environment of policing.

Mindfulness training promises to nurture the body, mind, and spirit of our police warriors. Research has shown that mindfulness enhances emotion regulation, empathy, cognitive performance, and working memory. These are the ingredients for an effective police encounter and a battle-ready, empathic police officer.

The good news is that police occupational stress can have constructive outcomes when responded to positively by the organization. Cultivating resilient police officers and a culture of resilience is possible using mindfulness as a foundation. Shifting from a reactive model to a preventative one is not simple, yet it is an integral part of leadership evolution. The opportunity before us is to lead our culture forward, toward a proactive and preventative paradigm of occupational stress. In this model, we create an environment that allows our employees and communities to not just survive, but to thrive.

Police training, generally, devotes much energy in training concepts of situational awareness. The U.S. legal framework looks at the concept of the totality of the circumstances. Awareness of the landscape (physical, environmental, human, industrial, etc.) is the first factor in staying safe in all emergency response professions. Assessing the behavior of persons confronted by police officers is an equally critical ingredient to officer safety. Mindfulness training is situational awareness “graduate school.” Through greater self-awareness, police officers can learn greater situational awareness and develop the ability to be present, focused, and grounded in the naturally occurring fog where heroes meet crises.
“Instead of panicking or returning to business as usual, commit to grounded compassion, pragmatic wisdom, and skillful action. Let awareness be your weapon... Be there for those who have suffered more than we have. Step beyond yourself and be of use to someone. Be courage in uncertainty. Be love in chaos.”

Notes:
1“American Police Institution” (API) is a term used by the author to describe the uniformed public safety industry at all levels of U.S. government. It primarily refers to the broad organizational and management culture of this mission-diverse group of police agencies.
8Strozzi-Heckler, In Search of the Warrior Spirit, 372.

Please cite as:
The IACP Center for Officer Safety and Wellness (COSW)

The COSW strives to establish a culture of safety, health, and wellness by emphasizing these values as they impact officer performance from recruitment to retirement. Visit:

http://www.theiacp.org/CenterforOfficerSafetyandWellness.

Share this article with anyone using the following URL:
http://www.policechiefmagazine.org/officer-safety-corner-the-role-of-mindfulness-training-in-policing-a-democratic-society/?ref=ed76dc1de89d0a2382884b2b05a1a4ff
Please Visit

ADDITIONAL REFERENCES


8. What is Rape Culture?: https://www.buzzfeed.com/ryanhatesthis/what-is-rape-culture?utm_term=.gdY00eBp3#.ykJNNkJ5P


10. Article outlining research on false reports: http://www.vox.com/2015/6/1/8687479/lie-rape-statistics


13. Project Unbreakable: www.project-unbreakable.org
Additional References Specific to Title IX and the Clery Act

1. U.S. Department of Education Clery Act Compliance Resource Page (includes the statute, the regulations, and the handbook)
   https://www2.ed.gov/admins/lead/safety/campus.html

2. U.S. Department of Education Clery Act Compliance Reports

3. OCR 2001 Revised Sexual Harassment Guidance
   http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf

4. 2010 Dear Colleague letter on Harassment and Bullying
   http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf

5. 2011 Handbook for Campus Safety and Security Reporting

6. April 2011 OCR Dear Colleague Letter
   http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf

7. April 2013 OCR Dear Colleague Letter on Retaliation
   http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html

8. April 2014 OCR Q&A
   http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf

   https://www.notalone.gov/assets/report.pdf

10. April 24, 2015 OCR Dear Colleague Letter (Title IX Coordinator)
    http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf

11. April 2015 OCR Title IX Resource Guide
    https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf

12. May 13, 2016 Dear Colleague Letter Transgender Student Guidance
    https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf


14. September 2017 Q&A on Campus Sexual Misconduct
    https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf?utm_name=

15. September 22, 2017 Dear Colleague Letter rescinding 2011 DCL and 2014 Q&A
    https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf
**Additional References Specific to Self-Care:**

1. **Apps:**
   - Headspace
   - The Five Minute Journal

2. **Book:**
   - Into the Magic Shop: A Neurosurgeon’s Quest to Discover the Mysteries of the Brain and the Secrets of the Heart, by James Doty

3. **TED Talks:**
   - Andy Puddicombe: All it takes is 10 mindful minutes
     [https://www.ted.com/talks/andy_puddicombe_all_it_takes_is_10_mindful_minutes?language=en](https://www.ted.com/talks/andy_puddicombe_all_it_takes_is_10_mindful_minutes?language=en)
   - Pico Iyer: The Art of Stillness

4. **Podcasts:**
   - On Being by Krista Tippett, Episodes:
     i. David Isay, "Listening As An Act of Love"
     ii. Kevin Kling, "The Losses and Laughter We Grow Into"

**Additional References Specific to MOUs:**

1. California Office of the Attorney General resource page on campus MOUs
   - [https://oag.ca.gov/campus-sexual-assault](https://oag.ca.gov/campus-sexual-assault)

2. The White House Task Force to Protect Students from Sexual Assault Resources

**Additional References Specific to Notice of Rights & Options:**

1. University of California Davis Notice of Rights and Options

2. University of Michigan Notice of Rights and Options

3. Emerson College Notice of Rights and Options
PART III. ADDITIONAL RESOURCES

MARGOLIS HEALY INSTRUCTOR BIOGRAPHIES

MICHAEL N. WEBSTER | DIRECTOR FOR REGULATORY COMPLIANCE

In January of 2015, Michael Webster was appointed the Director for Regulatory Compliance at Margolis Healy. His focus is in assisting clients in the areas of the Clery Act and Title IX, and also contributing to teams delivering Public Safety Management Studies. Since joining Margolis Healy in 2010 as an Associate, and as a Senior Associate in 2013, Mike has provided consultation to clients representing the spectrum of higher education institutions including: Swarthmore College, Penn State University, Seattle University, the University of Alabama, Huntsville, Emerson College, the University of North Carolina System, Claremont McKenna College, the University of Texas Pan American, Wilkes University, California Western School of Law and Baylor University.

From 1991 to 2014, Mike served as the Director of Campus Safety at McDaniel College in suburban Baltimore, Maryland. Prior to that, Mike worked as the Assistant Director of Public Safety at Emerson College and the Operations Manager, Campus Police Sergeant at Wentworth Institute of Technology both of which are in Boston, Massachusetts. Each of these agencies was a broadly missioned public safety agency with multiple roles including uniformed sworn law enforcement and non-sworn security, emergency medical services, fire prevention, community education, crime prevention and physical security technology. These private campuses were: urban and suburban, liberal arts, and specialized, largely commuter and residential, four-year undergraduate and master’s degree granting, and armed and unarmed.

Mike holds a Bachelor of Science degree in Criminal Justice from Northeastern University, and a Master of Science degree in Human Resource Development from McDaniel College, where his graduate research focused on two problems plaguing campus law enforcement agencies: recruitment and retention, and morale and motivation.

Mike served as an adjunct lecturer at McDaniel College in the Sociology Department where he authored and taught “Practical Applications in Law Enforcement.” He enjoys teaching in a variety of capacities and has served as a presenter at numerous conferences for a several professional organizations and state criminal justice training authorities. For many years, he served as the Government Relations Chair for the International Association of Campus Law Enforcement Administrators (IACLEA). Mike has participated in all three Negotiated Rulemaking sessions hosted by the United States Department of Education for the Clery Act, the most recent being the Violence Against Women Act amendments of 2013. Mike also served as a content reviewer for 2005 and 2011 versions of the Handbook, published by the US Department of Education to facilitate compliance with the Clery Act requirements. He has authored “Common Clery Challenges”.

In 2015, Mike completed the National Center for Campus Public Safety’s “Trauma Informed Sexual Assault Investigation and Adjudication” course, and in 2010 attended U.S. Department of Justice, Office of Violence Against Women / International Association of Chiefs of Police – National Law Enforcement Leadership Institute on Violence Against Women. He frequently presents on Title IX issues around institutional management and prevention of gender violence. He recently authored “Concurrent Criminal and Title IX Investigations”.

In 2014, Mike was named a Campus Safety Magazine Director of the Year finalist. Mike was a Certified Protection Professional (CPP) by the American Society for Industrial Security (ASIS) International from 1987 to 2014, a member of the IACLEA since 1984, the International Association of Chiefs of Police (IACP) since 2004, and the Association of Campus Law Enforcement Administrators – Chesapeake Region since 1991. Mike has ensured a comprehensive program of personal professional growth in a variety of areas through attending multiple professional development courses from varied government sources including the US Departments of Justice, Education, Homeland Security and State, as well as the Federal Emergency Management Agency, Federal Bureau of Investigation, and a broad array of professional associations and private groups.
SERGEANT ELIZABETH DONEGAN I ASSOCIATE

Sergeant Elizabeth Donegan is a 25-year veteran of the Austin Police Department (APD). For over nine years she led the APD Sex Crimes Unit, widely recognized for its progressive approach toward investigating sexual assault, providing better service to victims, and changing the culture surrounding the investigation of non-stranger sexual assault. Sgt. Donegan is a member of the Austin/Travis County Sexual Assault Response Resource Team (SARRT). The APD Sex Crimes Unit was recognized for its progressive approach by Human Rights Watch in their 2013 report, Improving Police Response to Sexual Assault. Sgt. Donegan currently leads the APD Sex Offender Apprehension and Registration (SOAR) unit.

Sgt. Donegan recently served as an expert testifying for the Response Systems Panel, a federal advisory committee which conducted an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses under military law. She has also trained and presented at a number of training events and conferences hosted by the U.S. Department of Defense, including the U.S. Army Summit, programs at Ft. Hood and Ft. Sam Houston, and ongoing training conducted at Ft. Leonard Wood. She is a veteran of the U.S. Army.

Sgt. Donegan serves as a subject matter expert for the International Association of Chiefs of Police (IACP) on projects related to sexual assault response and investigation, including the National Law Enforcement Leadership Initiative on Violence Against Women and the roll-call training series How to Bring Sexual Assault Offenders to Justice: A Law Enforcement Response. She is a published author and frequent presenter at conferences and seminars. She has won numerous awards for her work, including the first Professional Impact Award given by End Violence Against Women International (EVAWI) in 2011.
Margolis Healy is a professional services firm specializing in campus safety, security, and regulatory compliance for higher education and K-12. We provide our clients with a variety of specialized services that include physical security assessments, Title IX and Clery Act compliance assessments and training, emergency management risk and hazard assessments, emergency preparedness and crisis response systems and exercises, implementation of lethal and less-than-lethal force options, litigation consultation and expert witness services, and special investigations/independent reviews.

Dr. Gary J. Margolis and Mr. Steven J. Healy founded Margolis Healy in 2008. With twenty years each of providing consulting services to clients in the education, public and private sectors, their combined experience quickly earned Margolis Healy recognition as one of the leading campus safety and security professional services firms in the United States. In 2013, the U.S. Department of Justice, Bureau of Justice Assistance awarded the firm funding authorized by Congress to establish and operate The National Center for Campus Public Safety. In August 2017, Margolis Healy was acquired by the Philadelphia-based law firm Cozen O’Connor.

The Margolis Healy team has consulted or been intimately involved with numerous high profile cases. These include reviews, assessments and investigations at Penn State, The Citadel, Baylor University, and Umpqua Community College, to name a few. Shortly after the August 2017 “Unite the Right” rally that turned deadly in Charlottesville, VA and the unplanned white supremacists march through the Grounds of the University of Virginia on Friday, August 11, UVA retained Margolis Healy to conduct a comprehensive review of campus safety and security systems, policies, procedures, and practices.

We have worked tirelessly to assemble the best and brightest in the campus safety, security and regulatory compliance fields in order to provide our clients with outstanding service. The level of professionalism and breadth of experience each member of the Margolis Healy team brings allows us to provide each of our clients with personalized attention and high-quality work. For more information about our firm and services, please visit www.margolishealy.com.
THE MARGOLIS HEALY METHODOLOGY

Margolis Healy has developed a unique, proprietary methodology for evaluating safety and security needs at institutions of higher education based on years of educational campus safety and security experience, research, reflection and evaluation. We assess safety and security at educational institutions through our proprietary 3 Circles of Prevention System™. We have extensive proprietary checklists that support our methodology.

**The First Circle** - Policies, Procedures and Education - asks to what extent relationships and services exist for early interception and intervention for problems and issues germane to faculty, staff and students. Such services may include, but not be limited to, drug and alcohol education and counseling; behavioral threat assessment teams; grievance policies; workplace violence policies and prevention systems; sexual assault, stalking and domestic violence victim advocacy; mediation services and grievance policies and procedures for faculty and staff; and other similar policies and services that address problems before they become a crisis.

**The Second Circle** - Physical Security Systems - explores the extent to which institutions of higher education have employed physical obstacles, delaying tactics and security technology to control, secure or regulate access to the physical plant. This may include, but not be limited to, systems that direct vehicular traffic; security cameras; networked or standalone door locking systems and hardware; campus lighting (interior and exterior); E911 capacity and PBX phone systems; mass notification systems (high and low technology); fire and life safety systems; visitor management policies and practices; inclusion of crime prevention through environmental design considerations; and access control and other security technology tools.

**The Third Circle** - Response Capacity - explores measures that enable the institution to respond to events and security and safety related needs in an organized, timely, and efficient manner. This may include, but not be limited to, a public safety function with organized involvement of students, faculty and staff in the security of the campus; memoranda of understanding with area police, fire and emergency medical services; emergency response and recovery systems, policies and procedures that have been trained to; and adoption and implementation of the National Incident Management System (NIMS) and the Incident Command System (ICS). Combined, this third circle of prevention builds capacity for the human response to safety and security requirements.

Taken together, the various strategies (e.g., staffing, life safety and security technology, first response, and policies) depict the interconnected nature of campus safety and security. Changes or decisions made to one area impact the others. The deployment of security technology (cameras, door prop alarms, automated access control) may or may not have an effect on the number of public safety officers, which may or may not impact other security needs. Margolis Healy works with our clients to develop a reasonable campus safety and security program based on their current state and the desired future state.
MARGOLIS HEALY CORE SERVICES

Using our methodology, we deliver a range of services that include the following. A more detailed list can be found at our website (www.margolishealy.com).

I. Public Safety Management Studies™. Using our considerable experience in higher education public safety combined with our academic and real world experience with organizational development and transformation, we conduct management reviews and organizational studies for campus public safety agencies. We review the institution’s safety and security function and make recommendations and suggestions, if required, in light of best practices and institutional needs. Depending on the scope of the review, the goals of the management study may range from a review of the department’s operations to human resource practices; staffing (recruitment and retention); policies and protocols; and facilities and equipment depending on application, time constraints, and availability of information.

II. Safety & Security Program Assessments™. We evaluate your residential, academic and administrative facilities; security and safety related policies; and existing or envisioned security technology infrastructure (security cameras; access control; and mass notification and warning systems) in order to provide recommendations in alignment with promising or best practices. For security technology needs, we can provide system cost projections that can be included in overall fiscal projections as well as specifications that can be included in installation bids.

III. Risk Tolerance Profile. We help develop a Risk Tolerance Profile™ that assists the institution with identifying the range of realistic threats and vulnerabilities it faces, and then implementing a decision making process to determine which require prevention, mitigation, preparedness, and/or response plans. Without such a process, universities and colleges face the daunting task of giving equal attention to all perceived and real threats. Our process recognizes the range between high impact/low probability and low impact/high probability events. The Active Shooter tragedy (high impact/low probability) and the iPod theft from the library (low impact/high probability) each require different strategies. Impact is defined through the institution and the individual.

IV. Emergency Management. We assess, review and develop university and college emergency response and recovery plans, policies, guidelines and supporting documentation through the tailored application of acceptable, reasonable, promising and best practices in higher education emergency management. Our emergency management methodology aligns with the recommendations of the U.S. Department of Education, Action Guide for Emergency Management at Institutions of Higher Education, a document developed with input from Steven J. Healy (MHA Managing Partner) and Gregory A. Thomas (MHA Associate). MHA evaluates and develops crisis management and emergency preparedness policies, procedures, systems and plans in light of their (1) Administrative Framework; (2) Response Framework; (3) Related Incident Action Plans and Memorandum of Understanding; (4) adherence with the National Response Plan’s Concept of Operations; and (5) compliance with the Incident Management System (NIMS), and the Incident Command System (ICS). Our services include the formulation of an emergency management system and the associated development of coordination capabilities, policy and strategic roles, and effective implementation of recovery efforts specific to our clients’ context. We explore the roles and responsibilities of the executive decision makers and operational “first responders” while building an Emergency Operations Center infrastructure. Our policy review includes the existence, inclusion and identification of an Executive Policy Group; Emergency Operations Center; and Critical Incident Planning Group. We deliver training programs and tabletop exercises.

The measures taken to address safety and security are as much data and metrics driven as they are based on perception. We believe that our expertise, knowledge and experience uniquely qualify us to assist our client institutions with recommendations tuned to their culture and needs.
MARGOLIS HEALY PRACTICE AREAS

| CLERGY COMPLIANCE ASSESSMENT & TRAINING |
| CRISIS COMMUNICATIONS SERVICES |
| CRISIS SUPPORT SERVICES |
| EMERGENCY MANAGEMENT |
| RISK & HAZARD ASSESSMENT |
| EMERGENCY PREPAREDNESS & CRISIS RESPONSE SYSTEMS AND EXERCISES |
| EVENT SECURITY PLANNING & MANAGEMENT |
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| MASS NOTIFICATION SYSTEM IMPLEMENTATION |
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