



Skepticism as a Barrier to Evidence Collection: Transforming Procedure on Receiving Reports from Sex Crime Victims

Dr. Michael J. Davis

Southeastern Oklahoma State University, USA

E-mail: mdavis@se.edu

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Abstract

Comprehensive evidence collection in cases of sex crimes is of vital importance to obtaining convictions in a court of law, and in such cases testimonial evidence is often crucial to understanding the nature of the criminal violation as well as the scope and range of further possible evidence that may be gathered. Research has shown that when police are openly suspicious of victim testimony, or otherwise exhibit disregard, judgment, or hostility to victim reports and information, the evidence collection becomes less comprehensive as a result. However, by utilizing trauma-informed interviewing techniques, law enforcement can more successfully elicit information from victims that may be vital in better understanding the facts of a case, and to make a more comprehensive and exhaustive collection of evidence relevant to a case. Because victims in these sensitive types of crime are often already hesitant, traumatized, and confused – and because many sex crime cases involve alcohol or other drugs – law enforcement is best advised to exercise discretion and patience with victims during any type of information receipt or interrogatory related to a possible or alleged crime.

Keywords: *Trauma-Informed; Sexual Assault; Victimology*

Introduction

Victims of sex crimes are notoriously hesitant to come forward to law enforcement authorities to make reports of non-consensual sexual activity, and other criminal sexual contact. Among the multitude of reasons that victims have this hesitancy include a fear that they will not be taken seriously, that they will be blamed for the experience, that justice will not be served, and sometimes they fear the repercussions for the perpetrator of the crime who is often a friend or family member instead of a stranger (McCart et al, 2010). Additionally, there is some evidence that a significant number of law enforcement professionals hold antiquated or inaccurate notions of what to expect in interacting with victims of sex crimes, as well as the nature of sex crimes themselves, and these notions can creep into the way reports

are documented, what evidence, if any, is collected, and how the victim's report is received (Murphy-Oikonen et al, 2022). For these and other reasons, the total number of sexual assaults reported to the police may be as low as 15.8% to 35% of the real total number (Wolitzky-Taylor, 2013). There is some urgency to exploring the nature of this hesitancy to report, as well as associated biases and training deficits on the part of law enforcement that may contribute to victim hesitancy to report, or the mishandling of such reports once they are made. Helpfully, there is a body of research that remains potentially underutilized, which shows that when reporting victims come forward, an intentional effort on the part of the responding agencies to provide services and empower victims, making them feel safe reporting the full context of the situation and experience, can be beneficial to both victims and law enforcement and potentially reduce the overall number of non-reports in cases of sexual violence or assault.

The Current Perspective of Law Enforcement

Research has shown that police, just like large segments of the general public, harbor certain biases, prejudices, and preconceived notions about sexual assault, sexual assault victims, sexual assault perpetrators, and appropriate remedies to these crimes or allegations. Especially without training specific to sexual assault, but also sometimes with such training, significant percentages of the police profession harbor beliefs that sometimes undermine their perception of victim credibility, the veracity of the report, the seriousness or criminality of the allegation, and other factors (Hebert, 2013). There is a tendency among some officers to overestimate the probability of a false report used to tarnish the character of the accused, and a tendency to believe that intoxication or certain other behavior on the part of the purported victim mitigates the crime (Gekoski et al., 2024).

Police are typically the first point of contact for victims of sexual assault, even before local victim advocacy nonprofit groups (Wentz & Archbold, 2012). Researchers from North Dakota State University set out to measure and characterize the perceptions and views of police officers by using a survey. They focused on a Midwestern police agency in the United States, and surveyed 100 officers. Among these officers, 77 were male, and 23 were female. There was a healthy mix of demographic characteristics in the survey sample as the officers had all different education levels, backgrounds, and levels of experience. This survey discovered that while the number of officers who held to certain rape myths were a distinct minority of the force, the perceptions ranged from provocative dress inviting sexual activity, and the length of the relationship making sex more likely to be consensual (Wentz & Archbold, 2012).

There are also other instances of evidence that police may hold biases or perceptions that make victims less likely to come forward. In a series of qualitative interviews with male victims of sexual assault, in this case childhood molestation, the victims reported that they experienced recurring themes of disbelief coming from adults (Hohendorff, 2017). One important source of information about police perceptions of sexual assault reporters comes from a survey of SANE nurses. The Sexual Assault Nurse Examiner program trains nurses on the conduction of proper evidence collection with victims, and these nurses work closely with the police in the intake of a reporter of sexual violence, particularly in cases of sexual penetration. According to the survey conducted by Shana Maier (2011) at Widener University, SANE nurses were asked about their relationship with victims, victim advocates, and police. Among the statements from the interviews about the nurse's relationship with police, some important concerns were shared. Only one third of SANE nurses described their professional relationship with police as entirely positive. Another third had both good and bad experiences. This left a whole one third where the experiences were generally bad – a relatively surprising proportion. Concerns included being pressured to rush the exam, failure to pick up exam results if the victim chose not to file a police report, continued disbelief of the victim despite the results of the nurse's exam, and some officers apparently believed that the lack of bruising or marking on the victim mitigated the believability of their report. One officer told a nurse, "I am here to collect evidence for the rape that didn't happen" (Maier, 2011).

Value of Police Training

Behaviorally focused training is crucial for police handling of sensitive information and the intake process for reports of intimate victimization. While cognitive and attitudinal outcomes are not particularly influenced by training, actions and behaviors can be highly influenced by training (Lonsway & Fitzgerald, 2001). This means that police might retain certain ideas, perceptions, and biases despite training but the training may still nonetheless influence the manner and professionalism with which the police conduct themselves in various settings, and particularly in this context, with potential victims of intimate or sexual related crimes. These behaviors and actions during the intake process can be of crucial value to the accuracy of the information collected, the writing of a thorough police report, the collection of evidence, and increasing the likelihood of victim reporting overall. When such training is offered, it is generally effective at altering the behaviors and actions of police (Darwinkel, 2013).

Victim Hesitancy to Report

In a survey sample of 336 college students, researchers set out to further understand why police reporting on college campuses remained relatively low compared to the overall number of sexual assaults (Moore, 2016). Among the most frequently cited barriers to reporting include shame, embarrassment, fear of not being believed, and perhaps most troubling – a view that the incident is personal and not criminal. Many students reported fears about the security of confidentiality in the reporting process – even more than reported that their primary barrier was along the lines of shame and embarrassment. From the survey, whites were more likely to report than non-whites. One of the conclusions elicited from this survey (p. 17) was that police can encourage crime reporting by “engaging in trustworthy practices” such as treating potential victims with dignity and doing what they can to make the victim interview feel like less of a grilling and more of an opportunity to share. It also helps to offer guidance on how the criminal justice process works – mapping out what to expect instead of leaving victims in the dark about the next steps, when to expect further official contact, and other ramifications of participating in the reporting process. In other words, if police make the intake process for victims an opportunity to politely and encouragingly educate victims about their rights, the mechanics of the reporting process, and essentially “wrap them with services” the potential victims will feel more positive feelings about the experience of reporting.

Research has shown that certain circumstances reduce the likelihood of reporting, and it may behoove police to become familiar with these reasons. These circumstances are tied largely to the status of the relationship between the perpetrator and the victim. For example, when the perpetrator is an intimate partner or a former intimate partner only one in four sexual assaults are reported to the police. If they are an acquaintance then under 40% are reported. If they are a stranger, then as many as 66% may be reported (Hart & Rennison, 2003). Circumstances that reduce reporting also come from the personal choices made by victims. Notably, if drug or alcohol abuse is present in the actions of the victim then the likelihood to report is substantially reduced for fear that these choices will be held against them either legally or judgmentally. Related, if a victim blacked out due to intoxication or drug usage, then victims are substantially less likely to report due to their perception that they do not know enough details to be believed, as well as embarrassment or shame at having those circumstances inextricably tied to the report (Walsh, et. al., 2016). Victims also cite circumstances such as not wanting family to know about the incident, fear that there is no proof, active distrust or mistrust of the police or the justice system, and fear of reprisal as reasons they choose not to come forward to law enforcement officials (Cohn, 2013).

Relationship to Restorative Justice

In the most basic sense, victims cannot be restored in any way until or unless law enforcement takes their criminal allegations seriously, properly investigates the circumstances, collects the appropriate evidence in a timely manner, and importantly – treats the victim with respect, dignity, a manner that encourages their continued cooperation and trust in the process, and in a manner that reduces or mitigates

their feelings of shame or fear with coming forward (Richards, 2009). This is important not just for the present victim at the time of reporting, but also so that a relationship is established in a positive manner that makes other future victims feel comfortable with coming forward with their allegations, instead of worried that their statements will merely be looked upon unreasonably skeptically, or that they will be judged for ancillary or related behavior such as alcohol use, promiscuity, or other factors.

Trauma-Informed Victim Interviewing

Victims of sex crimes, particularly invasive or violent sex crimes, can sometimes carry themselves in a manner that differs markedly from the behavior of victims of less personal and less invasive crimes. It is not particularly unusual for a sex crime victim to intentionally hide crucially relevant parts of their story out of shame or fear, and sometimes law enforcement, if they become aware of these omissions in victim statements, might become skeptical about the overall veracity of the victim's statement (Risan et al., 2020). Additionally, victims might not fully recall their interaction with the perpetrator, or might have selective memory about that interaction for a multitude of factors including post-traumatic memory issues, the likelihood of memory-inhibiting substances being involved in the interaction, or other psychological reasons (Karmakar & Duggal, 2024). This, too, can confuse law enforcement into believing the allegations are concocted, not fully rendered, or that the victim themselves has something to hide in relation to the interaction. Victims are also hesitant to admit they were in a romantic relationship with a person who assaulted them, and sometimes hesitant to admit that they had been willing to participate in sexual activity up to a certain point and then withdrew that consent – instead thinking they are more likely to be believed if they describe the totality of the interaction as non-consensual, even if that is not the full truth. It is crucially important for law enforcement professionals to know these factors in order to better be able to elicit accurate information from victims, and also in order to prevent achieving conclusions that may not be accurate (Dolezal & Gibson, 2022).

Between a victim's initial interaction with law enforcement, and subsequent interactions with detectives or with prosecuting attorneys it is also somewhat common for victims to change their story or to add nuance that they did not volunteer in their initial interview (Zollner et al, 2000). This is relatively normal and does not always mean the victim intended to hold information back – although that might be the way it seems to law enforcement. In the post-trauma environment which a victim inhabits, information can come to the surface of their memory in spurts, slowly, or come rushing back all at once especially with the trigger of a familiar reference. Victims can also be distracted by emotion, counter-accusations by the accused, concerns about family learning about the event, concerns about their own future, and concerns about sexually transmitted disease – any one or all of these cause victims to be relatively shaken up in their initial days and weeks of coping with the traumatic episode itself – and these feelings can be present even if they are interviewed in an empathetic and patient manner (Helm, 2021). Victims can resent even inadvertent slights to their dignity because they are in a heightened state of sensitivity to the way they are perceived by others. This means that something as simple as not giving them reasonable time to collect belongings prior to questioning can be seen as disrespectful from the victim's perspective (Greenwalt, 2000).

There are also other factors to take into account that might be less noticeable unless one is trained specifically on them, for example a female sex crime victim might have trouble being immediately thrown into the generally male dominated police station environment, asked to wait in spartan rooms only to be interviewed by people wearing firearms – while not intentionally creating an intimidating situation, this can nonetheless be perceived as an intimidating situation and cause victims continued insecure feelings (Fyfe & McKay, 2000). It can make a victim feel like they are in trouble, unfree to leave, or that they will be grilled in the same manner as a suspect in a crime. Male victims often have even higher reservations about being believed than female victims, because they, sometimes accurately, are concerned that police officers will not understand how a man can be a victim. Finally, there is a distinct tension

between the needs of police and victims in terms of the amount of time that passes between the initial report intake and a forensic interview – with police wanting a fresh recollection from the victim, and the victim wanting time to compose themselves.

Helping Police Receive Victim Reports

An important study where twenty victims of sexual assault were interviewed resulted in the collection of information that can potentially increase the likelihood of victim reporting. Specifically, when police offer reinforcing language to victims such as praising their decision to report, acting like they believe the story, and refraining at least outwardly from judgmental sounding verbiage then a victim is more likely to share the fullness of their report. On the other hand, when police are openly skeptical, offer no such reassurances that reporting was the right thing to do, or worse – actively engage in judgmental verbiage – then the reporting victim is more likely to exaggerate the story, inappropriately modify the story in certain ways, or to clam up entirely (Greeson, 2016).

In receiving reports of sexual violence from victims, sometimes police will fail to continue any investigation or collect evidence if the victim articulates their interest in not pressing charges, but one blind spot in the research is that approximately 30% of police reports do not indicate what the victim's rationale was in choosing not to pursue the charges. There is some risk that victims are being intimidated, either by the perpetrator of the alleged crime or by the process – and that this intimidation is not being recorded in any meaningful way (Murphy, 2014). When a victim comes forward they are often emotionally vulnerable, and shy from intimidating environments, including a police station (Greeson, 2016). The decision of whether to pursue charges against the assailant is sometimes a difficult one, where the victim may need advice, ideas, and counseling in order to achieve an informed decision. There is often little evidence that this support structure is put in place for a majority of victims who come forward.

Conclusion

Considering the hesitancy of victims to report interpersonal violence and domestic abuse, including sexual assault, and a corresponding training challenge for law enforcement in the receipt of and investigation of such reports, further actions must be taken to adequately train law enforcement with trauma-informed skills and best practices, even in relatively well-developed agencies. A broader recognition, training, and implementation of best practices by law enforcement will likely contribute to a greater willingness on the part of victims to report promptly and fully, which may have follow-on effects of more success in investigation and conviction.

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