

## *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*

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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 per-

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sonal 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 systemize 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 second, 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).<sup>1</sup>

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

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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 analy-

sis 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

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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 stereotypical 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

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## False Reports

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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.
- The victim is hysterical and reports to law enforcement immediately.
- There are signs of physical injury.
- 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<sup>2</sup> 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,

*So, although the actual definition of a false report should be the same for all criminal justice professionals, it is clear that the practices that are really used vary dramatically.*

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.

## **WHAT IS THE ACTUAL DEFINITION OF A FALSE REPORT?**

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 made when there is sufficient evidence to establish that the sexual assault did not

happen (was not completed or attempted). This does not mean that the investigation failed to prove that the sexual assault happened—in that case the investigation would simply be inconclusive or unsubstantiated. It also does not mean that the suspect was unable to successfully complete the sexual assault—this would be an attempted sexual assault and/or some other sexual offense.

This definition is consistent with guidance provided by the FBI Uniform Crime Report (UCR) on methods for clearing cases. Specifically, the UCR Handbook states that a case can only be unfounded if it is "determined through investigation to be false or baseless. In other words, no crime occurred" (p. 77). This seems clear, because a case cannot be "determined through investigation to be false or baseless" if no investigation was conducted or if it yielded insufficient evidence.<sup>3</sup>

While this is the actual definition of a false report for law enforcement purposes, it does not typically reflect the way investigators, prosecutors (and their supervisors) tend to think of sexual assault investigations.<sup>4</sup> In fact, at virtually every training we offer on this topic, we hear from law enforcement professionals who unfound cases—and prosecutors who reject them—either because they do not believe the victim's account or they failed to prove it conclusively. This practice fails to meet the needs of both victims and the larger society.

So, although the actual definition of a false report should be the same for all criminal justice professionals, it is clear that the practices that are really used vary dramatically. This is why the percentage of sexual assault reports that are unfounded by various law 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 uncomfortable relaying details of the sexual assault. This may be particularly likely for details regarding the sexual acts involved. For

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example, it is quite common for sexual assault victims to describe the incident as involving only penile-vaginal penetration because they are uncomfortable reporting other crimes such as oral copulation or anal penetration.

Many victims give information that is incomplete, inconsistent, or untrue 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.<sup>5</sup>

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 sta-

tus (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.<sup>6</sup> 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

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## False Reports

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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 non-judgmental 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 misheard or 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 investiga-

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tion 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? Would you 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),<sup>7</sup> 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 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, this decision must be made carefully, with consideration of a number of factors. Investigators and prosecutors are thus advised to dis-

*Prosecuting someone for filing a false report may therefore be most appropriate in cases where an innocent person was arrested, booked, and perhaps even subjected to a forensic examination.*

cuss the advantages and disadvantages of prosecution with other professionals involved in the multi-disciplinary response to sexual assault victims (e.g., victim advocates, forensic examiners). For example, some of the advantages of pursuing such a charge would include the importance of conducting a thorough investigation and exonerating anyone who is innocent.

Prosecuting someone for filing a false report may therefore be most appropriate in cases where an innocent person

was arrested, booked, and perhaps even subjected to a forensic examination. The failure to pursue charges for filing a false report could create the appearance of bias, by turning a blind eye toward this criminal act.

Prosecution may also be appropriate in those rare cases that are very high profile and/or involve hundreds of hours of investigative effort. In such cases, some law enforcement agencies have even sought restitution from the person filing the false report for personnel hours consumed during an investigation and even expenses associated with forensic examinations, DNA analysis, and searches of crime scenes and suspects.

Finally, prosecution may help investigators to deal with the negative impact on their own personal and professional well-being. In the view of the person who investigated the case, this is often the most compelling reason to prosecute the individual who filed the false report. On the other hand, there are also a number of important disadvantages to charging someone with filing a false report, even if it is justified.

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 psy-

chological 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 nonstrangers. 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](http://www.evawintl.org/evaw_courseware).

International Association of Chiefs of Police (July, 2005). *Investigating Sexual Assaults: Model Policy and Concepts and Issues Paper*. Published by the IACP National Law Enforcement Policy Center, Alexandria, VA. Available at: *Investigating Sexual Assaults Concepts and Issues Paper* (July 2005), *Investigating Sexual Assault Model Policy* (May

2005). Three corresponding resources are also available: Part I: *Investigating Sexual Assaults*; Part II: *Elements of Sexual Assault & Initial Response*; and Part II: *Investigative Procedures*, and Part III: *Investigative Strategy & Prosecution*. These training keys are also published by the International Association of Chiefs of Police (<http://www.theiacp.org/>) and available at: training keys.

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.oregon-satf.org/documents/False\\_Allegations.pdf](http://www.oregon-satf.org/documents/False_Allegations.pdf).

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## ENDNOTES

<sup>1</sup> 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).

<sup>2</sup> Extensive research documents the characteristics of sexual assault victims, perpetrators, and incident. For example, see: Bachman & Saltzman, 1995; Bohmer & Parrot, 1993; Brenner, McMahon, Warren & Douglas, 1999; Fisher, Cullen & Turner, 2000; Humphrey & Kahn, 2000; Koss, 1988; Koss & Cook, 1993; Koss, Gidycz & Wisniewski, 1987; Merrill et al., 1998; National Victim Center, 1992; Tjaden & Thoennes, 1998.

<sup>3</sup> Uniform Crime Reporting Handbook (2004). Published by the Federal Bureau of Investigations (FBI) and available online at <http://www.fbi.gov/ucr/handbook/ucrhandbook04.pdf>. More information on the Uniform Crime Reporting Program is also available at the FBI Web site at: <http://www.fbi.gov/ucr/ucr.htm>.

<sup>4</sup> 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: "The person did not commit a crime. It does not mean a lack of proof of guilt beyond a reasonable doubt or even a preponderance of the evidence, nor does the term encompass those situations where an accusatory pleading is not issued for technical reasons such as search and seizure issues."

<sup>5</sup> 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. Only when absolutely necessary should law enforcement personnel consider arresting the victim of a sexual assault. When crafting a policy for law enforcement agencies, it is therefore important to make a distinction in the policy for responding to felonies versus misdemeanors that may have been committed by the victim.

<sup>6</sup> This hypothesis is supported by research studies that document more stereotypical 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).

<sup>7</sup> 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.