



November/December
2005

In Brief:

Join our Legal Advocacy Audio conference on Jan. 17. See page 4 for details.

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Check out our new feature on page 7 *"Top Ten - More or Less!"*

In each newsletter we will feature best practices from our partnering agencies! These tips will also find a permanent home on our website.

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The SVJI would like to acknowledge the great work done by Sue Marks while she served as site coordinator for the Southern St. Louis SMART in Duluth. Sue has taken a leave of absence and is living in Honduras until further notice. Thanks, Sue! You led your team to new heights.

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Our website has tools for your use! Find the SVJI information on www.mncasa.org and select the button "SVJI-Criminal Justice."

The CSI Effect on Sexual Assault Prosecutions

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Those who provide services to victims of sexual assault can readily relate to this scenario. The victim had recently ended their relationship but nonetheless agreed to let her former boyfriend come to her apartment one evening to talk things over. He brought a bottle of wine and poured it into their glasses in her the kitchen but out of her sight. After a few drinks she felt strangely light-headed and asked him to leave when his mood suddenly changed. He accused her of dating someone else and said "No other guy can have you." He forced her into the bedroom and began disrobing her. She protested and tried to resist but soon blacked out. She awoke the next morning lying unclothed on her bed and he was gone. She decided not to report the incident because she believed that he would harm her again if she did.

Several days later a friend persuaded the victim file a police report and undergo a sexual assault examination. Afterwards the police recovered the victim's unwashed bedding from the night of the assault, which together with the sexual assault kit was submitted to the crime laboratory for scientific analysis. The victim had bathed several times before the sexual assault examination was conducted and the wine glass from which she drank that

evening had already been washed.

During the trial a police criminalist testified to finding semen on the victim's bedding. However no DNA testing had been conducted or presented because the crime lab was backlogged and required at least six months to conduct such testing. The prosecutor did not present any expert DNA testimony because she believed that any biological evidence that might have been found would have likely been contaminated by the time it was collected. Similarly, no testimony was presented regarding "date rape drugs" because the victim's wine glass had been washed. The defendant also testified but denied that any intercourse had occurred. He denied placing anything in her wine and stated that if semen had been found on the victim's bedding, it was probably either from a previous intimate encounter or her "new boyfriend."

This scenario presents a composite of frequently encountered factual and evidentiary challenges to successful sexual assault prosecutions. As here, those recurring obstacles can include effectively educating jurors that legitimate victims of sexual assault commonly do not make immediate reports, or that her voluntary use of an intoxicant should not automatically negate her veracity. From a forensic perspec-

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tive, this would include convincing a jury that the victim's inadvertent destruction of possible biological evidence does not necessarily create a reasonable doubt, or that DNA evidence – the "holy grail" of sexual assault prosecutions – may simply not exist in every case and even if present, may have been contaminated and therefore be of questionable evidentiary value.

Now, legal commentators, journalists and sexual assault services professionals have identified a new phenomenon that may portend an even greater threat to successful sexual assault prosecutions. That phenomenon has evolved from the highly acclaimed "Crime Scene Investigation" television series and has been popularly dubbed the "CSI Effect." Although the acronym has various definitions, as to sexual assault cases it typically reflects a common theme: that the public's profound fascination with programs involving crime investigation, forensics and courtroom procedures has caused heightened and oftentimes unrealistic expectations among jurors that forensic and science-based evidence will conclusively prove the occurrence (or absence) of a sexual assault. The CSI Effect's enormous potential for unduly tainting sexual assault prosecutions is directly related to the public's seemingly unquenchable thirst for legal and forensic-related programming.

Consider these facts:

- 60 million viewers each week watch the ratings-leading CSI shows.
- The various "Law and Order" shows average 15 million weekly viewers and appears on multiple channels throughout the day and night.
- Popular cable and satellite stations such as the Discovery Channel, A&E and Court TV devote numerous hours of programming to criminal cases involving forensics and scientific analysis.
- Researchers have found that nationwide there are now 90 forensic science programs, including schools like the West Virginia University that has increased its forensic studies enrollment by 400 % since 1999.

Those statistics unquestionably demonstrate what the public – and more importantly potential jurors – are watching and likely have come to expect for proof in criminal prosecutions. Nationwide, the CSI Effect has already been attributed as the cause of adverse results in sexual assault prosecutions. For example, the jury in a recent Peoria, Illi-

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nois sexual assault prosecution reportedly acquitted the defendant despite inculpatory DNA evidence against him, immediate re-

porting by the victim and the discovery of the defendant's personal items left at the crime scene because soil found in the victim's cervix had not been compared with soil found at the crime scene. As the prosecutor pointedly observed, "that's straight out of CSI."

Similarly, a recent study conducted by the Phoenix-based Maricopa County Attorney's Office has provided empirical support for the proposition that the CSI Effect has had a demonstrable impact on criminal prosecutions. The study surveyed 102 prosecutors and concluded that virtually one-quarter believed that they experienced either acquittals or hung juries in their cases because of juror expectations for irrelevant and non-existent forensic evidence; that jurors were frequently inquisitive about unrelated forensic terminology; and that an amazing 80% percent of prosecutors believed that defense counsel routinely played upon CSI-type themes to challenge the prosecution's forensic proof at trial. Likewise, the forensic sciences community has expressed their dismay about their unrealistic portrayals in the CSI genre as having "high-tech labs and glib, gorgeous techies" when in reality such work is frequently unglamorous and requires tedious examination of smelly and messy evidence.

Unfortunately, many CSI-type shows misguide jurors into actually believing that their "Hollywood science" enables law enforcement to solve compli-

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cated crimes in 60 minutes (or less); that forensic evidence is usually available in every case and conclusive; and that even the most outlandish scientific techniques such as pouring materials into the victim's body to make a cast of an offending knife blade really do exist! Yet despite its shortcomings, the CSI Effect can also have positive consequences in sexual assault prosecutions as well. Programs that accurately portray the sequela of sexual assaults and real-life forensic techniques can actually aide in obtaining convictions by sensitizing potential jurors not to stereotype how sexual assaults occur, and make forensic techniques more readily understandable.

Nonetheless, providers of services to sexual assault victims at every level must recognize the necessity from the outset for planning and implementing strategies that anticipate, minimize and effectively rebut its misconceptions and pseudo-science caused by the CSI Effect. Those to whom first reports of sexual assault are made should be mindful that every aspect of the case might later be in dispute:

- Documenting, preserving and memorializing the crime scene (i.e., photographing or videotaping) are more important than ever. The TV generation needs to see and visualize evidence in addition to hearing it from witnesses.
- Well-considered, written reporting protocols should be developed which contemplate those matters that are rife for challenge at trial. This might include documenting why certain forensic evidence would *not* be helpful – for example, finger-printing the suspect's own house when the assault took place there.
- Investigators should recognize that jurors have come to expect that all aspects of the incriminating or corroborating evidence have been investigated, no matter how seemingly minute at the time.
- Prosecutors must anticipate the CSI Effect on the jury, addressing it from voir dire on through the trial to require jurors to consider only the evidence presented and not TV science. Talk with the jury about how we all think we "know" emergency

medicine from watching "ER," what high school is like today from "Boston Public," or how parenting works from "The Brady Bunch" – but could or would their own job be portrayed realistically on TV?

- Prosecutors must work with the jury to understand that witness testimony has proven cases beyond a reasonable doubt for centuries, and that their role is to weigh competing testimony, not just take forensic evidence as the be-all, end-all at trial.
- Prosecutors who already face the daunting task of presenting persuasive testimony regarding forensic evidence must now contemplate more compelling methods of presenting visualizations of those forensics.
- Equally as important, prosecutors must consider presenting expert testimony that addresses and debunks the myths that have been engendered by the CSI Effect. This may mean presenting experts to explain a *lack* of forensic evidence, or

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its questionable value in a given case, as well as the *meaning* of forensics.

Conclusion

The CSI Effect is a reality that those involved in sexual assault service must accept as a "sign of the times." The misconceptions and related harm that it may cause cannot be ignored or discounted. Recognizing this, it is incumbent upon sexual assault service providers to meet the challenge head-on and adapt the concept for our favorable use at trial whenever possible.

Our thanks to Mr. Robinson for his contribution.

Legal Advocacy Dialogues: Staying Ahead of the Curve

The SVJI is launching its follow-up to legal advocacy trainings by hosting an audio/telephone conference with Maggie Dexheimer Pharris, PhD, RN, MPH, FAAN, talking about adolescents and sexual violence – particularly as it relates to mandatory reporting and accessing medical services after an assault.

This audio conference is scheduled for **Tuesday, January 31, 1:30 PM—3 PM..** Maggie has been a loyal and effective advocate for victim/survivors and has frequently assisted in training in her role as a medical professional. Maggie is an Associate Professor at the College of St Catherine in St. Paul.

This audio conference will be the first of quarterly *Legal Advocacy Dialogues* during which participants can learn about advanced advocacy issues and present their questions and concerns for problem solving. We will offer future dialogues as either audio conferences or as face-to-face meetings. These dialogues are open to MNCASA members only at no cost. Participants must register no later than January 26. Registration material has been emailed to members and is available by calling the office at 800-964-8847. Registered participants will receive instructions about accessing the call.

SVJI Happenings

- “Winning the Consent Defense Case” featuring Deb Schmidt, Assistant County Attorney from Dakota County and Jeff Oxtan, St. Cloud Police Department was held on December 8 in St. Paul. The training presented information on common perpetrators of acquaintance sexual assault, working with victims in these cases, getting the most information possible in an investigation, and putting on a trial so that jurors can see the facts beyond a reasonable doubt. Fifty participants attended the day long symposium. A similar training scheduled for January 13 in Moorhead has been cancelled due to scheduling conflicts.
- SVJI has connected with several law enforcement academies around the state, and will begin presenting a sexual assault training to these budding law enforcement officers. We will discuss common myths and stereotypes which can break down investigations, and train on the law and working with victims. If you have an academy in your area, please contact Michelle Knudson at SVJI to schedule a training.
- We have convened an Alcohol Task Force of experienced professionals to meet December 2, 2005 at our new offices. This group will discuss obstacles that use of alcohol by victims can present in sexual assault cases, and produce best practices and protocols to address them. We will meet with this group again after the New Year to discuss how to best implement and spread this valuable information. We would like to thank all who are involved in this process.
- Do you know about our website and our efforts to put out good information for professionals through it? There are a couple of password protected places – but you only need to e-mail kaarin@mncasa.org from a work e-mail to get the password. We want to continue adding truly helpful information – so please take a minute and think about a topic for an article, memo, “best practice” idea – anything we can add which would be useful to your and others. Tell us what you need us to do and we’ll do it!

Protocol Site Updates

ISANTI COUNTY SAIC

Brenda Skogman, Site Coordinator

The Isanti County SAIC is now having monthly meetings which are going well. We have had a lot of discussion at our meetings about the systems' response and interagency questions on several cases.

We are working on our victim experience survey. We have now gotten Applebee's gift cards for victims who complete the Victim Experience Survey. Our public health team member is conducting the survey..

We continue to update the protocol as needed and are working on some new trainings/forums that we would like to implement for our team and community.



WINONA COUNTY SAIC

Valerie Williams, Site Coordinator

Winona County's SAIC has set some lofty goals for the year. A sub-committee is working to create a juvenile protocol to incorporate into our current protocol. The additional dimensions that come with working for the rights of minor sexual assault victims require us to invite more people to the Council. These new faces bring increased energy and resources.

The SAIC is reviewing processes at the Universities in town. Through our systems consultations we have found some communication gaps which we hope to eliminate through policy change and training. We are also developing a campaign to increase reporting of sexual assaults by college students. After conducting focus groups, we will create marketing tools that define sexual assault laws, processes for reporting, and victim rights.

This team continues to meet at 8 AM on the second Tuesday of each month. Current meeting location is the county government offices on 4th and Main Streets in Winona.

OLMSTED COUNTY SAIC

Joann Holt Angerman

After completing the Community Needs Assessment (CNA), the Olmsted County SAIC is working with a contractor to write an Executive Summary of the CNA. Given the importance of the document, the team has worked out a plan for disseminating the information in the CNA in the most effective way. The SAIC has also jumped right into the next step in the 8-Step Cycle: writing guidelines for adolescent sexual assault cases while also revising current agency guidelines that have been in use for the last four years. This process will likely take up the remainder of the fiscal year.

Several new professionals have joined the SAIC in the last year, so the coordinator has been doing orientation sessions for all new members. We are excited to have these new voices on our team and hope the orientation will allow people to have a better understanding of the process and become contributing team members from the beginning.

The Olmsted County SAIC continues to grapple with questions regarding expectations for mandatory reporters and differing interpretations of the statutes. This has highlighted the strengths of the 8-Step Cycle which has provided a setting and framework for this ongoing discussion.



RAMSEY COUNTY SAPT

Nicole Albaugh, Site Coordinator

The Ramsey County team along with Sexual Offense Services of Ramsey County offered a Transgender Competency Training in place of their regular team meeting on September 8th. Roughly 32 participants from various Ramsey County social services attended. The training was very well received. The team would like to sponsor another training in the future that gives professionals more strategies and resources to utilize when working with Transgender victims.

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Site Updates, Cont.

Several team members have also participated on the Latino Sexual Assault Task Force (LSATF) over the past year. In November, this group offered a training to health care professionals from across the metro area entitled "A Health Care Provider's Introduction to Working with Latino Victims of Sexual Assault". The main objectives included learning about the Latino culture, some of the barriers Latino patients face, how to work with an interpreter, how to do a culturally sensitive assessment which includes screening questions for both domestic violence and sexual violence, and how to offer culturally appropriate resources. Roughly 35 people attended the pilot training. Evaluations were very positive. The task force will be meeting in the future to discuss the possibility of offering more trainings in the future.

The team continues to receive victim experience surveys in the mail. So far all responses have been very positive. The team now has the victim experience survey available online. To access the survey, victims can go to: <http://tripark.org/survey1/> Victims will continue to receive the paper copy at the hospital, but will also have the online version available if they would rather complete it that way. The team continues to meet the second Thursday of every month from 9 – 10:30am at the Eastern District Police Station.



SOUTHERN ST. LOUIS COUNTY SMART

Sue Marks, Site Coordinator

The Southern St. Louis County SMART team has been focusing on the monitoring and evaluation piece, in addition to several projects. The team conducted focus groups and individual interviews with victims who went through the process with the systems. These results will be reviewed by the team in the upcoming months and goals will be written based on the results. In addition, the team has begun evaluating the process for screening for drug-facilitated sexual assault, to ascertain if there are more effective ways to do this. Finally, the team is reviewing the medical protocol again to do updated trainings based on changes in other system. The

team is also rejoicing in the news that we will be funded again for the next year, as there will be once again a change in the site coordinator.



Rice County SMART

Melanie Matson, Site Coordinator

The SMART of Rice County has had a busy fall season. We have been actively gathering community information during the Community Needs Assessment process.

Our team received helpful information from various community members during five focus groups centered on the response to sexual assault. During August, our team conducted a focus group with community members of Latina culture and community members who had experienced the sexual assault response system. During October, we completed three more focus groups. Two focus groups were held with students from two different colleges and one was with community members of Somali culture. The Community Needs Assessment subcommittee and several other team members contributed tremendous time and effort, almost 100 hours, into planning and facilitating these groups.

Numerous team members and agencies also contributed to our public forum, donating approximately 300 hours and \$4000. On October 25, our group came together to "Team Up Against Sexual Assault: A Rice County Community Forum." Patricia Weaver Francisco, author of "Telling: A Memoir of Rape and Recovery" spoke during the first half of the event. During the second half, a panel of representatives from our team spoke and answered questions from forum participants. The public was very interested in the SMART, asking questions for over a half hour. Carleton College hosted both a pre-event dinner and the event itself. South Central College hosted the teleconference site. The speaker and panel were taped and will be broadcast on our local cable channels.

Next, the SMART of Rice County will be developing our Community Needs Assessment Report. We are excited to begin to use the information learned to develop our response protocol together.

Continued on next page

Site Updates, Cont.

Carver County SAIC

Tara Keehr, Site Coordinator

The Carver County group has hired an outside consultant to set up a new, independent web site. We hope that it will be up and running by early 2006. Letters have been sent to the various agency heads, asking for appointments to meet with them to discuss SAIC and the agencies' involvement. The group is preparing to host several focus groups, the results of which will be included in our second Com-

munity Needs Assessment.

One of our members, Jeanne Oelfke, head of the emergency room nurses at Ridgeview Medical Center, was a member of a FEMA team sent to the relief of hurricane Katrina. Her stories about heading up a morgue group have been very interesting. As a result of her work, she was recognized on the Oprah Winfrey's Most Favorite things Show! We are very proud of her good work. There will be no December meeting so that everyone can more fully enjoy the holidays.

Top Ten—More or Less!

Five Questions **NEVER** to Ask a Victim of Sexual Assault:

1. Will you take a polygraph or CVSA?

These tools measure stress and the effect of fear. Thus, a person who has truly been sexually assaulted may certainly experience the physiological effects of the trauma when repeating the story - thereby giving a false positive. That makes a positive test useless. Further, these tests are inadmissible in court and therefore even a negative test result is useless. Finally, unless the investigator has other evidence that the report is actually false (which makes this person a suspect), asking for one of these tests victimizes a person who is reporting a crime - the tests do not help prove anything beyond a reasonable doubt regarding the victim

2. What was his penis size?

The problem with this question is that everything is relative - and it begs the question: compared to what? While marks, scars, tattoos, piercings or other unusual characteristics of a penis might help identify a perpetrator, asking the size implies that the victim has broad enough experience to be able to rank it. The rape shield statute protects victims from inquiry into their previous sexual conduct.

3. Are/were you a virgin?

See answer to number three: this does not help prove whether sexual assault occurred, but it does bring up issues of the victim's past sexual conduct which are inadmissible and none of the suspect's business.

4. You shouldn't have been drinking/using drugs/walking alone/prostituting, should you?

While certain behaviors and lifestyles may make victims more vulnerable to being sexually assaulted than others, the interview with the victim is not the time to shake a finger at the victim. Actually, a good investigation will focus on the perpetrator's decision to take advantage of these vulnerabilities rather than scolding the victim for her decisions.

5. You're lying, aren't you?

During a sexual assault victim interview, the behavior of the victim may seem at odds with the story of having been sexually assaulted. She may have delayed reporting, may not tell the whole story at first, or may lie about certain facts. She might be defensive, matter-of-fact, reluctant, and so on - attitudes and behaviors that do not match our "TV concept" of how a crime victim "should" act. As a result, professionals working with such a victim may begin to question whether the victim is telling the truth about the sexual assault. It is wise to understand Post Traumatic Stress Disorder and its effects - especially when the trauma is sexual assault. Telling the victim - especially early on before other investigation can be completed - that you don't believe her (or demonstrating such with your attitude) may well be adding insult to injury of a person who was truly sexually assaulted.

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