



2005

CSC Investigators: How to Do a Really Bad Investigation

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Mission:

“Dedicated to promoting justice for victims of sexual violence through multi-disciplinary collaboration, leadership and resources.”

Anyone involved in the criminal justice system knows that one of the most difficult crimes to investigate and prosecute is criminal sexual conduct (CSC). Whether it is the perceived ambiguity between consent and non-consent, pre-conceived biases and attitudes of criminal justice professionals and jurors, or the lack of physical evidence which often accompanies these reports, few would list CSC as the easiest crime to investigate!

But, at the same time, few would disagree that these cases are among the most important in terms of identifying sex offenders, and in terms of lasting consequences for victims. With the difficulties noted above, and more, problems in the investigation can quickly “sink” the prosecution of a true CSC, resulting in another sex offender going unnoticed by the criminal justice system.

With this in mind, we asked veteran sex crimes investigator Elisa Umpierre from the Rochester Police Department to enlighten us with what can happen to make these investigations go really wrong.

A personal message from Sgt. Umpierre:

First of all, thank you for stepping up and doing a job that takes a tremendous amount of courage, dedication and professionalism to do well. As police officers, we have to know everyone’s role within all aspects of the Criminal Justice system. That is, we must think like Defense and Prosecuting Attorneys. We often take on the guiding role of Social Workers. To get the most cooperation and best statement possible from a sexual assault victim, not only do we have to be skilled interviewers, we have to demonstrate the compassion of Advocates.

Thirteen years into my career, through both my own stumbles and those within my department, I have come to know the information that will be shared within this article. Your experiences may well be different than mine, but I’m pretty sure if you’re willing to take an honest look at the issues addressed in this piece, my experiences are not entirely unique. Please know I have an enormous amount of respect for all who work within our field. I mean not to offend anyone by what is included in this piece. From one Law Enforcement professional to another, we have a difficult, incredibly important job to do. Thank you for your efforts.

How to Do a Really Bad Investigation:

1) Don't take the time or effort to humanize the victim:

Law enforcement often has two or more roles to play: that of tough, cynical cop who is used to being lied to, and that of concerned interviewer looking to bring out the most in a witness interview. Often, lifestyles, behaviors or actions by a sexual assault victim might not be appreciated by the cop – they might even be illegal! But, while they may make a victim more susceptible to sexual violence, those choices are not punishable by sexual assault.

An investigator exhibiting judgmental tones and/or body language during the interview with the victim can set the tone for the whole investigation. Most often, the victim has already and likely always will blame her/himself for what happened to them. It’s your job - your opportunity -

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THE CULTURAL CORNER

Criminal Justice Advocacy Manual Nears Completion

As a program of the Minnesota Coalition Against Sexual Assault, one of the functions of SVJI is to provide technical assistance and resources to the advocates who work with our member advocacy programs. We continue to provide trainings, information, and resources so that victim advocates are knowledgeable and informed about the criminal justice system.

Toward that end, we have created a criminal justice manual for legal advocates. This is a uniquely in-depth

presentation of the criminal justice system as it relates to criminal sexual conduct cases in Minnesota. Not only does the manual include all the statutes and rules which might apply in a criminal sexual assault case, it includes a basic analysis of the application of caselaw and statutes to the issues. We also have included a set of reality checks in which we comment on the real life implementation of the letter of the law, so that advocates are savvy about the various challenges of investigating and prosecuting these cases.

This manual starts with the medical exam, talks through the law enforcement investigation, discusses the prosecutor's role in charging and trying cases, and explains the myriad of sentencing options when it comes to sex offenders. Ultimately, we hope this manual - to be published by Spring of '05 - will enlighten and inform legal advocates so they can ultimately pass this knowledge along to victims navigating the criminal justice maze.

SVJI Happenings

Donna Dunn, Program Manager of SVJI, will travel to Guam at the end of March to train the community collaboration method.

Staff Attorney Kaarin Long has been invited to present at the Office of Justice Programs conference on Crime Victims in June, 2005.

The site coordinator's retreat will be held June 15, 2005 at the St Croix Conference Cottage in Hastings, MN.

The site coordinator's manual was completed by Michelle Knudson and Donna Dunn and has been distributed.

Donna Dunn, Kaarin Long, and MNCASA executive director Carla Ferrucci will each be presenting at a sexual assault conference sponsored by PAVSA in Duluth April 21, 2005.

Donna Dunn will be presenting at a national conference of the National Crime Victims Litigation Institute in Portland, Oregon in June, 2005.

Upcoming trainings! Watch for more information on regional trainings on sexual assault investigation and prosecution in May and June, and a legal advocacy training in July.

LEGAL RESOURCES UPDATE

SVJI and Legal Resources Team Proposes Legislative Policy

SVJI has continued meeting with the Legal Resources Team (LRT), a group of prosecutors, law enforcement, and others who collaborate with us to discuss issues impacting the investigation and prosecution of criminal sexual conduct cases.

This team worked this past year to address various issues raised by prosecutors and others where legislative change might be useful. We worked to craft the language and have now drafted a bill for introduction this session.

Definition of Coercion Minn. Stat. 609.341 Subd. 14

Perhaps the most challenging word-smithing occurred when prosecutors asked us to address the definition of “force” or “coercion” for criminal sexual conduct prosecutions. Prosecutors told us that the wording is clumsy, that there is not much distinction between the force and coercion definitions, and that many cases were difficult to argue under existing language if the defendant used restraint or size to impose nonconsensual sexual conduct on the victim.

Thus, we have proposed eliminating the duplication in repeating the use of the word “force” in the “coercion” definition, and adding the use of confinement or superior size or strength to the definition. These changes may not clarify or simplify the language to the extent we might like, but they will hopefully make it easier for prosecutors to argue from the jury instructions in some of the most com-

mon scenarios of sexual assault. The wisdom we have received from experienced legislative drafters is that cleaning up the language and clarifying it for use in jury instructions may have to wait until next year – as legislative change is a slow process!

Cyber or Electronic Stalking Minn. Stat. 609.749 Subd. 2(2)

It is commonly known that technology often out-paces the law, as computer and mobile devices change daily. One way in which this can happen is in the use of technology to stalk or monitor a victim in ways which might not be prohibited by the current statute. Stalkers can place a Global Positioning System (GPS) transmitter – or even a hunting dog collar – in a victim’s car. They can download spyware onto a victim’s computer to record the keystrokes used or websites visited by the victim. Small cameras can be used to observe victims in places where they would never expect to be videoed.

In response to this potential, SVJI and the LRT have proposed prohibiting stalking or monitoring through technological or other means. The

current statute requires more direct communication or contact, but this will permit prosecutors to address the above scenarios – and hopefully others that might arise as technology changes continue to race forward. We have also proposed venue changes to this and similar statutes when the location of the communication or stalking might not be capable of determination.

If you are interested in participating in the Legal Resources Team meetings to advise and assist SVJI on policy, training, and systems ideas regarding criminal sexual conduct, please e-mail kaarin@mncasa.org

Harassment Restraining Orders Minn. Stat. 609.748

The Violence Against Women Act (VAWA) provides millions in federal funding to the state of Minnesota for work on the issues of sexual assault, domestic violence, and stalking. VAWA requires that no contact orders for either sexual assault, stalking, or domestic assault victims be free of charge for the victim.

Unfortunately, this is not currently the case for victims of sexual assault in Minnesota. They are often charged the same fee as for filing any civil lawsuit – approximately \$245. Our proposal would eliminate the fee for victims applying for a Harassment Restraining Order (HRO) based upon the allegation of criminal sexual conduct – a common sense proposal that brings Minnesota into line with the VAWA requirements.

We are also proposing that, in addition to the existing language allowing a parent or guardian to assist a minor with obtaining an HRO, a step-parent also be permitted to assist minors. This is in recognition that parents are not always available to minors in the urgent time in which a victim might apply for an HRO.

Bills Pending

In the House, our bill is HF 1031. In the Senate, it is SF1156. A hearing on the Senate bill was held on March 10, 2004. Watch our website for updates on these bills!

Website Launched for Access to Information

The Minnesota Coalition Against Sexual Assault has updated and launched its website to put out the most current information and resources. www.mncasa.org is the web address, and SVJI has its own section from the home page.

In the SVJI section, folks working with victims of crime can find a glossary of terms and flow charts for criminal and juvenile cases. Professionals in law enforcement and prosecution can also find resources in a password protected area, where we have included motions, search warrants, memoranda and briefs for use in criminal sexual conduct cases. We also have included a Prosecution of Sexual Assault Series, in which various common issues arising in criminal sexual conduct cases are analyzed as a start for prosecutors researching these issues. Topics such as *Cranford v. Washington*, drug-facilitated sexual assault, the rape shield statute and others are included and we will continue to update these memos. Contact kaarin@mncasa.org via an identifiable work e-mail for password access.

We hope to keep developing our website as a way to help us be the hub of information on sexual assault cases in Minnesota. We invite not only your suggestions, but also trial or appellate memoranda, search warrants, and other documents we might include in this section.

SVJI maintains an e-mail discussion group for prosecutors and law enforcement to exchange ideas, questions, and information on sexual assault cases. To join this list, e-mail kaarin@mncasa.org.

All SMART Team Event

Currently, eight separate counties are funded to work through the Eight-Step Protocol Development Cycle with the assistance of SVJI. Having begun this work any time between 1997 and 2004, these teams are all in various stages of the work and share the common goal of bettering their criminal justice response to victims of sexual violence through the SMART process.

The people at SVJI are connected with each of these teams and know all the great personnel contributing to the various team efforts. In fact, we think so highly of the people doing this work that we thought all these people should get to know each other and share this common experience between counties. Thus, we have scheduled an All-Team Event in June.

On June 10 at Bunker Hills Regional Park in Coon Rapids, we will host a team event for all SMART teams. We plan to have an activity where teams can learn various ideas and tips from each other, opportunities to network and connect with the other team members, and of course, a chance to enjoy some food and a break from the daily schedules of so many professionals always on the move.

Watch for more information and please join us!

SITE UPDATES

CARVER COUNTY

Tara Keehr, Site Coordinator

The Carver County team was, once again, without a Coordinator, from July, 2004, until the beginning of January, 2005, when Tara Keehr, a former Assistant County Attorney and long-time former member of the team, was hired to fill the position. On its second go-around on the 8 step process, the team has almost completed a more comprehensive IES, prepared the survey for the VES, and is now brainstorming methods to complete the Community Needs Assessment, as well as creative methods to be used in evaluation and monitoring. Last summer and fall the SAIC handed out its brochures at the County Fair and at Chaska River City Days. Updated resource posters were distributed at the Chaska Freshman Center and will be placed throughout the county in the near future. The team hopes to complete the Needs Assessment by summer 2005.



ISANTI COUNTY

Brenda Skogmna, Site Coordinator

Isanti County is currently evaluating the protocol with individual team members as well as working closely with law enforcement and prosecution. The team continues to monitor and evaluate the Victim Experience Survey regarding the quality of the services that are provided to sexual assault victims. The team will update the protocol as needed and begin the second round of the eight step process. The team has scheduled training for law enforcement in April. This training will be videotaped for future use with new employees. Isanti County continues

to work on providing the best possible services to victims of sexual assault.



WINONA COUNTY

Amy Kuchera, Site Coordinator

Winona County SAIC has been meeting monthly and focusing on training, continuation funding and transition. The Resident Advisor staff at St. Mary's University (SMU) was the location of a recent training with 50 students advisors in attendance. The Winona City Police Department attended training on the protocols as well as techniques for a successful investigation. The Team continues to grow with two new members representing community based counseling services and child protection services joining the group. The Victim Experience Survey is being revamped and reissued. A new monitoring plan is being proposed to the team at the March meeting.



RICE COUNTY

Melanie Matson, Site Coordinator

The Rice County SMART began with a three-day training with SVJI in September. St. Olaf College donated space for the event and lunch on the final day, which team members greatly appreciated. This was a wonderful opportunity for our team members to get to know each other and the roles of each agency better. We had thoughtful discussions, brainstormed together, played team-building games and even designed "vehicles" that represented our vision for the Rice County SMART.

In October, the team began meeting

twice a month. We created our mission statement: "To create and implement an integrated, victim-centered response to sexual assault that is inclusive of all communities and promotes healing, justice and accountability." We also established goals, a timeline, and several subcommittees. The Orientation Subcommittee planned and hosted an orientation session for new members in December. The Inventory of Existing Services Subcommittee created a survey to send to a comprehensive list of agencies, to better determine the existing resources in our community. The Victim Experience Survey Subcommittee created a survey about sexual assault services and a process to get the survey out to victims who work with Rice County agencies. A Technology Subcommittee has also been formed, with the charge of creating a Rice County SMART website from which the VES will be accessible.



ST. LOUIS CO. SMART TEAM

Sue Marks, Site Coordinator

The Southern St. Louis County SMART team has finished writing and has adopted multi-disciplinary sexual assault protocols for the advocacy, medical, law enforcement and prosecution agencies. In order to celebrate this accomplishment and inform the community that collaborative efforts are being made to use best practices in responding to victims, the SMART team is hosted a press conference on Friday, February 25th. The team hopes to encourage victims to report and to engage the community on issues of sexual as-

SITE UPDATES CONTINUED

sault. In March, there will be a SMART team retreat in order to review the protocols, orient new members, and form a vision for the next year and a half. The SMART team is also planning a one-day sexual assault conference on Thursday, April 21st from 8:00 – 4:30 in Duluth (for more information or to register go to www.pavsa.org). Finally, the team has ongoing projects with the four local colleges and universities to write protocols for sexual assault and harassment on-campus, and with the two local hospitals to begin a Sexual Assault Nurse Examiner (SANE) program.



Mille Lacs County (SMART) Cinnamom Quale, Site Coordinator

The team has completed protocol training with the hospital, mental health and four law enforcement agencies. When writing and training on the protocols SMART focused on understanding the roles that each agency plays in the system, agency collaboration, cultural competence, informing the victim about local resources and their case through out the whole system process. We also included “quick reference” pages for resources that include victim rights, warrant check procedures, assault kit payment, writing detailed reports and SMART member agencies.

Finally, we have set up monitoring procedures to ensure that the protocol is be utilized by the agencies. SMART will be meeting at the end of February to discuss the direction of

the team now that the protocols are in place.



OLMSTED COUNTY SAIC Joann Holt Angerman, Site Coordinator

The SAIC is preparing the addendum to the Community Needs Assessment highlighting the findings from their focus groups with teens. Current sexual assault data from SAIC participants is also being gathered to include in the CNA. Victim Experience responses have been collected and reported to the team. Responses indicate overall a high level of satisfaction with victim’s interactions with community professionals. Several SAIC members met with a representative from the County Attorney’s office to discuss issues around mandated reporting in age-based sexual assault cases. A training with Adult Protection was recently completed. The team provided 3 multi-disciplinary panels for discussion after recent productions of *The Vagina Monologues*.



Ramsey County SAPT Nicole Albaugh, Site Coordinator

Ramsey County SAPT is currently implementing the victim experience survey. Each victim who completes the survey will have the opportunity to receive a \$10.00 gift card. In order to receive the card, the victim must detach the bottom portion of the survey which will contain identifying information thus allowing the gift

card to be sent to their residence. This portion will also include an opportunity for the victim to become a part of a focus group in the future. The responses of the survey however, remain non-identifying. SAPT plans on distributing the survey at two different times. The first survey will take place when the victim has sought out services through the community advocate, medical or law enforcement. The second survey will include the services of the victim/witness program and prosecution. The idea is to hopefully capture the input of the victim throughout the criminal justice process. SAPT is also busy organizing another training for law enforcement departments. Finally, the team has drafted a tool for evaluation and monitoring of the implementation of the protocol with the assistance of Leslie Loeding, an epidemiologist for Children’s Hospital in St. Paul.

to be the professional here. How you react to the situation will forever be remembered by the person across the table from you. You will *absolutely* define what this person thinks of law enforcement and the criminal justice system. Treat others as you would like to be treated.

2) Don't anticipate possible barriers to a full, honest disclosure:

Any lie or omission on the part of the victim that comes to light in the course of the investigation or trial can ruin the chance of success. Often, victims blame themselves for the event and will lie to cover up either embarrassing or illegal behavior on their part. Keeping in mind that a felony CSC case usually outweighs any illegal conduct by the victim, the focus for the interview should be solely on the report of sexual assault – and the victim should be told this! If you are speaking with a minor who may have been drinking prior to the assault, or someone using drugs, take the time to tell her/him in the beginning that you are not concerned with the illegality of their actions - you simply **MUST** get the entire truth from them. Any lie told by the victim, no matter how seemingly small, may very well end any chance at conviction. Make sure the victim knows this at the outset and guarantee them they have no risk of prosecution for minor offenses.

3) Decide immediately that the victim must be lying

Investigators are taught to see certain behaviors or body language as red flags indicating that they are being lied to. But the truth is that many of these behaviors might be present when a sexual assault victim is being perfectly honest. For example, a delayed report is a normal report. It is a difficult decision for victims of sexual assault to come forward to the police

(less than 20% ever do), so it can take time and support from others before s/he feels comfortable doing so. Further, some victims may have had previous negative experiences with police, they often blame themselves partially for what happened, and many are fearful of retribution from the offender. Without knowing how the criminal justice system works, many victims fear how they will be portrayed or accused if they report to law enforcement. The reality is that many investigators have questioned and disbelieved the report by a victim, only to find out later that it was true. You can never re-do that first interview - so take the information at face value and investigate from there to look for the truth.

4) Don't explain to the victim why you must ask what could be interpreted as judgmental or embarrassing questions:

With your training and experience, you know why you need to ask such questions as "Have you had sex with anybody other than the suspect in the previous 72 hours?" or "What part of your body did he touch with his penis?" But someone new to the topic of sexual assault might not. Before beginning your interview, explain to the victim that some questions might seem overly detailed, but that the prosecutor must know each and every thing that happened to charge the case under the right statute. Try to see things from the victim's point of view.

5) Don't take the time to fully interview any and all witnesses – even those mentioned by the suspect:

In sexual assault cases, a valuable witness doesn't have to actually "see" the assault take place. Anybody the victim *or suspect* told about the assault (especially prior to the victim making the police report), saw the victim or suspect's demeanor, or spent time

with the victim shortly before or after the assault **MUST** be interviewed. It is easy for an investigator to judge a new case as "a poor CSC case" prior to doing all they can to investigate the report. Difficult cases provide you an opportunity to showcase your talents as an investigator. Anyone can get a conviction on the "easy" cases. It takes skill and professional creativity to get a conviction on the difficult cases.

Both the victim and the suspects are equal witnesses in any case. It is important to avoid the investigator showing a bias favoring the victim's account and failing to interview **ALL** possible witnesses or to investigate **ALL** of the "loose ends" that might corroborate or disprove *either* the victim's or suspect's account of what happened. Investigators would do well to see themselves as "truth seekers, where ever the truth might lie."

6) Don't offer/allow the victim support people during the reporting/investigation process:

Advocacy services can benefit not only the victim, but also law enforcement and the prosecution by keeping the victim informed and involved in the case. Fully explain the services provided by victim advocates and offer to call one immediately to escort the victim through the process.

Hopefully these suggestions will help investigators avoid some of the common challenges that can derail a good sexual assault investigation!

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