

Navigating the Landscape of Sexual Assault

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**OUT OF EVERY 1000 SEXUAL ASSAULTS,
995 PERPETRATORS WILL WALK FREE**

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230 are reported to policeⁱ



4

46 reports lead to arrestⁱⁱ



5

5 cases will lead to a felony convictionⁱⁱⁱ



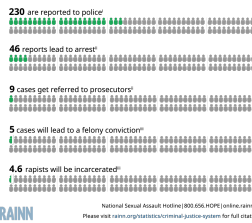
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4.6 rapists will be incarcerated¹⁰



7

OUT OF EVERY 1000 SEXUAL ASSAULTS,
995 PERPETRATORS WILL WALK FREE



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WHY THESE #S?
Rape Culture

9

What is
Rape
Culture?

NOT a claim that:

- All men are rapists, or that all are capable of rape (95% / 5%)
- Women or men are incapable of lying about sexual assault

10

More than anything else.....

A tolerance of behaviors that
minimize, trivialize and ***normalize***
sexually assaultive behaviors and
abusive attitudes

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"Facebook Didn't Seem To Care I Was
Being Sexually Harassed Until I Decided
To Write About It"

12

“There is no vulnerability
without danger.”

13

CONSENT IS REALIZING
VULNERABILITY IS NOT AN
OPPORTUNITY

DR. GAIL STERN

14

WHY THESE #S?
Rape Myths

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What are they?

- Mostly strangers in the dark
- Rapists are easy to spot
- Most women give "mixed messages" – "no" really means "yes"
- A victim who is drinking or dressed seductively is partially to blame
- Sexual assault victims remember every detail
- "Date rape" is not as bad as "real rape"
- Men can't be raped
- Sexual assault is a crime of passion and lust
- A person who is sexually assaulted will fight back
- A person who is sexually assaulted will be hysterical
- Only young, pretty women are assaulted
- Sexual assault victims always report
- A real victim will always tell the truth

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82%

LITTLE OR NO PHYSICAL
INJURYNEVER REPORTED – OR
DELAYED

GAPS IN MEMORY

PERCEIVED CREDIBILITY
ISSUESOMIT, EXAGGERATE,
FABRICATE AND EVEN
RECAT

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Why Do
Victims Come
Forward?

Safety

To Be Believed

To Hold Offenders Accountable

Someone Else Reports Encourages them
to Report

18

Internal Influences Embarrassment, Shame, Self-Blame, Fear they won't be believed	External Influences Pressure from family, friends, hide certain behaviors
<h2>Why might they recant?</h2>	
Socio-Cultural Influences Uncomfortable about specific acts, isolation from community, fear of the system	System Influences Lengthy investigations, Non-belief, Interrogation/Polygraph, Trial
<small>Dr. Kim Lonsway</small>	

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WHY THESE #S?

False Reports

20

How many sexual
assault allegations
are false?

21

So how many
reports are false?

20 published studies,
however, most
profoundly flawed

- Clark and Lewis (1977): 116 cases
10% (12 cases) classified as false
- Kelly, Lovett & Regan (2005): 2,643 cases
2.5% (67) classified as false
- Lisak et al., (2009): 136 cases
5.9% (8) classified as false

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Why doesn't
everyone know
that?

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Confusion in
Terminology

- **Case Unfounded / False Allegation**
- **Victim Recanted**
- **Pending / Unsolved**
- **Prosecution declined**
- **Suspicious circumstances**
- **Exceptional clearance**

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Uniform Crime Report (FBI)

UCR 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.

JSD

25

Media Doesn't Help

DUKE LACROSSE

2006

2015

ROLLING STONE – "Jackie"

26

There is no credible evidence that false allegations are widespread

False Reports
are LOW

most allegations are true

It remains a task for trained investigators to make the determination – treat each case initially as valid

JSD

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WHY THESE #S?
Law Enforcement Training

28

The Policing Culture

“Old Warhorses”

29

WHY THESE #S?
Failure of the Court System

30

BEYOND A
REASONABLE
DOUBT

31

Faced up to 14 years in prison
DA asked for 6 years
Probation officer recommended less than a year
Judge sentenced him to 6 months
Released in 3 months

32

Judge James Troiano – NJ
2019

- 16-year-old filmed himself raping an extremely intoxicated teenager at a party
- Sent the video to friends with the text “When your first time having sex was rape”

33

WHY THESE #S?
Pornography and the Internet

34

In 2016 -
Pornhub alone showed
4.6 billion hours of
pornography viewed on
its site

35

Meta-analysis of different studies shows "clear and consistently" that repeated exposure to pornography puts people at increased risk for accepting rape myths and/or committing sexual offenses.

36

Exposure at a young age

Studies show 93% of boys, 62% of girls exposed in adolescence

49% of males were exposed before age 13

Teenage girls and young women are significantly more likely to view porn regularly than women 25 and above

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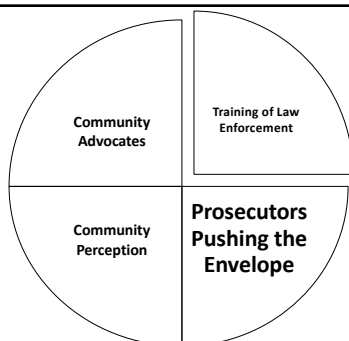
Intimate partner violence and pornography

Use of pornography by batterers significantly increased the odds of the victim also being sexually abused 2xs.

When alcohol was also present, the factor increased 3xs.

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Changing the System



39

Understanding the Neurobiology of Trauma

40

Trauma applies to all cases – but the misunderstanding has had significant impact in our sexual assault cases

Takes a team approach – everyone needs to understand the **science**

This is just an overview

JBD

41

Let's Talk
Brain
Science

Trauma causes physical changes in the human brain

42

Prefrontal Cortex

Limbic System

Reptilian Brain

Defense Circuitry

43

Always Assessing For Danger

**Limbic System (Hippocampus and
Amygdala)**

44

Less than a
second...

45

Survival Reflexes

46

WHY
DIDN'T
YOU...

FIGHT

SCREAM

RUN

???????

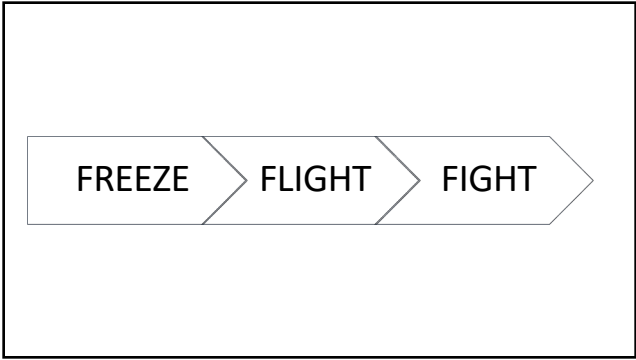
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FIGHT

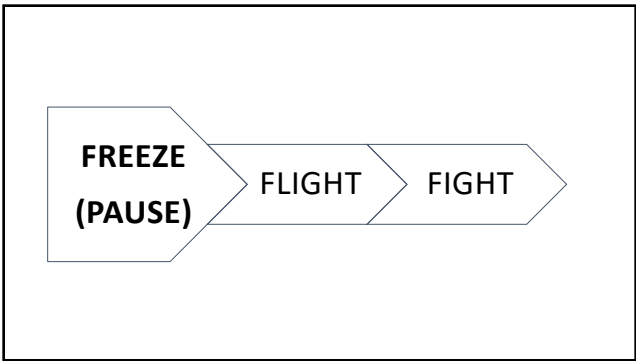
FLIGHT

FREEZE

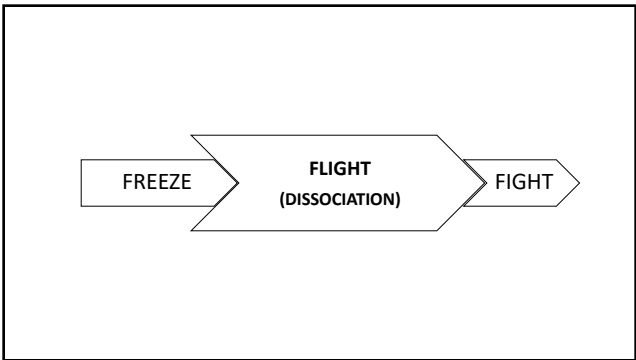
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51

Reflexes & Habits

**All that is left when defense circuitry
takes over**

52

Training is to keep prefrontal
cortex "on".. then to have habits
burned in when it becomes
impaired

53

**Why was I so
polite????**

54

What about
childhood
trauma??

55

Extreme Survival Reflexes

56

FREEZE
(Tonic and
Collapsed
Immobilty)

FLIGHT

FIGHT

57

Tonic Immobility

- Fixed or unfocused staring
- Feeling Cold
- Rigid or trembling muscles
- Rapid Blinking
- Numbness to pain

Collapsed Immobility

- Extreme drop in BP and Heart Rate
- Loss of muscle tone "went limp"
- Sleepiness
- Total loss of consciousness

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Perpetrator

- No threat – Not stressed
- Pre-frontal cortex is "on"
- Planned - habitual
- In control
- Memory is "normal"

Victim

- Terrified
- Defense circuitry in control
- Focused on perceived threat , survival
- Habits & reflexes
- Memory impaired

59

People respond to sexual assault
involuntarily

60

Memory & Trauma

61

What we want...

Beginning, Middle, End

Who, What, Where,
When, Why, How???

Concise & to the Point

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~~PRE-FRONTAL CORTEX~~

~~Logic~~ ~~Choices~~

Focus is on SURVIVAL

SENSORY experiences are strong

PERIPHERAL details are not important

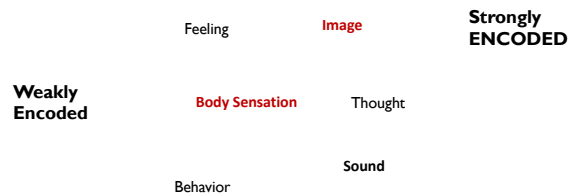
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Trauma-informed
interviewing is about
figuring out what the
attention was focused on

or where they checked
out to...

64

A mess of a memory



65

What we get...

- Not Chronological
- Flashbulb
- Weak narrative

You can't force it...

66

Memory
Time & Stress

67

Peripheral
details are lost
as time passes

68

Stress impairs
retrieval

69

Central details
usually
remain
more reliable

70

Changing the
Script

Inconsistent Statements & Unusual Behavior

ARE NOT ALWAYS

Lies / False Allegations

71

Trauma-Informed Interviewing

72

What happens when we misunderstand trauma??

- Victim-Blaming
- Disbelief of victim
- Ask "report" driven questions
- Misinterpret behaviors and body language

73

Reactions of doubt and blame increase the trauma victim's negative experience and decrease the likelihood they will stay engaged in an investigation

74

Our #s will only improve when responders start from a place that sexual assault reports have merit - and then follow the evidence through a fair, impartial and thorough investigation

This does not mean "always believe victims" or "believe everything a victim says" or pursue corroborative evidence more than exculpatory evidence

75

Thoughts for Prosecutors

- Prosecutors were over 5xs more likely to file charges if there were no questions about the victim's moral character.
- 2.5xs more likely to file charges if the victim did not engage in any "risky" behavior at the time of the assault.
- 4xs more likely to file charges if the victim reported to the police within an hour of the assault.
- 2019 study – 3269 cases from 6 jurisdictions – only 1.5% resulted in a trial

(Spears & Spohn, 1997)
Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the U.S. (2019)
 Melissa S. Marabito, Linda M. Williams, April Pattavina

76

"Ask the right questions...create the right space"

Dr. James Hopper

77

Approach interviews through a trauma lens...

78

Prepare

Know your case – talk to:

- initial responding officer(s)
- Initial witnesses that were present
- SANE/Forensic Nurse
- paramedics or first responders – (if involved)

79

Prepare

Timing considerations – should you delay the full interview?

- Is there an immediate threat to the public?
- Did the victim just go through a physical exam?
- Has the victim had time to sleep?
- Is the victim under the influence of alcohol/drugs?

80

Arrange to have an advocate present

- **Get to know each other before an investigative situation**
- **Help with advocate training**
- **Build TRUST**
- **Understand confidentiality**

81

Physical Comfort

- Victim must feel safe
- Private
- Free from distractions
- Think about logistics
 - transportation
 - childcare

82

What about a
regional room?

83

Time

- Recognize that these interviews can be lengthy
- Address possible distractions so the victim can be completely “present”
 - Child pickups / activities
 - Job schedule
 - Etc.

84

How can you begin to give back control?

85

"You"
Statements

How are **you** feeling?

Is there anything **you** need to feel more comfortable?

May I call **you** by your first name?

Where would **you** like to do this interview?

Do **you** have any questions?

Do **you** have any concerns?

86

"We"
Messages

Establish the victim as an important and central member of the investigative team process.

One of the most important parts of rapport and relationship building

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"We"
Messages

We are going to take time to talk about what happened.

We will review all the information together.

We will discuss all aspects of the case as it progresses.

We will go over all the options available.

88

Things NOT to
Say

Everything is going to be alright.

Don't cry

Time heals all wounds

I know exactly how you feel

It could have been worse

Just try to get on with your life

89

When the victim is empowered, it starts building rapport and trust with the investigator.

90

Build Trust

Good interviewers do it intuitively

- Patience
- Compassion
- Empathy
- Flexible

Recognize that your actions directly affect the victim's healing

91

The Right Person

Can you teach empathy?

Empathy

- Empathy is not sympathy
- Empathy is the ability to understand and **SHARE** the feelings of another.

92

**It doesn't require
malicious intent to do
great harm.**

93

Allow the
victim to
vent

Psychological first aid

**Assure them that these
emotions are normal and
appropriate**

94

Tone, Body Language, &
Eye Contact

95

Tone

Express patience and support

Calm and reassuring

96

Body Language

Open body language projects empathy, care and builds rapport

Sit with victim in a relaxed manner

Victim physically higher if possible

One to two arm lengths away

Acknowledge conversation with nods and verbal encouragers

97

Monitor the victim's body language

May indicate when a break is needed

May indicate the need to skip an area of questioning and come back later

98

Eye Contact

Shows emotion, attention and interest

Communicates you are listening

99

Eye Contact 50/70 Rule

Maintain appropriate eye contact without staring

- While speaking - maintain eye contact 50% of the time
- While listening - maintain eye contact 70% of the time
- Maintain for 4 to 5 seconds, then slowly glance to the side, and then back
- Look side to side, down indicates a lack of confidence in what is being said

Michigan State University (2012) Eye Contact: Don't make these mistakes.

100

Getting Started – Setting the Stage

Let the victim know that it is ok for them to interrupt you at any time with a correction, thought, or question

Let them know that they can decide if/when a break is needed and can stop the interview at any point

101

Full Disclosure

explain that disclosing and "getting in front" of some behaviors reinforces credibility

remind that the truth about all behavior WILL come out

reinforce what you are investigating

102

Remember, the victim, not the investigator has the most vital information about the sexual assault, therefore the victim should be the one with primary control during the interview process.

EVAWI, (2019) Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault

103

How to Begin

Introduce

I'm Investigator Smith, but feel free to call me Jim - I'm sorry we are meeting under these circumstances

Explain

I have worked many cases like this – I speak to lots of people in similar situations

Encourage

You can tell me anything that you feel is important

104

Permission
not to
remember

Begin by saying something like...
"Share with me anything you can
remember about this experience.
You can start wherever you want..."

105

Permission not to remember

Gives them permission to not remember details

Communicates it is ok and expected that they won't remember things

Never "force" a victim to dwell or focus on a point they cannot remember

106

let the victim go at their own pace
and use their own words -
fight the urge to interrupt, clarify or
redirect...

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- Open-ended questions & prompts
- Sensory questions
- Clarification questions – carefully
- No leading questions
- No "why" questions

108

Open Narrative

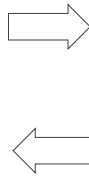
Open-ended prompts

- And then what happened?
- Tell me more about that...
- Can you tell me what you were **thinking** at this point?
- Can you tell me what you were **feeling** when he did that?

109

5 Senses

Take the
time to
explore
each one



Senses
trigger
memories

J3D

110

Establishing Force, Threat & Intimidation

- When did you first feel afraid?
- What changed at that point for you?
- What was going through your mind then - compared to before?
- Compared to _____ were you feeling more or less afraid? Why?
- Tell me more about what made you feel forced
- Tell me more about him - his demeanor, his size, his strength...

111

Central
Details

**What is the one thing you
remember the most about this
event?**

**What stands out in your mind the
most when you talk about this
event?**

**What is the one thing that you
cannot forget about this event?**

112

Finding
Corroboration

**What was your most
significant physical
feeling?**

**Who have you told about
what happened to you?
When did you tell?**

113

Finding
Corroboration

**Is there anything that you can't
do anymore?**

**Is there anything that you have
lost interest in?**

**Is there anything you do now
that you didn't before?**

**How has this changed your day
to day life?**

114

When a "Triggered" Report...	Many people wait to report what has happened to them, what made you choose to report now?	How did your life change immediately after this happened?
	Can you tell me what you remember about the first 3 days after this happened?	

115

Did he hold you down?	Avoid Leading Questions
Was he bigger than you?	
Did you hit him?	
Did you bite him?	

116

Tell me more about him	Instead...
What did you do?	
How did you feel?	

117

Avoid the "Why" ?s	Why didn't you fight the suspect?
	Why didn't you scream for help?
	Why didn't you just leave?
	Why did you kiss him?
	Why did you leave with him?

118

INSTEAD...	Help me understand your perspective...	What was going through your mind when...
	Can you elaborate on...	

119

Clarification	Explain why the questions are needed
	- one of the biggest complaints of victims is not feeling informed through the interview - especially important when dealing with sexual acts or high-risk activities of the victim

120

Clarification

- explain to the victim an overview of the legal requirements of the offenses
- remind that they are not in any legal trouble for drugs or alcohol use
- this continues to establish rapport, trust, and that the victim is a partner in the process

121

Be Careful

- studies find that detectives ask questions in the order that they appear in report forms
- this may not be in the sequence of memory that the victim is relaying and can disrupt the victim's thought process
- memory is not usually stored in the order that an assault occurs

Fischer (1995)

122

Sexual Terminology

- Difficult for detectives and victims
- ask the victim to clarify what terms they use for male and female intimate parts
 - evaluate their knowledge of different types of sexual activity
 - victim will often be relieved when this conversation is initiated by the detective
 - use the terms the victim uses for the duration of the interview
 - avoid law enforcement / legal jargon

123

Record the Interview

Allows the detective to listen in-depth to the victim - only needing to take minimal notes during the interview

Best for evidence and court

Consider having another detective observe through video for feedback

124

The "Prosecution" Question

This question should *never* be asked during the interview phase – only when the investigation is complete, and prosecutor is consulted

If asked by the victim - be completely honest - never promise that the suspect will be arrested, prosecuted, or convicted

Reassure that a thorough investigation will happen and reassure the victim will continue to be kept informed

125

Next Steps

Answer

- any questions or concerns

Inform

- more memories may develop

Encourage

- documentation and sharing of new info

Reassure

- that an investigation will follow

Explore

- potential support and/or barriers

Request

- time and date for follow-up

126

Disclosure is a process

Follow-up
interview(s)

**New information will develop,
and this often means speaking
to your victim for clarification /
elaboration**

127

Science has brought us a long way but... trauma symptoms do not PROVE or DISPROVE sexual assault

"Such gaps and inconsistencies are never, on their own, proof of ANYONE's credibility, innocence, or guilt."

- Dr. Jim Hopper

128

"Why do you need a weapon if you have alcohol?"
-Teresa Scalzo

If the victim is incapacitated by voluntary alcohol or drug use, tell how this in increased
VULNERABILITY not
CULPABILITY!

129

Steps of Impairment

Cognitive

- Judgement, Emotions and Inhibitions

Voluntary Movement

- Coordination and Balance

Involuntary Movement

- Breathing and Heartbeat

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What Determines the Effect?

Body Weight

Energy and Rest Level

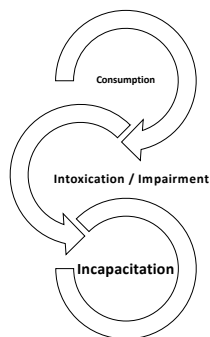
Emotional State

Food Consumption

Level of Tolerance / Exposure

131

How Drunk is Too Drunk?



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How Does Alcohol Impact Your Case?

Force, Threat or Intimidation

- Goes to vulnerability and credibility

Unconscious – Passed Out

- Physical Helplessness

Too Intoxicated to Legally Consent

- Mental Incapacity

133

“Pass Out” vs. “Blackout”

Passing Out

- losing consciousness
- going to sleep

Blacking Out

- complex and specific neurological phenomenon
- interruption of hippocampus activity

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Interrupted hippocampus activity

- Interferes with ability to form new long-term memories

Impairment increases with consumption

Leaves intact ability to keep new information active in memory for brief periods

- Might remember small things during blackout (brownout)

Leaves intact previously established long-term memories

135

Blackout

Rarely beer alone

Preceded and followed by signs of extreme intoxication

Very close to either passing out or vomiting (body's methods of preventing alcohol poisoning)

136

"Alcohol can disrupt the encoding or organizing process of memory. Encoding the context of a sexual assault is impaired, so details such as time, place, and sequence of events may be further fragmented or not encoded at all.

However, the hippocampus can often still encode sensory details (smells, sounds, etc.)."

Bisby, J.A. ET AL.,
"Acute effects of alcohol in intrusive memory development and viewpoint dependence in spatial memory support a dual representation model." *Psychiatry*, 68(3) 280-286. 2010.

137

Blackout as a Defense

Make sure the defense is correctly defining "blackout"

Before the defense can use an expert – make sure the foundation has been correctly laid

Blackout is usually not an option for the defendant

138

Use of an Expert – No Blood Test

Toxicologist – Widmark Formula

Estimated BAC

Timeline for Absorption

- What time they started drinking & what alcohol they consumed
- What time the assault happened
- Weight / Sex (body h₂o)
- Effect of interaction with food – not important

Drinking Pattern

Can give a range

139

Use of an Expert – Blood Test

Back Extrapolation

Need to know time of assault

No other alcohol consumed since assault

Weight/sex doesn't matter

Food doesn't matter

Reported in range

140

Sexual Assault Investigations

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Victim centered
– what does it
mean?

**If we don't investigate
through a trauma-informed
lens we will likely damage
our most important piece of
evidence**

***We will do more harm
than good***

142

The Initial Response

143

Minimal Fact- Finding Interview

What type of crime?
Who is the victim?
Who is the perpetrator?
Where did it happen?
When did it happen?
***Does this information have to come from
the victim?***

144

Investigator
ALWAYS
Responds

Sexual offenses
treated with same
attention as
homicide

Policy!

145

**What is the minimum
number of crime scenes
you will always have?**

146

There are always at least
3 crime scenes –
Location of Crime
Victim
Suspect

147

Why is this important in cases where consent is a defense?

148

Pretend it is a stranger rape...

Photos and Video

Clothing (even if washed)

Sheets & Comforter

Towels

Trash

Recent laundry v. dirty clothes

Birth Control, Lubricants, Sex Toys

Alcohol
Drugs

Document anything out of order

149

What about DNA?

150

Forensic Exam
Understand
your
resources

What is an acute
case?

Description-driven
or complete exam?

Time involved,
location and
payment

151

Does the
nurse need to
interview?

Impartiality is key

152

Lack of physical injury
SHOULD NOT be viewed as
disproving the victim's account
of the assault

153

Suspect PERK exam

Strategic factors:

- Length of time since the assault
- Timing
- Search warrant?
- Consent?

154

Suspect PERK exam

- Buccal swabs
- Penile and scrotal swabs
- Pubic, chest, and facial hair
- External examination of the anal area
- Photographs
- Injuries
- Hygiene details
- Foreign debris or material

Still a patient if done by a nurse

155

Suspect PERK exam

Considerations

- Police department v. hospital
- SANE/FNE or Forensic tech
- What if combative?
- Cross contamination
- SART should discuss protocol and policies

156

Jury expectations and bias

Win the numbers game

157

Where did the trauma manifest?

Think about your
victim's
interview(s):

Document lifestyle
changes?

Work Records

School Records

Friends & Family

Lack of texts or
social media

Can you create a
timeline?

158

Corroboration

- Photographs
- Security videos
- Traffic cams
- Bar tabs, ABC receipts
- Texts & Emails (Preservation Letters)
- Social Media
- Witnesses Phones
- GPS records

159

Why this Victim?

- How was trust built?
- How was trust tested in the past?
- Why this specific location?
- Factors to reduce the victim's credibility? Vulnerabilities?
- Drugs? Alcohol?
- Does it fit past behaviors with exes?

160

The Report

Vital Part of your Case

161

Accuracy is Critical

Details of ALL the evidence in the investigation

Speaks for all witnesses

Prosecutors rely on them and make decisions based on them

162

Preserve the details of the sexual assault
using the EXACT words of the victim

Don't:

sanitize
use passive voice
use consensual terms

163

had sex with	rape
oral sex	forced his penis, tongue
fondle	grabbed
kiss	forced his tongue
performed	was made to

164

Open-ended questions, accurately reported answers:

- What thoughts did you have when...?
- How were you feeling when...?
- When do you remember first being afraid? What caused those first feelings of fear?
- Compared to before he said/did that - were you feeling more or less afraid?

165

Document all
factors of
force, threats
and
intimidation

- Suspect was - older, larger, stronger
- Victim was - vulnerable, *i.e.* immigration status, employee, student, patient, etc.
- History of domestic violence, past victimization
- Fear for children or others

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How do you
lay the
foundation of
trauma brain
throughout
your report?

I seized a green leafy
substance

...that **in my training
and experience**
appeared to be
marijuana

167

How do you
lay the
foundation of
trauma brain
throughout
your report?

When I spoke with Ms Doe I used
an interview technique based on
my training and experience known
to be effective in interviewing
people who have experienced
trauma

or

A full trauma-informed interview
was conducted with Ms. Doe –
statement was recorded.

168

What about the
“Why did you/didn’t you”
questions??

169

FREEZE → FLIGHT → FIGHT

170

How do you
frame this
in your
report?

In my **training and experience**
people who experience
trauma sometimes have a
fright, flight or freeze
response. When Ms. Doe said
she couldn’t feel her legs I
followed up with specific
questions about that
sensation.

171

What about the gaps??

172

For your report consider...

I began my interview by telling Ms. Doe that she could begin with whatever she thought was important for me to know and I then asked her to share with me what she was **able** to tell me about what she experienced

173

How do you deal with inconsistencies??

VERY ACCURATELY

174

Suspect
Interview

Empathy Based Interview
(EBI)

***Remember - they WANT to
tell you a story... Let them!***

175

Problem
Solving
Environment

Creativity

Flexibility

Patience

Empathy

176

Atmosphere

177

Interview "Ops" Plan

What are your goals for the interview?

- Elements that need to be corroborated?

178

Conversation Points

Let the suspect tell their story

- No interruptions
- No judging
- Minimal encouragers
- Then establish conversation points of common interest between suspect and interviewer

179

Risk Levels

Low Risk

Medium
Risk

High Risk

180

Strategic Introduction of Evidence

Least threatening to most damning

- Photos
- Records
- Victim/Witness Statements
- Video
- Medical

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Flip the
Perspective

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