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Using Science to Increase Effectiveness of Sexual Assault Investigations

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Multiple forces are converging to put increasing pressure on law enforcement to ramp up the effectiveness of sexual assault investigations. There is a growing awareness and concern about the scourge of sexual violence, and that concern is reflected in increased scrutiny from the media, politicians, and ordinary citizens. The U.S. military has experienced this intense scrutiny for more than a decade; colleges and universities are now under the same spotlight; and there are growing signs that the civilian criminal justice system is next in line. The current focus on untested rape kits is likely just the first chapter in what will be a long-term focus on how the civilian criminal justice system responds to rape and sexual assault.

Fortunately, as law enforcement looks to ramp up its effectiveness, it can draw from a substantial body of scientific research on both sexual victimization and sexual offending. This research yields direct applications for the investigation of sexual assault cases. In particular, it addresses (1) the importance of treating victims of sexual violence with respect and compassion (without relinquishing neutrality); (2) the particular nature of traumatic memory and, therefore, specific methods for interviewing trauma victims; and (3) the dynamics of sexual offending and specific avenues for investigating suspects.

Treating Victims with Respect and Compassion

In non-stranger rape cases, the victim is very often the most important source of evidence. Therefore, interviewing the victim may be the single most important aspect of a rape investigation. Is there an approach to this crucial interview that helps yield the most information and the most evidence?

Research confirms what many veteran investigators have learned from experience. Namely, victims respond with more openness and more disclosure when they are relatively relaxed, when they trust the investigator, and when they do not feel threatened or accused by the investigator. Similar studies conducted in the United States and Sweden reached identical conclusions: victims who felt they were being treated with compassion and respect by investigators talked more openly about their experience; they disclosed more and withheld less.¹

One segment of an interview from the U.S. study provides some insight into why disclosure increases when victims feel safe:

4129: *They were consoling, careful, you know. They didn't bombard me, a man had just assaulted me. I felt calmness right away... I felt safe... they were, you know, they come out and they were consoling. They weren't question, question. They made sure that I was OK and safe, felt safe there.*

I: *So not being bombarded with questions made you feel more safe with them?*

4129: *Yeah... they didn't come at me right away wanting to know this, this, and this. They gave me my time and my space.*

I: *Why is that important to do?*

4129: *Because one, you've just been sexually assaulted by a man. The last thing she needs is a man on a power trip. Someone coming at her, demanding things from her when (one) they didn't even ask, they just took. And you're not in a normal state of mind when you're going through, after something like that happens. You need somebody, you need people to be careful with you and be careful of the way they talk to you and treat you and approach you, because the way I look at it now, I don't know this man. I don't trust anyone.²*

The Swedish study was conducted by a veteran police officer. Data collected from 178 crime victims revealed a stark difference in their experiences—some victims felt they were treated with humanity, while others felt they were treated with “dominance.” Statistical analysis showed that victim interviews that were marked by dominance were associated with the omission of information, while interviews that were marked by humanity were

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associated with cooperation and the disclosure of more information.³

Research has also identified a link between police officers' attitudes and their skill level in interviewing rape victims. Officers who endorsed more "rape myths" scored significantly lower on a measure of interviewing skills.⁴ A study by Dr. Rebecca Campbell, a subject matter expert on the needs of rape survivors, provides some insight into this finding. According to the study, victims described very negative reactions to being questioned about whether or not they resisted or why they were with the perpetrator in the first place.⁵ While such questions may be necessary, the timing of the questions, how they are framed, and whether they are asked in the context of a compassionate interview can be crucial.

Compassion and empathy, however, are not high-priority attributes for most police officers. Traditionally, police officers have not been trained to be empathic toward victims. The common curriculum in law enforcement academies includes topics that are essential to a police officers' knowledge and skill base in law enforcement—statutory law, traffic enforcement, shooting and use-of-force skills, high-speed driving tactics, and suspect interview and interrogation skills—but little, if any, training exists on how to treat and interview crime victims with empathy and compassion, particularly sexual assault victims. In fact, most law enforcement personnel—and citizens, in general—are conditioned to be suspicious of anyone who reports that they were sexually assaulted. Fortunately, law enforcement agencies are beginning to recognize that this approach is non-productive and often is re-traumatizing for sexual assault victims.

There are two critical points to consider in taking a report of a sexual assault that are not typically considered by law enforcement. First, victims should never be treated as witnesses to their own sexual assault; they did not witness the crime, they experienced it. In practical terms, this mind-set is the first step in learning to apply the principles of empathy and compassion toward victims. It is an approach that results in an increase in victims' cooperation and greater levels of helpful information, and it does not lessen a police officer's capacity to remain non-biased. It simply makes her or him more effective.

Second, the victim interview is far more important to a successful sexual assault investigation and prosecution than any other aspect of evidence collection and preservation. By applying the research on how victims respond to empathic approaches, investigators can gather more evidence and increase the likelihood of a successful resolution to the case. A sexual assault investigation will generally lead to an unprosecuted case unless the victim is interviewed in such a way as to elude as much of the experiential evidence of the crime as possible.

Finally, there is a "simply human" dimension to the empathic engagement with a victim of sexual violence, illustrated by one of many cases from the second author's career in law enforcement. After an unsuccessful attempt at prosecuting the sexual assault defendant, the victim stated she was not surprised that the jury did not believe her version of the story, yet she was not disheartened or further traumatized by the verdict. She was, in fact, grateful that she had been believed throughout the investigation and that the prosecutor believed her enough to bring the case to a jury. Even if the case does not result in a conviction, a victim may leave the process with a more positive experience and outlook when treated with empathy, compassion, and humanity by "the system."

Trauma, Memory, and the Implications for Interviewing Victims

The human brain is a miraculous organ, an unparalleled learning machine. The survival of the human species is in large part due to the brain's capacity to constantly survey the environment through the five senses to detect the presence of threats. When a threat—or the possibility of a threat—is perceived, the brain triggers a massive biological response that alters the functioning of the body and the brain. Adrenaline is pumped into the bloodstream, and, in a heartbeat, the body is readied to flee to safety. Simultaneously, specific neurochemicals flood the brain and transform how it functions.⁶

Neuroscience research has exploded in the last several decades. Scientists are uncovering the minutiae of how the brain responds to threats, how the brain encodes experience during life-threatening events, and how those events are recalled afterwards. This ever-deepening understanding of the relationship between trauma and memory has enormous implications for one of the most critical functions of the sexual assault investigator: the victim interview.

A traumatic experience instantly and radically changes the brain's neurochemistry. High concentrations of particular neurotransmitters alter the functioning of two critical brain regions: the frontal lobes and the hippocampus.

The frontal lobes are often called the brain's "executive center." This critical region enables a person to willfully direct their attention, to contain their emotions and impulses, and to integrate information from across different brain regions. When trauma triggers the release of high concentrations of certain neurotransmitters, the frontal lobes begin to lose traction. With sustained trauma, the frontal lobes can functionally go "offline," and the person can no longer direct their attention or integrate information.⁷

As disturbing as this change in brain function might sound, it is actually a quite normal experience. Almost everyone has had the experience of being suddenly thrust into a very high-stress situation and finding that they are unable to remember simple information like a phone number or a name. When the functioning of the frontal lobes deteriorates, simple tasks like understanding questions and formulating coherent answers can be severely

compromised.

Rape victims have been traumatized; therefore, they are subject to these alterations in the function of the frontal lobes. This is not only true in the immediate aftermath of the trauma, but it is also often the case weeks and months later when they are being questioned about the trauma. As the victim relives the events, it is very likely that similar changes take place in his or her brain.

Another brain region that is severely affected by the changes in brain neurochemistry during a threat is the hippocampus. The hippocampus is deeply involved in memory formation; in particular, it controls a person's ability to recall events in context and sequence. Trauma alters the functioning of the hippocampus, dramatically reducing its capacity to encode context and sequence. Instead, traumatic memories tend to be extremely vivid, disconnected fragments, and, often, those fragments are tied to the senses—the victim may recall intense visual images, sounds, or smells.⁸

These profound changes to the way the brain encodes experience during a trauma mean that ways of questioning that seem normal are often counter-productive in the context of someone who has been traumatized. Asking a rape victim to describe what happened and to "start from the beginning," may inadvertently push the victim to try to recall the sequence of events when they are actually unsure of that sequence. Assuming that a rape victim will recall peripheral details—the context of an event—may well be misplaced. Assuming that a rape victim will recall events exactly the same way each time they are interviewed may also be misplaced. Is it a reasonable expectation—given that they are likely to recall vivid, often disconnected fragments instead of complete memories?

To address these changes in how a traumatized person is likely to recall events, Russell Strand, a former special agent for the U.S. Army Criminal Investigation Division (CID), developed the Forensic Experiential Trauma Interview (FETI) technique. This interview technique attempts to address the neuroscience of human trauma and the related issues that can make victim interviews much less productive and more harmful than they need to be. FETI borrows from critical incident stress debriefings, child forensic interviews, the neuroscience of trauma and memory, and best practices from clinical psychological methods. It is currently being taught to military and civilian investigators, victim advocates, mental health workers, and prosecutors across the United States.

A key aspect of the FETI interview is to start the interview by acknowledging the victim's trauma, emotional pain, or difficult situation. From this initial empathic and compassionate introduction, the interviewer then asks what the victim is able to tell about their experience. The keys to this question are the words "able" and "experience." The word able sends a message to the victim that relieves some of the stress and pressure of feeling obligated to recall as many details as possible and the inherent sense of responsibility the victim may feel to be entirely accurate in sequence and in trying to figure out what is important to the investigative process. Having the victims relate their experience, as opposed to asking them what happened, provides an opportunity for the victims to relate their physical and emotional experiences in meaningful and natural ways, including their experiences before, during, and after the sexual assault.⁹

While useful in any trauma scenario, the application of the FETI technique for sexual assault interviews is particularly acute in light of how common it is for law enforcement to question the veracity of a victim's experience when it seems to be inconsistent, lacking in peripheral details, and "full of holes." The FETI process focuses on the sensory aspects of the victim's experience, a focus that is consistent with the neuroscience of traumatic memories. The information provided by victims who are interviewed this way tends to be significantly more detailed than the information obtained in traditional "who, what, why, when, where, and how" interviews.

Investigators who have been trained in the FETI technique have expressed that they are able to get inside the victim's "trauma bubble," drawing out information that provides psychophysiological evidence—sensory information that describes both the victims' physical and emotional responses to the trauma they have sustained. This type of information has been useful in explaining to investigators why a victim did or did not behave in ways that, in the past, were considered counter-intuitive. When victims sense that they are being listened to, victim recantation is reduced, and victim cooperation and participation in the investigation and prosecution are increased.

The Dynamics of Sexual Offending

Research on the motives, characteristics, and behaviors of sex offenders spans many decades. While there are forensic implications of much of this research, one finding in particular merits particular attention—the phenomenon of serial offending.

Most sex offenders come to the attention of law enforcement when a victim makes a report. The report triggers an investigation, and the investigation either yields sufficient evidence to proceed toward prosecution or it does not.

However, if the victim who reports a sexual assault is a child, there is almost invariably an additional dimension to the investigation. In addition to investigating the child's allegation, efforts will be made to canvas other children who have been exposed to the alleged perpetrator. This additional dimension to the investigation is based on both research and forensic experience. Often, sex offenders who target a child will have targeted other children, and such offenders are rarely caught on their first offense.

However, while this additional investigative dimension is a common practice in child cases, it has not been often applied when the victim who reports is an adolescent or adult. In those cases, the investigation typically begins and ends with that victim.

Yet, evidence abounds that a very significant percentage of adult-on-adult sexual violence is perpetrated by serial offenders. This research spans many decades, and it is consistent across many different contexts: civilian communities, the U.S. military, and universities. In at least two studies, more than 90 percent of all rapes and attempted rapes were perpetrated by serial offenders.¹⁰ Researchers in the late 1980s and early 1990s discovered that adjudicated sex offenders, most of whom had been convicted on one or two counts, had actually committed multiple offenses prior to being caught.¹¹ Research on so-called "life-course persistent offenders" has also documented a propensity toward sexual aggression among these offenders.¹² Additionally, a one-year longitudinal study of a community sample documented that 25 percent of the men who had reported sexual aggression at the beginning of the study reported another act of sexual aggression at the second assessment one year later.¹³

Given this research, why is it not common practice for law enforcement agencies to approach adult-on-adult cases the same way as they traditionally approach adult-on-child cases? Most child sexual assault investigators will apply multiple tactics to find other victims of a suspected child sex offender, from asking known victims if they know of other victims, to investigation and surveillance of the suspect's travel patterns, exposure to other children, and grooming tactics, to obtaining search warrants where applicable. These same tactics can be effective in investigating suspected adult sexual assault perpetrators.

Additional tactics may include questioning known associates and friends of a suspect, which may result in finding that the suspect has flaunted or bragged about multiple sexual conquests; talking to known prior dating partners or spouses; using pre-textual phone conversations or text communications from known victims; or running suspect DNA through the FBI's Combined DNA Index System (CODIS). Even direct questioning of the suspect may result in the disclosure of additional victims. Keeping the perspective that there is always the possibility of multiple victims from any one perpetrator will help maintain the integrity and thoroughness of a sexual assault investigation.

The increased scrutiny on the effectiveness of law enforcement's response to sexual assault cases will inevitably lead to increased expectations. Therefore, it is imperative that law enforcement become more aware of the research that informs its work and more willing to adopt emerging best practices. ♦

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